Tab 1	**SB 40** by **Thurston**; (Similar to CS/CS/H 06535) Relief of the Estate of Dr. Sherrill Lynn Aversa by the Department of Transportation

Tab 2	**SB 42** by **Rodriguez**; (Similar to H 06505) Relief of Vonshelle Brothers by the Department of Health

Tab 3	**SB 44** by **Rodriguez**; (Similar to H 06501) Relief of Cristina Alvarez and George Patnode by the Department of Health

366626	PCS	S		RCS	AP, AHS		03/02 03:52 PM

Tab 4	**CS/SB 272** by **CA, Brandes (CO-INTRODUCERS) Campbell**; (Compare to CS/CS/H 00317) Local Tax Referenda

245118	PCS	S		RCS	AP, AFT		03/02 04:16 PM

Tab 5	**CS/SB 354** by **CA, Stargel**; (Similar to CS/1ST ENG/H 00011) Government Accountability

522564	D	S		FAV	AP, Stargel	Delete everything after	03/02 04:28 PM
104016	AA	S		RCS	AP, Bradley	Delete L.362 - 574:	03/02 04:28 PM
110202	AA	S		RCS	AP, Stargel	Delete L.779 - 947:	03/02 04:28 PM
263764	AA	S		RCS	AP, Stargel	btw L.1495 - 1496:	03/02 04:28 PM
703092	AA	S	L	RCS	AP, Stargel	Delete L.311 - 333:	03/02 04:28 PM

Tab 6	**SB 422** by **Gibson**; (Similar to CS/H 00259) Elder Abuse Fatality Review Teams

707324	PCS	S		RCS	AP, AHS		03/02 04:37 PM
913150	A	S	L	RCS	AP, Gibson	Before L.29:	03/02 04:37 PM

Tab 7	**CS/SB 424** by **GO, Gibson**; (Similar to H 00261) Public Records and Public Meetings/Elder Abuse Fatality Review Team

Tab 8	**CS/SB 620** by **CM, Passidomo (CO-INTRODUCERS) Young, Steube, Campbell**; Disaster Preparedness Tax Exemption

741326	PCS	S		RCS	AP, AFT		03/02 05:03 PM
177326	PCS:D	S	L	RCS	AP, Stargel	Delete everything after	03/02 05:03 PM

Tab 9	**SB 672** by **Stargel (CO-INTRODUCERS) Grimsley, Perry**; (Similar to CS/H 00819) Truck License Taxes

Tab 10	**CS/SB 732** by **ED, Baxley**; (Similar to CS/CS/1ST ENG/H 00731) K-12 Education

478690	PCS	S		RCS	AP, AED		03/02 05:24 PM
677438	A	S	L	RCS	AP, Brandes	Delete L.535 - 592:	03/02 05:24 PM

Tab 11	**CS/SB 744** by **HP, Grimsley**; (Compare to CS/CS/CS/H 00965) Laser Hair Removal or Reduction

128446	D	S		RCS	AP, Grimsley	Delete everything after	03/02 05:34 PM

Tab 12	**CS/CS/SB 774** by **JU, CF, Bean**; (Compare to CS/CS/H 00505) Dependency Proceedings

Tab 13	**CS/CS/SB 784** by **JU, BI, Brandes**; (Similar to CS/CS/2ND ENG/H 00465) Insurance

Tab 14	**SB 840** by **Hutson**; (Compare to H 00223) Gaming

514374	PCS	S		RCS	AP, AFT		03/02 05:45 PM
184406	PCS:D	S		RCS	AP, Hutson	Delete everything after	03/02 05:45 PM
~~578866~~	PCS:AA	S	L	WD	AP, Braynon	Delete L.2662 - 2695.	03/02 05:45 PM

Tab 15	**CS/SB 844** by **ED, Bean**; (Similar to CS/H 00565) Excess Credit Hour Surcharges

Tab 16	**CS/SB 848** by **HP, Grimsley**; (Similar to CS/CS/H 00679) Telepharmacy

Tab 17	**CS/SB 852** by **TR, Brandes (CO-INTRODUCERS) Taddeo, Campbell, Gibson**; (Similar to CS/CS/H 00633) Florida Smart City Challenge Grant Program

859872	PCS	S		RCS	AP, ATD		03/02 07:21 PM
136690	A	S		RCS	AP, Brandes	Delete L.94 - 147:	03/02 07:21 PM
819704	A	S		RCS	AP, Brandes	Delete L.289:	03/02 07:21 PM

Tab 18	**SB 992** by **Book**; (Compare to CS/CS/H 07063) C-51 Reservoir Project

757058	PCS	S		RCS	AP, AEN		03/02 07:24 PM

Tab 19	**SB 1012** by **Passidomo (CO-INTRODUCERS) Young**; (Compare to CS/CS/1ST ENG/H 00141) Alligator Alley Toll Road

291154	PCS	S		RCS	AP, ATD		03/02 07:40 PM
~~494290~~	PCS:D	S		WD	AP, Passidomo	Delete everything after	03/02 07:36 PM
477376	PCS:D	S		RCS	AP, Passidomo	Delete everything after	03/02 07:40 PM

Tab 20	**CS/SB 1056** by **ED, Passidomo**; (Similar to CS/H 01213) Computer Science Instruction

293960	PCS	S		RCS	AP, AED		03/02 07:43 PM
234318	PCS:D	S		RCS	AP, Passidomo	Delete everything after	03/02 07:43 PM

Tab 21	**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 22	**CS/SB 1104** by **TR, Brandes**; (Similar to CS/1ST ENG/H 01189) Commercial Motor Vehicles

472918	PCS	S		RCS	AP, ATD		03/02 07:51 PM
419998	PCS:D	S		RCS	AP, Brandes	Delete everything after	03/02 07:51 PM
~~796284~~	PCS:AA	S	L	WD	AP, Brandes	btw L.327 - 328:	03/02 07:51 PM

Tab 23	**CS/SB 1218** by **CJ, Brandes**; Persons Awaiting Trial

485662	PCS	S			AP, ACJ		02/23 03:12 PM
711458	A	S		RS	AP, Brandes	btw L.2200 - 2201:	03/02 07:58 PM
~~606820~~	AA	S	L	WD	AP, Brandes	Delete L.31:	03/02 07:58 PM
786578	SA	S	L	RCS	AP, Brandes	btw L.2200 - 2201:	03/02 07:58 PM

Tab 24	**CS/SB 1254** by **ED, Passidomo (CO-INTRODUCERS) Book**; (Similar to CS/CS/H 01091) Early Learning

481844	D	S		RCS	AP, Passidomo	Delete everything after	03/02 08:25 PM

Tab 25	**CS/SB 1314** by **CM, Brandes**; (Similar to H 01181) Florida Capital Formation Act

188068	PCS	S		RCS	AP, ATD		03/02 08:37 PM

Tab 26	**CS/SB 1396** by **JU, Steube (CO-INTRODUCERS) Brandes**; (Similar to H 05301) Judgeships

535720	PCS	S		RCS	AP, ACJ		03/02 08:53 PM
830072	A	S		RCS	AP, Steube	Delete L.149:	03/02 08:53 PM
554532	A	S	L	RCS	AP, Steube	btw L.80 - 81:	03/02 08:53 PM
225404	A	S	L	RCS	AP, Steube	btw L.80 - 81:	03/02 08:53 PM

Tab 27	**CS/SB 1450** by **CM, Steube**; (Identical to CS/H 01231) Sales Tax Refund for Eligible Job Training Organizations

285140	PCS	S	RCS	AP, ATD		03/02 08:59 PM

Tab 28	**CS/SB 1486** by **HP, Grimsley**; (Similar to CS/CS/H 01047) Department of Health

485676	A	S	RCS	AP, Grimsley	Delete L.145 - 1408.	03/02 09:02 PM

Tab 29	**CS/CS/SB 1494** by **BI, HP, Montford (CO-INTRODUCERS) Grimsley, Powell**; (Similar to CS/CS/H 00351) Prescription Drug Pricing Transparency

~~722650~~	A	S	WD	AP, Montford	Delete L.116 - 192:	03/03 09:54 AM
796750	A	S	RCS	AP, Montford	btw L.193 - 194:	03/03 09:54 AM

Tab 30	**SB 1532** by **Stargel (CO-INTRODUCERS) Perry, Simpson**; (Compare to CS/1ST ENG/H 01175) Early Learning Coalitions

Tab 31	**CS/SB 1548** by **ED, Book**; (Similar to H 00777) K-12 Student Safety

142946	D	S	RCS	AP, Book	Delete everything after	03/03 09:58 AM

Tab 32	**CS/SB 1612** by **EP, Rader (CO-INTRODUCERS) Book**; (Similar to CS/CS/H 01211) Airboat Regulation

473282	PCS	S	RCS	AP, AEN		03/03 10:04 AM
179484	A	S	RCS	AP, Rader	btw L.40 - 41:	03/03 10:04 AM
~~152212~~	A	S L	WD	AP, Rader	Delete L.63:	03/03 10:04 AM
639812	A	S L	RCS	AP, Rader	Delete L.19:	03/03 10:04 AM

Tab 33	**CS/SB 1646** by **CM, Montford (CO-INTRODUCERS) Gainer**; (Similar to CS/CS/H 01103) Regional Rural Development Grants

952426	PCS	S	RCS	AP, ATD		03/02 01:28 PM
677446	A	S	RCS	AP, Montford	btw L.223 - 224:	03/02 01:28 PM

Tab 34	**CS/CS/SB 1678** by **JU, CJ, Stargel**; (Similar to CS/H 00547) Reports Concerning Seized or Forfeited Property

Tab 35	**SB 1712** by **Montford (CO-INTRODUCERS) Thurston**; (Identical to CS/H 00375) Postsecondary Revenue Bonds and Debt

Tab 36	**SB 7028** by **RC**; Ratification of Department of Elderly Affairs Rules

Tab 37	**SB 7030** by **RC**; (Similar to H 07099) Ratification of Agency for Health Care Administration Rules

The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

APPROPRIATIONS
Senator Bradley, Chair
Senator Flores, Vice Chair

MEETING DATE: Friday, March 2, 2018
TIME: 9:00 a.m.—12:00 noon
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 40** Thurston (Similar CS/CS/H 6535)	Relief of the Estate of Dr. Sherrill Lynn Aversa by the Department of Transportation ; Providing for the relief of the Estate of Dr. Sherrill Lynn Aversa; providing an appropriation to compensate the Estate of Dr. Sherrill Lynn Aversa for Dr. Aversa's death as a result of the negligence of the Department of Transportation; requiring the Executive Office of the Governor to establish spending authority from unappropriated trust fund balances of the department for compensation to the Estate of Dr. Sherrill Lynn Aversa, etc. SM JU 01/25/2018 Favorable ATD 02/14/2018 Favorable AP 03/02/2018 Favorable	Favorable Yeas 16 Nays 1
2	**SB 42** Rodriguez (Similar H 6505)	Relief of Vonshelle Brothers by the Department of Health; Providing for the relief of Vonshelle Brothers on behalf of her daughter Iyonna Hughey; providing an appropriation to compensate Iyonna Hughey for injuries and damages sustained as a result of the alleged negligence of the Brevard County Health Department, an agency of the Department of Health, etc. SM JU 01/25/2018 Favorable AHS 02/21/2018 Favorable AP 03/02/2018 Favorable With subcommittee recommendation – Health and Human Services	Favorable Yeas 18 Nays 0

A proposed committee substitute for the following bill (SB 44) is available:

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	**SB 44** Rodriguez (Similar H 6501)	Relief of Cristina Alvarez and George Patnode by the Department of Health; Providing for the relief of Cristina Alvarez and George Patnode; providing appropriations to compensate them for the death of their son, Nicholas Patnode, a minor, due to the negligence of the Department of Health, etc. SM JU 01/25/2018 Favorable AHS 02/21/2018 Fav/CS AP 03/02/2018 Fav/CS	Fav/CS Yeas 18 Nays 0

With subcommittee recommendation – Health and Human Services

A proposed committee substitute for the following bill (CS/SB 272) is available:

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	**CS/SB 272** Community Affairs / Brandes (Compare CS/CS/H 317)	Local Tax Referenda; Revising the voter approval threshold required to pass a referendum to adopt or amend local government discretionary sales surtaxes when the referendum is held at any date other than a general election, etc. CA 10/24/2017 Fav/CS AFT 01/16/2018 Fav/CS AP 03/02/2018 Fav/CS RC	Fav/CS Yeas 11 Nays 7

With subcommittee recommendation – Finance and Tax

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
5	**CS/SB 354** Community Affairs / Stargel (Similar CS/H 11, Compare CS/CS/H 1019, CS/CS/CS/H 1279, H 5203, CS/H 7055, CS/CS/H 7073, CS/S 1426, CS/CS/S 1804)	Government Accountability; Specifying that the Governor, the Commissioner of Education, or the designee of the Governor or of the commissioner, may notify the Legislative Auditing Committee of an entity's failure to comply with certain auditing and financial reporting requirements; revising the responsibilities of the Justice Administrative Commission, each state attorney, each public defender, the criminal conflict and civil regional counsel, the capital collateral regional counsel, and the Guardian Ad Litem Program, to include the establishment and maintenance of certain internal controls; prohibiting a board or commission from requiring an advance copy of testimony or comments from a member of the public as a precondition to being given the opportunity to be heard at a public meeting, etc. CA 11/07/2017 Fav/CS AP 02/27/2018 Not Considered AP 03/02/2018 Fav/CS RC	Fav/CS Yeas 10 Nays 8

A proposed committee substitute for the following bill (SB 422) is available:

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
6	**SB 422** Gibson (Similar CS/H 259, Compare H 261, Linked CS/S 424)	Elder Abuse Fatality Review Teams; Creating elder abuse fatality review teams in each judicial circuit housed, for administrative purposes only, in the Department of Elderly Affairs; exempting certain information and records acquired by a review team from discovery or introduction into evidence in specified actions or proceedings; prohibiting a person from being required to testify regarding records or information produced or presented during meetings or other activities of a review team, etc. CF 11/13/2017 Favorable AHS 01/10/2018 Fav/CS AP 03/02/2018 Fav/CS	Fav/CS Yeas 19 Nays 0
	With subcommittee recommendation – Health and Human Services		
7	**CS/SB 424** Governmental Oversight and Accountability / Gibson (Similar H 261, Compare CS/H 259, Linked S 422)	Public Records and Public Meetings/Elder Abuse Fatality Review Team; Specifying that information obtained by an elder abuse fatality review team which is exempt or confidential and exempt from public records requirements retains its protected status; providing an exemption from public meetings requirements for portions of review team meetings at which exempt or confidential and exempt information or the identity of an elder abuse victim is discussed; providing for future legislative review and repeal; providing statements of public necessity, etc. CF 11/13/2017 Favorable GO 01/10/2018 Fav/CS AP 03/02/2018 Favorable	Favorable Yeas 18 Nays 0
	A proposed committee substitute for the following bill (CS/SB 620) is available:		
8	**CS/SB 620** Commerce and Tourism / Passidomo	Disaster Preparedness Tax Exemption; Providing a sales and use tax exemption for certain tangible personal property related to disaster preparedness during a specified period, etc. CM 11/13/2017 Fav/CS AFT 01/16/2018 Fav/CS AP 03/02/2018 Fav/CS	Fav/CS Yeas 18 Nays 0
	With subcommittee recommendation – Finance and Tax		
9	**SB 672** Stargel (Similar CS/H 819)	Truck License Taxes; Revising which truck tractors and heavy trucks transporting certain agricultural or horticultural products are eligible for reduced license taxes, etc. TR 01/10/2018 Favorable ATD 01/17/2018 Favorable AP 03/02/2018 Favorable	Favorable Yeas 18 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
	With subcommittee recommendation – Transportation, Tourism, and Economic Development		
	A proposed committee substitute for the following bill (CS/SB 732) is available:		
10	**CS/SB 732** Education / Baxley (Similar CS/CS/H 731, Compare CS/CS/H 323, H 1095, S 1270)	K-12 Education; Specifying that a home education program is not a school district program and is registered with the district school superintendent only for the purpose of complying with the state's attendance requirements; authorizing a school district to provide home education program students with access to certain courses and programs offered by the school district; prohibiting a district school superintendent from requiring certain evidence relating to a child's age from children enrolled in specified schools and programs, etc. ED 01/22/2018 Fav/CS AED 02/08/2018 Fav/CS AP 03/02/2018 Fav/CS	Fav/CS Yeas 19 Nays 0
	With subcommittee recommendation – Pre-K – 12 Education		
11	**CS/SB 744** Health Policy / Grimsley (Compare CS/CS/CS/H 965)	Laser Hair Removal or Reduction; Providing rulemaking authority to the Department of Health for regulating electrolysis services; providing for the validity of temporary permits previously issued by the Board of Medicine; providing certification requirements for licensed electrologists who perform laser hair removal or reduction, etc. HP 02/13/2018 Fav/CS AP 02/27/2018 Not Considered AP 03/02/2018 Fav/CS RC	Fav/CS Yeas 17 Nays 0
12	**CS/CS/SB 774** Judiciary / Children, Families, and Elder Affairs / Bean (Compare CS/CS/H 505, CS/CS/H 1079, CS/CS/S 1360)	Dependency Proceedings; Requiring the Department of Children and Families to provide specified records to entities conducting preliminary home studies; limiting certain training requirements to persons who adopt children from the department, etc. CF 01/22/2018 Fav/CS JU 02/20/2018 Fav/CS AP 02/27/2018 Not Considered AP 03/02/2018 Favorable	Favorable Yeas 16 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
13	**CS/CS/SB 784** Judiciary / Banking and Insurance / Brandes (Similar CS/CS/H 465, Compare CS/CS/CS/H 1073, CS/CS/CS/S 1292)	Insurance; Providing that certain securities valuation limitations do not apply to certain stock of certain foreign insurers' subsidiary corporations or related entities; revising professional designations that exempt all-lines adjuster license applicants from an examination requirement; reducing the tax on surplus lines insurance; revising federal standards applicable to Department of Financial Services and Financial Services Commission rules governing the use of consumer nonpublic personal financial and health information, etc. BI 02/06/2018 Fav/CS JU 02/20/2018 Fav/CS AP 03/02/2018 Favorable	Favorable Yeas 18 Nays 0

A proposed committee substitute for the following bill (SB 840) is available:

14	**SB 840** Hutson (Compare H 223, H 7067, CS/S 374)	Gaming; Authorizing a greyhound racing permitholder to receive an operating license to conduct pari-mutuel wagering activities at another permitholder's greyhound racing facility; authorizing such thoroughbred racing permitholder's facility to remain an eligible facility, to continue to be eligible for a slot machine license, to be exempt from certain provisions to be eligible as a guest track for intertrack wagering and simulcasting, and to remain eligible for a cardroom license; authorizing the division to establish a reasonable period to respond to certain requests from a licensed cardroom, etc. RI 01/17/2018 Favorable AFT 02/12/2018 Fav/CS AP 03/02/2018 Fav/CS With subcommittee recommendation – Finance and Tax	Fav/CS Yeas 16 Nays 4
15	**CS/SB 844** Education / Bean (Similar CS/H 565)	Excess Credit Hour Surcharges; Requiring a state university to return up to a specified amount of assessed excess credit hour surcharges to first-time-in-college students who meet certain requirements, etc. ED 02/06/2018 Fav/CS AHE 02/14/2018 Favorable AP 03/02/2018 Favorable With subcommittee recommendation – Higher Education	Favorable Yeas 20 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
16	**CS/SB 848** Health Policy / Grimsley (Similar CS/CS/H 679)	Telepharmacy; Providing permit requirements for remote dispensing site pharmacies; requiring the prescription department manager or other pharmacist employed by the supervising pharmacy to visit the remote dispensing site pharmacy; authorizing a Florida licensed pharmacist to serve as the prescription drug manager at more than one remote dispensing site pharmacy under certain conditions, etc. HP 02/06/2018 Fav/CS AP 02/27/2018 Not Considered AP 03/02/2018 Favorable RC	Favorable Yeas 14 Nays 3

A proposed committee substitute for the following bill (CS/SB 852) is available:

17	**CS/SB 852** Transportation / Brandes (Similar CS/CS/H 633)	Florida Smart City Challenge Grant Program; Creating the program within the Department of Transportation; requiring the department to issue a request for proposals by a specified date; authorizing the department to select an independent nongovernmental entity to assist in project construction, management, and evaluation for specified purposes, etc. TR 01/18/2018 Fav/CS ATD 02/21/2018 Fav/CS AP 02/27/2018 Not Considered AP 03/02/2018 Fav/CS With subcommittee recommendation – Transportation, Tourism, and Economic Development	Fav/CS Yeas 17 Nays 1

A proposed committee substitute for the following bill (SB 992) is available:

18	**SB 992** Book (Compare CS/CS/H 7063)	C-51 Reservoir Project; Revising requirements related to the operation of water storage and use for Phase I and Phase II of the C-51 reservoir project if state funds are appropriated for such phases; authorizing the South Florida Water Management District to enter into certain capacity allocation agreements and to request a waiver for repayment of certain loans; authorizing the Department of Environmental Protection to waive such loan repayment under certain conditions, etc. EP 02/05/2018 Favorable AEN 02/14/2018 Fav/CS AP 02/27/2018 Not Considered AP 03/02/2018 Fav/CS With subcommittee recommendation – Environment and Natural Resources	Fav/CS Yeas 19 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
	A proposed committee substitute for the following bill (SB 1012) is available:		
19	**SB 1012** Passidomo (Compare CS/CS/H 141)	Alligator Alley Toll Road; Requiring fees generated from tolls to be used to reimburse, by interlocal agreement effective for a specified period of time, a county or another local governmental entity for the direct actual costs of operating a specified fire station, which may be used by a county or another local governmental entity to provide fire, rescue, and emergency management services to the public, etc. TR 01/18/2018 Favorable ATD 02/08/2018 Fav/CS AP 02/27/2018 Not Considered AP 03/02/2018 Fav/CS With subcommittee recommendation – Transportation, Tourism, and Economic Development	Fav/CS Yeas 17 Nays 0
	A proposed committee substitute for the following bill (CS/SB 1056) is available:		
20	**CS/SB 1056** Education / Passidomo (Similar CS/H 1213, Compare CS/H 495, S 180)	Computer Science Instruction; Requiring school districts to provide computer science courses in a specified number of schools by certain dates; providing that a charter school is not required to offer computer science courses; requiring the Florida Virtual School to offer certain computer science courses; providing funds for school districts to provide professional development for classroom teachers, etc. ED 01/16/2018 Fav/CS AED 02/08/2018 Fav/CS AP 03/02/2018 Fav/CS With subcommittee recommendation – Pre-K – 12 Education	Fav/CS Yeas 17 Nays 0
21	**SB 1066** Baxley (Compare CS/H 171, CS/S 382)	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 AP 02/27/2018 Not Considered AP 03/02/2018 Fav/CS With subcommittee recommendation – Transportation, Tourism, and Economic Development	Fav/CS Yeas 18 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
	A proposed committee substitute for the following bill (CS/SB 1104) is available:		
22	**CS/SB 1104** Transportation / Brandes (Similar CS/H 1189, Compare CS/CS/H 1287, CS/CS/CS/H 1359, CS/S 1414)	Commercial Motor Vehicles; Repealing provisions relating to the assistive truck platooning technology pilot project; revising regulations to which owners and drivers of commercial motor vehicles are subject; requiring a vehicle that has an apportioned registration to be issued, before a specified date, an annual license plate and a cab card denoting the declared gross vehicle weight; allowing the Department of Highway Safety and Motor Vehicles to authorize dealer and fleet specialty license plates, etc. TR 01/18/2018 Fav/CS ATD 02/14/2018 Fav/CS AP 03/02/2018 Fav/CS	Fav/CS Yeas 18 Nays 0
	With subcommittee recommendation – Transportation, Tourism, and Economic Development		
	A proposed committee substitute for the following bill (CS/SB 1218) is available:		
23	**CS/SB 1218** Criminal Justice / Brandes (Compare CS/CS/S 484)	Persons Awaiting Trial; Requiring the Department of Corrections to develop a risk assessment instrument; creating the Risk Assessment Pilot Program for a specified period; requiring all counties to administer the risk assessment instrument to all persons arrested for a felony, etc. CJ 01/29/2018 Fav/CS ACJ 02/21/2018 Fav/CS AP 03/02/2018 Fav/CS	Fav/CS Yeas 13 Nays 5
	With subcommittee recommendation – Criminal and Civil Justice		
24	**CS/SB 1254** Education / Passidomo (Similar CS/CS/H 1091)	Early Learning; Revising the duties of the Office of Early Learning; providing that failing to meet certain measures for a specified period is cause for termination of a provider; revising the required contents of the school readiness program plan each early learning coalition must submit; revising the priority criteria for participation in the school readiness program; revising school readiness provider requirements for program participation, etc. ED 01/29/2018 Fav/CS JU 02/06/2018 Favorable AP 03/02/2018 Fav/CS	Fav/CS Yeas 17 Nays 0
	A proposed committee substitute for the following bill (CS/SB 1314) is available:		

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
25	**CS/SB 1314** Commerce and Tourism / Brandes (Similar H 1181)	Florida Capital Formation Act; Deleting the requirement that the Department of Economic Opportunity manage certain activities related to the commercialization of specified products, services, and ideas; redesignating the Institute for the Commercialization of Public Research as the Institute for Commercialization of Florida Technology; requiring that certain proceeds be returned to the Florida Technology Seed Capital Fund after the payment of certain costs and fees, etc. CM 02/06/2018 Fav/CS ATD 02/21/2018 Fav/CS AP 02/27/2018 Not Considered AP 03/02/2018 Fav/CS With subcommittee recommendation – Transportation, Tourism, and Economic Development	Fav/CS Yeas 18 Nays 0

A proposed committee substitute for the following bill (CS/SB 1396) is available:

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
26	**CS/SB 1396** Judiciary / Steube (Similar H 5301, Compare CS/S 1384)	Judgeships; Adding judges to the Ninth Judicial Circuit Court; adding and removing judges from certain county courts, etc. JU 01/25/2018 Fav/CS ACJ 02/14/2018 Fav/CS AP 03/02/2018 Fav/CS With subcommittee recommendation – Criminal and Civil Justice	Fav/CS Yeas 17 Nays 0

A proposed committee substitute for the following bill (CS/SB 1450) is available:

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
27	**CS/SB 1450** Commerce and Tourism / Steube (Identical CS/H 1231)	Sales Tax Refund for Eligible Job Training Organizations; Authorizing eligible organizations to receive a refund of a specified amount of certain sales taxes collected if such amount is used for certain purposes relating to job training and employment services; specifying the annual maximum allowable tax refund for such organizations; providing requirements for receiving the refund; authorizing the Department of Economic Opportunity to certify organizations, etc. CM 01/29/2018 Fav/CS ATD 02/14/2018 Fav/CS AP 03/02/2018 Fav/CS With subcommittee recommendation – Transportation, Tourism, and Economic Development	Fav/CS Yeas 18 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
28	**CS/SB 1486** Health Policy / Grimsley (Similar CS/CS/H 1047, Compare CS/H 29, H 557, H 1039, S 1706, CS/S 1884)	Department of Health; Requiring the department to adopt any rules necessary to implement a specified federal program to further encourage qualified physicians to relocate to and practice in underserved areas; revising health care practitioner licensure eligibility for certain members of the armed forces and their spouses to include licensed dentists; removing a provision prohibiting a physician from holding himself or herself out as a board-certified specialist in dermatology unless the recognizing agency is reviewed and reauthorized on a specified basis by the Board of Medicine; authorizing the Board of Nursing to establish certain standards of care, etc. HP 01/30/2018 Fav/CS AP 02/27/2018 Not Considered AP 03/02/2018 Fav/CS RC	Fav/CS Yeas 17 Nays 0
29	**CS/CS/SB 1494** Banking and Insurance / Health Policy / Montford (Similar CS/CS/H 351)	Prescription Drug Pricing Transparency; Requiring pharmacists to inform customers of less expensive, generically equivalent drugs for their prescriptions and as to whether customers' cost-sharing obligations exceed the retail price of their prescriptions; requiring a pharmacy benefit manager to register with the Office of Insurance Regulation beginning on a specified date, etc. HP 02/06/2018 Fav/CS BI 02/20/2018 Fav/CS AP 02/27/2018 Not Considered AP 03/02/2018 Fav/CS	Fav/CS Yeas 18 Nays 0
30	**SB 1532** Stargel (Compare CS/H 1175)	Early Learning Coalitions; Authorizing an early learning coalition to refuse to contract with certain school readiness program providers, etc. ED 01/29/2018 Favorable AED 02/08/2018 Favorable AP 03/02/2018 Favorable With subcommittee recommendation – Pre-K – 12 Education	Favorable Yeas 17 Nays 0
31	**CS/SB 1548** Education / Book (Similar H 777, Compare CS/CS/H 1391, CS/H 7055, H 7101, S 1616, CS/S 7026)	K-12 Student Safety; Prohibiting certain teachers from receiving bonuses related to specified FTE student membership calculations; requiring certified educators to inform their employers within a specified time period after being arrested for, rather than convicted of, certain offenses, etc. ED 01/22/2018 Fav/CS CJ 02/06/2018 Favorable AP 03/02/2018 Fav/CS	Fav/CS Yeas 16 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
	A proposed committee substitute for the following bill (CS/SB 1612) is available:		
32	**CS/SB 1612** Environmental Preservation and Conservation / Rader (Similar CS/CS/H 1211)	Airboat Regulation; Citing this act as "Ellie's Law"; requiring, by a specified date, a commercial airboat operator to have specified documents on board the airboat while carrying passengers for hire; providing a penalty for violation of airboat operation requirements, etc. EP 01/22/2018 Fav/CS AEN 02/14/2018 Fav/CS AP 03/02/2018 Fav/CS	Fav/CS Yeas 17 Nays 0
	With subcommittee recommendation – Environment and Natural Resources		
	A proposed committee substitute for the following bill (CS/SB 1646) is available:		
33	**CS/SB 1646** Commerce and Tourism / Montford (Similar CS/CS/H 1103, Compare H 1193, S 1496)	Regional Rural Development Grants; Providing that regional rural development grants may be used to hire regional economic development organization professional staff; authorizing the use of matching grant funds to provide technical assistance to certain entities; requiring that contracts or agreements involving the expenditure of grant funds be placed on a certain website for a specified time period; requiring that a plain language version of certain contracts or agreements be placed on a certain website; providing that improving access to and availability of broadband Internet service may be included in a project that is eligible for rural infrastructure grant funds, etc. CM 01/29/2018 Fav/CS ATD 02/21/2018 Fav/CS AP 02/27/2018 Not Considered AP 03/02/2018 Fav/CS	Fav/CS Yeas 16 Nays 0
	With subcommittee recommendation – Transportation, Tourism, and Economic Development		
34	**CS/CS/SB 1678** Judiciary / Criminal Justice / Stargel (Similar CS/H 547)	Reports Concerning Seized or Forfeited Property; Revising the deadline for submitting an annual report by law enforcement agencies concerning property seized or forfeited under the Florida Contraband Forfeiture Act, etc. CJ 02/12/2018 Fav/CS JU 02/20/2018 Fav/CS AP 02/27/2018 Not Considered AP 03/02/2018 Favorable	Favorable Yeas 17 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
35	**SB 1712** Montford (Identical CS/H 375)	Postsecondary Revenue Bonds and Debt; Authorizing state universities to use specified moneys to pay debt service on revenue bonds if required by a specified federal program, etc. ED 02/06/2018 Favorable AHE 02/14/2018 Favorable AP 02/27/2018 Not Considered AP 03/02/2018 Favorable With subcommittee recommendation – Higher Education	Favorable Yeas 17 Nays 0
36	**SB 7028** Rules	Ratification of Department of Elderly Affairs Rules; Ratifying a specified rule relating to emergency environmental control for assisted living facilities for the sole and exclusive purpose of satisfying any condition on effectiveness pursuant to s. 120.541(3), F.S., which requires ratification of any rule exceeding the specified thresholds for likely adverse impact or increase in regulatory costs, etc. AP 03/02/2018 Favorable	Favorable Yeas 18 Nays 0
37	**SB 7030** Rules (Similar H 7099)	Ratification of Agency for Health Care Administration Rules; Ratifying a specified rule relating to emergency environmental control for nursing homes for the sole and exclusive purpose of satisfying any condition on effectiveness pursuant to s. 120.541(3), F.S., which requires ratification of any rule exceeding the specified thresholds for likely adverse impact on or increase in regulatory costs, etc. AP 03/02/2018 Favorable	Favorable Yeas 17 Nays 0
	Other Related Meeting Documents		

THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
515 Knott Building

Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5198

DATE	COMM	ACTION
1/22/18	SM	Favorable
1/23/18	JU	**Favorable**
2/14/18	ATD	Recommend: Favorable
03/02/18	AP	Favorable

January 22, 2018

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

Re: **SB 40** – Senator Perry E. Thurston, Jr.
HB 6535 – Representative Wengay "Newt" Newton
Relief of Estate of Dr. Sherrill Lynn Aversa

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNOPPOSED EQUITABLE CLAIM FOR $650,000 FROM UNAPPROPRIATED TRUST FUNDS OF THE DEPARTMENT OF TRANSPORTATION FOR THE DEATH OF THE CLAIMANT IN AN AUTOMOBILE ACCIDENT CAUSED WHEN A LADDER FELL OFF A DEPARTMENT TRUCK.

CURRENT STATUS:

Before a prior legislative session, Judge Bram D. E. Canter, an administrative law judge from the Division of Administrative Hearings, serving as a Senate Special Master, held a de novo hearing on a previous version of this bill. After the hearing, the judge issued a report containing findings of fact and conclusions of law and recommended that the bill be reported FAVORABLY.

Judge Canter's report was reissued for SB 30 (2012), the most recent version of the claim bill for which a report is available. The 2012 report is attached as an addendum to this document.

Due to the passage of time since the hearing, the Senate President reassigned the claim to me, Thomas C. Cibula. My

responsibilities were to review the records relating to the claim bill, be available for questions from Senators, and determine whether any changes have occurred since the hearing before Judge Canter, which if known at the hearing might have significantly altered the findings or recommendation in the report.

As part of my review of this matter, counsel for the parties were asked to describe any developments that have occurred since the original special master hearing. After reviewing the responses, I find that there are no new facts that would justify altering the original findings. Additionally, the 2012 claim bill on which Judge Canter's report is based is similar to the claim bill filed for the 2018 Legislative Session. The 2018 bill, however, incorporates several corrections recommended by Judge Canter. Therefore, the undersigned recommends that SB 40 be reported FAVORABLY.

Respectfully submitted,

Thomas C. Cibula
Senate Special Master

cc: Secretary of the Senate

THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
402 Senate Office Building

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

DATE	COMM	ACTION
12/1/11	SM	Fav/1 amendment

December 1, 2011

The Honorable Mike Haridopolos
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 30 (2012)** – Senator Thad Altman
Relief of Sherrill Lynn Aversa

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNOPPOSED EQUITABLE CLAIM FOR $650,000 FROM UNAPPROPRIATED TRUST FUNDS OF THE DEPARTMENT OF TRANSPORTATION FOR THE DEATH OF THE CLAIMANT IN AN AUTOMOBILE ACCIDENT CAUSED WHEN A LADDER FELL OFF A DEPARTMENT TRUCK.

FINDINGS OF FACT:

On June 21, 1999, Dr. Sherrill Lynn Aversa, 33 years old, was traveling southbound on I-75 in Tampa in rush hour traffic. She was wearing her seatbelt. At the same time, a Department of Transportation (DOT) truck driven by DOT employee Domingo Alvarado was traveling northbound. A 12-foot extension ladder on the DOT truck was not well-secured and fell off the truck into the path of a vehicle driven by Roxann Hodge. Ms. Hodge veered sharply left to avoid the ladder and went into the median where she lost control of her vehicle. Ms. Hodge's car crossed the median into the southbound traffic and struck Dr. Aversa's car head-on. Dr. Aversa was killed instantly. Three other vehicles were also involved in the crash, but those drivers were not seriously injured.

When Mr. Alvarado realized that the ladder had fallen off his truck, he pulled off the roadway, backed up, and retrieved the ladder, which had come to a rest in the center northbound lane. Mr. Alvarado re-secured the ladder and then proceeded on his way. He said that he was unaware that his ladder caused a crash, although he acknowledged seeing smoke and commotion in the southbound lanes of I-75. Later that evening, Mr. Alvarado saw news coverage of the crash and called the Florida Highway Patrol to report his probable involvement.

Mr. Alvarado was cited for a violation of section 316.520, Florida Statutes, for failing to secure a load. DOT suspended him for four weeks without pay for violating DOT's policy regarding securing equipment on his truck.

Dr. Aversa was survived by her husband, Dr. Lee Crandall. They had no children. Dr. Aversa was an epidemiologist at the University of Miami Medical School and a leading researcher in the field of HIV/AIDS. An economist's report estimated that Dr. Aversa's economic damages (lost wages, etc.) were approximately $2.6 million.

Dr. Crandall created a non-profit foundation to honor Dr. Aversa. The foundation awards scholarships to assist epidemiology students in completing their doctoral degrees. Dr. Crandall testified at the claim bill hearing that it is his intention to deposit most of the funds awarded from this claim bill into the foundation in order to endow the scholarships in perpetuity.

The other injured drivers settled with DOT for a total of $50,000. That left $150,000 under the sovereign immunity cap to pay Dr. Aversa's estate. DOT paid $150,000 to Dr. Aversa's estate. All but $727 was used to pay for attorney's fees and costs. Dr. Crandall received approximately $110,000 from a life insurance policy, $100,000 in underinsured motorist coverage, and $10,000 in settlement proceeds from Ms. Hodge's insurer. Some of these funds were used to pay off Dr. Aversa's student loans and some will be transferred to the foundation once Dr. Aversa's estate is closed.

LITIGATION HISTORY:

Dr. Crandall, as husband and personal representative of Dr. Aversa's estate, filed an action for negligence against DOT in the circuit court for Hillsborough County in 2000. In May 2003, on the eve of trial, the parties entered into a stipulated settlement agreement wherein DOT agreed to pay Dr. Aversa's estate a total of $800,000. DOT has already paid $150,000, leaving $650,000 to be paid by way of this claim bill. As a part of the settlement agreement, DOT agreed to cooperate and support the passage of a claim bill in the amount of $650,000.

CONCLUSIONS OF LAW:

The claim bill hearing was a *de novo* proceeding to determine, based on the evidence presented to the Special Master, whether DOT is liable in negligence for the death of the Claimant and, if so, whether the amount of the claim is reasonable.

Mr. Alvarado had a duty to secure the load to his truck pursuant to section 316.520, Florida Statutes, and DOT policy. His failure to do so was the direct and proximate cause of the crash that killed Dr. Aversa. Mr. Alvarado was an employee of DOT acting in the course and scope of his employment at the time of the crash. His negligence is therefore attributable to DOT.

The amount of the claim is fair and reasonable.

ATTORNEY'S FEES:

Claimant's attorneys have agreed to limit their fees to 25 percent of any amount awarded by the Legislature in compliance with section 768.28(8), Florida Statutes. There is an agreement to pay the lobbyist's fee from the claim bill proceeds, which could conflict with the requirement in SB 30 that the lobbyist's fee must be paid from the 25 percent attorney's fees.

OTHER ISSUES:

DOT states that the claim should be paid from the State Transportation Fund.

There are some errors in SB 30. The bill states that the consent judgment was for $797,500. The correct figure is $800,000. The bill states that DOT paid $100,000 to Dr. Aversa's estate, but DOT paid $150,000.

RECOMMENDATIONS: For the reasons set forth above, I recommend that Senate Bill 30 (2012) be reported FAVORABLY, as amended.

Respectfully submitted,

Bram D. E. Canter
Senate Special Master

cc: Senator Thad Altman
Debbie Brown, Interim Secretary of the Senate
Counsel of Record

By Senator Thurston

33-00252-18 201840__

A bill to be entitled

An act for the relief of the Estate of Dr. Sherrill Lynn Aversa; providing an appropriation to compensate the Estate of Dr. Sherrill Lynn Aversa for Dr. Aversa's death as a result of the negligence of the Department of Transportation; requiring the Executive Office of the Governor to establish spending authority from unappropriated trust fund balances of the department for compensation to the Estate of Dr. Sherrill Lynn Aversa; providing a limitation on the payment of attorney fees; providing an effective date.

WHEREAS, on June 21, 1999, an employee of the Department of Transportation was driving a department vehicle north on Interstate 75 in Hillsborough County, and

WHEREAS, on that same day, Dr. Sherrill Lynn Aversa, having completed an interview at the University of South Florida Medical School, was traveling south on Interstate 75, and

WHEREAS, according to departmental policy, employees of the department are required to ensure that all items used by the department and stored on a department vehicle are appropriately secured, and

WHEREAS, one such item used by the department was a 12-foot extension ladder stored on the roof of the truck driven by the department employee and the employee failed to ensure that the ladder was secured to the vehicle before leaving the department's maintenance yard, and

WHEREAS, as the employee traveled north on Interstate 75 in the department vehicle, the extension ladder flew off the roof

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

33-00252-18 201840__

into the northbound traffic traveling behind the department vehicle, and

WHEREAS, the driver of the vehicle traveling behind the department vehicle swerved to avoid hitting the ladder and, as a result of the swerving movement, lost control of her vehicle, veered to the left, crossed the Interstate 75 median, and struck Dr. Aversa's southbound vehicle, killing Dr. Aversa instantly, and

WHEREAS, as a result of these events, the Estate of Dr. Sherrill Lynn Aversa brought suit against the department for its negligence in causing the death of Dr. Aversa, and

WHEREAS, after 3 years of litigation, the department admitted liability for the accident and agreed to settle the case, and

WHEREAS, the parties agreed to a consent judgment in the amount of $800,000 solely against the department, with no finding of comparative negligence against any other party, and

WHEREAS, the department has paid $150,000 to the Estate of Dr. Sherrill Lynn Aversa consistent with the statutory limits of liability set forth in s. 768.28, Florida Statutes, NOW, THEREFORE,

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

Section 1. The facts stated in the preamble to this act are found and declared to be true.

Section 2. The Executive Office of the Governor is directed to establish spending authority from unappropriated trust fund balances of the Department of Transportation in the amount of

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

$650,000 to a new category titled "Relief: Estate of Dr. Sherrill Lynn Aversa" as compensation to the Estate of Dr. Sherrill Lynn Aversa for the death of Dr. Sherrill Lynn Aversa, which amount includes attorney fees and costs.

Section 3. The Chief Financial Officer is directed to draw a warrant, pursuant to the stipulated settlement agreement executed by the Department of Transportation and the personal representative of the Estate of Dr. Sherrill Lynn Aversa, in the amount of $650,000 upon funds of the Department of Transportation not otherwise encumbered, and the Chief Financial Officer is directed to pay the same sum out of such funds in the State Treasury.

Section 4. The amount paid by the Department of Transportation pursuant to s. 768.28, Florida Statutes, and the amount awarded under this act are intended to provide the sole compensation for this excess judgment claim and for all other present and future claims arising out of the factual situation described in this act which resulted in the death of Dr. Sherrill Lynn Aversa. The total amount paid for attorney fees relating to this claim may not exceed 25 percent of the amount awarded under this act.

Section 5. This act shall take effect upon becoming a law.

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 21, 2018

I respectfully request that **Senate Bill #40**, relating to Relief of the Estate of Dr. Sherrill Lynn Aversa by the Department of Transportation, be placed on the:

☒ Committee agenda at your earliest possible convenience.

☐ Next committee agenda.

Perry E. Thurston, Jr.

Senator Perry E. Thurston, Jr.
Florida Senate, District 33

File signed original with committee office

THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
515 Knott Building

Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5198

DATE	COMM	ACTION
1/22/18	SM	Unfavorable
1/23/18	JU	**Favorable**
2/20/18	AHS	Recommend: Favorable
3/2/18	AP	Favorable

January 22, 2018

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

Re: **SB 42** – Senator Jose Rodriguez
HB 6505 – Representative Jenne
Relief of Vonshelle Brothers, Individually, and as the Natural Parent and Guardian of Iyonna Hughey

SPECIAL MASTER'S FINAL REPORT

THIS IS A SETTLED EXCESS JUDGMENT CLAIM FOR $1 MILLION. THE CLAIM SEEKS COMPENSATION FROM THE GENERAL REVENUE FUND FOR THE ALLEGED MEDICAL MALPRACTICE COMMITTED BY THE BREVARD COUNTY HEALTH DEPARTMENT DURING THE PRENATAL CARE OF VONSHELLE BROTHERS AND THE RESULTING DAMAGES TO HER DAUGHTER, IYONNA HUGHEY.

CASE SUMMARY:

Iyonna Hughey is a 7-year-old child who developed meningoencephalitis[1] soon after birth. The disease was both an infection of the meninges, the tissue covering the brain, and an infection of the brain tissue itself. The disease was caused by herpes simplex virus type 2. As a result, Iyonna is severely brain damaged and has profound developmental delays.

Vonshelle Brothers, the Claimant, is Iyonna's mother. Vonshelle alleges that the infection and resulting damage

[1] Iyonna's condition is referred to throughout the depositions as being meningoencephalitis, herpetic encephalopathy, and alternatively, herpetic encephalitis.

were caused by the failure of the Brevard County Health Department to sufficiently test her, the mother, for herpes. Adequate testing, the Claimant argued, would have led to Vonshelle's treatment with an anti-viral drug that would have prevented her from passing the virus to Iyonna. However, the evidence submitted through deposition testimony and medical records demonstrated that Vonshelle Brothers did not have the herpes simplex virus type 2. As a result, Iyonna must have contracted the herpes virus by contact with another person who had the infection. Because the Department did not cause the injuries to Iyonna, I recommend this claim unfavorably.

BACKGROUND INFORMATION: As a foundational matter, it is helpful to understand how Iyonna may have contracted the herpes virus. The herpes simplex viruses exist in two forms: herpes simplex virus type 1, which is oral herpes and abbreviated as HSV-1, and herpes simplex virus type 2, which is genital herpes and abbreviated as HSV-2.

HSV-1 generally causes sores near the mouth and lips, which are referred to as cold sores or fever blisters. HSV-1 is usually transmitted by oral-to-oral contact through oral secretions or sores on the skin and can be spread through sharing eating utensils and toothbrushes or kissing. With HSV-2, sores generally occur around the genitals or rectum. Genital herpes may be caused by HSV-1 or HSV-2, but most cases are caused by HSV-2 and are spread during sexual contact with someone who has a genital herpes type 2 infection. HSV-2 is highly contagious.

Many people infected with genital herpes do not display symptoms or have mild symptoms that are not noticed. When symptoms are noticed, they present as blisters, open ulcers, scabs, fever, muscle aches, or swollen lymph nodes. Both HSV-1 and HSV-2 remain in a person's body for life, even when no signs of infection are present. While it is rare, HSV-2 may be transmitted from a mother to her baby during

the delivery process.[2] The incubation period for HSV-1 or HSV-2 ranges anywhere from 2 to 12 days.[3]

FINDINGS OF FACT:

Initial Pre-Natal Visit

On March 16, 2010, Vonshelle Brothers visited the Brevard County Health Department to determine if she was pregnant.

Regina Pappagallo, a registered nurse, performed the initial intake interview and obtained a Patient History from Vonshelle.

To complete the Prenatal History form, Nurse Pappagallo asked Vonshelle two pages of extensive questions about her previous pregnancies, medical history, genetic screening, and infection history. The nurse recorded Vonshelle's response to each question. Under the "infection history" portion of the screening, Vonshelle responded "no" when asked if she or her partner had a history of genital herpes.[4]

Elena Cruz-Hunter, a certified nurse mid-wife and advanced registered nurse practitioner, then reviewed the patient history taken by Nurse Pappagallo, performed a vaginal exam, and conducted a Pap test to screen for the presence of pre-cancerous cells on the cervix.[5]

In conducting the initial physical examination, Ms. Cruz-Hunter was required to examine and note whether 17 specific areas of Vonshelle's body were normal or abnormal. The notations from the physical exam recorded no lesions, discharge, or inflammation in the areas of the vulva, vagina,

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[2] WebMD, *Herpes Simplex: Herpes Type 1 and 2,* http://www.webmd.com/genital-herpes/pain-management-herpes#1; Center for Disease Control and Prevention, *2015 Sexually Transmitted Diseases Treatment Guidelines, Genital HSV Infections*, available at https://www.cdc.gov/std/tg2015/herpes.htm; World Health Organization, *Herpes simplex virus*, available at http://www.who.int/mediacentre/factsheets/fs400/en/; Mayo Clinic, *Genital herpes*, available at http://www.mayoclinic.org/diseases-conditions/genital-herpes/basics/complications/con-20020893; Johns Hopkins Medicine, *Herpes Meningoencephalitis*, available at http://www.hopkinsmedicine.org/healthlibrary/conditions/adult/nervous_system_disorders/herpes_meningoencephalitis_134,27/.

[3] The American College of Obstetricians and Gynecologists, ACOG Practice Bulletin, Clinical Management Guidelines for Obstetrician-Gynecologists, *Management of Herpes in Pregnancy*, Number 82, June 2007.

[4] The Prenatal History indicates that Vonshelle acknowledged smoking 4 cigarettes per day for about 2 years and noted "daily" drug use/abuse for about 3 years, and drinking socially for about 1 year, but stated that she did not participate with tobacco, drugs, or alcohol when pregnant.

[5] The Pap test, or Pap smear, is a screening, not a diagnostic test, in which cells are scraped from the cervix and sent to a lab for testing to determine if abnormal cells are present that could lead to cancer. Deposition testimony from medical professionals in the case and The American College of Obstetricians and Gynecologists, *Frequently Asked Questions*, available at http://www.acog.org/Patients/FAQs/Cervical-Cancer-Screening#cervical.

or cervix. She checked that each of the specific areas was normal. In her deposition, Ms. Cruz-Hunter testified that she did not see any indication of any lesions or any signs or symptoms that suggested the presence of the herpes simplex virus. The urine test performed on Vonshelle that day was negative and showed that her urine was "perfectly normal." She noted that Vonshelle's uterus size indicated that she was 8-10 weeks pregnant. The Pap test used to screen for precancers was sent to Quest Diagnostics for interpretation.

Pap Test Results from Quest Diagnostics

On March 22, 2010, Quest Diagnostics reported that the patient was 9 weeks pregnant[6] and that the Pap test culture was satisfactory for evaluation. In the category titled "Interpretation/Result" the report stated:

"Negative for intraepithelial lesion or malignancy.
Cellular changes consistent with Herpes simplex virus
Shift in vaginal flora suggestive of bacterial vaginosis."

Under the comment section, the following cryptic and ambiguous phrase was noted: "Queued for Alerts call." No deposition testimony of any Quest pathologist was submitted to clarify what Quest meant by this ambiguous notation or if Quest made a call to the Brevard County Health Department alerting them to this observation. Accordingly, it is unclear if this phrase meant that Quest was indicating that someone in its office would call the clinician to alert them to this additional observation, given that someone at Quest was commenting on an issue outside the scope of the initial test for precancer or pre-malignancy.

Brevard County Health Department's Lab Slip Tracking Policy

The Claimant attached, as an exhibit to Nurse Regina Pappagallo's deposition, the cover page for the Brevard County Health Department Tracking Policy, dated 07-10-06, which did not contain the terms of the policy. The Claimant also attached the Brevard County Health Department Tracking [Policy for] Lab Slips and Missed Appointments, dated 7/15/10,[7] which contained the policy's contents. This

[6] This was Vonshelle's third pregnancy, which would be followed by two additional pregnancies. None of the other four pregnancies involved herpes simplex virus issues or injuries.
[7] The date of "7/15/10" is almost 4 months after Vonshelle visited the Brevard County Health Department. It is unclear if this policy was also in place when she visited the Department for her initial pregnancy exam.

policy explains what the staff members are to do when they receive the result of lab tests, like the results of Vonshelle's Pap test.

The policy for reviewing lab slips was a two-step process, and how the second step was to be completed depended on whether the lab test results were positive or negative. The first step in the policy required that a nurse review and initial the incoming lab slip. The second step required the medical staff to file the slip in the client's medical record if the results were negative, or pull the slip and give it to a nurse/clinician for additional orders if the results were positive. Under the policy, all abnormal slips needed to be signed by a clinician. The nurse would then determine how the client was to be contacted about the positive results–whether by the health support technician or nurse and whether by a letter or phone call. Someone was then required to make three documented attempts to reach the client. The Sr. CHN Supervisor[8] or designee was to determine if there were a need to send a certified letter. The policy also established the procedure for notating when a client failed to make an appointment.

The Quest Diagnostic lab report for Vonshelle was initialed by Nurse Pappagallo in the upper right hand corner, as required. A checkmark was placed at the end of the phrase "Negative for intraepithelial lesion of malignancy" indicating that the diagnosis was reviewed. Accordingly, the Pap test lab slip was negative for a malignancy, so it was placed in Vonshelle's medical records, in compliance with the policy. The purpose of the test was to determine the existence of precancerous cells, not herpes or another sexually transmitted disease. Among Vonshelle's additional medical records, labeled "Laboratory Results" and the category of Pap Test, it is recorded "3/16/10" and the word "normal" is circled. If the results had been abnormal, or positive for a malignancy, the records should have been pulled by the medical records staff and given to the nurse/clinician for possible orders and the nurse would have determined the type of contact with the patient that was appropriate.

What is confusing in this case but important to the issue of liability is the meaning of the unusual and added verbiage stating, "Cellular changes consistent with Herpes simplex

[8] It is unclear what this designation means.

virus." This is apparently an unusual notation to be placed on a Pap test result. According to the deposition testimony of Nurse Pappagallo, she had never seen this writing on another Pap smear; it was the first time she had ever seen this notation. Dr. Mark Sargent, the Brevard County Health Department physician who was Vonshelle's obstetrician, testified that he had "never even heard of this result on a pap smear . . . it's not even supposed to be on a pap smear and I've never seen it on a pap smear." He said that he did not know if the nurse was confused by the remark, because it was so unusual, but if he had seen the notation he would have certainly pursued it.

Additionally, there is no evidence in the record to demonstrate that Quest Diagnostic contacted the Clinic as suggested by the phrase "Queued for Alerts call." Further, Quest's lab results did not state whether herpes simplex virus type 1 or type 2 might be indicated.

No additional tests were performed by the Brevard County Health Department during the pregnancy to determine whether Vonshelle was infected with the herpes virus. Additionally, there is no documentation in the medical records that Vonshelle complained to the medical staff or requested prescriptions to alleviate the common symptoms of the herpes simplex virus.

The Pregnancy

According to the medical records, the pregnancy was not without complications and Vonshelle did not consistently comply with medical advice. Vonshelle had low amniotic fluid, which can be dangerous for the baby. She was admitted to the hospital for a 3-day stay in September to monitor pre-term contractions and preterm labor at 31 weeks. She was advised to stay 3 days and increase her fluids. Vonshelle left the hospital 1 day early, against the doctor's recommendation. She was given multiple sonograms throughout the pregnancy to monitor the level of amniotic fluid.

Because she had given birth prematurely in two earlier pregnancies, Vonshelle was given a prescription of progesterone to help reduce the risk of early labor.[9] The

[9] In his deposition, Dr. Mark Sargent testified that he gave the nurse a progesterone prescription for Vonshelle on August 12, but Vonshelle later denied ever having it. He wrote another prescription for progesterone on August 26, and handed the prescription to Vonshelle. Dr. Sargent had someone call Vonshelle on August 30 to follow up

medical notes indicate that she smoked cigarettes and declined Quitline[10] at her initial visit and stated that she could quit smoking on her own.[11]

Delivery

On October 14, 2010, an ultrasound and non-stress test were performed on Vonshelle. Because of the stress test results and decreased fetal movement, she was admitted to the labor and delivery unit at Wuesthoff Memorial Hospital in Melbourne and labor was induced. Vonshelle gave birth by vaginal delivery to Iyonna Hughey that night at 36 weeks and 4 days gestation.

On October 16, 2010, Vonshelle and Iyonna were discharged 2 days later, both in good condition. In her deposition testimony, Vonshelle stated that at the time of Iyonna's delivery she did not have any lesions or sores on her vagina or elsewhere on her body. This was confirmed by Dr. Mark Sargent, the delivering doctor, who stated that Vonshelle never indicated any lesions either pre-pregnancy, early pregnancy, or during the labor and delivery process. He noted that other than the "spurious finding on the pap smear, there is no indication that she ever had herpes."

Vonshelle returned with Iyonna to her home where her two older daughters were living and another woman, Cynthia Retland. It is unclear if Cynthia Retland's sons were also living in the home at that time.

Emergency Room Visit

On October 31, 2010, at about 11:00 p.m., Vonshelle took Iyonna to the emergency room at Wuesthoff because Iyonna had a fever, was lethargic and pale, was not eating, and was sleeping a lot. She stated in her deposition that the fever may have been present for a couple of days. Vonshelle stated that

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to make certain that the prescription was filled, but Vonshelle said she was unable to fill the prescription. Vonshelle did not show for her next appointment, and it is unclear when she actually began taking the progesterone.

[10] Quitline is a tobacco cessation service that supplies nicotine replacement therapy at no cost to the participants. http://c.ymcdn.com/sites/www.naquitline.org/resource/resmgr/ppp/fl_bureau_of_tobacco_prevent.pdf.

[11] Smoking during pregnancy can cause problems with the placenta and reduce a baby's food and oxygen. Smoking is known to increase the risk that a baby will be born prematurely or have a low birth weight. This increases the likelihood that the baby will be sick and require a longer hospitalization. See Centers for Disease Control and Prevention, Reproductive Health, *Tobacco Use and Pregnancy*, available at https://www.cdc.gov/reproductivehealth/maternalinfanthealth/tobaccousepregnancy/index.htm.

her mother kept saying that night that something was not right with Iyonna, and she was pale.

Vonshelle's deposition states that she signed in and spoke with a nurse in the front area of the waiting room. She estimates that she was in the waiting room for a total of about 30 minutes during which she spoke with a nurse for about 10 minutes. Vonshelle said that the nurse told her that the way Iyonna was behaving was "what newborns do, they sleep." Vonshelle stated that the nurse told her to take a cold rag and rub it over Iyonna's body and see if that would wake her. Vonshelle stated that the nurse told her to go home and come back in the morning if something was not right. Vonshelle left the emergency room and did not wait for her name to be called to see medical personnel. She stated that she thought, "maybe we are just overreacting. So, we left."

Vonshelle stated that she did not tell the nurse that Iyonna was lethargic or had a fever. Vonshelle added that she really thought nothing was wrong. She took Iyonna home, and both slept through the night from about midnight until 7:00 a.m.

Wuesthoff Memorial Hospital
On November 1, the next morning, when Vonshelle woke, she noticed that Iyonna was not responsive, her eyes were rolling back in her head, her lips were dark, she would not eat, and her breathing was shallow. Vonshelle called her mother who came and drove them to the Wuesthoff Hospital. She did not call 911.

Transfer to Arnold Palmer Hospital
The staff at Wuesthoff performed a lumbar puncture on Iyonna and drew spinal fluid. She was transferred to Arnold Palmer Hospital for Children in Orlando for further evaluation and care. The lumbar puncture was repeated and the results came back positive for herpes simplex virus type 2. Iyonna was diagnosed with herpes meningoencephalitis, meaning that her brain tissue was infected. She remained at Arnold Palmer for 36 days, from November 1, 2010 until her discharge on December 6, 2010. While at the hospital, Iyonna was treated intravenously with acyclovir for 21 days, to stop the viral growth, followed by oral acyclovir for suppressive therapy. She was fed through a gastric tube and was on a ventilator.

Iyonna's Injuries and Disabilities

The viral infection caused severe brain damage and neurological disabilities that impair Iyonna's ability to develop and function as a normal child. This was caused by the herpes simplex virus type 2. At the time of the special master hearing Iyonna spoke only about 20 words, could feed herself, but could not walk independently or bathe herself, and wore diapers each day. She was in kindergarten in a special needs program at Palm Bay Elementary. Iyonna rode a special needs school bus to and from school each day. She had a walker and wheelchair at school for mobility. She enjoyed playing games on a tablet, coloring, and watching television. The professionals who have observed Iyonna believe that she is going to need continuous care throughout her lifetime and will never be able to live or function independently due to the brain damage she received from the herpes meningoencephalitis.

Subsequent Herpes Tests

Vonshelle returned to the Brevard County Health Department for a subsequent pregnancy test in 2014, almost 4 years after Iyonna's birth. She did not alert the Health Department that she might be carrying the herpes virus, which allegedly caused the severe brain damage to Iyonna. If Vonshelle believed she had herpes, one would have expected her to disclose this information to the Department in order to protect her next child from the virus and the potential for brain damage. However, the Department recognized Vonshelle's name because of the ongoing litigation and tested her for herpes to determine if an anti-viral medication needed to be prescribed to prevent the fetus from getting the disease.

Blood was drawn from Vonshelle on August 1, 2014, for two separate HerpeSelect tests[12] and sent to different labs. The first blood sample was collected on August 1, 2014, and tested by Health Management System. The second blood sample was collected a few minutes later and tested by Quest Diagnostics. Both tests were negative for HSV-1 and HSV-2.[13]

[12] According to a website, the HerpeSelect test "is the most commonly used HSV antibody test in the U.S." The test can detect antibodies and differentiate between HSV-1 and HSV-2. It generally takes about 3-6 weeks for someone to develop a detectable amount of antibodies to the herpes simplex virus. Most everyone will have detectable antibodies 16 weeks after exposure. http://www.healthassist.net/medical/herpes-test.shtml

[13] There is a third DOH hsv test result in the records, apart from the two tests discussed above, which shows that more blood was drawn from Vonshelle on August 4, 2014, and sent to Quest Diagnostics. This was also initiated

On November 20, 2014, Vonshelle's attorneys initiated a third, and different type, of herpes test on Vonshelle. Blood was collected in Florida for an HSV Western Blot test[14] and sent overnight to the University of Washington Medical Center in Washington state. That test found that Vonshelle had been exposed to HSV-1, but was "indeterminate" for antibodies to HSV-2. No additional Western Blot tests were performed to clarify the results. The Claimant's attorneys did not reveal this test to the Brevard County Health Department during discovery claiming it was protected under the Claimant's work product privilege. Because the attorneys for the Department were unaware of the test's existence, they did not question any experts on the Western Blot's credibility or reliability.

Not one of the three blood tests performed on Vonshelle has demonstrated that she was exposed to herpes simplex virus, type 2.

LITIGATION HISTORY:

Litigation
Vonshelle Brothers filed a medical malpractice suit, individually and on behalf of her daughter, Iyonna Hughey, a minor, against the Brevard County Health Department on October 9, 2012. The suit was filed in the Circuit Court of the Eighteenth Judicial Circuit in and for Brevard County. The Brevard County Health Department is a division of the Florida Department of Health, an agency of the State of Florida. An extensive period of discovery ensued, and depositions were taken in 2014, 2015, and 2016.

Mediation
The parties attempted to mediate the case on February 10, 2015, but were not able to reach a settlement.

Settlement
The trial was scheduled to begin April 25, 2016. Approximately 1 week before the trial, the parties reached their first of two settlement agreements. The Department of

by DOH. The results were again negative for HSV type-1 and HSV type-2. The expert witness depositions seem to discuss only two tests initiated by the Department of Health, so the presence of this third hsv test, although present in the submitted records, does not appear to be mentioned in the depositions. Because the Department of Health did not present a case at the claim bill hearing, this third DOH test, nor any of their theories, were argued at the hearing.

[14] In the last paragraph of the HSV Western Blot test results two sentences are printed: "This test was developed and its performance characteristics determined by UW Medicine, Department of Laboratory Medicine. *It has not been cleared or approved by the U.S. Food and Drug Administration*." (Emphasis added.)

Health agreed to pay the statutory cap of $200,000, and the Claimant would pursue a claim bill for the excess amount of $3 million. However, the Department maintained the right to contest the claim bill during the legislative process.

The Department then paid the $200,000, the maximum amount that may be paid without legislative authority which was disbursed as follows:

$101,841.41	Litigation Expenses Paid to Plaintiff's Law Firm
$7,560.58	Payment of Medical Liens
$50,000.00	Purchase of Annuity for Iyonna Hughey[15]
$40,698.01	Disbursement to Vonshelle Brothers
$200,000.00	

As of the date of the special master hearing, the Claimant's law firm had not received any fees for its legal work, only reimbursements for costs. An additional $71.19 is due the firm for interest accrued.

The Claimant's attorneys later offered to reduce the claim to $1 million if the Department would not contest the claim bill. The Department accepted this offer and has agreed to maintain a neutral position on the claim bill, but it has not admitted liability.

Claim Bill Hearing

On February 24, 2017, a lengthy, almost day-long hearing was held before the House and Senate special masters. Ronald Gilbert and Jonathan Gilbert appeared with their clients, Vonshelle Brothers and Iyonna Hughey. Patrick Reynolds, Chief Legal Counsel for the Department, Michael J. Williams, Assistant General Counsel, and Maria Stahl, Health Officer for Brevard County, appeared for the Department of Health. Because the Department agreed that it would not oppose the claim bill, it did not present any theories, arguments, or evidence on the Department's behalf. However, the Department did provide documentation in response to specific requests by the special masters. The Department did not admit fault in this claim.

[15] The annuity will begin making payments to Iyonna Hughey when she is 18 years old. As the annuity is structured, Iyonna will receive annual income of $2,500 per year for 5 years when she turns 18, $3,500 per year for 5 years when she turns 23, $4,500 per year for 5 years when she turns 28, $5,500 per year for 5 years when she turns 33, and lump sum annual disbursements of $6,500 payable at ages 38, 39, and 40, then $3,825.85 when she is 41, for a total lifetime yield of $103,325.85.

CLAIMANT'S POSITION: Vonshelle Brothers' position is that the Brevard County Health Department was negligent and did not meet the standard of care when reviewing her Pap test. Her argument then follows that, if the lab slip had been properly reviewed, additional testing would have revealed that Vonshelle carried the herpes virus. A proper course of treatment could have then prevented Iyonna from contracting the herpes virus, suffering herpetic encephalitis, and sustaining substantial brain damage.

RESPONDENT'S POSITION: While the Respondent did not present a case at the special master hearing, a review of the depositions taken over the course of discovery in this case reveals what its arguments might have been. Based upon the depositions of expert witnesses, the Department was likely preparing to argue that Vonshelle did not have the herpes virus and therefore, could not have transmitted the virus to Iyonna during the pregnancy or delivery.

An alternative theory might have been that Vonshelle contributed to Iyonna's damage by transmitting the herpes virus to her. Additionally, it might have been argued, that Vonshelle did not seek timely medical attention when severe symptoms were apparent on the night that she left the emergency room without seeing a doctor, thereby delaying treatment for Iyonna by 7 or 8 hours. Prompt treatment for Iyonna might have prevented or mitigated her brain damage.

A case might also have been built on missed opportunities by Vonshelle. She missed many obstetrical appointments and apparently did not fill an initial progesterone prescription to prevent early labor, which required that a second prescription be written for her, thus causing the medicine to be taken later. Iyonna missed many appointments for speech therapy, physical therapy, occupational therapy, and Vonshelle chose not to acquire a wheelchair that was prescribed for Iyonna because she did not want people to see Iyonna in a wheelchair. It was questioned whether she made a diligent effort to enroll Iyonna in school as early as she could have.

CONCLUSIONS OF LAW: The Brevard County Health Department, a department of the Florida Department of Health, is an agency of the State of Florida. Under the legal doctrine of *respondeat superior*, the Department is liable for its employees' wrongful acts, or medical negligence, committed within the scope of their employment.

When a plaintiff seeks to recover damages for a personal injury and alleges that the injury resulted from the negligence of a health care provider, the plaintiff bears the legal burden of proving, by the greater weight of the evidence, that the alleged actions of the health care provider were a breach of the prevailing professional standard of care for that health care provider. The prevailing professional standard of care is defined in statute as "that level of care, skill, and treatment which, in light of all relevant surrounding circumstances, is recognized as acceptable and appropriate by reasonably prudent similar health care providers."[16] The standard of care is established at trial by providing expert testimony from professionals in that field.

To establish liability in a medical malpractice action, the plaintiff must prove:
(1) A duty of care owed by the healthcare provider to the injured party;
(2) A breach of that duty;
(3) Causation--that the breach of the duty caused the plaintiff's injury;[17] and
(4) Damages.

In this case, the Department's liability turns on whether the Department breached a duty and whether it caused Iyonna's damages. To express these legal principles in the factual context of this case, the issues are whether the Department should have tested Vonshelle Brothers for the herpes simplex virus, and whether that testing would have led to treatment that could have prevented Iyonna Hughey from acquiring meningoencephalitis, which caused her brain damage.

These elements as outlined below are based upon depositions, testimony, and other information provided before and during the special master hearing. Medical malpractice cases generally "involve a battle of expert witnesses."[18] This claim is no exception. The parties deposed medical experts in several cities in Florida, Atlanta, New York City, and Michigan to support their cases.

[16] Section 766.102(1), F.S.
[17] *Saunders v. Dickens*, 151 So. 3d 434, 441 (Fla. 2014).
[18] *Id.*

Duty
As discussed above, a health care facility and its employees have a duty to provide a professional standard of care to its patients that is recognized as acceptable and appropriate by reasonably prudent similar health care providers.[19] The issue of whether the Brevard County Health Department owed a duty to Vonshelle Brothers is not contested in this case. The duty was owed.

Breach of Duty
If this case had proceeded to trial, it would likely have been disputed whether the duty of care owed to Vonshelle Brothers and Iyonna Hughey was breached. Three areas of a potential breach were identified:

(1) Whether the Department breached the standard of care when it received and filed the Pap test lab results in Vonshelle's medical records and did not have a clinician review the results or pursue additional testing to determine if she carried the herpes virus.

(2) Whether the Health Department breached its duty by not starting Vonshelle on a regimen of anti-viral medicines that would have suppressed the alleged hsv in her body, thereby preventing her from passing the disease to Iyonna during the birth process.

(3) Whether an anti-viral medicine should have been given to Vonshelle and when it should have been given because of her history of delivering two earlier babies before full-term gestation at 40 weeks.[20]

Based upon the deposition testimony of medical experts, each side would have had arguments to support its case before a jury.

The Claimant's Arguments
The Claimant provided experts who testified in depositions that the Brevard County Health Department breached the duty of care owed to Vonshelle.

[19] Section 766.102(1), F.S.
[20] Authoritative medical literature and expert witness medical testimony suggest waiting until the 36th week of pregnancy to begin an anti-viral medicine for the mother.

Dr. Berto Lopez

Dr. Berto Lopez, a medical doctor practicing in obstetrics and gynecology, testified as a standard of care expert. He stated that he personally reads the results of all Pap smears that he orders and that Dr. Mark Sargent, Vonshelle's obstetrician at the Brevard County Health Department, should have read the results himself rather than allowing a subordinate on staff to read the results. In his opinion, this was a breach of the standard of care. Regarding the issues of initiating an anti-viral medicine and when the anti-viral should be initiated, he stated that he generally starts women on an anti-viral drug early in the pregnancy. To prevent the passage of the disease to the baby at birth, he does not wait until 36 weeks to begin suppression therapy.

Nurse Sharon Hall

Sharon Hall[21] testified in her deposition about the nursing standard of care at the Brevard County Health Department. Nurse Hall is an obstetrical nurse who formerly practiced in high-risk labor and delivery. She stated that it was a deviation from the standard of care when the Department nurse did not report to Dr. Sargent the changes that were observed in the Pap smear report.

The Respondent's Arguments

Perhaps the Respondent's theory would have been that the added phrase "Cellular changes consistent with Herpes simplex virus" was so out of place on a Pap test report that it did not actually alert the nurse to notify a clinician. Because the test was negative for precancers, she technically complied with the policy for handling negative lab slips.

Dr. Mark Sargent

Dr. Mark Sargent, Vonshelle's treating obstetrician, stated in his deposition that he felt the findings should have been reported to him, but that he had "never even heard of this result on a Pap smear. It's not even – it's not even supposed to be on a pap smear and I've never seen it on a pap smear….I would have expected, had I seen it, I would have certainly pursued it." Dr. Sargent said that he would have expected the nurse to bring this report to someone's attention.

[21] Sharon Hall is an obstetrical nurse with approximately 30 years of experience. She earned a bachelor's degree in nursing and a master's degree and is certified in inpatient obstetric care and electronic fetal monitoring.

Dr. David Colombo

Dr. David Colombo was also deposed as a defense expert witness for the Department. He is a practicing physician in obstetrics and gynecology and maternal fetal medicine.[22] He stated in his deposition that he believed that Dr. Sargent deviated from the standard of care by not personally reviewing the Pap test results. However, as will be discussed later, he did not believe that this deviation caused any damage.

Conclusion

Accordingly, I find that the Brevard County Health Department deviated from the acceptable standard of care owed to Vonshelle Brothers by not having a clinician review the results of the Pap test that was ordered by a nurse midwife.[23]

Causation

If this case had proceeded to trial, it would likely have been disputed whether the damage to Iyonna was actually caused by the negligence of the employees of the Brevard County Health Department. The Claimant argues that the failure of the Brevard County Health Department to discover whether Vonshelle had herpes, and its subsequent failure to provide her with anti-viral medication that would have prevented her from passing the herpes virus to Iyonna at birth, is the cause of Iyonna's injuries. It is undisputed that Iyonna contracted HSV-2, which caused her brain damage. Whether she contracted the disease from her mother at birth is not so clear.

The Claimant's Arguments

Dr. Berto Lopez

Dr. Berto Lopez, an expert witness for the claimant, testified that, upon receiving and reviewing Vonshelle's Pap smear lab slip, he would have given her extra tests to determine whether she had herpes. He would have given her anti-viral medication early in the pregnancy and would not have waited until she was 36 weeks pregnant. He believed that there was

[22] Dr. Colombo is a former clinical assistant professor of maternal fetal medicine at the Ohio State University hospitals and associate professor of obstetrics and gynecology and maternal fetal medicine at Michigan State University.

[23] The Brevard County Health Department instituted a new policy for reviewing lab slips, on or around August 2015, according to an affidavit submitted by Maria Stahl, the Administrator for the Brevard County Health Department. The ordering clinician must review and acknowledge the laboratory results, in addition to the review performed by the assigned nursing staff. The laboratory review process is reviewed at all new employee orientations for the Brevard County Health Department.

no harm in giving the anti-viral medication to Vonshelle early, but that there could be tremendous harm to the baby if the medication were not given.

Dr. Fred Gonzalez

Dr. Fred Gonzalez, a board certified perinatologist[24] or maternal fetal medicine specialist, practicing in New York City, was another expert witness for the claimant. He also testified that when he has a pregnant patient with a recurrent herpes infection and she has not had an outbreak in the last year, he puts her on an anti-viral drug for suppression therapy at 36 weeks. He then lets the pediatrician or neonatologist know that the mother has a history of herpes. According to Dr. Gonzalez, the mother's primary outbreak is the most dangerous to the baby. When asked if he recommended beginning anti-viral therapy earlier than 36 weeks for someone with previous pre-term births at 35 or 36 weeks, he said he did not. If a mother has herpes symptoms or a lesion at the time of delivery, the treatment is to do a Caesarean section.

Dr. Catherine Lamprecht

Dr. Catherine Lamprecht, a pediatric infectious disease specialist for the claimant, treated Iyonna at Arnold Palmer Hospital for Children. She testified that she could say with medical certainty that Iyonna was exposed to hsv and suffered meningoencephalitis as a result. Dr. Lamprecht was asked in her deposition if she was an expert in the prenatal care of a mother with herpes who was about to give birth. She stated that she did not consider herself an expert in that area. Dr. Lamprecht said that she could not give a medical expert opinion as to whether Vonshelle had herpes.

Respondent's Arguments

Dr. Mark Sargent

Diagnosing Herpes In Pregnant Women

Dr. Mark Sargent, Vonshelle's treating obstetrician, testified in his deposition that he had dealt with approximately 10,000 patients in his obstetrical career of which "a couple hundred" were pregnant women having confirmed cases of herpes simplex virus.

[24] Perinatology is a subspecialty within the field of obstetrics and gynecology. It focuses on high-risk, complicated pregnancies. Perinatology is also referred to as maternal-fetal medicine. http://www.perinatologist.net/

When asked how he confirms that a pregnant woman has herpes, Dr. Sargent responded that, if the woman has been diagnosed with herpes or told of it and treated for it, that is the first way. If the patient tells him that she has a lesion in the vaginal area or vulva, he cultures the lesion, sends it to a lab, and if it comes back positive, that is definitive. A third way, which is less definitive, is a blood test to determine the presence of herpes antibodies, because it means that a patient has been exposed to herpes.

Sores or Boils

Later in the deposition, Dr. Sargent discussed Vonshelle's claim that she had boils. Vonshelle stated that she had a sore under her arm and in the area of the crease in her leg near the vaginal area during the pregnancy. She described the sores to be boils about the size of a penny. When asked if this could be characteristic of a herpes lesion, Dr. Sargent said "No" and that boils are not cratered lesions characteristic of herpes. Moreover, Dr. Sargent testified that there was nothing in the medical records that indicated that Vonshelle had any boils during her pregnancy. He said that he would have examined those areas and the information would have been in Vonshelle's medical records if he had been notified, but there was nothing in her records about boils.

Standard of Care and Suppression Therapy

When asked what Dr. Sargent would have done if the Quest Pap test lab report had been brought to his attention, he replied that he would have gotten a second opinion about starting an anti-viral medicine on a baby in the first trimester. He does not order acyclovir, an anti-viral prescription that suppresses herpes, in the first trimester, but waits until the last trimester, at approximately 34 or 36 weeks, if the mother has a history of herpes. He stated that it is too late to treat a mother with acyclovir during the birthing process because it would not be helpful to her, the mother. Additionally, a Caesarean section was never recommended for Vonshelle because they were not aware that she had herpes.

Dr. Sargent testified that treating the mother at 34 to 36 weeks with acyclovir does not protect the baby and because Vonshelle delivered Iyonna at 36 weeks, the medicine would not have been in Vonshelle's system long enough to help the baby. He stated that the medical recommendation is that the

drug needs to be administered for 4 to 6 weeks before it is helpful.

When asked if Iyonna likely contracted herpes during the birthing process, Dr. Sargent responded, "No." He said that he really did not know when the transmission of the disease likely occurred, and commented that the case was very odd.[25]

Dr. Keith Van Dyke

Herpes Testing

Dr. Keith Van Dyke was also deposed as a defense expert witness. At the time of his deposition, he was a practicing gynecologist who had worked in high risk obstetrics. He stated that he had never had a patient who tested positive for hsv on a Pap test.

Whether Vonshelle Had the Herpes Simplex Virus

Dr. Van Dyke stated that Vonshelle "has never had herpes based on her lab test from 2014." He noted that Vonshelle took a blood serum test and the results test were negative.

Dr. Van Dyke was asked to comment on conclusions made by Dr. Lamprecht, the infectious disease specialist practicing at Arnold Palmer Hospital for Children. Dr. Lamprecht concluded that Iyonna contracted hsv during the vaginal birth. Dr. Van Dyke stated that Dr. Lamprecht was wrong to conclude that Iyonna was exposed to hsv during the vaginal delivery. He based this on the fact that Vonshelle tested negative for herpes.

When asked if false-negatives could occur, he responded that it is possible if the herpes test is performed on someone soon after the virus is transmitted to them. This is because the particular anti-body had not been around long enough in the body to register. However, Dr. Van Dyke said that he was not aware of any false negative tests in the literature he reviewed. When asked if Vonshelle could have had a false negative for the hsv test, Dr. Van Dyke stated, "I would think not."

Iyonna's Acquisition of Herpes

When asked his opinion of how Iyonna acquired the herpes simplex virus, Dr. Van Dyke stated, "I can only suppose that

[25] At the time of Dr. Sargent's deposition on March 13, 2014, Vonshelle had not been tested for herpes. The multiple HerpeSelect tests were not taken until almost 5 months later, in August 2014. It was then that people became aware that she did not have the herpes type 2 virus.

the baby acquired it after delivery." The follow up question was asked if there were any possibility that the baby would have acquired the virus before labor and delivery and he responded, "No."

Herpes Incubation Period
During Dr. Van Dyke's deposition, the issue was raised about the length of an incubation period for the herpes simplex virus. Dr. Van Dyke stated that generally, the incubation period before lesions appear is 2 to 12 days or so after exposure.

Validity of HSV Test
Dr. Van Dyke placed more validity on the negative hsv test than on the Pap test report which stated "cellular change consistent with herpes simplex virus." He explained his reasoning as being that the blood serology test, or the test that was performed on Vonshelle in 2014 after Iyonna's birth in 2010, is an antibody test, and if someone has been exposed to the herpes virus, the person will remain positive for antibodies for his or her lifetime. He said that this holds true if it was a blood sample test, regardless of the location of where the blood was drawn or the amount of blood that was drawn.

Dr. Van Dyke stated that, in his opinion, other than when the test was performed during the early stage of an initial or primary herpes outbreak, a negative result would be 100 percent confirmation that the patient had never had herpes.

Suppression Therapy
Dr. Van Dyke relies on the American Congress of Obstetrics and Gynecology's publication, the Herpes Management in Pregnancy document, published in 2007 and reaffirmed in 2014. It states that suppression therapy for herpes should begin at 36 weeks. He found the bulletin to be authoritative and follows its guidelines for suppression therapy.

Dr. Van Dyke was asked about suppression therapy for hsv and using a daily therapy drug such as acyclovir or Valtrex to prevent recurrences of herpes outbreaks, and whether that would affect the results of an antibody hsv test. He stated suppression therapy would not affect those test results because "antibodies" are for life and that "They don't go away."

When asked if he would have begun a regimen of suppression therapy based upon the Pap test results, he responded that it would not have been appropriate to initiate suppression therapy without a diagnosis of hsv with a serum blood test. He stated, once again, that Vonshelle did not have a diagnosis of herpes simplex, and in his opinion, because Vonshelle never had herpes, it would not matter. He noted that it is not good practice to give medicine for no reason. Dr. Van Dyke expounded that suppression therapy is a treatment for a known disease. He stated that suppression will decrease outbreaks, but some of his patients on daily suppression still get outbreaks of herpes. Unless it is a primary outbreak during pregnancy, suppression is used for recurrences at 36 weeks and up.

Standard of Care

When asked whether the handling of Vonshelle's Pap test met the standard of care, Dr. Van Dyke responded that he did not think there was a standard of care on this particular Pap test because it was so unusual. He said, "It's got to be rare because I've never seen one. I wouldn't know that there would be a standard." He noted that the Pap test result did not say "diagnostic of" herpes, and suggested that there are other possibilities that might not always be true, such as other infections. He concluded that the Pap test results did not need to be communicated to Vonshelle because the results were negative for what it was tested for, cervical disease, dysplasia, and malignancy.

Dr. Van Dyke also stated that the pathologist's notation about cellular changes did not make any distinction between herpes-1 and herpes-2. He stated, once again, that note on the Pap smear lab slip is odd and extremely rare and he could not say what the standard of care would be for it.

He further stated that a Pap test is not diagnostic of herpes.

Transmission from Mother to Baby

When asked his theories of how a baby could acquire HSV-2 after birth, Dr. Van Dyke said that if someone had lesions in his or her mouth, he or she could shed the virus through saliva. If someone has active herpes or lesions on their genitals and they touch themselves and then touch the baby, that is a possible way to transmit the virus as well. "So, kissing, touching."

In summary, when Dr. Van Dyke was asked if it was his opinion that the baby absolutely did not acquire hsv from the mother during vaginal birth but rather was exposed to the herpes simplex virus after birth by someone other than the mother, he replied, "Correct."

Dr. David Columbo

Dr. David Columbo was also deposed as a defense expert witness. He is board certified in obstetrics and gynecology and maternal fetal medicine.[26] He regularly addresses the prevention of neonatal herpes in his maternal fetal medicine practice.

Impact of Previous Pre-term Births on this Pregnancy

When asked if Vonshelle's two earlier pre-term births were important to the issues in this case, Dr. Columbo stated, "No." He said that he would not have done anything differently than what Dr. Sargent did in treating Vonshelle in 2010.

He agreed with the American Congress of Obstetrics and Gynecology's guidelines for maternal fetal medicine. Those guidelines recommend beginning an anti-viral medicine at 36 weeks, and he found those guidelines to be reliable and well thought out. This opinion is in direct conflict with the testimony offered by the Claimant's medical expert, Dr. Berto Lopez.

Whether Vonshelle had the Herpes Simplex Virus

Dr. Colombo commented on the testimony of Dr. Lamprecht, the pediatric infectious disease specialist. He stated that her testimony was actually very good but her conclusion was wrong when she was asked about the pathology results showing cellular changes consistent with herpes. He also said that Dr. Lamprecht was wrong to conclude that Vonshelle had hsv during her pregnancy. When asked to elaborate, he said that Vonshelle Brothers did not have hsv during her pregnancy. He based that opinion upon the 2014 test results of the antibody screen for HSV-1 and HSV-2, after the 2010 pregnancy. Those test results show that it was impossible for her to have had hsv during her pregnancy.

[26] Dr. Colombo served as a clinical assistant professor of maternal fetal medicine at the Ohio State University hospital system and at the time of the deposition was an associate professor at Michigan State University in obstetrics and gynecology and maternal fetal medicine.

Dr. Colombo expounded on the pathology notation about changes consistent with herpes. He said that the pathologist saw a multinucleated giant cell with inclusions in the nucleus that were not specific for herpes. At that point, he felt that it was the obstetrician's job to do an antibody screen to see if Vonshelle actually had herpes or if it were due to another cause. The fact that the obstetrician did not follow up then was not an issue because the fact that the tests were negative years later meant that the results would have been negative at the time that the Pap smear was done in 2010.

He felt that the pathologist was correct to say that he saw those type of cells, but those types of cells could also be human papilloma virus, chronic inflammation, or a lot of things that can give that appearance. He felt that the pathologist was unable to distinguish between herpes simplex virus and other viruses or infections at that point. Dr. Colombo felt that the pathologist made an incorrect assumption that the cells were herpes simplex virus.

The Method of Transmission to Iyonna

Dr. Colombo believed that Dr. Lamprecht actually gave the method of Iyonna's transmission in her deposition when she related the story of someone with a cold sore kissing a baby. He concluded that what happened to Iyonna was either "in the nursery or a family member, somebody with herpes contacted this child shortly after delivery and transmitted the herpes virus then." He stated, "But the mom didn't have it. So it had to be that other two percent where somebody else gave it to the kid shortly after delivery."

Standard of Care

Dr. Colombo felt that Dr. Sargent deviated from the standard of care by failing to review the lab report. However, because the mistake did not result in any damage, the mistake is less relevant. He found no causal connection between the deviation in the standard of care and the resulting damages.

Suppression Therapy

If he had received a positive antibody screen on Vonshelle, he would have offered acyclovir at 36 weeks. He would not have started it any sooner even though she had two pregnancies that delivered at 32 and 36 weeks.

Dr. Colombo stated that, if a mother has antibodies and a recurrent infection, the risk of transmitting herpes to the baby is about 1 in 4,000. Some people have a reaction or side effects to acyclovir or Valtrex which could be catastrophic, even fatal. He did not think that giving the medicines in a timely manner would prevent herpetic meningoencephalitis, but would decrease the risk of herpetic meningoencephalitis.

Dr. Colombo said that the HSV-2 antibody test used in 2014 for determining whether Vonshelle had herpes is a very good test.

Source of Transmission of HSV to Iyonna
Dr. Colombo testified that the virus likely came from a well-meaning relative who was excited for the baby, who came in with a cold sore and kissed the child. He noted that it could have been a nurse or tech in the newborn nursery who picked the child up without gloves and had a herpes lesion on her or his hand. He said that this method is consistent with the incubation period because it happened shortly after delivery.

Dr. Colombo expressed once again that Iyonna's exposure to the virus was not during labor and delivery and he based that upon the fact that Vonshelle tested negative for herpes in a subsequent pregnancy. He also noted that if Vonshelle were exposed to herpes, she would have antibodies in her blood for life. He stated that because she twice tested negative for herpes means that she was never exposed to the virus

Incubation Period
Dr. Colombo testified that herpes incubation periods generally occur with a general range of time. The shortest incubation period he has seen was 7 days and the longest was 21 days.

<u>Conclusion</u>
In light of the negative HerpeSelect tests[27] and expert witness testimony, as well as the Western Blot test, I find that Vonshelle did not have HSV-2 while pregnant with Iyonna. She was, therefore, incapable of transmitting the virus to Iyonna during the birth process and causing her neurological

[27] According to a website, the HerpeSelect test "is the most commonly used HSV antibody test in the U.S." The test can detect antibodies and differentiate between HSV-1 and HSV-2. It generally takes about 3-6 weeks for someone to develop a detectable amount of antibodies to the herpes simplex virus. Most everyone will have detectable antibodies 16 weeks after exposure. http://www.healthassist.net/medical/herpes-test.shtml

damage. Iyonna's infection must have originated from coming into contact with another person who had the infection.

Damages

The parties agreed to settle this claim for:

(1) The $200,000 statutory cap, which was previously paid to the Claimant and her attorneys; and
(2) The right to pursue a claim bill for no more than $1 million that would not be contested by the Department of Health.

As discussed on page 11, the attorneys have been reimbursed $101,841.41 for their costs, but have not received any compensation for their legal services. Vonshelle has received $40,698.01. An annuity costing $50,000 has been purchased for Iyonna.

Vonshelle has incurred no out-of-pocket medical expenses because she and Iyonna are covered by Medicaid. According to Vonshelle's deposition testimony in 2014, she received $720 per month in Social Security disability payments for Iyonna.

FINAL CONCLUSION IN LIGHT OF THE EVIDENCE:

I do not find that the Claimant has proven, by the greater weight of the evidence, that the Brevard County Health Department is responsible for Iyonna's neurological injuries.

The Department's breach of the standard of care when Dr. Sargent did not review the entire results of Vonshelle's Pap test did not cause Iyonna's injuries. Vonshelle has never tested positive for HSV-2, in separate tests submitted to the special masters, and therefore, she did not have the virus and was not capable of passing the virus to Iyonna. Any further testing by the Department for hsv after the lab slip noted the cellular changes consistent with the herpes virus would not have yielded a positive test result. Therefore, the Department is not liable for any damages.

ATTORNEY 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 agreed to limit attorney fees to 15 percent of the claim bill award.

RECOMMENDATIONS: Based upon the foregoing, the undersigned recommends that Senate Bill 42 be reported UNFAVORABLY.

Respectfully submitted,

Eva M. Davis
Senate Special Master

cc: Secretary of the Senate

By Senator Rodriguez

37-00065-18 201842__

A bill to be entitled

An act for the relief of Vonshelle Brothers on behalf of her daughter Iyonna Hughey; providing an appropriation to compensate Iyonna Hughey for injuries and damages sustained as a result of the alleged negligence of the Brevard County Health Department, an agency of the Department of Health; providing that certain payments and the appropriation satisfy all present and future claims related to the alleged negligent acts; providing a limitation on the payment of fees and costs; providing an effective date.

WHEREAS, on March 16, 2010, Vonshelle Brothers visited a location of the Brevard County Health Department for her initial prenatal visit, during which a complete obstetrical and gynecological exam was conducted, including a Pap smear, and

WHEREAS, the lab results of the exam were reported to be within normal limits with the exception of the Pap smear, which had tested negative for intraepithelial lesion or malignancy, but showed cellular changes consistent with herpes simplex virus and bacterial vaginosis, and

WHEREAS, despite the results of the Pap smear, the Brevard County Health Department did not report the results to Vonshelle Brothers, and

WHEREAS, Vonshelle Brothers continued to receive treatment from the Brevard County Health Department through the duration of her pregnancy until the birth of her daughter, Iyonna Hughey, on October 14, 2010, at the Wuesthoff Medical Center, and both were discharged from the hospital 2 days later in good

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

37-00065-18 201842__

condition, and

WHEREAS, on November 1, 2010, Vonshelle Brothers brought Iyonna to the emergency room at Wuesthoff Medical Center, citing Iyonna's lack of eating, weak condition, and fever, and

WHEREAS, a lumbar puncture was performed and cerebral spinal fluid was collected which initially suggested that Iyonna had meningitis, which prompted her transfer to the Arnold Palmer Hospital for Children for further evaluation and management, and

WHEREAS, on November 3, 2010, the final results of the cerebral spinal fluid collection were reported, and the fluid had tested positive for herpes simplex type 2, and

WHEREAS, as a result of her diagnosis, Iyonna continues to experience significant developmental delay and neurologic impairment related to the herpes meningoencephalitis and has required continued treatment, including physical therapy, occupational and speech therapy, and neurologic and ophthalmologic care, and

WHEREAS, Iyonna's condition requires her to be under the constant care and supervision of Vonshelle Brothers, and

WHEREAS, the Brevard County Health Department had a duty to provide a reasonable level of care to Vonshelle Brothers and Iyonna, but that duty was allegedly breached by the department's failure to disclose the presence of the herpes simplex virus in Vonshelle Brothers and to order proper treatment of the virus, which eventually resulted in Iyonna's medical condition, and

WHEREAS, in June 2016, a final order was entered approving a settlement in the sum of $3.2 million between Vonshelle Brothers, individually and as parent and legal guardian of Iyonna, and the Brevard County Health Department to settle all

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

claims arising out of the factual situation described in this act, and

WHEREAS, the Department of Health has paid $200,000 to Vonshelle Brothers under the statutory limits of liability set forth in s. 768.28, Florida Statutes, and the parties have agreed to a reduced settlement in the amount of $1 million, NOW, THEREFORE,

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

Section 1. The facts stated in the preamble to this act are found and declared to be true.

Section 2. The sum of $1 million is appropriated from the General Revenue Fund to the Department of Health for the Supplemental Care Trust for the Benefit of Iyonna Hughey or other special needs trust for the exclusive use and benefit of Iyonna Hughey.

Section 3. The Chief Financial Officer is directed to draw a warrant in favor of the Supplemental Care Trust for the Benefit of Iyonna Hughey or other special needs trust for the exclusive use and benefit of Iyonna Hughey in the sum of $1 million upon funds of the Department of Health in the State Treasury and to pay the same out of such funds in the State Treasury.

Section 4. The amount paid by the Department of Health pursuant to s. 768.28, Florida Statutes, and the amount awarded under this act are intended to provide the sole compensation for all present and future claims arising out of the factual situation described in this act which resulted in injuries and

damages to Vonshelle Brothers and Iyonna Hughey. Of the amount awarded under this act, the total amount paid for attorney fees may not exceed $100,000, the total amount paid for lobbying fees may not exceed $50,000, and the total amount paid for costs and other similar expenses relating to this claim may not exceed $2,214.

Section 5. This act shall take effect upon becoming a law.

366626

576-03509-18

Proposed Committee Substitute by the Committee on Appropriations (Appropriations Subcommittee on Health and Human Services)

A bill to be entitled

An act for the relief of Cristina Alvarez and George Patnode; providing appropriations to compensate them for the death of their son, Nicholas Patnode, a minor, due to the negligence of the Department of Health; providing for the repayment of Medicaid liens; providing a limitation on the payment of attorney fees; providing an effective date.

WHEREAS, on January 8, 1998, Nicholas Patnode, 5 months of age, was seen for a fever at the Martin County Health Department - Indiantown Clinic, and

WHEREAS, a blood test was ordered, the results of which were abnormal and consistent with bacteremia, a condition that requires immediate administration of antibiotics, and

WHEREAS, the results of the blood test were printed that day but not picked up from the printer at the clinic, and as a result, treatment was not begun and Nicholas Patnode's condition deteriorated, and

WHEREAS, several hours later, Nicholas Patnode's parents took him to Martin Memorial Medical Center, where a spinal tap confirmed a diagnosis of bacterial meningitis, and Nicholas Patnode was transferred to St. Mary's Hospital in critical condition, and

WHEREAS, a decision was made to discontinue life support due to irreversible brain damage, and Nicholas Patnode died on January 10, 1998, and

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576-03509-18

WHEREAS, Nicholas Patnode is survived by his parents, Cristina Alvarez and George Patnode, and

WHEREAS, the actions of the Martin County Health Department demonstrated the failure to adhere to a reasonable level of care for Nicholas Patnode and resulted in his death, and

WHEREAS, after an unsuccessful attempt by Nicholas Patnode's parents to settle this claim, it proceeded to litigation, resulting in a judgment in favor of the parents in the amount of $2.6 million, and

WHEREAS, the Department of Health has paid $200,000 to Cristina Alvarez and George Patnode under the statutory limits of liability set forth in s. 768.28, Florida Statutes, NOW, THEREFORE,

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

Section 1. The facts stated in the preamble to this act are found and declared to be true.

Section 2. The sum of $1,382,500 is appropriated from the General Revenue Fund to the Department of Health for the relief of Cristina Alvarez as compensation for the death of her son, Nicholas Patnode, a minor, due to the negligence of the Martin County Health Department.

Section 3. The Chief Financial Officer is directed to draw a warrant in favor of Cristina Alvarez in the sum of $1,382,500 upon funds of the Department of Health in the State Treasury, and the Chief Financial Officer is directed to pay the same out of such funds in the State Treasury.

Section 4. The sum of $782,500 is appropriated from the

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576-03509-18

General Revenue Fund to the Department of Health for the relief of George Patnode as compensation for the death of his son, Nicholas Patnode, a minor, due to the negligence of the Martin County Health Department.

Section 5. The Chief Financial Officer is directed to draw a warrant in favor of George Patnode in the sum of $782,500 upon funds of the Department of Health in the State Treasury, and the Chief Financial Officer is directed to pay the same out of such funds in the State Treasury.

Section 6. The governmental entity responsible for payment of the warrants shall pay to the Agency for Health Care Administration the amount due under s. 409.910, Florida Statutes, before disbursing any funds to the claimants. The amount due to the agency shall be equal to all unreimbursed medical payments paid by Medicaid up to the date on which this act becomes a law. Such amounts shall be deducted in equal amounts from the award to each parent.

Section 7. The amount paid by the Department of Health pursuant to s. 768.28, Florida Statutes, and the amounts awarded under this act are intended to provide the sole compensation for all present and future claims arising out of the factual situation described in this act which resulted in the death of Nicholas Patnode. The total amount paid for attorney fees relating to this claim may not exceed 25 percent of the total amount awarded under this act.

Section 8. This act shall take effect upon becoming a law.

THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
515 Knott Building

Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5198

DATE	COMM	ACTION
1/22/18	SM	Favorable
1/23/18	JU	Favorable
2/23/18	AHS	Recommend: Fav/CS
3/2/18	AP	Fav/CS

January 22, 2018

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

Re: **CS/SB 44** – Appropriations Committee (Recommended by Appropriations Subcommittee on Health and Human Services) and Senator Jose Rodriguez
HB 6501 – Representative Jackie Toledo
Relief of Christina Alvarez and George Patnode by the Department of Health

SPECIAL MASTER'S FINAL REPORT

THIS IS A CONTESTED EXCESS JUDGMENT CLAIM FOR $2.4 MILLION AGAINST THE DEPARTMENT OF HEALTH FOR THE NEGLIGENT MEDICAL CARE PROVIDED TO NICHOLAS PATNODE IN 1998 AT THE COUNTY HEALTH DEPARTMENT/PUBLIC HEALTH CLINIC OPERATED BY THE DEPARTMENT IN MARTIN COUNTY.

CURRENT STATUS:

This claim bill was previously filed with the Legislature for the 2004 through 2010 Legislative Sessions. At some point, it was heard by T. Kent Wetherell, an administrative law judge from the Division of Administrative Hearings, serving as a Senate Special Master. After the hearing, the judge issued a report containing findings of fact and conclusions of law and recommended that the bill be reported FAVORABLY. Judge Wetherell's special master report from SB 46 (2007), the latest report available, is attached.

According to counsel for the parties, no changes have occurred since the hearing which might have altered the

findings and recommendations in the report. Additionally, the prior claim bills on which the attached special master report is based, is effectively identical to claim bill filed for the 2018 Legislative Session. Therefore, the undersigned recommends that Senate Bill 44 be reported FAVORABLY.

Respectfully submitted,

Thomas C. Cibula
Senate Special Master

cc: Secretary of the Senate

THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
402 Senate Office Building

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

DATE	COMM	ACTION
1/17/07	SM	Favorable

January 17, 2007

The Honorable Ken Pruitt
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 46 (2007)** – Senator Dave Aronberg
Relief of Nicholas Patnode

SPECIAL MASTER'S FINAL REPORT

THIS IS A CONTESTED EXCESS JUDGMENT CLAIM FOR $2.4 MILLION AGAINST THE DEPARTMENT OF HEALTH FOR THE NEGLIGENT MEDICAL CARE PROVIDED TO NICHOLAS PATNODE IN 1998 AT THE COUNTY HEALTH DEPARTMENT/PUBLIC HEALTH CLINIC OPERATED BY THE DEPARTMENT IN MARTIN COUNTY.

FINDINGS OF FACT:

On December 26, 1997, 5-month-old Nicholas Patnode was taken to the Martin County Health Department - Indiantown Clinic (hereafter "the Clinic") by his mother, Christina Alvarez, because of a fever. Nicholas received his primary care through the Clinic, as did the claimants' other two children. Nicholas' regular pediatrician was Dr. Stephen Williams.

Dr. Williams diagnosed Nicholas with an ear infection. He prescribed an antibiotic, and told Ms. Alvarez to bring Nicholas back in 10 days. Nicholas completed the antibiotic, and went in for the follow-up appointment on January 6, 1998. At the follow-up appointment, Dr. Williams found that Nicholas had recovered from the ear infection.

Two days later, on Thursday, January 8, 1998, Nicholas again ran a fever causing his mother to bring him back to the Clinic. Dr. Williams saw Nicholas and measured his fever at 103.7

degrees. The fever was "without focus," meaning that there was no apparent cause for the fever. In order to rule out a dangerous bacterial infection, Dr. Williams properly ordered a complete blood count (CBC) and urine test.

The Clinic did not have lab facilities. Lab work, such as the CBC ordered by Dr. Williams, was sent to the lab at Martin Memorial Hospital for analysis. The lab faxed the results of the tests back to the Clinic physician who ordered the tests.

In addition to ordering the CBC, Dr. Williams prescribed Tylenol and Motrin for Nicholas, told his mother to keep cool clothes on him, and to watch him for a rash. He also told her that if there was a rash or if the fever persisted or got worse, she should take Nicholas immediately to the emergency room.

The next day, January 9, 1998, Ms. Alvarez stated that she checked Nicholas' temperature every 4 hours, and that his temperature was "normal" (i.e., 98.6 degrees) throughout the day. At about 4:30 p.m., Nicholas felt hot and had a fever of 100 degrees. Ms. Alvarez gave Nicholas a dose of Tylenol, and when she checked his temperature again an hour later, his fever was up to 101 degrees. At about the same time, Nicholas' father, George Patnode, arrived home from working on a friend's car.

Mr. Patnode and Ms. Alvarez proceeded directly to the Martin Memorial Hospital emergency room with Nicholas. They arrived at the hospital at approximately 6:50 p.m. Ms. Alvarez did not mention during the admission process that Nicholas had been seen by Dr. Williams on the prior day or that he had ordered a CBC test.

The emergency room physician ordered another CBC test, which showed an abnormal white blood cell count. While waiting for test results, Cristina noticed that Nicholas was getting limp and whining, and was starting to get blotches on his lips. A lumbar puncture (i.e., spinal tap) indicated that Nicholas had pneumoccoccal meningitis. Nicholas was given intravenous antibiotics, and transferred by ambulance to St. Mary Hospital's pediatric intensive care unit.

Nicholas arrived at St. Mary's at 1:57 a.m., on January 10, 1998. By that time, Nicholas had gone into septic shock. He was removed from life support and died later that morning.

Dr. Williams' Background

Dr. Williams obtained his medical degree in Nigeria in the 1980's. He came to the United States in 1991 after completing an internship in a Nigerian hospital and working for a year in a public health clinic in Nigeria. It took Dr. Williams two tries to pass the exams required for him to practice medicine in the United States. He did a residency program in pediatrics in New York before coming to the Clinic in July 1996. According the Department's website, Dr. Williams was licensed to practice medicine in Florida on July 1, 1996, and his license number is ME70792.

Dr. Williams was granted permanent resident status in the United States in 1996. He worked for the Clinic pursuant to an F-1 visa that required him to provide services in an underserved area for three years. It took Dr. Williams three tries to pass the exam for Board certification in pediatrics. He was Board certified at some point in 1998 after the incident involving Nicholas.

Negligent Medical Care Provided by Dr. Williams

Dr. Williams did not order a rush or "stat" CBC; he ordered a routine CBC. Had Dr. Williams ordered the CBC "stat," the results would have been ready by 5:30 p.m., the day that they were ordered, i.e., January 8, 1998. The more credible expert testimony establishes that, in order to meet standard of care, Dr. Williams should have ordered the CBC "stat" because the test involved a five-month old child who had a fever without a focus.

The tests were completed by the lab at 11:30 p.m., on January 8, 1998. The results were faxed to the Clinic at 12:17 p.m., on January 9, 1998.

The lab results showed that Nicholas had a white blood cell count of 24,900. The normal range for a child of Nicholas' age was between 6,000 to 15,000. Nicholas' elevated white blood cell count was an indication that he might have a serious bacterial infection which, in turn, might develop into bacterial meningitis. In such cases, the standard of care requires immediate treatment with antibiotics.

The Clinic policy in effect at the time required abnormal lab results to be followed-up on with the patient within 24 hours of receipt. Dr. Williams did not review Nicolas' lab results until January 14, 1998, four days after he passed away. His failure to do so violated the clinic policy, and more importantly, fell below the standard of care.

The Clinic had a policy that required the lab to call the physician immediately if the lab results exceeded "panic values" set by the Clinic. The "panic value" set for white blood cell counts was 25,000, which was 100 higher than Nicholas' white blood cell count. The claimants' expert testified that the "panic value" should have been 15,000, which was the reference range published by the American Academy of Pediatrics.

The claimants' expert ultimately opined that had the CBC test been ordered "stat," or if the regular and actual results that were received by the Clinic at 12:17 p.m. on January 9, 1998, had been promptly reviewed and acted upon by Dr. Williams, then a course of intravenous antibiotics could have been administered in time to save Nicholas' life. The Clinic's expert, while not agreeing that a "stat" CBC was required, agreed that had Nicholas been started on antibiotics at any point up until 4:30 p.m. or so on January 9, 1998, he most likely would not have died.

The Clinic

The Clinic a county health department/public health clinic operated by the Department, with funding support from Martin County. See generally ss. 154.001-.067, F.S. Employees of the Clinic are employees of the Department. s. 154.04(2), F.S.

The Clinic serves Medicaid recipients and other low income patients who do not otherwise have access to health care. It is one of only three facilities in Martin County serving that patient population. In fiscal year 2005-06, the Clinic served more than 19,000 patients and had a budget of $7.8 million. It now has 137 employees.

The Clinic was only one of only three county health departments in the state that provides prenatal care from pregnancy to birth. The Clinic delivers approximately one-

third of the babies born in Martin County. Pediatric care is provided to many of these children after birth, as was the case with Nicholas and his siblings.

The Clinic is funded with a mix of federal, state, and county funds. It receives approximately $3.5 million in state funds and $920,000 (or 12 percent of its budget) from Martin County. As of November 30, 2006, the Clinic had a cash reserve of $1.3 million and a cash-to-budget ratio of 17.85 percent, which exceeds the 8.5 percent operating reserve required by s. 154.02(5)(a), F.S.

The Claimants

Nicholas' parents, Cristina Alvarez and George Patnode had two children prior to Nicolas. One of the other children is emotionally handicapped, has ADHD, and has pervasive developmental disorder. The other child has ADHD.

Ms. Alvarez and Ms. Patnode had been married for 10 years at the time of Nicholas' death. They separated four days after Nicolas' death, and they divorced in 2000. Both have remarried, and they each have had additional children since Nicholas' death.

George Patnode is 45-years-old. He does not work. He is a disabled veteran, who receives $724 per month in Social Security disability benefits and $115 per month from the Veterans Administration. He has been on Social Security disability since 1998. He has been working on an Associate in Arts degree at Indian River Community College for several years. He expects to complete that degree soon and then he intends to pursue a Bachelor's degree at Florida Atlantic University.

Mr. Patnode pays a total of $1,200 per month in child support, $600 of which is paid to Ms. Alvarez. He is current on his child support obligations. He is a "recovering alcoholic." He has been sober for 8 years, except for a "brief relapse in 2004," and he is active in Alcoholics Anonymous. He had two criminal offenses in 2002. The offenses were misdemeanor domestic batteries to which he pled no contest and served 30 days in jail.

Ms. Alvarez does not work outside the home. She receives $982 per month in government benefits for the two children

fathered by Mr. Patnode who are disabled, in addition to the $600 per month in child support that she receives from Mr. Patnode. She has no history of drug or alcohol abuse.

Relevant Subsequent Events

Dr. Williams no longer works for the Clinic. He left the Clinic in June 1999, after the end of the 3-year term required by his visa. Dr. Williams is now in private practice in the Tampa area.

Dr. Williams was not disciplined by the Clinic as a result of the incident. No disciplinary action was taken against his medical license.

The only policy change that came about at the Clinic as a result of Nicholas' death was the that the white blood cell count "panic value" of 25,000 was changed. Now, the "panic value" for that and other tests depends upon the range established by the lab for the specific test. No Department-wide policy changes were made as a result of the incident.

Source of Funds to Pay this Claim Bill

The bill authorizes and directs payment of this claim out of General Revenue, not the funds of the Department or the Clinic. The Department argues that neither it nor the Clinic has funds available to pay this claim and that payment of the claim from funds earmarked for the Clinic would be contrary to state law and would seriously hamper the Clinic's ability to serve its patients.

The Clinic and other county health departments receive a majority of their state funding from the County Health Department Trust Fund (CHDTF). In the 2006-07 General Appropriations Act, for example, a total of approximately $980 million of state funds were appropriated for the operation of the 67 county health departments, with $192 million (19.6%), coming from General Revenue and $780 million (79.4%) coming from the CHDTF, and the remainder (1%) coming from other sources.

Section 154.02(2), F.S., provides that funds in the CHDTF "shall be expended by the Department of Health solely for the purposes of carrying out the intent and purposes of [Part I of Chapter 154, F.S.]." Nothing in Part I of Chapter 154.02, F.S., addresses payment of claims against county health

departments. Moreover, s. 154.02(3), F.S., provides very specific language regarding the use of funds in the CHDTF; limitations on the transfer of the funds; and specific accounting requirements for those funds. Thus, it does not appear that that funds from the CHDTF could be used to pay this claim, and, under the circumstances, it is appropriate to pay the claim from General Revenue.

If the claim is paid from General Revenue, the Legislature will have to make a policy decision as to whether to concomitantly increase the appropriation of General Revenue to the Department to offset the payment of the claim. Failure to do so will provide a measure of accountability to the Department, whose employee's negligence was the basis of the claim, but it will mean that the other 66 county health departments are effectively subsidizing the payment of this claim since they will receive proportionally less General Revenue than they otherwise would have received.

In my view, it is unlikely that a proportional reduction in General Revenue would have a material negative impact on the operation of the county health departments since the amount of the claim ($2.4 million) amounts to less than 1.3 percent of the General Revenue ($192 million) and only 0.25 percent of the total state funds ($980 million) appropriated to the county health departments in fiscal year 2006-07. Thus, I recommend that the bill be amended to require payment of the claim out of the General Revenue funds appropriated to the Department for the county health departments and not from a separate and additional appropriation of General Revenue to the Department specifically for the payment of this claim.

LITIGATION HISTORY:

In 2000, the claimants filed suit against the Clinic, Dr. Williams, Martin Memorial Hospital, and others involved in the care and treatment of Nicholas from January 8 through 10, 1998. The suit was filed in circuit court in Martin County.

The claimants offered to settle with the Clinic for $200,000 prior to trial, but the Clinic rejected the offer. Martin Memorial Hospital settled with the claimants for $35,000. The claims against the other defendants were dismissed, and the case proceeded to trial against the Clinic only.

A jury trial was held in February 2002. The trial judge granted a directed verdict in favor of Mr. Patnode on the issue of his comparative negligence, but the jury had the opportunity to apportion negligence to Ms. Alvarez. The jury returned a $2.6 million verdict in favor of the claimants, finding the Clinic 100 percent responsible for Nicholas' death. The damages award was for past and future pain and suffering; no economic damages were sought or awarded. The jury apportioned 61.5 percent of the damages ($1.6 million) to Ms. Alvarez and 38.5 percent ($1 million) to Mr. Patnode.

The Department's post-trial motions were denied, and a final judgment consistent with the jury verdict was entered on March 26, 2002. The Fourth District Court of Appeal affirmed the final judgment without an opinion on April 30, 2003. The Clinic paid $200,000 in partial satisfaction of the judgment pursuant to s. 768.28, F.S., in September 2003.

The final judgment reserved jurisdiction to tax costs and attorney's fees, but no subsequent order was entered. The claimant's attorney has advised that no costs are being sought as part of the claim bill.

CLAIMANTS' POSITION:

- The claim is based on a jury verdict that was affirmed on appeal, and the jury verdict should be given full effect because it is supported by the evidence.
- Government entities should be held to the same level of accountability as the private sector, especially in the area of health care.
- The Department had an opportunity to settle this case for $200,000, but it failed to do so and, therefore, it should be required to pay the full amount awarded by the jury.

DEPARTMENT'S POSITION:

- Nicholas' mother, Ms. Patnode, should be found comparatively negligent for not taking Nicolas to the emergency room sooner, and for not telling the emergency room nurse about seeing Dr. Williams the day before.
- Payment of the claim would hinder the Clinic's ability to provide services to its patients.

- Payment of the claim should come from a separate appropriation of General Revenue because the Clinic and the Department do not have the funds to pay the claim.

CONCLUSIONS OF LAW:

Dr. Williams was an employee of the Department acting within the course and scope of his employment at the time of the incidents giving rise to this claim. As a result, the Department is vicariously liable for his negligence.

Dr. Williams owed a duty to Nicholas and his parents to properly diagnose and treat his medical condition. Dr. Williams breached that duty by failing to follow-up on the blood test that he ordered for Nicholas for the purpose of ruling out a serious bacterial infection. His failure to do so fell below the prevailing professional standard of care and was a proximate cause of Nicholas' death because had he reviewed the results of the test, Dr. Williams would have (or, at least, should have) sent Nicholas to the emergency room for antibiotics.

It is a close question in my mind as to whether Nicholas' mother was comparatively negligent for failing to take Nicholas to the emergency room sooner. On one hand, she was following Dr. Williams advice by giving Nicholas Tylenol and Motrin to reduce his fever and by only taking him to the emergency room if the fever continued despite the medications. On the other hand, it is clear from the expert medical testimony that she could not have been truthful when she testified that Nicholas' temperature was "normal" (i.e., 98.6 degrees) throughout the day on January 9, 1998, and, as a result, she might bear some responsibility for not bringing Nicholas to the emergency room until it was too late. The jury rejected the Department's argument that Nicholas' mother was comparatively negligent and, on balance, I agree with the jury's conclusion on that issue.

The damages awarded by the jury are reasonable. The damage award should, however, be reduced by $35,000 to reflect the settlement that the claimants received from Martin Memorial Hospital. It would be a windfall to the claimants if the claim bill was not reduced by the amount of that settlement because the jury specifically found that the hospital's lab was not negligent and the claimants' medical expert testified that he had no criticism of the care provided to Nicholas in the hospital's emergency room. Each parent's share of the claim

bill should be reduced by $17,500 (i.e., half of the $35,000 settlement) because they split the settlement equally.

ATTORNEY'S FEES AND LOBBYIST'S FEES: The claimants' attorney submitted an affidavit stating that attorney's fees related to this claim bill, inclusive of lobbyist's fees and costs, will be limited to 25 percent of the final claim in accordance with s. 768.28(8), F.S.

LEGISLATIVE HISTORY: This is the fourth year that this claim has been presented to the Senate. It was first presented in 2004 (SB 26), and then again in 2005 (SB 42) and 2006 (SB 52). No Special Master hearings were held on the prior years' Senate bills. The House Special Master recommended favorable consideration of the claim, as presented in HB 235 in 2004.

OTHER ISSUES: The bill authorizes and directs payment of $1.5 million to Ms. Alvarez and $900,000 to Mr. Patnode, which is consistent with the allocation of damages by the jury and the final judgment. However, the proceeds received to date -- the $35,000 settlement with Martin Memorial Hospital and the $200,000 partial satisfaction of the judgment by the Clinic -- have been split equally between Ms. Alvarez and Mr. Patnode after payment of attorney's fees and costs.

RECOMMENDATIONS: For the reasons set forth above, I recommend that SB 46 be reported FAVORABLY, as amended.

Respectfully submitted,

T. Kent Wetherell
Senate Special Master

cc: Senator Dave Aronberg
Faye Blanton, Secretary of the Senate
House Claims Committee

CS by Appropriations on March 2, 2018:
The committee substitute reduces the award amounts to reflect partial payments previously made, specifically the $200,000 partial satisfaction of the judgement and $35,000 paid in settlement with the treating hospital, which is consistent with the original Special Master's Final Report from January 17, 2007.

By Senator Rodriguez

37-00064-18 201844__

A bill to be entitled

An act for the relief of Cristina Alvarez and George Patnode; providing appropriations to compensate them for the death of their son, Nicholas Patnode, a minor, due to the negligence of the Department of Health; providing for the repayment of Medicaid liens; providing a limitation on the payment of attorney fees; providing an effective date.

WHEREAS, on January 8, 1998, Nicholas Patnode, 5 months of age, was seen for a fever at the Martin County Health Department - Indiantown Clinic, and

WHEREAS, a blood test was ordered, the results of which were abnormal and consistent with bacteremia, a condition that requires immediate administration of antibiotics, and

WHEREAS, the results of the blood test were printed that day but not picked up from the printer at the clinic, and as a result, treatment was not begun and Nicholas Patnode's condition deteriorated, and

WHEREAS, several hours later, Nicholas Patnode's parents took him to Martin Memorial Medical Center, where a spinal tap confirmed a diagnosis of bacterial meningitis, and Nicholas Patnode was transferred to St. Mary's Hospital in critical condition, and

WHEREAS, a decision was made to discontinue life support due to irreversible brain damage, and Nicholas Patnode died on January 10, 1998, and

WHEREAS, Nicholas Patnode is survived by his parents, Cristina Alvarez and George Patnode, and

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

37-00064-18 201844__

WHEREAS, the actions of the Martin County Health Department demonstrated the failure to adhere to a reasonable level of care for Nicholas Patnode and resulted in his death, and

WHEREAS, after an unsuccessful attempt by Nicholas Patnode's parents to settle this claim, it proceeded to litigation, resulting in a judgment in favor of the parents in the amount of $2.6 million, and

WHEREAS, the Department of Health has paid $200,000 to Cristina Alvarez and George Patnode under the statutory limits of liability set forth in s. 768.28, Florida Statutes, NOW, THEREFORE,

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

Section 1. The facts stated in the preamble to this act are found and declared to be true.

Section 2. The sum of $1.5 million is appropriated from the General Revenue Fund to the Department of Health for the relief of Cristina Alvarez as compensation for the death of her son, Nicholas Patnode, a minor, due to the negligence of the Martin County Health Department.

Section 3. The Chief Financial Officer is directed to draw a warrant in favor of Cristina Alvarez in the sum of $1.5 million upon funds of the Department of Health in the State Treasury, and the Chief Financial Officer is directed to pay the same out of such funds in the State Treasury.

Section 4. The sum of $900,000 is appropriated from the General Revenue Fund to the Department of Health for the relief of George Patnode as compensation for the death of his son,

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

Nicholas Patnode, a minor, due to the negligence of the Martin County Health Department.

Section 5. The Chief Financial Officer is directed to draw a warrant in favor of George Patnode in the sum of $900,000 upon funds of the Department of Health in the State Treasury, and the Chief Financial Officer is directed to pay the same out of such funds in the State Treasury.

Section 6. The governmental entity responsible for payment of the warrants shall pay to the Agency for Health Care Administration the amount due under s. 409.910, Florida Statutes, before disbursing any funds to the claimants. The amount due to the agency shall be equal to all unreimbursed medical payments paid by Medicaid up to the date on which this act becomes a law. Such amounts shall be deducted in equal amounts from the award to each parent.

Section 7. The amount paid by the Department of Health pursuant to s. 768.28, Florida Statutes, and the amounts awarded under this act are intended to provide the sole compensation for all present and future claims arising out of the factual situation described in this act which resulted in the death of Nicholas Patnode. The total amount paid for attorney fees relating to this claim may not exceed 25 percent of the total amount awarded under this act.

Section 8. This act shall take effect upon becoming a law.

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/CS/SB 272 (245118)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Finance and Tax); Community Affairs Committee; and Senators Brandes and Campbell
SUBJECT:	Local Tax Referenda
DATE:	March 1, 2018 REVISED:

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 272 provides that a referendum to adopt or amend a local option discretionary sales surtax must be held at a general election. The bill has no impact on state or local revenues or expenditures.

II. Present Situation:

Discretionary Sales Surtax

The Florida Constitution preempts all forms of taxation to the state, except for ad valorem taxes on real estate and tangible personal property, unless otherwise provided by general law.[1] Counties have limited authority to levy discretionary sales surtaxes on transactions subject to state sales tax.[2,3] The Legislature has authorized the following local option discretionary sales surtaxes:

- Charter County and Regional Transportation System Surtax, for operating a transportation system in a charter county, a county which is consolidated with that of one or more

[1] Art. VII, s. 1(a), Fla. Const.
[2] Sections 212.054 and 212.055, F.S.
[3] Surtaxes only apply to the first $5,000 of a taxable transaction pursuant to s. 212.054(2)(b)1, F.S.

municipalities, or a county that is within or under an interlocal agreement with a regional transportation or transit authority.[4]

- Local Government Infrastructure Surtax, for financing local government infrastructure projects.[5]
- Small County Surtax, providing additional revenue for counties having fewer than 50,000 residents as of April 1, 1992.[6]
- Indigent Care and Trauma Center Surtax, for providing medical care for indigent persons (in non-consolidated counties having a population of at least 800,000) and funding trauma centers (in non-consolidated counties having a population less than 800,000).[7]
- County Public Hospital Surtax, for operating, maintaining, and administering a county public general hospital in a county as defined in s. 125.011(1), F.S. (i.e., Miami-Dade County).[8]
- School Capital Outlay Surtax, for constructing and renovating schools.[9]
- Voter-Approved Indigent Care Surtax, for providing medical care for indigent persons in counties with a population less than 800,000.[10]
- Emergency Fire Rescue Services and Facilities Surtax, for providing emergency fire rescue services and facilities.[11]
- Pension Liability Surtax for funding pension liability shortfalls.[12]

Local discretionary sales surtaxes are collected by the Department of Revenue (DOR) using the same procedures used for the administration, collection, and enforcement of the general state sales tax.[13] DOR places these funds into the Discretionary Sales Surtax Clearing Trust Fund. A separate account is established for each county imposing a discretionary surtax. The proceeds of the surtax are distributed to the county on a monthly basis, minus an administrative fee of the lesser of three percent or administrative costs solely and directly attributable to the surtax. Each county is liable for its prorated share of administrative costs, based on its prorated share of the amount collected statewide.[14]

New surtaxes and rate changes to existing surtaxes take effect on January 1, while the repeal of an existing surtax takes effect on December 31.[15] The governing body of the county or the school district must notify DOR of the imposition, termination, or rate change of a discretionary sales surtax within 10 days of final adoption by ordinance or referendum, but no later than November 16. The notification must include the duration of the surtax, the surtax rate, a copy of the ordinance, and any additional information DOR requires by rule.[16] If the county or school district fails to provide timely notice, the effective date of the change is delayed by 1 year.[17] Counties

[4] Section 212.055(1), F.S.
[5] Section 212.055(2), F.S.
[6] Section 212.055(3), F.S.
[7] Section 212.055(4), F.S.
[8] Section 212.055(5), F.S.
[9] Section 212.055(6), F.S.
[10] Section 212.055(7), F.S.
[11] Section 212.055(8), F.S.
[12] Section 212.055(9), F.S.
[13] Section 212.054(4)(a), F.S.
[14] Section 212.054(4)(b), F.S.
[15] Section 212.054(5), F.S.
[16] Section 212.054(7)(a), F.S.
[17] *Id*.

and school districts are also required to notify DOR if a referendum or consideration of an ordinance to impose, terminate, or change the rate of a surtax is to occur after October 1.[18]

The 49 counties and 16 school districts levying one or more discretionary sales surtaxes were projected to realize $2.35 billion in revenue in fiscal year 2016-17.[19] If all counties and school districts levied discretionary sales surtaxes at the maximum possible rates, they would have been projected to raise $11.68 billion in revenue in fiscal year 2016-17.[20]

Most local discretionary sales surtaxes may be approved only by referendum, while some may be approved by an extraordinary vote of the county commission.[21] For those requiring voter approval, the referendum must be approved by a majority of electors voting.[22] Except for the emergency fire rescue services and facilities surtax, the date of the referendum is at the discretion of the county commission.[23]

Referendum Process

The Florida Election Code provides the general requirements for a referendum.[24] The question presented to voters must contain a ballot summary with clear and unambiguous language, such that a "yes" or "no" vote on the measure indicates approval or rejection, respectively.[25] The ballot summary should explain the chief purpose of the measure and may not exceed 75 words.[26] The ballot summary and title must be included in the resolution or ordinance calling for the referendum.[27] For some discretionary sales surtaxes, the form of the ballot question is specified by statute.[28]

Five types of elections exist under the Election Code: primary elections, special primary elections, special elections, general elections, and presidential preference primary elections.[29] A "general election" is held on the first Tuesday after the first Monday in November in even-numbered years to fill national, state, county, and district offices, and for voting on constitutional amendments.[30]

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[18] Section 212.054(7)(b), F.S. The deadline for this notification is October 1.
[19] *2017 Florida Tax Handbook*, Office of Economic and Demographic Research, p. 220, available at http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2017.pdf (last visited Oct. 16, 2017).
[20] *2016 Local Government Financial Information Handbook*, Office of Economic and Demographic Research, p. 150, available at http://edr.state.fl.us/Content/local-government/reports/lgfih16.pdf (last visited Oct. 16, 2017).
[21] *See generally* s. 212.055, F.S., *but see* s. 212.055(3), F.S. (small county surtax may be approved by extraordinary vote of the county commission, as long as surtax revenues are not used for servicing bond indebtedness), s. 212.055(4), F.S. (indigent care and trauma center surtax may be approved by extraordinary vote of the county commission), and s. 212.055(5), F.S. (county public hospital surtax may be approved by extraordinary vote of the county commission).
[22] Section 212.055, F.S.
[23] *E.g.* s. 212.055(1)(c), F.S. and s. 212.055(5), F.S. (referendum for charter county and regional transportation system and county public hospital surtax to be held at a time "set at the discretion of the governing body"); *but see* s. 212.055(8)(b), F.S. (referendum for emergency fire rescue services and facilities surtax must be placed on the ballot of a "regularly scheduled election").
[24] Section 101.161, F.S.
[25] Section 101.161(1), F.S.
[26] *Id*.
[27] *Id*.
[28] *See* s. 212.055(4)(b)1., F.S. (ballot question for discretionary sales surtax for trauma centers).
[29] Section 97.021(11), F.S.
[30] Art. VI, s. 5(a), Fla. Const. (also codified as s. 97.021(16), F.S.).

III. Effect of Proposed Changes:

Section 1 amends s. 212.055, F.S., to require that a referendum to adopt or amend a local government discretionary surtax must be held at a general election. This will limit the timing and frequency of these referenda to even-year November elections.

Section 2 provides that the act takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18(b) of the Florida Constitution provides that the Legislature, except upon approval by a two-thirds vote of the membership, 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.

In 1991, Senate President Margolis and House Speaker Wetherell released a memorandum to guide the House and Senate in the review of local government mandates. In the memorandum, the guidelines define the term "authority" to mean the power to levy a tax; the vote required to levy the tax, e.g., increasing the required vote from majority to majority plus one; the tax rate which can be levied; and the base against which the tax is levied, e.g., a bill providing a sales tax exemption should be considered a reduction in authority because counties have authority to levy local option sales taxes against the state sales tax base.

The bill requires that a referendum to adopt or amend a local government discretionary surtax must be held at a general election. While the bill limits the flexibility that counties and municipalities have for scheduling a referendum, it does not limit the authority they have to raise revenues. Therefore, the bill does not appear to be a mandate.

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:

None.

VIII. Statutes Affected:

This bill substantially amends section 212.055 of the Florida Statutes.

IX. Additional Information:

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

Recommended CS by Appropriations Subcommittee on Finance and Tax on January 16, 2018:
Provides that a referendum to adopt or amend a local government discretionary sales surtax must be held at a general election, and is effective upon becoming a law.

CS by Community Affairs Committee on October 24, 2017:
Removes a provision that required a municipality to attain a vote of at least 60 percent of the governing body of the municipality in order to increase the millage rate of ad valorem taxes levied on real and tangible personal property within the municipality.

B. Amendments:

None.

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

245118

576-02115-18

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

A bill to be entitled

An act relating to local tax referenda; amending s. 212.055, F.S.; providing that a referendum to adopt or amend a local discretionary sales surtax must be held at a general election; providing an effective date.

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

Section 1. Paragraph (c) of subsection (1), paragraph (b) of subsection (5), and paragraph (b) of subsection (8) of section 212.055, Florida Statutes, are amended, and subsection (10) is added to that section, to read:

212.055 Discretionary sales surtaxes; legislative intent; authorization and use of proceeds.—It is the legislative intent that any authorization for imposition of a discretionary sales surtax shall be published in the Florida Statutes as a subsection of this section, irrespective of the duration of the levy. Each enactment shall specify the types of counties authorized to levy; the rate or rates which may be imposed; the maximum length of time the surtax may be imposed, if any; the procedure which must be followed to secure voter approval, if required; the purpose for which the proceeds may be expended; and such other requirements as the Legislature may provide. Taxable transactions and administrative procedures shall be as provided in s. 212.054.

(1) CHARTER COUNTY AND REGIONAL TRANSPORTATION SYSTEM SURTAX.—

245118

576-02115-18

(c) The proposal to adopt a discretionary sales surtax as provided in this subsection and to create a trust fund within the county accounts shall be placed on the ballot in accordance with law and must be approved in a referendum held at a general election as set forth in subsection (10) ~~at a time to be set at the discretion of the governing body~~.

(5) COUNTY PUBLIC HOSPITAL SURTAX.—Any county as defined in s. 125.011(1) may levy the surtax authorized in this subsection pursuant to an ordinance either approved by extraordinary vote of the county commission or conditioned to take effect only upon approval by a majority vote of the electors of the county voting in a referendum. In a county as defined in s. 125.011(1), for the purposes of this subsection, "county public general hospital" means a general hospital as defined in s. 395.002 which is owned, operated, maintained, or governed by the county or its agency, authority, or public health trust.

(b) If the ordinance is conditioned on a referendum, the proposal to adopt the county public hospital surtax shall be placed on the ballot in accordance with subsection (10) ~~law at a time to be set at the discretion of the governing body~~. The referendum question on the ballot shall include a brief general description of the health care services to be funded by the surtax.

(8) EMERGENCY FIRE RESCUE SERVICES AND FACILITIES SURTAX.—

(b) Upon the adoption of the ordinance, the levy of the surtax must be placed on the ballot by the governing authority of the county enacting the ordinance. The ordinance will take effect if approved by a majority of the electors of the county voting in a referendum held for such purpose. The referendum

shall be placed on the ballot of a general ~~regularly scheduled~~ election. The ballot for the referendum must conform to the requirements of s. 101.161.

(10) DATES FOR REFERENDA.—A referendum to adopt or amend a local government discretionary sales surtax under this section shall be held at a general election as defined in s. 97.021.

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 272
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Finance and Tax); Community Affairs Committee; and Senators Brandes and Campbell
SUBJECT:	Local Tax Referenda
DATE:	March 3, 2018
REVISED:	

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 272 provides that a referendum to adopt or amend a local option discretionary sales surtax must be held at a general election. The bill has no impact on state or local revenues or expenditures.

II. Present Situation:

Discretionary Sales Surtax

The Florida Constitution preempts all forms of taxation to the state, except for ad valorem taxes on real estate and tangible personal property, unless otherwise provided by general law.[1] Counties have limited authority to levy discretionary sales surtaxes on transactions subject to state sales tax.[2,3] The Legislature has authorized the following local option discretionary sales surtaxes:

- Charter County and Regional Transportation System Surtax, for operating a transportation system in a charter county, a county which is consolidated with that of one or more

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[2] Sections 212.054 and 212.055, F.S.
[3] Surtaxes only apply to the first $5,000 of a taxable transaction pursuant to s. 212.054(2)(b)1, F.S.

municipalities, or a county that is within or under an interlocal agreement with a regional transportation or transit authority.[4]

- Local Government Infrastructure Surtax, for financing local government infrastructure projects.[5]
- Small County Surtax, providing additional revenue for counties having fewer than 50,000 residents as of April 1, 1992.[6]
- Indigent Care and Trauma Center Surtax, for providing medical care for indigent persons (in non-consolidated counties having a population of at least 800,000) and funding trauma centers (in non-consolidated counties having a population less than 800,000).[7]
- County Public Hospital Surtax, for operating, maintaining, and administering a county public general hospital in a county as defined in s. 125.011(1), F.S. (i.e., Miami-Dade County).[8]
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- Emergency Fire Rescue Services and Facilities Surtax, for providing emergency fire rescue services and facilities.[11]
- Pension Liability Surtax for funding pension liability shortfalls.[12]

Local discretionary sales surtaxes are collected by the Department of Revenue (DOR) using the same procedures used for the administration, collection, and enforcement of the general state sales tax.[13] DOR places these funds into the Discretionary Sales Surtax Clearing Trust Fund. A separate account is established for each county imposing a discretionary surtax. The proceeds of the surtax are distributed to the county on a monthly basis, minus an administrative fee of the lesser of three percent or administrative costs solely and directly attributable to the surtax. Each county is liable for its prorated share of administrative costs, based on its prorated share of the amount collected statewide.[14]

New surtaxes and rate changes to existing surtaxes take effect on January 1, while the repeal of an existing surtax takes effect on December 31.[15] The governing body of the county or the school district must notify DOR of the imposition, termination, or rate change of a discretionary sales surtax within 10 days of final adoption by ordinance or referendum, but no later than November 16. The notification must include the duration of the surtax, the surtax rate, a copy of the ordinance, and any additional information DOR requires by rule.[16] If the county or school district fails to provide timely notice, the effective date of the change is delayed by 1 year.[17] Counties

[4] Section 212.055(1), F.S.
[5] Section 212.055(2), F.S.
[6] Section 212.055(3), F.S.
[7] Section 212.055(4), F.S.
[8] Section 212.055(5), F.S.
[9] Section 212.055(6), F.S.
[10] Section 212.055(7), F.S.
[11] Section 212.055(8), F.S.
[12] Section 212.055(9), F.S.
[13] Section 212.054(4)(a), F.S.
[14] Section 212.054(4)(b), F.S.
[15] Section 212.054(5), F.S.
[16] Section 212.054(7)(a), F.S.
[17] *Id*.

and school districts are also required to notify DOR if a referendum or consideration of an ordinance to impose, terminate, or change the rate of a surtax is to occur after October 1.[18]

The 49 counties and 16 school districts levying one or more discretionary sales surtaxes were projected to realize $2.35 billion in revenue in fiscal year 2016-17.[19] If all counties and school districts levied discretionary sales surtaxes at the maximum possible rates, they would have been projected to raise $11.68 billion in revenue in fiscal year 2016-17.[20]

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Referendum Process

The Florida Election Code provides the general requirements for a referendum.[24] The question presented to voters must contain a ballot summary with clear and unambiguous language, such that a "yes" or "no" vote on the measure indicates approval or rejection, respectively.[25] The ballot summary should explain the chief purpose of the measure and may not exceed 75 words.[26] The ballot summary and title must be included in the resolution or ordinance calling for the referendum.[27] For some discretionary sales surtaxes, the form of the ballot question is specified by statute.[28]

Five types of elections exist under the Election Code: primary elections, special primary elections, special elections, general elections, and presidential preference primary elections.[29] A "general election" is held on the first Tuesday after the first Monday in November in even-numbered years to fill national, state, county, and district offices, and for voting on constitutional amendments.[30]

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[18] Section 212.054(7)(b), F.S. The deadline for this notification is October 1.
[19] *2017 Florida Tax Handbook*, Office of Economic and Demographic Research, p. 220, available at http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2017.pdf (last visited Oct. 16, 2017).
[20] *2016 Local Government Financial Information Handbook*, Office of Economic and Demographic Research, p. 150, available at http://edr.state.fl.us/Content/local-government/reports/lgfih16.pdf (last visited Oct. 16, 2017).
[21] *See generally* s. 212.055, F.S., *but see* s. 212.055(3), F.S. (small county surtax may be approved by extraordinary vote of the county commission, as long as surtax revenues are not used for servicing bond indebtedness), s. 212.055(4), F.S. (indigent care and trauma center surtax may be approved by extraordinary vote of the county commission), and s. 212.055(5), F.S. (county public hospital surtax may be approved by extraordinary vote of the county commission).
[22] Section 212.055, F.S.
[23] *E.g.* s. 212.055(1)(c), F.S. and s. 212.055(5), F.S. (referendum for charter county and regional transportation system and county public hospital surtax to be held at a time "set at the discretion of the governing body"); *but see* s. 212.055(8)(b), F.S. (referendum for emergency fire rescue services and facilities surtax must be placed on the ballot of a "regularly scheduled election").
[24] Section 101.161, F.S.
[25] Section 101.161(1), F.S.
[26] *Id*.
[27] *Id*.
[28] *See* s. 212.055(4)(b)1., F.S. (ballot question for discretionary sales surtax for trauma centers).
[29] Section 97.021(11), F.S.
[30] Art. VI, s. 5(a), Fla. Const. (also codified as s. 97.021(16), F.S.).

III. Effect of Proposed Changes:

Section 1 amends s. 212.055, F.S., to require that a referendum to adopt or amend a local government discretionary surtax must be held at a general election. This will limit the timing and frequency of these referenda to even-year November elections.

Section 2 provides that the act takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18(b) of the Florida Constitution provides that the Legislature, except upon approval by a two-thirds vote of the membership, 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.

In 1991, Senate President Margolis and House Speaker Wetherell released a memorandum to guide the House and Senate in the review of local government mandates. In the memorandum, the guidelines define the term "authority" to mean the power to levy a tax; the vote required to levy the tax, e.g., increasing the required vote from majority to majority plus one; the tax rate which can be levied; and the base against which the tax is levied, e.g., a bill providing a sales tax exemption should be considered a reduction in authority because counties have authority to levy local option sales taxes against the state sales tax base.

The bill requires that a referendum to adopt or amend a local government discretionary surtax must be held at a general election. While the bill limits the flexibility that counties and municipalities have for scheduling a referendum, it does not limit the authority they have to raise revenues. Therefore, the bill does not appear to be a mandate.

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:

None.

VIII. Statutes Affected:

This bill substantially amends section 212.055 of the Florida Statutes.

IX. Additional Information:

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

CS/CS by Appropriations on March 2, 2018:
Provides that a referendum to adopt or amend a local government discretionary sales surtax must be held at a general election, and is effective upon becoming a law.

CS by Community Affairs Committee on October 24, 2017:
Removes a provision that required a municipality to attain a vote of at least 60 percent of the governing body of the municipality in order to increase the millage rate of ad valorem taxes levied on real and tangible personal property within the municipality.

B. Amendments:

None.

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

By the Committee on Community Affairs; and Senator Brandes

578-00918-18 2018272c1

A bill to be entitled

An act relating to local tax referenda; amending s. 212.055, F.S.; revising the voter approval threshold required to pass a referendum to adopt or amend local government discretionary sales surtaxes when the referendum is held at any date other than a general election; 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. Paragraphs (a) and (c) of subsection (1), paragraph (a) of subsection (2), paragraph (a) of subsection (3), subsections (4) and (5), paragraph (a) of subsection (6), paragraph (a) of subsection (7), paragraph (b) of subsection (8), and paragraph (a) of subsection (9) of section 212.055, Florida Statutes, are amended, and subsection (10) is added to that section, to read:

212.055 Discretionary sales surtaxes; legislative intent; authorization and use of proceeds.—It is the legislative intent that any authorization for imposition of a discretionary sales surtax shall be published in the Florida Statutes as a subsection of this section, irrespective of the duration of the levy. Each enactment shall specify the types of counties authorized to levy; the rate or rates which may be imposed; the maximum length of time the surtax may be imposed, if any; the procedure which must be followed to secure voter approval, if required; the purpose for which the proceeds may be expended; and such other requirements as the Legislature may provide.

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

578-00918-18 2018272c1

Taxable transactions and administrative procedures shall be as provided in s. 212.054.

(1) CHARTER COUNTY AND REGIONAL TRANSPORTATION SYSTEM SURTAX.—

(a) Each charter county that has adopted a charter, each county the government of which is consolidated with that of one or more municipalities, and each county that is within or under an interlocal agreement with a regional transportation or transit authority created under chapter 343 or chapter 349 may levy a discretionary sales surtax~~, subject to approval by a majority vote of the electorate of the county or by a charter amendment approved by a majority vote of the electorate of the county~~.

(c) The proposal to adopt a discretionary sales surtax as provided in this subsection and to create a trust fund within the county accounts shall be placed on the ballot in accordance with law and must be approved in a referendum as set forth in subsection (10) ~~at a time to be set at the discretion of the governing body~~.

(2) LOCAL GOVERNMENT INFRASTRUCTURE SURTAX.—

(a)1. The governing authority in each county may levy a discretionary sales surtax of 0.5 percent or 1 percent. The levy of the surtax shall be pursuant to an ordinance enacted by a majority of the members of the county governing authority and approved by ~~a majority of~~ the electors of the county, as set forth in subsection (10), voting in a referendum on the surtax. If the governing bodies of the municipalities representing a majority of the county's population adopt uniform resolutions establishing the rate of the surtax and calling for a referendum

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on the surtax, the levy of the surtax shall be placed on the ballot and shall take effect if approved by ~~a majority of~~ the electors of the county, as set forth in subsection (10), voting in the referendum on the surtax.

2. If the surtax was levied pursuant to a referendum held before July 1, 1993, the surtax may not be levied beyond the time established in the ordinance, or, if the ordinance did not limit the period of the levy, the surtax may not be levied for more than 15 years. The levy of such surtax may be extended only by approval of ~~a majority of~~ the electors of the county, as set forth in subsection (10), voting in a referendum on the surtax.

(3) SMALL COUNTY SURTAX.—

(a) The governing authority in each county that has a population of 50,000 or less on April 1, 1992, may levy a discretionary sales surtax of 0.5 percent or 1 percent. The levy of the surtax shall be pursuant to an ordinance enacted by an extraordinary vote of the members of the county governing authority if the surtax revenues are expended for operating purposes. If the surtax revenues are expended for the purpose of servicing bond indebtedness, the surtax shall be approved by ~~a majority of~~ the electors of the county, as set forth in subsection (10), voting in a referendum on the surtax.

(4) INDIGENT CARE AND TRAUMA CENTER SURTAX.—

(a)1. The governing body in each county the government of which is not consolidated with that of one or more municipalities, which has a population of at least 800,000 residents and is not authorized to levy a surtax under subsection (5), may levy, pursuant to an ordinance either approved by an extraordinary vote of the governing body or

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conditioned to take effect only upon approval by ~~a majority vote of~~ the electors of the county, as set forth in subsection (10), voting in a referendum, a discretionary sales surtax at a rate that may not exceed 0.5 percent.

2. If the ordinance is conditioned on a referendum, a statement that includes a brief and general description of the purposes to be funded by the surtax and that conforms to the requirements of s. 101.161 shall be placed on the ballot by the governing body of the county. The following questions shall be placed on the ballot:

FOR THE. . . .CENTS TAX
AGAINST THE. . . .CENTS TAX

3. The ordinance adopted by the governing body providing for the imposition of the surtax shall set forth a plan for providing health care services to qualified residents, as defined in subparagraph 4. Such plan and subsequent amendments to it shall fund a broad range of health care services for both indigent persons and the medically poor, including, but not limited to, primary care and preventive care as well as hospital care. The plan must also address the services to be provided by the Level I trauma center. It shall emphasize a continuity of care in the most cost-effective setting, taking into consideration both a high quality of care and geographic access. Where consistent with these objectives, it shall include, without limitation, services rendered by physicians, clinics, community hospitals, mental health centers, and alternative delivery sites, as well as at least one regional referral

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hospital where appropriate. It shall provide that agreements negotiated between the county and providers, including hospitals with a Level I trauma center, will include reimbursement methodologies that take into account the cost of services rendered to eligible patients, recognize hospitals that render a disproportionate share of indigent care, provide other incentives to promote the delivery of charity care, promote the advancement of technology in medical services, recognize the level of responsiveness to medical needs in trauma cases, and require cost containment, including, but not limited to, case management. It must also provide that any hospitals that are owned and operated by government entities on May 21, 1991, must, as a condition of receiving funds under this subsection, afford public access equal to that provided under s. 286.011 as to meetings of the governing board, the subject of which is budgeting resources for the rendition of charity care as that term is defined in the Florida Hospital Uniform Reporting System (FHURS) manual referenced in s. 408.07. The plan shall also include innovative health care programs that provide cost-effective alternatives to traditional methods of service delivery and funding.

4. For the purpose of this paragraph, the term "qualified resident" means residents of the authorizing county who are:

a. Qualified as indigent persons as certified by the authorizing county;

b. Certified by the authorizing county as meeting the definition of the medically poor, defined as persons having insufficient income, resources, and assets to provide the needed medical care without using resources required to meet basic

needs for shelter, food, clothing, and personal expenses; or not being eligible for any other state or federal program, or having medical needs that are not covered by any such program; or having insufficient third-party insurance coverage. In all cases, the authorizing county is intended to serve as the payor of last resort; or

c. Participating in innovative, cost-effective programs approved by the authorizing county.

5. Moneys collected pursuant to this paragraph remain the property of the state and shall be distributed by the Department of Revenue on a regular and periodic basis to the clerk of the circuit court as ex officio custodian of the funds of the authorizing county. The clerk of the circuit court shall:

a. Maintain the moneys in an indigent health care trust fund;

b. Invest any funds held on deposit in the trust fund pursuant to general law;

c. Disburse the funds, including any interest earned, to any provider of health care services, as provided in subparagraphs 3. and 4., upon directive from the authorizing county. However, if a county has a population of at least 800,000 residents and has levied the surtax authorized in this paragraph, notwithstanding any directive from the authorizing county, on October 1 of each calendar year, the clerk of the court shall issue a check in the amount of $6.5 million to a hospital in its jurisdiction that has a Level I trauma center or shall issue a check in the amount of $3.5 million to a hospital in its jurisdiction that has a Level I trauma center if that county enacts and implements a hospital lien law in accordance

with chapter 98-499, Laws of Florida. The issuance of the checks on October 1 of each year is provided in recognition of the Level I trauma center status and shall be in addition to the base contract amount received during fiscal year 1999-2000 and any additional amount negotiated to the base contract. If the hospital receiving funds for its Level I trauma center status requests such funds to be used to generate federal matching funds under Medicaid, the clerk of the court shall instead issue a check to the Agency for Health Care Administration to accomplish that purpose to the extent that it is allowed through the General Appropriations Act; and

d. Prepare on a biennial basis an audit of the trust fund specified in sub-subparagraph a. Commencing February 1, 2004, such audit shall be delivered to the governing body and to the chair of the legislative delegation of each authorizing county.

6. Notwithstanding any other provision of this section, a county shall not levy local option sales surtaxes authorized in this paragraph and subsections (2) and (3) in excess of a combined rate of 1 percent.

(b) Notwithstanding any other provision of this section, the governing body in each county the government of which is not consolidated with that of one or more municipalities and which has a population of less than 800,000 residents~~,~~ may levy, by ordinance subject to approval by ~~a majority of~~ the electors of the county, as set forth in subsection (10), voting in a referendum, a discretionary sales surtax at a rate that may not exceed 0.25 percent for the sole purpose of funding trauma services provided by a trauma center licensed pursuant to chapter 395.

1. A statement that includes a brief and general description of the purposes to be funded by the surtax and that conforms to the requirements of s. 101.161 shall be placed on the ballot by the governing body of the county. The following shall be placed on the ballot:

FOR THE. . . .CENTS TAX
AGAINST THE. . . .CENTS TAX

2. The ordinance adopted by the governing body of the county providing for the imposition of the surtax shall set forth a plan for providing trauma services to trauma victims presenting in the trauma service area in which such county is located.

3. Moneys collected pursuant to this paragraph remain the property of the state and shall be distributed by the Department of Revenue on a regular and periodic basis to the clerk of the circuit court as ex officio custodian of the funds of the authorizing county. The clerk of the circuit court shall:

a. Maintain the moneys in a trauma services trust fund.

b. Invest any funds held on deposit in the trust fund pursuant to general law.

c. Disburse the funds, including any interest earned on such funds, to the trauma center in its trauma service area, as provided in the plan set forth pursuant to subparagraph 2., upon directive from the authorizing county. If the trauma center receiving funds requests such funds be used to generate federal matching funds under Medicaid, the custodian of the funds shall instead issue a check to the Agency for Health Care

Administration to accomplish that purpose to the extent that the agency is allowed through the General Appropriations Act.

d. Prepare on a biennial basis an audit of the trauma services trust fund specified in sub-subparagraph a., to be delivered to the authorizing county.

4. A discretionary sales surtax imposed pursuant to this paragraph shall expire 4 years after the effective date of the surtax~~,~~ unless reenacted by ordinance subject to approval by ~~a majority of~~ the electors of the county, as set forth in subsection (10), voting in a subsequent referendum.

5. Notwithstanding any other provision of this section, a county shall not levy local option sales surtaxes authorized in this paragraph and subsections (2) and (3) in excess of a combined rate of 1 percent.

(5) COUNTY PUBLIC HOSPITAL SURTAX.—Any county as defined in s. 125.011(1) may levy the surtax authorized in this subsection pursuant to an ordinance either approved by extraordinary vote of the county commission or conditioned to take effect only upon approval by ~~a majority vote of~~ the electors of the county, as set forth in subsection (10), voting in a referendum. In a county as defined in s. 125.011(1), for the purposes of this subsection, "county public general hospital" means a general hospital as defined in s. 395.002 which is owned, operated, maintained, or governed by the county or its agency, authority, or public health trust.

(a) The rate shall be 0.5 percent.

(b) If the ordinance is conditioned on a referendum, the proposal to adopt the county public hospital surtax shall be placed on the ballot in accordance with subsection (10) ~~law at a~~

~~time to be set at the discretion of the governing body~~. The referendum question on the ballot shall include a brief general description of the health care services to be funded by the surtax.

(c) Proceeds from the surtax shall be:

1. Deposited by the county in a special fund, set aside from other county funds, to be used only for the operation, maintenance, and administration of the county public general hospital; and

2. Remitted promptly by the county to the agency, authority, or public health trust created by law which administers or operates the county public general hospital.

(d) Except as provided in subparagraphs 1. and 2., the county must continue to contribute each year an amount equal to at least 80 percent of that percentage of the total county budget appropriated for the operation, administration, and maintenance of the county public general hospital from the county's general revenues in the fiscal year of the county ending September 30, 1991:

1. Twenty-five percent of such amount must be remitted to a governing board, agency, or authority that is wholly independent from the public health trust, agency, or authority responsible for the county public general hospital, to be used solely for the purpose of funding the plan for indigent health care services provided for in paragraph (e);

2. However, in the first year of the plan, a total of $10 million shall be remitted to such governing board, agency, or authority, to be used solely for the purpose of funding the plan for indigent health care services provided for in paragraph (e),

and in the second year of the plan, a total of $15 million shall be so remitted and used.

(e) A governing board, agency, or authority shall be chartered by the county commission upon this act becoming law. The governing board, agency, or authority shall adopt and implement a health care plan for indigent health care services. The governing board, agency, or authority shall consist of no more than seven and no fewer than five members appointed by the county commission. The members of the governing board, agency, or authority shall be at least 18 years of age and residents of the county. No member may be employed by or affiliated with a health care provider or the public health trust, agency, or authority responsible for the county public general hospital. The following community organizations shall each appoint a representative to a nominating committee: the South Florida Hospital and Healthcare Association, the Miami-Dade County Public Health Trust, the Dade County Medical Association, the Miami-Dade County Homeless Trust, and the Mayor of Miami-Dade County. This committee shall nominate between 10 and 14 county citizens for the governing board, agency, or authority. The slate shall be presented to the county commission and the county commission shall confirm the top five to seven nominees, depending on the size of the governing board. Until such time as the governing board, agency, or authority is created, the funds provided for in subparagraph (d)2. shall be placed in a restricted account set aside from other county funds and not disbursed by the county for any other purpose.

1. The plan shall divide the county into a minimum of four and maximum of six service areas, with no more than one

participant hospital per service area. The county public general hospital shall be designated as the provider for one of the service areas. Services shall be provided through participants' primary acute care facilities.

2. The plan and subsequent amendments to it shall fund a defined range of health care services for both indigent persons and the medically poor, including primary care, preventive care, hospital emergency room care, and hospital care necessary to stabilize the patient. For the purposes of this section, "stabilization" means stabilization as defined in s. 397.311(45). Where consistent with these objectives, the plan may include services rendered by physicians, clinics, community hospitals, and alternative delivery sites, as well as at least one regional referral hospital per service area. The plan shall provide that agreements negotiated between the governing board, agency, or authority and providers shall recognize hospitals that render a disproportionate share of indigent care, provide other incentives to promote the delivery of charity care to draw down federal funds where appropriate, and require cost containment, including, but not limited to, case management. From the funds specified in subparagraphs (d)1. and 2. for indigent health care services, service providers shall receive reimbursement at a Medicaid rate to be determined by the governing board, agency, or authority created pursuant to this paragraph for the initial emergency room visit, and a per-member per-month fee or capitation for those members enrolled in their service area, as compensation for the services rendered following the initial emergency visit. Except for provisions of emergency services, upon determination of eligibility,

enrollment shall be deemed to have occurred at the time services were rendered. The provisions for specific reimbursement of emergency services shall be repealed on July 1, 2001, unless otherwise reenacted by the Legislature. The capitation amount or rate shall be determined before program implementation by an independent actuarial consultant. In no event shall such reimbursement rates exceed the Medicaid rate. The plan must also provide that any hospitals owned and operated by government entities on or after the effective date of this act must, as a condition of receiving funds under this subsection, afford public access equal to that provided under s. 286.011 as to any meeting of the governing board, agency, or authority the subject of which is budgeting resources for the retention of charity care, as that term is defined in the rules of the Agency for Health Care Administration. The plan shall also include innovative health care programs that provide cost-effective alternatives to traditional methods of service and delivery funding.

3. The plan's benefits shall be made available to all county residents currently eligible to receive health care services as indigents or medically poor as defined in paragraph (4)(d).

4. Eligible residents who participate in the health care plan shall receive coverage for a period of 12 months or the period extending from the time of enrollment to the end of the current fiscal year, per enrollment period, whichever is less.

5. At the end of each fiscal year, the governing board, agency, or authority shall prepare an audit that reviews the budget of the plan, delivery of services, and quality of

services, and makes recommendations to increase the plan's efficiency. The audit shall take into account participant hospital satisfaction with the plan and assess the amount of poststabilization patient transfers requested, and accepted or denied, by the county public general hospital.

(f) Notwithstanding any other provision of this section, a county may not levy local option sales surtaxes authorized in this subsection and subsections (2) and (3) in excess of a combined rate of 1 percent.

(6) SCHOOL CAPITAL OUTLAY SURTAX.—

(a) The school board in each county may levy, pursuant to a resolution conditioned to take effect only upon approval by ~~a majority vote of~~ the electors of the county, as set forth in subsection (10), voting in a referendum, a discretionary sales surtax at a rate that may not exceed 0.5 percent.

(7) VOTER-APPROVED INDIGENT CARE SURTAX.—

(a)1. The governing body in each county that has a population of fewer than 800,000 residents may levy an indigent care surtax pursuant to an ordinance conditioned to take effect only upon approval by ~~a majority vote of~~ the electors of the county, as set forth in subsection (10), voting in a referendum. The surtax may be levied at a rate not to exceed 0.5 percent, except that if a publicly supported medical school is located in the county, the rate shall not exceed 1 percent.

2. Notwithstanding subparagraph 1., the governing body of any county that has a population of fewer than 50,000 residents may levy an indigent care surtax pursuant to an ordinance conditioned to take effect only upon approval by ~~a majority vote of~~ the electors of the county, as set forth in subsection (10),

voting in a referendum. The surtax may be levied at a rate not to exceed 1 percent.

(8) EMERGENCY FIRE RESCUE SERVICES AND FACILITIES SURTAX.—

(b) Upon the adoption of the ordinance, the levy of the surtax must be placed on the ballot by the governing authority of the county enacting the ordinance. The ordinance will take effect if approved by ~~a majority of~~ the electors of the county, as set forth in subsection (10), voting in a referendum held for such purpose. The referendum shall be placed on the ballot of a regularly scheduled election. The ballot for the referendum must conform to the requirements of s. 101.161.

(9) PENSION LIABILITY SURTAX.—

(a) The governing body of a county may levy a pension liability surtax to fund an underfunded defined benefit retirement plan or system, pursuant to an ordinance conditioned to take effect upon approval by ~~a majority vote of~~ the electors of the county, as set forth in subsection (10), voting in a referendum, at a rate that may not exceed 0.5 percent. The county may not impose a pension liability surtax unless the underfunded defined benefit retirement plan or system is below 80 percent of actuarial funding at the time the ordinance or referendum is passed. The most recent actuarial report submitted to the Department of Management Services pursuant to s. 112.63 must be used to establish the level of actuarial funding for purposes of determining eligibility to impose the surtax. The governing body of a county may only impose the surtax if:

1. An employee, including a police officer or firefighter, who enters employment on or after the date when the local government certifies that the defined benefit retirement plan or

system formerly available to such an employee has been closed may not enroll in a defined benefit retirement plan or system that will receive surtax proceeds.

2. The local government and the collective bargaining representative for the members of the underfunded defined benefit retirement plan or system or, if there is no representative, a majority of the members of the plan or system, mutually consent to requiring each member to make an employee retirement contribution of at least 10 percent of each member's salary for each pay period beginning with the first pay period after the plan or system is closed.

3. The pension board of trustees for the underfunded defined benefit retirement plan or system, if such board exists, is prohibited from participating in the collective bargaining process and engaging in the determination of pension benefits.

4. The county currently levies a local government infrastructure surtax pursuant to subsection (2) which is scheduled to terminate and is not subject to renewal.

5. The pension liability surtax does not take effect until the local government infrastructure surtax described in subparagraph 4. is terminated.

(10) VOTER APPROVAL THRESHOLDS.—A referendum to adopt or amend a local government discretionary sales surtax under this section which is held at any date other than a general election as defined by s. 97.021 requires the approval of at least 60 percent of the electors voting on the ballot question. A referendum under this section which is held at a general election as defined by s. 97.021 requires the approval of a majority of the electors voting on the ballot question.

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

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The Florida Senate

Committee Agenda Request

To: Senator Rob Bradley
Committee on Appropriations

Subject: Committee Agenda Request

Date: January 16, 2018

I respectfully request that **Senate Bill #272**, relating to **Local Tax Referenda**, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Jeff Brandes
Florida Senate, District 24

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 354
INTRODUCER:	Appropriations Committee; Community Affairs Committee; and Senator Stargel
SUBJECT:	Government Accountability
DATE:	March 6, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cochran	Yeatman	CA	**Fav/CS**
2.	Davis	Hansen	AP	**Fav/CS**
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 354 amends various statutes to enhance government accountability and auditing, based on recommendations noted in recent reports by the Auditor General. The bill:

- Specifies that the Governor or Commissioner of Education, or designee, may notify the Joint Legislative Auditing Committee of an entity's failure to comply with certain auditing and financial reporting requirements;
- Provides definitions for the terms "abuse," "fraud," and "waste;"
- Adds tourist development council and county tourism promotion agency to the definition of "local government entity;"
- States that local government entities do not include water management districts for the purposes of s. 11.45(2), F.S.;
- Includes tourist development councils and county tourism promotion agencies in the list of entities that the Auditor General may audit;
- Requires the Florida Clerks of Court Operations Corporation to notify quarterly the Legislature of any clerk not meeting workload performance standards;
- Requires each agency, the judicial branch, the Justice Administrative Commission, state attorneys, public defenders, criminal conflict and civil regional counsel, capital collateral regional counsel, the Guardian Ad Litem program, local governmental entities, charter schools, school districts, Florida College System institutions, and state universities to establish and maintain internal controls designed to prevent and detect fraud, waste, and abuse;

- Requires counties, municipalities, special districts, and water management districts to maintain certain budget documents on their websites for specified timeframes;
- Requires counties, municipalities, and special districts, water management districts and school districts to:
  - Provide an electronic copy of their respective budgets to the Office of Economic and Demographic Research (EDR), on forms prescribed by the EDR; and
  - Provide a copy of their budgets and a certification of timely filing to the clerk of the court. However, these requirements do not apply to a charter county in which the clerk of the court is not the county auditor.
- Provides that the clerk of court must notify the appropriate fiscal officer to withhold salary payments from the head of the local government entity or the superintendent of the school district until the reports are filed if a local government entity or school district fails to file required reports with the clerk of the court;
- Revises the monthly financial statement requirements for water management districts;
- Provides that the Department of Financial Services may request additional information from local government entities when preparing its annual verified report;
- Requires a local governmental entity, district school board, charter school, or charter technical career center, Florida College System board of trustees, or university board of trustees to respond to audit recommendations under certain circumstances;
- Begins the process of creating the Florida Open Financial Statement System to allow better access to financial reports filed by local governments;
- Requires school districts receiving annual federal, state, and local funds in excess of $500 million to employ an internal auditor. The duties of the internal auditor must include oversight of every functional and program area of the school system;
- Requires the internal auditor to perform a comprehensive risk assessment of all areas of the school system every five years, and conduct other audits and reviews as the district school board directs to make a determination;
- Requires the internal auditor to prepare audit reports of his or her findings and establishes penalties for failure to produce financial records to the internal auditor;
- Establishes the Statewide Travel Management System (system) in law;
- Requires all executive branch state government agencies and the judicial branch to report public officer and employee travel information in the system;
- Additionally requires that all executive branch state government agencies and the judicial branch use the system for purposes of travel authorization and reimbursement;
- Requires reporting entities, to report monthly, all public officer and employee travel information resulting from an overnight stay in the system;
- Establishes a timeline for the Department of Management Services (DMS) to make travel reports for executive branch state government agencies, the judicial branch, and certain reporting entities available for public view;
- Requires reporting entities to redact confidential and exempt information from travel reports prior to posting them to the system and provides a process for reporting entities to follow when a travel report has been posted prior to proper redaction;
- Provides rulemaking authority to the DMS to administer provisions of the section pertaining to the system;
- Makes the requirements to implement the system for reporting entities contingent upon the Legislature appropriating at least $5.4 million to the DMS for Fiscal Year 2018-2019;

- Requires an independent certified public accountant conducting an audit of a local governmental entity to determine, as part of the audit, whether the entity's annual financial report is in agreement with the entity's audited financial statements;
- Revises the composition of auditor selection committees;
- Requires completion of an annual financial audit of the Florida Virtual School; and
- Prohibits a board or commission from requiring a member of the public to provide an advance written copy of his or her testimony or comments as a precondition of being given the opportunity to be heard.

In addition, the bill limits the amount that may be reimbursed per day for state agency and judicial branch employee lodging expenses for travel under certain circumstances to $150, and requires all governmental entities to use the statewide travel management system.

Executive branch state government agencies and the judicial branch may incur indeterminate additional costs associated with using the Statewide Travel Management System for travel authorization and reimbursement. The bill specifies the requirements to implement the system for reporting entities are contingent upon the Legislature appropriating at least $5.4 million to the DMS for Fiscal Year 2018-2019.

Costs for the development of the Florida Open Financial Statement System are estimated to be $500,000. There will be additional costs in future years to create the software tool needed to implement the system. The additional future needs are indeterminate.

II. Present Situation:

Various statutes ensure government accountability of state and local governments. For example, the Auditor General conducts audits of accounts and records of state agencies, state universities, state colleges, district school boards, and others as directed by the Joint Legislative Auditing Committee. The Auditor General conducts operational and performance audits on public records and information technology systems. The Auditor General also reviews all audit reports of local governmental entities, charter schools, and charter technical career centers. Other statutes require publishing of government budgets and other information online and require government entities to follow certain practices to promote efficiency and compliance within the entity.

Due to the disparate issues in the bill, the present situation for each section is discussed below in conjunction with the Effect of Proposed Changes.

III. Effect of Proposed Changes:

Auditing

Present Situation

The position of Auditor General is established by Art. III, s. 2 of the State Constitution. The Auditor General is appointed to office to serve at the pleasure of the Legislature, by a majority vote of the members of the Joint Legislative Auditing Committee, subject to confirmation by

both houses of the Legislature.[1] The appointment of the Auditor General may be terminated at any time by a majority vote of both houses of the Legislature.[2] At the time of appointment, the Auditor General must have been certified under the Public Accountancy Law in Florida for a period of at least 10 years and may not have less than 10 years' experience in an accounting or auditing related field.[3]

The Auditor General must conduct audits, examinations, or reviews of government programs[4] as well as audit the accounts and records of state agencies, state universities, state colleges, district school boards, and others as directed by the Joint Legislative Auditing Committee.[5] The Auditor General conducts operational and performance audits on public records and information technology systems and reviews all audit reports of local governmental entities, charter schools, and charter technical career centers.[6]

Various provisions require the Auditor General to compile and submit reports. For example, the Auditor General must annually compile and transmit to the President of the Senate, the Speaker of the House of Representatives, and the Joint Legislative Auditing Committee a summary of significant findings and financial trends identified in audit reports.[7] The Auditor General also must compile and transmit to the President of the Senate, Speaker of the House of Representatives, and Joint Legislative Auditing Committee an annual report by December 1. The report must include a two-year work plan identifying the audit and other accountability activities to be undertaken and a list of statutory and fiscal changes recommended by the Auditor General.[8] In addition, the Auditor General must transmit recommendations at other times during the year when the information would be timely and useful to the Legislature.[9]

The annual report for the Auditor General for November 1, 2015, through October 31, 2016, contained the following recommendation:[10]

> The Legislature should consider amending applicable Florida Statutes to establish in law the responsibility of each state and local government for the establishment and maintenance of management systems and internal controls designed to prevent and detect fraud, waste, and abuse; promote and encourage compliance with applicable laws, rules, contracts, grant agreements, and best practices; support economical and efficient operations; ensure reliability of financial records and reports; and safeguard assets.

[1] Section 11.42(2), F.S.
[2] Section 11.42(5), F.S.
[3] Section 11.42(2), F.S.
[4] Section 11.45(7), F.S.
[5] Section 11.45(2)(d)-(f), F.S.
[6] Section 11.45(7)(b), F.S.
[7] Section 11.45(7)(f), F.S.
[8] Section 11.45(7)(h), F.S.
[9] *Id.*
[10] A copy of the report can be found online at: https://flauditor.gov/pages/pdf_files/annual%20report%202016.pdf (last visited November 1, 2017).

Section 11.45, F.S., defines the types of audits the Auditor General may conduct, requires certain state and local governmental audits to be conducted, and specifies the frequency with which the audits must occur. The Auditor General also may conduct other audits he or she determines to be appropriate.

Following notification by the Auditor General, the Department of Financial Services (DFS), or the Division of Bond Finance of the State Board of Administration of the failure of a local governmental entity, district school board, charter school, or charter technical career center to comply with applicable auditing, financial reporting, bond issuance notification, or bond verification provisions or the failure to disclose a financial emergency or provide information required during a financial emergency,[11] the Joint Legislative Auditing Committee may schedule a hearing to determine whether the entity should be subject to further state action. For purposes of s. 11.45, F.S., the term "local governmental entity" means a county agency, municipality, or special district as defined in s. 189.012, F.S.,[12] but does not include any housing authority established under ch. 421, F.S.

The Auditor General is also required to annually transmit, by July 15, to the President of the Senate, the Speaker of the House of Representatives, and the DFS a list of all school districts, charter schools, charter technical career centers, Florida College System institutions, state universities, and water management districts (WMDs) that have failed to comply with certain transparency requirements.

Effect of the Bill

Section 1 amends s. 11.40, F.S., to authorize the Governor or his or her designee, and the Commissioner of Education or his or her designee, to notify the Joint Legislative Auditing Committee that a local governmental entity, district school board, charter school, or charter technical career center has failed to comply with applicable auditing, financial reporting, bond issuance notification, or bond verification provisions or failed to disclose a financial emergency or provide information required during a financial emergency.

Section 2 amends s. 11.45, F.S., to define the terms abuse, fraud, and waste. These terms are related to the internal controls various government agencies must establish and maintain to prevent and detect fraud, waste, and abuse.

This section expands the definition of "local governmental entity" to include tourist development council and county tourism promotion agency. With this expanded definition, the Auditor

[11] Section 11.45, F.S., governs certain audits to be conducted by the Auditor General. Section 218.32(1), F.S., requires annual financial reports from local governmental entities. Section 218.38, F.S., requires notice of bond issuance and contains verification requirements. Section 218.503(3), F.S., requires certain entities to disclose a financial emergency and provide certain information concerning a financial emergency.

[12] Section 189.012(6), F.S., defines a "special district" to mean a unit of local government created for a special purpose, as opposed to a general purpose, which has jurisdiction to operate within a limited geographic boundary and is created by general law, special act, local ordinance, or by rule of the Governor and Cabinet. The term does not include a school district, a community college district, a special improvement district created pursuant to s. 285.17, F.S., a municipal service taxing or benefit unit as specified in s. 125.01, F.S., or a board which provides electrical service and which is a political subdivision of a municipality or is part of a municipality.

General is authorized to conduct audits or other engagements of tourist development councils and county tourism promotion agencies.

This section exempts WMDs from being subject to audits of local governmental entities conducted pursuant to s. 11.45(2)(j), F.S. With this change, the WMDs will be subject only to the periodic audits authorized by s. 11.45(2)(f), F.S.,[13] rather than audits requested by the Joint Legislative Auditing Committee or when deemed necessary by the Auditor General.

This section expands the list of entities that must be included in the Auditor General report concerning entities that fail to comply with transparency requirements in s. 11.45, F.S., to include all local governmental entities rather than just the WMDs.

Florida Clerks of Court Operations Corporation

Present Situation

Currently, s. 28.35, F.S., requires the Florida Clerks of Court Operations Corporation (corporation) to develop and certify a uniform system of workload measures and applicable workload standards for court-related functions as developed by the corporation and clerk workload performance in meeting the workload performance standards. These workload measures and workload performance standards must be designed to facilitate an objective determination of the performance of each clerk in accordance with minimum standards for fiscal management, operational efficiency, and effective collection of fines, fees, service charges, and court costs. The corporation must develop the workload measures and workload performance standards in consultation with the Legislature. When the corporation finds a clerk has not met the workload performance standards, the corporation must identify the nature of each deficiency and any corrective action recommended and taken by the affected clerk of the court. The corporation must notify the Legislature of any clerk not meeting workload performance standards and provide a copy of any corrective action plans.

Effect of the Bill

Section 3 amends s. 28.35, F.S., to require the corporation to notify the Legislature of any clerk not meeting the workload performance standards and provide a copy of any corrective action plans within 45 days after the end of each quarter. For purposes of s. 28.35, F.S., the quarters end on the last day of March, June, September, and December of each year.

Public Employee Travel Expenses

Present Situation

Section 112.061, F.S., establishes the rates of per diem and subsistence allowance for travel by public officers and employees. When traveling to a convention or conference or to conduct bona fide state business, a traveler is authorized to receive $80 per diem. However, if actual expenses exceed $80, the traveler may receive $6 for breakfast, $11 for lunch, $19 for dinner, and the actual expenses for lodging at a single-occupancy rate.

[13] Section 11.45(2)(f), F.S., states in part that at least every three years, the Auditor General shall conduct operational audits of the accounts and records of water management districts.

The 2017-18 implementing bill created a limit on the amount of actual expenses for lodging that may be reimbursed under certain circumstances. The bill provided that when an employee of a state agency or the judicial branch is attending a meeting, conference, or convention organized or sponsored in whole or in part by a state agency or the judicial branch, the reimbursement for lodging expenses may not exceed $150 per day. However, an employee may expend his or her own funds for any lodging expenses in excess of the limit. This limit is in effect until July 1, 2018.

Section 112.061(2)(a), F.S., defines the term "agency or public agency" to mean any office, department, agency, division, subdivision, political subdivision, board, bureau, commission, authority, district, public body, body politic, county, city, town, village, municipality, or any other separate unit of government created pursuant to law.

The Fiscal Year 2016-2017 General Appropriations Act (GAA) appropriated $1,800,000 in recurring General Revenue funding to the Executive Office of the Governor (EOG) to acquire a Statewide Travel Management System (system). The EOG was required to undertake a competitive procurement for the system pursuant to s. 287.057, F.S. In addition, $2,800,000 in nonrecurring General Revenue funding was provided to executive branch state agencies and the judicial branch for their portion relating to implementation of the system.[14]

The system was required to be able to electronically: interface with the Florida Accounting Information Resource Subsystem (FLAIR) and the Personnel Information System; generate uniform travel authorization request and travel voucher forms pursuant to s. 112.061, F.S.; and receive approvals for travel. The system was also required to include search features that query travel information by specific criteria. Proviso also required the EOG and the Legislature to have access to the system for purposes of generating reports on all travel completed by executive branch state agencies and the judicial branch.

The system was also required to include search features that query travel information by specific criteria. Additionally, proviso in the Fiscal Year 2016-2017 GAA required the EOG and the Legislature to have access to the system for purposes of generating reports on all travel completed by executive branch state agencies and the judicial branch.

The EOG directed the Department of Management Services (DMS) to become the lead agency on procuring and establishing the system. Proviso in Specific Appropriation 2718A of ch. 2017-70, L.O.F., provided $1,800,000 in recurring General Revenue funding to the DMS to operate and maintain a statewide travel management system (system).

Effect of the Bill

Section 5 amends s. 112.061, F.S., to limit the reimbursement of lodging expenses associated with the attendance at a meeting, conference, or convention organized or sponsored by a state agency or judicial branch. Such reimbursement cannot exceed $150 per day for executive and judicial branch employees. The section clarifies that a "meeting" does not include the travel

[14] Specific Appropriation 1965A, Ch. 2016-66, L.O.F.

activities associated with an audit, examination, or inspection or the travel activities relating to litigation or an emergency response.

This section also:

- Establishes the "Statewide Travel Management System" (system) as the system used by the DMS to:
  - Collect and store information relating to public officer or employee travel information;
  - Standardize and automate agency travel management;
  - Allow for travel planning and approval, expense reporting, and reimbursement; and
  - Allow travel information queries.
- Requires that each executive branch state government agency and the judicial branch must use the system for:
  - Travel authorization;
  - Travel reimbursement; and
  - Reporting all public officer and employee travel information, including, but not limited to:
    - Name and position title;
    - Purpose of travel;
    - Dates and location of travel;
    - Mode of travel;
    - Confirmation from the head of the agency or designee authorization, if required; and
    - Total travel cost.
- Requires that by November 1, 2018, the DMS shall make available to the public, all travel reports posted on the system for executive branch state agencies and the judicial branch.
- Requires that each "reporting entity" must report into the system, information relating to all travel resulting in an overnight stay by a public officer or employee, including:
  - Name and position title;
  - Purpose of travel;
  - Dates and location of travel;
  - Mode of travel; and
  - Total travel cost.
- Specifies the term "reporting entity" includes each municipality, county, local constitutional officer, county school district, state college, state university, and water management district.
- Specifies that each reporting entity shall post one travel report per entity; however, a "local constitutional officer" may post a separate travel report from the respective county travel report.
- Defines the term "local constitutional officer" to include sheriffs, tax collectors, property appraisers, supervisors of elections, clerks of the circuit court, county commissioners, district school board members, and superintendents of schools.
- Requires that on a monthly basis, each reporting entity shall post on the system, a report for the previous month's travel, which resulted in an overnight stay.
- Requires the DMS to provide a format and method for reporting entities to post travel reports on the system.
- Requires that no later than November 1, 2019, each reporting entity shall post monthly travel reports relating to all travel resulting in an overnight stay for public officers and employees into the statewide travel management system.

- Requires that beginning December 1, 2019, the DMS shall make available to the public all travel reports posted on the system for each reporting entity.
- Makes the requirements to implement the system for reporting entities contingent upon the Legislature appropriating at least $5.4 million to the DMS for Fiscal Year 2018-2019.
- Provides that travel reports made available on the system may not reveal information made confidential or exempt by law. Specifying that each reporting entity must redact confidential or exempt information from a travel report before posting the report on the system. If the posting reporting entity becomes aware that an improperly redacted travel report has been posted to the system, the reporting entity must notify the DMS and immediately request removal of the travel report from the system. The reporting entity must then republish a properly redacted version of the travel report within seven business days on the system.
- Provides that the Secretary of the DMS, and any officer, employee or contractor of the DMS is not responsible for redacting confidential or exempt information from a travel report posted on the system.
- Provides that the posting of travel reports on the system does not supersede the duty of a reporting entity to respond to a public records request or subpoena for the information.
- Amends s. 112.061(9), F.S., providing that the DMS may adopt rules to administer the provisions of this section relating to the Statewide Travel Management System.

Florida Single Audit Act

Present Situation

The Florida Single Audit Act, codified in s. 215.97, F.S., is designed to:
- Establish uniform state audit requirements for state financial assistance provided by state agencies to nonstate entities to carry out state projects;
- Promote sound financial management, including effective internal controls, with respect to state financial assistance administered by nonstate entities;
- Promote audit economy and efficiency by relying to the extent possible on already required audits of federal financial assistance provided to nonstate entities;
- Provide for identification of state financial assistance transactions in the state accounting records and recipient organization records;
- Promote improved coordination and cooperation within and between affected state agencies providing state financial assistance and nonstate entities receiving state assistance; and
- Ensure, to the maximum extent possible, that state agencies monitor, use, and follow-up on audits of state financial assistance provided to nonstate entities.

Pursuant to the Florida Single Audit Act, certain entities that meet the "audit threshold" requirements are subject to a state single audit or a project-specific audit. Currently, the "audit threshold" requires each nonstate entity that expends a total amount of state financial assistance equal to or in excess of $750,000 in any fiscal year of such nonstate entity to have a state single audit, or a project-specific audit, for such fiscal year. Every two years, the Auditor General, after consulting with the Executive Office of the Governor, the DFS, and all state awarding agencies, is required to review the threshold amount for requiring audits and may adjust the threshold amount.[15]

[15] Section 215.97(2)(a), F.S.

Effect of the Bill

Section 11 amends s. 215.97, F.S., to change the requirement that the Auditor General review the threshold amount for requiring audits from every two years to "periodically;" however, the term "periodically" is not defined. This section also authorizes the Auditor General to recommend to the Legislature a statutory change to revise the threshold amount in its annual report.

Annual Financial Audit Reports

Present Situation

Counties, school districts, municipalities with revenues or expenditures of more than $250,000 per year, special districts with revenues or expenditures of more than $100,000 per year, school districts, charter schools, and charter technical career centers are required to conduct an annual audit, unless informed by the first day of the fiscal year that a financial audit by the Auditor General will be performed for that fiscal year.[16] Municipalities with revenues or expenditures between $100,000 and $250,000 and special districts with revenues or expenditures between $50,000 and $100,000 are required to conduct audits on a triennial basis.[17]

The auditor meets with the chair of the entity to discuss comments that will be included in the report and informs the entity's governing body if deteriorating financial conditions exist that may cause a financial emergency in the absence of corrective actions being taken or a deficit exists for which there are insufficient funds to cover.[18] The officer's explanation or rebuttal of the auditor's findings, including corrective actions to be taken, must be filed with the entity's governing body within 30 days after the delivery of the auditor's findings.[19]

The audit report must be filed with the Auditor General within 45 days of delivery to the governing body of the audited entity, but no later than nine months after the end of the audited entity's fiscal year.[20] 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 report. If an audited entity fails to take full corrective action in response to a recommendation that was included in the two preceding financial audit reports, the Auditor General must notify the Joint Legislative Auditing Committee.[21]

Effect of the Bill

Section 15 amends s. 218.39, F.S., to require all municipalities and special districts to complete an annual financial audit starting in Fiscal Year 2018-2019. Local government entities required to submit an annual financial audit report to the Auditor General must do so no later than six

[16] Section 218.39(1), F.S.
[17] Section 218.39(1)(g)-(h), F.S. In fiscal year 2016, 17 municipalities reported revenue or expenditures of less than $250,000. *See* Local Government Financial Reporting, Department of Financial Services, https://apps.fldfs.com/localgov/reports/default.aspx (last visited Feb. 22, 2018).
[18] Section 218.39(5), F.S.
[19] Section 218.39(6), F.S.
[20] Section 218.39(7), F.S.
[21] Section 218.39(8), F.S.

months after the end of the fiscal year. The Auditor General may extend the deadline for up to 90 days if the Governor declares a state of emergency within 30 days of the submission deadline.

This section also provides that if an audit report contains a recommendation that was included in the preceding financial audit report but remains unaddressed, the governing body of the audited entity, within 60 days after delivery of the audit report to the governing body, must indicate during a regularly scheduled public meeting whether it intends to take a corrective action, the corrective action to be taken, and when the corrective action will occur. If the governing body does not intend to take any corrective action, it must explain its decision at the public meeting.

Section 25 amends s. 1011.60, F.S., to require each school district required to file an annual financial report to submit an electronic copy to the Department of Education certifying the report was timely filed to maintain eligibility for the Florida Education Finance Program.

Auditor Selection Procedures

Present Situation

Section 218.391, F.S., outlines the process that each local governmental entity, district school board, charter school, or charter technical career center must follow in selecting an auditor to conduct the annual financial audit of the entity required by s. 218.39, F.S. Each entity is required to establish an audit committee to assist the governing body in selecting the auditor. Each noncharter county's audit committee must consist of each of its officers elected pursuant to the State Constitution and one member of the board of county commissioners or its designee. The audit committees must publicly announce requests for proposals for the audit services. The law specifies the factors that must be considered in selecting the auditor and the procedures for negotiating for compensation.

Effect of the Bill

Section 16 amends s. 218.391, F.S., to require every county's audit committee to consist of each county officer elected pursuant to the State Constitution or the county charter, or their respective designees, and one member of the board of county commissioners or its designee. The section requires the audit committee for a municipality, special district, district school board, charter school, or charter technical career center to consist of at least three members, one of whom must be a member of the governing body of the entity. That member must serve as the audit committee's chair. An employee, chief executive officer, or chief financial officer of the county, municipality, special district, district school board, charter school, or charter technical career center may not serve as a member of an audit committee but may serve in a nonvoting advisory capacity. At least one member of the audit committee should have experience in finance, business, or government operations.

For each of the annual financial audits, certain information relating to the selection of the auditor and the contract for such services must be included in the management letter. If an entity fails to select an auditor in compliance with the new process, the Joint Legislative Auditing Committee must determine whether the entity should be subject to state action pursuant to 11.40(2), F.S.

The Florida Virtual School

Present Situation

The Florida Virtual School was created to develop and deliver online and distance learning education.[22] The Commissioner of Education is charged with monitoring the Florida Virtual School. In pertinent part, the law requires the board of trustees to submit an annual report to the Governor, the Legislature, the Commissioner of Education, and the State Board of Education (SBE) that must address:

- The operations and accomplishments of the Florida Virtual School within the state and those occurring outside the state as Florida Virtual School Global;
- The marketing and operational plan for the Florida Virtual School and Florida Virtual School Global, including recommendations regarding methods for improving the delivery of education through the Internet and other distance learning technology;
- The assets and liabilities of the Florida Virtual School and Florida Virtual School Global at the end of the fiscal year;
- A copy of an annual financial audit of the accounts and records of the Florida Virtual School and Florida Virtual School Global, conducted by an independent certified public accountant and performed in accordance with rules adopted by the Auditor General;
- Recommendations regarding the unit cost of providing services to students through the Florida Virtual School and Florida Virtual School Global; and
- Recommendations regarding an accountability mechanism to assess the effectiveness of the services provided by the Florida Virtual School and Florida Virtual School Global.[23]

The Auditor General must conduct an operational audit of the Florida Virtual School, including Florida Virtual School Global.[24] The scope of the audit must include, but is not limited to, the administration of responsibilities relating to personnel; procurement and contracting; revenue production; school funds, including internal funds; student enrollment records; franchise agreements; information technology utilization, assets, and security; performance measures and standards; and accountability. The law specifies that the final report on the audit must be submitted to the President of the Senate and the Speaker of the House of Representatives no later than January 31, 2014.[25]

Effect of the Bill

Section 21 amends s. 1002.37, F.S., to require the Florida Virtual School to have an annual financial audit of its accounts and records conducted by an independent auditor who is a licensed certified public accountant. The independent auditor must conduct the audit in accordance with rules adopted by the Auditor General and must prepare an audit report in accordance with such rules. The audit report must include a written statement by the board of trustees describing corrective action to be taken in response to each of the independent auditor's recommendations. The independent auditor must submit the audit report to the board of trustees and the Auditor General no later than nine months after the end of the preceding fiscal year.

[22] Section 1002.37(1)(a), F.S.
[23] Section 1002.37(6), F.S.
[24] Section 1002.37(11), F.S.
[25] *Id.*

Local Governmental Entity Annual Financial Reports

Present Situation

Section 218.32, F.S., requires local governmental entities that are required to provide for an audit under s. 218.39, F.S., to submit an audit report and annual financial report to the DFS within 45 days after completion of the audit report, but no later than nine months after the end of the fiscal year. The annual financial report must be signed by the chair of the governing body and the chief financial officer of the local governmental entity. The law also specifies the information that must be included in the report.

In addition, the DFS is required to file a verified report with the Governor, the Legislature, the Auditor General, and the Special District Accountability Program of the Department of Economic Opportunity showing the revenues, both locally derived and derived from intergovernmental transfers, and the expenditures of each local governmental entity, regional planning council, local government finance commission, and municipal power corporation that is required to submit an annual financial report.[26]

Effect of the Bill

Section 13 amends s. 218.32, F.S., to provide that the Legislature intends to create the Florida Open Financial Statement System. The system will be an interactive repository for governmental financial statements. The Chief Financial Officer (CFO) may consult with stakeholders, including the department, the Auditor General, a representative of a municipality or county, a representative of a special district, a municipal bond investor, and an information technology professional employed in the private sector for input on the design and implementation of the system.

This section permits the CFO to choose contractors to build one or more eXtensible Business Reporting Language (XBRL) taxonomies suitable for state, county, municipal, and special district financial filings and to create a software tool that enables financial statement filers to create XBRL documents consistent with the taxonomy or taxonomies. XBRL is a global standard for exchanging business information. The CFO must recruit and select contractors through an open request for proposals process pursuant to ch. 287, F.S., and all work must be completed by December 31, 2021. If the CFO deems the work products adequate, all local governmental financial statements pertaining to fiscal years ending on or after September 1, 2022, must be filed in XBRL format and must meet the validation requirements of the relevant taxonomy.

Local government entities required to submit an audit report and annual financial report to the DFS must do so no later than six months after the end of the fiscal year. An extension of the deadline is allowed for up to 90 days if the Governor declares a state of emergency within 30 days of the submission deadline.

Each local government entity must submit an electronic copy of the annual financial report and a statement certifying the document was timely filed with the DFS to the clerk of the court.

[26] Section 218.32(2), F.S.

However, these requirements do not apply to a charter county in which the clerk of the court is not the county auditor. Starting in Fiscal Year 2018-2019, the bill provides that if a local government entity fails to submit information to the clerk of the court, the clerk must notify the appropriate fiscal officer of the local government to suspend salary payments to the head of the local government entity until such time as the information is provided to the clerk. The clerk must notify the appropriate local fiscal officer to resume payments when the clerk receives the information.

This section requires an independent certified public accountant conducting an audit of a local governmental entity pursuant to s. 218.39, F.S., to determine, as part of the audit, whether the entity's annual financial report is in agreement with the entity's audited financial statements. If the audited financial statements are not in agreement with the annual financial report, the section requires the accountant to specify in the audit report the significant differences that exist between the audited financial statements and the annual financial report.

This section also authorizes the DFS, in preparing the verified report, to request additional information from the local governmental entity. Any additional information requested must be provided to the DFS within 45 days after the request. If the local governmental entity does not comply with the request, the DFS must notify the Joint Legislative Auditing Committee, which may take action pursuant to s. 11.40(2), F.S.

This section requires the DFS to post a copy of each local government entity's annual financial report to its website within 12 months of the conclusion of the fiscal year for which the report was compiled.

Required Audits of Certain Educational Institutions

Present Situation

School districts, Florida College System institutions, and other institutions and agencies under the supervision of the State Board of Education (SBE) and state universities under the supervision of the Board of Governors (BOG) are subject to the audit provisions of ss. 11.45 and 218.39, F.S. If an audit contains a significant finding, the district school board, the Florida College System institution board of trustees, or the university board of trustees is required to conduct an audit overview during a public meeting.[27]

Effect of the Bill

Section 23 amends s. 1010.30, F.S., to provide that if an audit report includes a recommendation that was included in the preceding financial audit report but remains unaddressed, the district school board, the Florida College System institution board of trustees, or the university board of trustees must indicate during a regularly scheduled public meeting whether it intends to take corrective action, the corrective action to be taken, and when the corrective action will occur within 60 days after the delivery of the audit report. If the district school board, Florida College System institution board of trustees, or university board of trustees does not intend to take corrective action, it must explain its decision at the public meeting.

[27] Section 1010.30(2), F.S.

Internal Controls to Prevent and Detect Fraud, Waste, and Abuse

Present Situation

State Agencies and the Judicial Branch

Section 215.86, F.S., requires each state agency and the judicial branch as defined in s. 216.011, F.S., to establish and maintain management systems and controls that promote and encourage compliance; economic, efficient, and effective operations; reliability of records and reports; and safeguarding of assets. It requires accounting systems and procedures to be designed to fulfill the requirements of generally accepted accounting principles.

Local Governmental Entities

Section 218.33, F.S., requires each local governmental entity to begin its fiscal year on October 1 and end it on September 30. Section 218.33(2), F.S., requires each local governmental entity to follow uniform accounting practices and procedures as provided by rule of DFS to assure the use of proper accounting and fiscal management by such units. Such rules must include a uniform classification of accounts.

Charter Schools

Section 1002.33, F.S., authorizes charter schools as part of Florida's state program of education. In addition to creating charter schools, that section also imposes certain requirements on charter schools. In pertinent part, the law provides that the governing body of a charter school is responsible for:

- Ensuring that the charter school has retained a certified public accountant or auditor to perform its annual audit;
- Reviewing and approving the audit report;
- Establishing a corrective plan, if necessary;
- Monitoring a financial recovery plan to ensure compliance; and
- Participating in governance training approved by the Department of Education, which must include government in the sunshine, conflicts of interest, ethics, and financial responsibility.[28]

School Districts, Florida College System Institutions, and State Universities

Current law requires the financial records and accounts of each school district, Florida College System institution, and other institution or agency under the supervision of the SBE to be prepared and maintained as prescribed by law and rules of the SBE. The financial records and accounts of each state university under the supervision of the BOG must be prepared and maintained as prescribed by law and rules of the BOG. Rules of the SBE and rules of the BOG must incorporate the requirements of law and accounting principles generally accepted in the United States and must include a uniform classification of accounts. Each state university must annually file with the BOG financial statements prepared in conformity with these requirements. The BOG's rules must prescribe the filing deadline for the financial statements. The required

[28] Section 1002.33(9)(j), F.S.

financial accounts and reports must include provisions that are unique to K-12 school districts, Florida College System institutions, and state universities.[29]

Justice Administrative Commission

The Justice Administrative Commission (Commission) is created in s. 43.16, F.S. As one of its duties, the Commission is charged with maintaining a central state office for administrative services and assistance on behalf of state attorneys and public defenders, the capital collateral regional counsel, the criminal conflict and civil regional counsel, and the Guardian Ad Litem Program.[30] Additionally, the Commission records and submits certain documents prepared by a state attorney, public defender, or criminal conflict and civil regional counsel or the Guardian Ad Litem Program, including necessary budgets, vouchers that represent valid claims for reimbursement by the state for authorized expenses, and other things incidental to the proper administrative operation of the office, such as revenue transmittals to the Chief Financial Officer and automated systems plans.[31]

Effect of the Bill

Sections 4, 10, 14, 20 and 22 amend ss. 43.16, 215.86, 218.33, 1002.33, and 1010.01, F.S., respectively, to require state agencies, the judicial branch, local governmental entities, charter schools, school districts, Florida College System institutions, state universities, the Commission, each state attorney, each public defender, the criminal conflict and civil regional counsel, the capital collateral regional counsel, and the Guardian Ad Litem Program to establish and maintain internal controls designed to:

- Prevent and detect fraud, waste, and abuse, as defined in s. 11.45(1), F.S.;
- Promote and encourage compliance with applicable laws, rules, contracts, grant agreements, and best practices;
- Support economical and efficient operations;
- Ensure reliability of financial records and reports; and
- Safeguard assets.

Section 19 amends s. 1001.42, F.S., to require school districts receiving annual federal, state, and local funds in excess of $500 million to employ an internal auditor. The duties of the internal auditor must include oversight of every functional and program area of the school system.

Additionally, this section requires the internal auditor to perform a comprehensive risk assessment of all areas of the school system every five years, and conduct other audits and reviews as the district school board directs to determine:

- The adequacy of internal controls designed to prevent and detect fraud, waste, and abuse.
- Compliance with applicable laws, rules, contracts, grant agreements, district school board-approved policies, and best practices.
- The efficiency of operations.
- The reliability of financial records and reports.
- The safeguarding of assets.

[29] Section 1010.01, F.S.
[30] Section 43.16(5)(a), F.S.
[31] Section 43.16(5)(b), F.S.

- Financial solvency.
- Projected revenues and expenditures.
- The rate of change in the general fund balance.

This section requires the internal auditor to prepare audit reports of his or her findings and establishes penalties for failure to produce financial records to the internal auditor.[32]

Online Posting of Governmental Budgets

Present Situation

Counties and Municipalities

Counties[33] and municipalities[34] are required to post their tentative budgets on their websites two days prior to consideration of the budget at a public hearing. The final budget of a county or municipality must be posted on its website within 30 days after adoption. An amendment to a budget must be posted to the website within five days of adoption.[35] Current law does not specify how long these documents must remain available on the website.

Effect of the Bill

Sections 6, 7 and 8 amend ss. 129.03, 129.06, and 166.241, F.S., respectively, to require a tentative budget to remain on a county or municipality's website for at least 45 days. The sections also requires a final budget to remain on the entity's website for at least two years. Finally, the sections requires an adopted amendment to a budget to remain on the website for at least two years.

The bill also requires the county or municipality to submit an electronic copy of the final budget to the Office of Economic and Demographic Research (EDR) within 30 days after the budget is adopted. The bill allows for an extension of the deadline for up to 90 days if the Governor declares a state of emergency within 30 days of the submission deadline.

The county or municipality must also submit to the clerk of the court a copy of the information that was submitted to the EDR, a copy of the final budget that was posted on the county's website, and a statement certifying both of these items were submitted and posted in a timely manner. However, these requirements do not apply to a charter county in which the clerk of the court is not the county auditor.

[32] Section 11.47(3), F.S. Any person who willfully fails or refuses to furnish or produce any book, record, paper, document, data, or sufficient information necessary to a proper audit or examination which the Auditor General or the Office of Program Policy Analysis and Government Accountability is by law authorized to perform is guilty of a misdemeanor of the first degree. Section 11.47(4), F.S.
[33] Section 129.03, F.S.
[34] Section 166.241, F.S.
[35] Sections 129.06(2)(f)2., 166.241(5), and 189.016(7), F.S.

Present Situation

Special Districts

A "special district" is defined as a unit of local government created for a special purpose, as opposed to a general purpose, which has jurisdiction to operate within a limited geographic boundary and is created by general law, special act, local ordinance, or by rule of the Governor and Cabinet. The term does not include a school district, a community college district, a special improvement district created pursuant to s. 285.17, F.S., a municipal service taxing or benefit unit as specified in s. 125.01, F.S., or a board which provides electrical service and which is a political subdivision of a municipality or is part of a municipality.[36] Special districts are required to post their tentative budgets on their websites two days prior to consideration of the budget at a public hearing and must remain on the website for at least 45 days. The final budget of a special district must be posted on its website within 30 days after adoption and must remain on the website for at least two years.[37]

Effect of the Bill

Section 9 amends s. 189.016, F.S., to require a special district to submit an electronic copy of the final budget to the EDR within 30 days after the budget is adopted. The bill allows for an extension of the deadline for up to 90 days if the Governor declares a state of emergency within 30 days of the submission deadline.

The special district must also submit to the clerk of the court a copy of the information that was submitted to the EDR, a copy of the final budget that was posted on the county's website, and a statement certifying both of these items were submitted and posted in a timely manner.

Present Situation

Water Management Districts (WMD)

Chapter 373, F.S., governs Florida's water resource management and authorizes the creation of WMDs, which are given taxing authority. A WMD is defined as "any flood control, resource management, or water management district" operating under the authority of ch. 373, F.S.[38] There are five WMDs in Florida: Northwest Florida, Suwanee River, St. Johns River, Southwest Florida, and South Florida.[39] Section 373.536, F.S., governs the budget process for WMDs and requires a WMD's tentative budget to be posted on the WMD's website at least two days before budget hearings are conducted. The law requires a WMD's final adopted budget to be posted on the WMD's official website within 30 days after adoption.

Effect of the Bill

Section 18 amends s. 373.536, F.S., to require a WMD's tentative budget to remain on the WMD's website for at least 45 days and requires the final adopted budget to remain on the website for at least two years.

[36] Section 189.012(6), F.S.
[37] Section 189.016(4), F.S.
[38] Section 373.019(23), F.S.
[39] Section 373.069(1), F.S.

The bill also requires the WMD to submit an electronic copy of the final budget to the EDR within 30 days after the budget is adopted. The bill allows for an extension of the deadline for up to 90 days if the Governor declares a state of emergency within 30 days of the submission deadline.

The WMD must also submit to the clerk of the court a copy of the information that was submitted to the EDR, a copy of the final budget that was posted on the county's website, and a statement certifying both of these items were submitted and posted in a timely manner.

Beginning in Fiscal Year 2018-2019, the bill provides that if a WMD fails to submit information to the clerk of the court, the clerk must notify the appropriate fiscal officer to suspend future salary payments for the executive director of that WMD until such time as the information is provided to the clerk.

Present Situation

School Districts

Section 1011.03, F.S., requires each district school board to post its tentative budget on the district's official website at least two days prior to consideration of the budget at a public hearing. The final budget of a county or municipality must be posted on its website within 30 days after adoption. The district school superintendent is required to transmit two copies of the adopted budget to the Department of Education.

Effect of the Bill

Section 24 amends s. 1011.03, F.S., to require the district school board budget officer to submit an electronic copy of the final budget to the EDR within 30 days after the budget is adopted. The bill allows for an extension of the deadline for up to 90 days if the Governor declares a state of emergency within 30 days of the submission deadline.

The district school board budget officer must also submit to the clerk of the court a copy of the information that was submitted to the EDR, a copy of the final budget that was posted on the district school's website, and a statement certifying both of these items were submitted and posted in a timely manner.

Beginning in Fiscal Year 2018-2019, the bill provides that if a district school board budget officer fails to submit information to the clerk of the court, the clerk must notify the appropriate fiscal officer to suspend future salary payments for the superintendent of that district until such time as the information is provided to the clerk.

Transparency in Government Spending

Present Situation

The Transparency Florida Act (Act), codified in s. 215.985, F.S., requires the Governor, in consultation with the appropriations committees of the House and Senate, to maintain a central website providing access to all other websites required to be linked under the Act. It also requires certain budget information, certain contract information, and minimum functionality standards to

be readily available online. In pertinent part, s. 215.985(11), F.S., requires each WMD to provide a monthly financial statement to its governing board and make the statement available for public access on its website.

Effect of the Bill

Section 12 amends s. 215.985, F.S., to require a WMD's monthly financial statement to be in the form and manner prescribed by the DFS and requires each WMD to make the monthly financial statement available to the public on its website.

Office of Economic and Demographic Research (EDR)

Effect of the Bill

Section 26 requires the EDR to develop forms by July 15, 2018, for the purpose of submitting budget data. The forms must provide "broad, but meaningful" categories for organizing expenditures. By December 1, 2018, the EDR is required to submit a report to the President of the Senate and Speaker of the House of Representatives that:

- Identifies a structure to create unique area profiles for the counties, municipalities, special districts, water management districts, and school districts that would assist the public to make simple, direct comparisons between governmental entities of the same type;
- Provides recommendations for metrics for ranking the reporting entities based on the final budget information submitted to the EDR. The metrics must allow the public to make direct comparisons between different local governments; and
- Provides recommendations to provide this information in a cost-effective manner.

Reasonable Opportunity to Be Heard at Public Meetings

Present Situation

Section 286.0114, F.S., requires, with certain exceptions, that members of the public be provided a reasonable opportunity to be heard before a board or commission. The law describes a general public comment process and allows entities to prescribe how public comment is made and create certain reasonable limitations.

Effect of the Bill

Section 17 amends s. 286.0114, F.S., to prohibit a board or commission from requiring a member of the public to provide an advance written copy of his or her testimony or comments as a precondition of being given the opportunity to be heard at a meeting.

Statement of Legislative Findings

Section 32 specifies that a proper and legitimate state purpose is served when internal controls are established to prevent and detect fraud, waste, and abuse and to safeguard and account for government funds and property. In addition, a proper and legitimate state purpose is served when the travel records of state and local employees are transparent to members of the public. The Legislature further finds that a proper and legitimate state purpose is served when local

governments ensure the budgets, annual financial report, and associated data for various governmental entities are available to, and usable by, the public.

Sections 27, 28, 29, 30 and 31 amend ss. 165.0615, 189.066, 189.069, 189.074 and 218.503, F.S., to correct cross-references.

Section 33 provides an effective date of July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18(a) of the Florida Constitution provides, in pertinent part, that no county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take an action requiring the expenditure of funds unless the legislature has determined that such law fulfills an important state interest and:

- The law requiring such expenditure is approved by two-thirds of the membership in each house of the legislature; or
- The expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments.

Article VII, s. 18(d) of the Florida Constitution provides, in pertinent part, that laws having insignificant fiscal impact are exempt from the mandates requirements.

This bill requires county and municipal governments to establish and maintain specified internal controls, to post government budgets online, and to use the statewide travel management system. Section 32 of the bill specifies that the bill serves an important state interest. An exception may apply because the bill applies to similarly situated persons (municipalities, counties, water management districts, school districts, state agencies and other governmental entities).

In addition, the bill may be exempt from the mandates requirements if the costs incurred by the municipalities and counties to comply are $2.05 million or less (the threshold for "insignificant"[40] fiscal impact for Fiscal Year 2017-2018).[41]

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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[40] 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).

[41] 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).

D. Other Constitutional Issues:

Section 13 requires the salary of the head of the local entity to be withheld if a local government fails to submit specified information to the clerk of the court. If that head of the local entity is a constitutional officer, such as a county commissioner, school board member or a school superintendent, that officer has legal right to receive salary as long as he or she holds the office and performs the requisite duties.[42, 43]

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

State agency and judicial branch personnel may incur additional costs to the extent lodging costs exceed $150 per day when such personnel are required to travel for official business.

C. Government Sector Impact:

Executive branch state government agencies and the judicial branch may incur indeterminate additional costs associated with using the Statewide Travel Management System (system). The bill makes the requirements to implement the system for reporting entities contingent upon the Legislature appropriating at least $5.4 million to the Department of Management Services (DMS) for Fiscal Year 2018-2019.

State agencies, the court system, court-related entities, local governments, district school boards, charter schools, and state colleges and universities may incur minimal costs associated with establishing and maintaining the specified internal controls.

State agencies and the judicial branch may avoid some travel costs associated with the limitations of lodging expenses.

The Department of Financial Services estimates the costs for the development of the Florida Open Financial Statement System to be $500,000. There will be additional costs in future years to create the software tool needed to implement the system. The additional future needs are indeterminate.

The bill has an indeterminate, but likely insignificant negative fiscal impact to expenditures and staff time of the Office of Economic and Demographic Research (EDR). The bill requires that the EDR, by July 15, 2018, develop forms for the submittal of budget data from certain specified entities. Additionally, the bill requires the EDR to compile and submit a report to the President of the Senate and Speaker of the House of

[42] Section 111.045, F.S.
[43] see Flack v. Graham, 453 So. 2d 819 (Fla. 1984).

Representatives by December 1, 2018. In the report, the EDR is required to identify a structure to allow the public to make simple, direct comparisons between governmental entities of the same type; enable the public to rank entities of the same type based on submitted budget data; and, offer recommendations to provide this information in a cost-effective manner. According to the EDR, current resources are adequate to absorb these costs.

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, 28.35, 43.16, 112.061, 129.03, 129.06, 165.0615, 166.241, 189.016, 189.066, 189.069, 189.074, 215.86, 215.97, 215.985, 218.32, 218.33, 218.39, 218.391, 218.503, 286.0114, 373.536, 1001.42, 1002.33, 1002.37, 1010.01, 1010.30, 1011.03, and 1011.60.

This bill also 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 March 2, 2018:
The committee substitute:

- Requires counties, municipalities, special districts, water management districts, and school districts to:
  - Post annual budgets to their respective websites for two years;
  - Post tentative budgets to their websites for 45 days;
  - Provide an electronic copy of their budgets to the Office of Economic and Demographic Research (EDR), on forms prescribed by the EDR; and
  - Provide a copy of their budgets and certification of timely filing to the clerk of the court. However, a charter county in which the clerk of the court is not the county auditor is excluded.
- Provides that if a local government entity or school district fails to file required reports with the clerk of the court, the clerk must notify the appropriate fiscal officer to withhold salary payments from the head of the local government entity or the superintendent of the school district until the reports are filed.
- Requires all municipalities and special districts to conduct an annual audit.
- Requires the Joint Legislative Auditing Committee to conduct a hearing upon receiving notification from the Auditor General, the Department of Financial Services, the Division of Bond Finance of the State Board of Administration, the

Governor, or the Commissioner of Education that a local government entity has failed to file required reports.
- Begins the process of creating the Florida Open Financial Statement System to allow better access to financial reports filed by local governments.
- Requires school districts receiving annual federal, state, and local funds in excess of $500 million to employ an internal auditor. The duties of the internal auditor must include oversight of every functional and program area of the school system.
- Requires the internal auditor to perform a comprehensive risk assessment of all areas of the school system every five years, and conduct other audits and reviews as the district school board directs to make a determination.
- Requires the internal auditor to prepare audit reports of his or her findings and establishes penalties for failure to produce financial records to the internal auditor.
- Establishes the Statewide Travel Management System (system) in law.
- Requires all executive branch state government agencies and the judicial branch to report public officer and employee travel information in the system.
- Additionally requires that all executive branch state government agencies and the judicial branch use the system for purposes of travel authorization and reimbursement.
- Requires "reporting entities", which are defined in the bill to include municipalities, counties, local constitutional officers, county school districts, state colleges, state universities, and water management districts, to report monthly, all public officer and employee travel information resulting from an overnight stay in the system.
- Establishes a timeline for the Department of Management Services (DMS) to make travel reports for executive branch state government agencies, the judicial branch, and certain reporting entities available for public view.
- Requires reporting entities to redact confidential and exempt information from travel reports prior to posting them to the system and provides a process for reporting entities to follow when a travel report has been posted prior to proper redaction.
- Provides rulemaking authority to the DMS to administer provisions of the section pertaining to the system.
- Makes the requirements to implement the system for reporting entities contingent upon the Legislature appropriating at least $5.4 million to the DMS for Fiscal Year 2018-2019.
- Clarifies the finding of an important state interest.

CS by Community Affairs on November 7, 2017:
Identifies the Department of Management Services as the body that acquired the statewide travel management system, not the Executive Office of the Governor.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
03/02/2018	.	
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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. Subsection (2) of section 11.40, Florida Statutes, is amended to read:

11.40 Legislative Auditing Committee.—

(2) Following notification by the Auditor General, the Department of Financial Services, ~~or~~ the Division of Bond Finance of the State Board of Administration, the Governor or

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his or her designee, or the Commissioner of Education or his or her designee of the failure of a local governmental entity, district school board, charter school, or charter technical career center to comply with the applicable provisions within s. 11.45(5)-(7), s. 218.32(1), s. 218.38, or s. 218.503(3), the Legislative Auditing Committee shall ~~may~~ schedule a hearing to determine if the entity should be subject to further state action. If the committee determines that the entity should be subject to further state action, the committee shall:

(a) In the case of a local governmental entity or district school board, direct the Department of Revenue and the Department of Financial Services to withhold any funds not pledged for bond debt service satisfaction which are payable to such entity until the entity complies with the law. The committee shall specify the date that such action must ~~shall~~ begin, and the directive must be received by the Department of Revenue and the Department of Financial Services 30 days before the date of the distribution mandated by law. The Department of Revenue and the Department of Financial Services may implement ~~the provisions of~~ this paragraph.

(b) In the case of a special district created by:

1. A special act, notify the President of the Senate, the Speaker of the House of Representatives, the standing committees of the Senate and the House of Representatives charged with special district oversight as determined by the presiding officers of each respective chamber, the legislators who represent a portion of the geographical jurisdiction of the special district, and the Department of Economic Opportunity that the special district has failed to comply with the law.

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Upon receipt of notification, the Department of Economic Opportunity shall proceed pursuant to s. 189.062 or s. 189.067. If the special district remains in noncompliance after the process set forth in s. 189.0651, or if a public hearing is not held, the Legislative Auditing Committee may request the department to proceed pursuant to s. 189.067(3).

2. A local ordinance, notify the chair or equivalent of the local general-purpose government pursuant to s. 189.0652 and the Department of Economic Opportunity that the special district has failed to comply with the law. Upon receipt of notification, the department shall proceed pursuant to s. 189.062 or s. 189.067. If the special district remains in noncompliance after the process set forth in s. 189.0652, or if a public hearing is not held, the Legislative Auditing Committee may request the department to proceed pursuant to s. 189.067(3).

3. Any manner other than a special act or local ordinance, notify the Department of Economic Opportunity that the special district has failed to comply with the law. Upon receipt of notification, the department shall proceed pursuant to s. 189.062 or s. 189.067(3).

(c) In the case of a charter school or charter technical career center, notify the appropriate sponsoring entity, which may terminate the charter pursuant to ss. 1002.33 and 1002.34.

Section 2. Subsection (1), paragraph (j) of subsection (2), paragraph (u) of subsection (3), and paragraph (i) of subsection (7) of section 11.45, Florida Statutes, are amended, and paragraph (y) is added to subsection (3) of that section, to read:

11.45 Definitions; duties; authorities; reports; rules.—

(1) DEFINITIONS.—As used in ss. 11.40-11.51, the term:

(a) "Abuse" means behavior that is deficient or improper when compared with behavior that a prudent person would consider a reasonable and necessary operational practice given the facts and circumstances. The term includes the misuse of authority or position for personal gain.

(b) ~~(a)~~ "Audit" means a financial audit, operational audit, or performance audit.

(c) ~~(b)~~ "County agency" means a board of county commissioners or other legislative and governing body of a county, however styled, including that of a consolidated or metropolitan government, a clerk of the circuit court, a separate or ex officio clerk of the county court, a sheriff, a property appraiser, a tax collector, a supervisor of elections, or any other officer in whom any portion of the fiscal duties of a body or officer expressly stated in this paragraph are ~~the above are under law~~ separately placed by law.

(d) ~~(c)~~ "Financial audit" means an examination of financial statements in order to express an opinion on the fairness with which they are presented in conformity with generally accepted accounting principles and an examination to determine whether operations are properly conducted in accordance with legal and regulatory requirements. Financial audits must be conducted in accordance with auditing standards generally accepted in the United States and government auditing standards as adopted by the Board of Accountancy. When applicable, the scope of financial audits must ~~shall~~ encompass the additional activities necessary to establish compliance with the Single Audit Act Amendments of 1996, 31 U.S.C. ss. 7501-7507, and other

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applicable federal law.

(e) "Fraud" means obtaining something of value through willful misrepresentation, including, but not limited to, the intentional misstatements or intentional omissions of amounts or disclosures in financial statements to deceive users of financial statements, theft of an entity's assets, bribery, or the use of one's position for personal enrichment through the deliberate misuse or misapplication of an organization's resources.

(f) ~~(d)~~ "Governmental entity" means a state agency, a county agency, or any other entity, however styled, that independently exercises any type of state or local governmental function.

(g) ~~(e)~~ "Local governmental entity" means a county agency, municipality, tourist development council, county tourism promotion agency, or special district as defined in s. 189.012. The term~~, but~~ does not include any housing authority established under chapter 421.

(h) ~~(f)~~ "Management letter" means a statement of the auditor's comments and recommendations.

(i) ~~(g)~~ "Operational audit" means an audit whose purpose is to evaluate management's performance in establishing and maintaining internal controls, including controls designed to prevent and detect fraud, waste, and abuse, and in administering assigned responsibilities in accordance with applicable laws, administrative rules, contracts, grant agreements, and other guidelines. Operational audits must be conducted in accordance with government auditing standards. Such audits examine internal controls that are designed and placed in operation to promote and encourage the achievement of management's control objectives

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in the categories of compliance, economic and efficient operations, reliability of financial records and reports, and safeguarding of assets, and identify weaknesses in those internal controls.

(j) ~~(h)~~ "Performance audit" means an examination of a program, activity, or function of a governmental entity, conducted in accordance with applicable government auditing standards or auditing and evaluation standards of other appropriate authoritative bodies. The term includes an examination of issues related to:

1. Economy, efficiency, or effectiveness of the program.

2. Structure or design of the program to accomplish its goals and objectives.

3. Adequacy of the program to meet the needs identified by the Legislature or governing body.

4. Alternative methods of providing program services or products.

5. Goals, objectives, and performance measures used by the agency to monitor and report program accomplishments.

6. The accuracy or adequacy of public documents, reports, or requests prepared under the program by state agencies.

7. Compliance of the program with appropriate policies, rules, or laws.

8. Any other issues related to governmental entities as directed by the Legislative Auditing Committee.

(k) ~~(i)~~ "Political subdivision" means a separate agency or unit of local government created or established by law and includes, but is not limited to, the following and the officers thereof: authority, board, branch, bureau, city, commission,

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consolidated government, county, department, district, institution, metropolitan government, municipality, office, officer, public corporation, town, or village.

(l) ~~(j)~~ "State agency" means a separate agency or unit of state government created or established by law and includes, but is not limited to, the following and the officers thereof: authority, board, branch, bureau, commission, department, division, institution, office, officer, or public corporation, as the case may be, except any such agency or unit within the legislative branch of state government other than the Florida Public Service Commission.

(m) "Waste" means the act of using or expending resources unreasonably, carelessly, extravagantly, or for no useful purpose.

(2) DUTIES.—The Auditor General shall:

(j) Conduct audits of local governmental entities when determined to be necessary by the Auditor General, when directed by the Legislative Auditing Committee, or when otherwise required by law. No later than 18 months after the release of the audit report, the Auditor General shall perform such appropriate followup procedures as he or she deems necessary to determine the audited entity's progress in addressing the findings and recommendations contained within the Auditor General's previous report. The Auditor General shall notify each member of the audited entity's governing body and the Legislative Auditing Committee of the results of his or her determination. For purposes of this paragraph, local governmental entities do not include water management districts.

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The Auditor General shall perform his or her duties independently but under the general policies established by the Legislative Auditing Committee. This subsection does not limit the Auditor General's discretionary authority to conduct other audits or engagements of governmental entities as authorized in subsection (3).

(3) AUTHORITY FOR AUDITS AND OTHER ENGAGEMENTS.—The Auditor General may, pursuant to his or her own authority, or at the direction of the Legislative Auditing Committee, conduct audits or other engagements as determined appropriate by the Auditor General of:

(u) The Florida Virtual School ~~pursuant to s. 1002.37~~.

(y) Tourist development councils and county tourism promotion agencies.

(7) AUDITOR GENERAL REPORTING REQUIREMENTS.—

(i) The Auditor General shall annually transmit by July 15, to the President of the Senate, the Speaker of the House of Representatives, and the Department of Financial Services, a list of all school districts, charter schools, charter technical career centers, Florida College System institutions, state universities, and local governmental entities ~~water management districts~~ that have failed to comply with the transparency requirements as identified in the audit reports reviewed pursuant to paragraph (b) and those conducted pursuant to subsection (2).

Section 3. Paragraph (d) of subsection (2) of section 28.35, Florida Statutes, is amended to read:

28.35 Florida Clerks of Court Operations Corporation.—

(2) The duties of the corporation shall include the

following:

(d) Developing and certifying a uniform system of workload measures and applicable workload standards for court-related functions as developed by the corporation and clerk workload performance in meeting the workload performance standards. These workload measures and workload performance standards shall be designed to facilitate an objective determination of the performance of each clerk in accordance with minimum standards for fiscal management, operational efficiency, and effective collection of fines, fees, service charges, and court costs. The corporation shall develop the workload measures and workload performance standards in consultation with the Legislature. When the corporation finds a clerk has not met the workload performance standards, the corporation shall identify the nature of each deficiency and any corrective action recommended and taken by the affected clerk of the court. For quarterly periods ending on the last day of March, June, September, and December of each year, the corporation shall notify the Legislature of any clerk not meeting workload performance standards and provide a copy of any corrective action plans. Such notifications shall be submitted no later than 45 days after the end of the preceding quarterly period. As used in this subsection, the term:

1. "Workload measures" means the measurement of the activities and frequency of the work required for the clerk to adequately perform the court-related duties of the office as defined by the membership of the Florida Clerks of Court Operations Corporation.

2. "Workload performance standards" means the standards

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developed to measure the timeliness and effectiveness of the activities that are accomplished by the clerk in the performance of the court-related duties of the office as defined by the membership of the Florida Clerks of Court Operations Corporation.

Section 4. Present subsections (6) and (7) of section 43.16, Florida Statutes, are renumbered as subsections (7) and (8), respectively, and a new subsection (6) is added to that section, to read:

43.16 Justice Administrative Commission; membership, powers and duties.—

(6) The commission, each state attorney, each public defender, the criminal conflict and civil regional counsel, the capital collateral regional counsel, and the Guardian Ad Litem Program shall establish and maintain internal controls designed to:

(a) Prevent and detect fraud, waste, and abuse as defined in s. 11.45(1).

(b) Promote and encourage compliance with applicable laws, rules, contracts, grant agreements, and best practices.

(c) Support economical and efficient operations.

(d) Ensure reliability of financial records and reports.

(e) Safeguard assets.

Section 5. Subsection (6) of section 112.061, Florida Statutes, is amended, and subsection (16) is added to that section, to read:

112.061 Per diem and travel expenses of public officers, employees, and authorized persons.—

(6) RATES OF PER DIEM AND SUBSISTENCE ALLOWANCE.—For

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purposes of reimbursement rates and methods of calculation, per diem and subsistence allowances are provided as follows:

(a) All travelers shall be allowed for subsistence when traveling to a convention or conference or when traveling within or outside the state in order to conduct bona fide state business, which convention, conference, or business serves a direct and lawful public purpose with relation to the public agency served by the person attending such meeting or conducting such business, either of the following for each day of such travel at the option of the traveler:

1. Eighty dollars per diem; or

2. If actual expenses exceed $80, the amounts permitted in paragraph (b) for subsistence, plus actual expenses for lodging at a single-occupancy rate, except as provided in paragraph (c), to be substantiated by paid bills therefor.

When lodging or meals are provided at a state institution, the traveler shall be reimbursed only for the actual expenses of such lodging or meals, not to exceed the maximum provided for in this subsection.

(b) All travelers shall be allowed the following amounts for subsistence while on Class C travel on official business as provided in paragraph (5)(b):

1. Breakfast.....$6
2. Lunch.....$11
3. Dinner.....$19

(c) Actual expenses for lodging associated with the attendance of an employee of a state agency or the judicial branch at a meeting, conference, or convention organized or

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sponsored in whole or in part by a state agency or the judicial branch may not exceed $150 per day. However, an employee may expend his or her own funds for any lodging expenses that exceed $150 per day. For purposes of this paragraph, a meeting does not include travel activities for conducting an audit, examination, inspection, or investigation or travel activities related to a litigation or emergency response.

(d) ~~(c)~~ No one, whether traveling out of state or in state, shall be reimbursed for any meal or lodging included in a convention or conference registration fee paid by the state.

(16) STATEWIDE TRAVEL MANAGEMENT SYSTEM.—

(a) For purposes of this subsection, the term "statewide travel management system" means the system acquired by the Department of Management Services to:

1. Standardize and automate agency travel management;

2. Allow for travel planning and approval, expense reporting, and reimbursement; and

3. Allow a person to query travel information by public employee or officer name and position title, purpose of travel, dates and location of travel, mode of travel, confirmation of agency head or designee authorization if required, and total travel cost.

(b) All agencies and the judicial branch must report public officer and employee travel information in the statewide travel management system, including, but not limited to, officer or employee name and position title, purpose of travel, dates and location of travel, mode of travel, confirmation of agency head or designee authorization if required, and total travel cost. At a minimum, such information must be reported in the statewide

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travel management system on a monthly basis.

(c) All executive branch state agencies and the judicial branch must use the statewide travel management system for purposes of travel authorization and reimbursement.

Section 6. Paragraph (c) of subsection (3) of section 129.03, Florida Statutes, is amended, and paragraph (d) is added to that subsection, to read:

129.03 Preparation and adoption of budget.—

(3) The county budget officer, after tentatively ascertaining the proposed fiscal policies of the board for the next fiscal year, shall prepare and present to the board a tentative budget for the next fiscal year for each of the funds provided in this chapter, including all estimated receipts, taxes to be levied, and balances expected to be brought forward and all estimated expenditures, reserves, and balances to be carried over at the end of the year.

(c) The board shall hold public hearings to adopt tentative and final budgets pursuant to s. 200.065. The hearings shall be primarily for the purpose of hearing requests and complaints from the public regarding the budgets and the proposed tax levies and for explaining the budget and any proposed or adopted amendments. The tentative budget must be posted on the county's official website at least 2 days before the public hearing to consider such budget and must remain on the website for at least 45 days. The final budget must be posted on the website within 30 days after adoption and must remain on the website for at least 2 years. The tentative budgets, adopted tentative budgets, and final budgets shall be filed in the office of the county auditor as a public record. Sufficient reference in words and

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figures to identify the particular transactions must ~~shall~~ be made in the minutes of the board to record its actions with reference to the budgets.

(d) Beginning in the 2018-2019 fiscal year, the county budget officer shall electronically submit information regarding the final budget to the Office of Economic and Demographic Research in the format specified by the office within 30 days after adoption of the final budget. If the Governor declares a state of emergency pursuant to s. 252.36(2) within 30 days after the submission deadline, the office may extend the deadline up to an additional 90 days. The county budget officer shall also electronically submit to the clerk of the court:

1. A copy of the information that was submitted to the office.

2. A copy of the final budget that was posted on the county's website.

3. A statement certifying that the items in subparagraphs 1. and 2. were timely submitted and posted.

Section 7. Paragraph (f) of subsection (2) of section 129.06, Florida Statutes, is amended to read:

129.06 Execution and amendment of budget.—

(2) The board at any time within a fiscal year may amend a budget for that year, and may within the first 60 days of a fiscal year amend the budget for the prior fiscal year, as follows:

(f) Unless otherwise prohibited by law, if an amendment to a budget is required for a purpose not specifically authorized in paragraphs (a)-(e), the amendment may be authorized by resolution or ordinance of the board of county commissioners

adopted following a public hearing.

1. The public hearing must be advertised at least 2 days, but not more than 5 days, before the date of the hearing. The advertisement must appear in a newspaper of paid general circulation and must identify the name of the taxing authority, the date, place, and time of the hearing, and the purpose of the hearing. The advertisement must also identify each budgetary fund to be amended, the source of the funds, the use of the funds, and the total amount of each fund's appropriations.

2. If the board amends the budget pursuant to this paragraph, the adopted amendment must be posted on the county's official website within 5 days after adoption and must remain on the website for at least 2 years.

Section 8. Present subsections (4) and (5) of section 166.241, Florida Statutes, are renumbered as subsections (5) and (6), respectively, subsection (3) and present subsection (5) are amended, and a new subsection (4) is added to that section, to read:

166.241 Fiscal years, budgets, and budget amendments.—

(3) The tentative budget must be posted on the municipality's official website at least 2 days before the budget hearing, held pursuant to s. 200.065 or other law, to consider such budget and must remain on the website for at least 45 days. The final adopted budget must be posted on the municipality's official website within 30 days after adoption and must remain on the website for at least 2 years. If the municipality does not operate an official website, the municipality must, within a reasonable period of time as established by the county or counties in which the municipality

is located, transmit the tentative budget and final budget to the manager or administrator of such county or counties who shall post the budgets on the county's website.

(4) Beginning in the 2018-2019 fiscal year, the municipality budget officer shall electronically submit information regarding the final budget to the Office of Economic and Demographic Research in the format specified by the office within 30 days after adoption of the final budget. If the Governor declares a state of emergency pursuant to s. 252.36(2) within 30 days after the submission deadline, the office may extend the deadline up to an additional 90 days. The municipality budget officer shall also electronically submit to the clerk of the court:

(a) A copy of the information that was submitted to the office.

(b) A copy of the final budget that was posted on the municipality's website.

(c) A statement certifying that the items in paragraphs (a) and (b) were timely submitted and posted.

(6) ~~(5)~~ If the governing body of a municipality amends the budget pursuant to paragraph (5)(c) ~~(4)(c)~~, the adopted amendment must be posted on the official website of the municipality within 5 days after adoption and must remain on the website for at least 2 years. If the municipality does not operate an official website, the municipality must, within a reasonable period of time as established by the county or counties in which the municipality is located, transmit the adopted amendment to the manager or administrator of such county or counties who shall post the adopted amendment on the county's

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website.

Section 9. Present subsections (5) through (10) of section 189.016, Florida Statutes, are renumbered as subsections (6) through (11), respectively, present subsections (7) and (10) are amended, and a new subsection (5) is added to that section, to read:

189.016 Reports; budgets; audits.—

(5) Beginning in the 2018-2019 fiscal year, the special district budget officer shall electronically submit information regarding the final budget to the Office of Economic and Demographic Research in the format specified by the office within 30 days after adoption of the final budget. If the Governor declares a state of emergency under s. 252.36(2) within 30 days after the submission deadline for the final budget, the office may extend the deadline up to an additional 90 days. The special district budget officer shall also electronically submit to the clerk of the court:

(a) A copy of the information that was submitted to the office.

(b) A copy of the final budget that was posted on the special district's website.

(c) A statement certifying that the items in paragraphs (a) and (b) were timely submitted and posted.

(8)~~(7)~~ If the governing body of a special district amends the budget pursuant to paragraph (7)(c) ~~(6)(c)~~, the adopted amendment must be posted on the official website of the special district within 5 days after adoption and must remain on the website for at least 2 years.

(11)~~(10)~~ All reports or information required to be filed

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with a local general-purpose government or governing authority under ss. 189.014, 189.015, and 189.08 and subsection (9) ~~(8)~~ must:

(a) If the local general-purpose government or governing authority is a county, be filed with the clerk of the board of county commissioners.

(b) If the district is a multicounty district, be filed with the clerk of the county commission in each county.

(c) If the local general-purpose government or governing authority is a municipality, be filed at the place designated by the municipal governing body.

Section 10. Section 215.86, Florida Statutes, is amended to read:

215.86 Management systems and controls.—Each state agency and the judicial branch as defined in s. 216.011 shall establish and maintain management systems and internal controls designed to:

(1) Prevent and detect fraud, waste, and abuse as defined in s. 11.45(1). ~~that~~

(2) Promote and encourage compliance with applicable laws, rules, contracts, and grant agreements.~~;~~

(3) Support economical and ~~economic,~~ efficient~~, and effective~~ operations.~~;~~

(4) Ensure reliability of financial records and reports.~~;~~

(5) Safeguard ~~and safeguarding of~~ assets. ~~Accounting systems and procedures shall be designed to fulfill the requirements of generally accepted accounting principles.~~

Section 11. Paragraph (a) of subsection (2) of section 215.97, Florida Statutes, is amended to read:

215.97 Florida Single Audit Act.—

(2) As used in this section, the term:

(a) "Audit threshold" means the threshold amount used to determine when a state single audit or project-specific audit of a nonstate entity shall be conducted in accordance with this section. Each nonstate entity that expends a total amount of state financial assistance equal to or in excess of $750,000 in any fiscal year of such nonstate entity shall be required to have a state single audit~~,~~ or a project-specific audit~~,~~ for such fiscal year in accordance with the requirements of this section. ~~Every 2 years the Auditor General,~~ After consulting with the Executive Office of the Governor, the Department of Financial Services, and all state awarding agencies, the Auditor General shall periodically review the threshold amount for requiring audits under this section and may recommend any appropriate statutory change to revise the threshold amount in the annual report submitted pursuant to s. 11.45(7)(h) to the Legislature ~~adjust such threshold amount consistent with the purposes of this section~~.

Section 12. Subsection (11) of section 215.985, Florida Statutes, is amended to read:

215.985 Transparency in government spending.—

(11) Each water management district shall provide a monthly financial statement in the form and manner prescribed by the Department of Financial Services to the district's ~~its~~ governing board and make such monthly financial statement available for public access on its website.

Section 13. Section 218.32, Florida Statutes, is amended to read:

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218.32 Annual financial reports; local governmental entities; Florida Open Financial Statement System.—

(1)(a) Each local governmental entity that is determined to be a reporting entity, as defined by generally accepted accounting principles, and each independent special district as defined in s. 189.012, shall submit to the department a copy of its annual financial report for the previous fiscal year in a format prescribed by the department. The annual financial report must include a list of each local governmental entity included in the report and each local governmental entity that failed to provide financial information as required by paragraph (b). The chair of the governing body and the chief financial officer of each local governmental entity shall sign the annual financial report submitted pursuant to this subsection attesting to the accuracy of the information included in the report. The county annual financial report must be a single document that covers each county agency.

(b) Each component unit, as defined by generally accepted accounting principles, of a local governmental entity shall provide the local governmental entity, within a reasonable time period as established by the local governmental entity, with financial information necessary to comply with the reporting requirements contained in this section.

(c) Each regional planning council created under s. 186.504, each local government finance commission, board, or council, and each municipal power corporation created as a separate legal or administrative entity by interlocal agreement under s. 163.01(7) shall submit to the department a copy of its audit report and an annual financial report for the previous

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fiscal year in a format prescribed by the department.

(d) Each local governmental entity that is required to provide for an audit under s. 218.39(1) must submit a copy of the audit report and annual financial report to the department within 45 days after the completion of the audit report but no later than 6 ~~9~~ months after the end of the fiscal year. If the Governor declares a state of emergency under s. 252.36(2) within 30 days after the submission deadline for the audit report and annual financial report, the department may extend the deadline up to an additional 90 days. The local governmental entity must electronically submit to the clerk of the court a copy of its annual financial report and a statement certifying that the report was timely filed with the department.

(e) In conducting an audit of a local governmental entity pursuant to s. 218.39, an independent certified public accountant shall determine whether the entity's annual financial report is in agreement with the audited financial statements. If the audited financial statements are not in agreement with the annual financial report, the accountant shall specify and explain the significant differences that exist between the audited financial statements and the annual financial report.

(f) 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)(f). The department must

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forward the financial information contained within the annual financial reports to the Auditor General in electronic form. If the Governor declares a state of emergency under s. 252.36(2) within 30 days after the submission deadline, the department may extend the deadline up to an additional 90 days. This paragraph does not apply to housing authorities created under chapter 421.

(g) ~~(f)~~ If the department does not receive a completed annual financial report from a local governmental entity within the required period, it shall notify the Legislative Auditing Committee and the Special District Accountability Program of the Department of Economic Opportunity by April 30 of the entity's failure to comply with the reporting requirements.

(h) ~~(g)~~ Each local governmental entity's website must provide a link to the department's website to view the entity's annual financial report submitted to the department pursuant to this section. If the local governmental entity does not have an official website, the county government's website must provide the required link for the local governmental entity.

(i) It is the intent of the Legislature to create the Florida Open Financial Statement System, an interactive repository for governmental financial statements.

1. The Chief Financial Officer may consult with stakeholders, including the department, the Auditor General, a representative of a municipality or county, a representative of a special district, a municipal bond investor, and an information technology professional employed in the private sector, for input on the design and implementation of the Florida Open Financial Statement System.

2. The Chief Financial Officer may choose contractors to

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build one or more extensible Business Reporting Language (XBRL) taxonomies suitable for state, county, municipal, and special district financial filings and to create a software tool that enables financial statement filers to easily create XBRL documents consistent with the taxonomy or taxonomies. The Chief Financial Officer shall recruit and select contractors through an open request for proposals process pursuant to chapter 287.

3. The Chief Financial Officer shall require all work to be completed no later than December 31, 2021.

4. If the Chief Financial Officer deems the work products adequate, all local governmental financial statements pertaining to fiscal years ending on or after September 1, 2022, must be filed in XBRL format and must meet the validation requirements of the relevant taxonomy.

5. A local government that commences filing in XBRL format may not be required to make filings in portable document format.

(j) Beginning in the 2018-2019 fiscal year and notwithstanding any other penalty or remedy provided by law, if a local governmental entity fails to submit information to the clerk of the court as required under paragraph (d), s. 129.03(3)(d), s. 166.241(4), or s. 189.016(5), as applicable, the clerk of the court shall notify the appropriate local fiscal officer to suspend future salary payments to the head of that local governmental entity. The clerk shall notify the appropriate local fiscal officer to resume payments when the clerk receives the information.

(2) The department shall annually by December 1 file a verified report with the Governor, the Legislature, the Auditor General, and the Special District Accountability Program of the

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Department of Economic Opportunity showing the revenues, both locally derived and derived from intergovernmental transfers, and the expenditures of each local governmental entity, regional planning council, local government finance commission, and municipal power corporation that is required to submit an annual financial report. In preparing the verified report, the department may request additional information from the local governmental entity. The information requested must be provided to the department within 45 days after the request. If the local governmental entity does not comply with the request, the department shall notify the Legislative Auditing Committee, which may take action pursuant to s. 11.40(2). The report must include, but is not limited to:

(a) The total revenues and expenditures of each local governmental entity that is a component unit included in the annual financial report of the reporting entity.

(b) The amount of outstanding long-term debt by each local governmental entity. For purposes of this paragraph, the term "long-term debt" means any agreement or series of agreements to pay money, which, at inception, contemplate terms of payment exceeding 1 year in duration.

(3) No later than 12 months after the end of the most recently completed fiscal year, the department shall post on its website the annual financial report for each local governmental entity and independent special district that is required to submit an annual financial report pursuant to subsection (1).

(4) ~~(3)~~ The department shall notify the President of the Senate and the Speaker of the House of Representatives of any municipality that has not reported any financial activity for

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the last 4 fiscal years. Such notice must be sufficient to initiate dissolution procedures as described in s. 165.051(1)(a). Any special law authorizing the incorporation or creation of the municipality must be included within the notification.

Section 14. Present subsection (3) of section 218.33, Florida Statutes, is renumbered as subsection (4), and a new subsection (3) is added to that section, to read:

218.33 Local governmental entities; establishment of uniform fiscal years and accounting practices and procedures.—

(3) Each local governmental entity shall establish and maintain internal controls designed to:

(a) Prevent and detect fraud, waste, and abuse as defined in s. 11.45(1).

(b) Promote and encourage compliance with applicable laws, rules, contracts, grant agreements, and best practices.

(c) Support economical and efficient operations.

(d) Ensure reliability of financial records and reports.

(e) Safeguard assets.

Section 15. Present subsections (8) through (12) of section 218.39, Florida Statutes, are renumbered as subsections (9) through (13), respectively, paragraphs (b), (c), (g), and (h) of subsection (1) and subsection (7) of that section are amended, and a new subsection (8) is added to that section, to read:

218.39 Annual financial audit reports.—

(1) 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

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Auditor General, each of the following entities shall have an annual financial audit of its accounts and records completed within 9 months after the end of its fiscal year by an independent certified public accountant retained by it and paid from its public funds:

(b) Any municipality with revenues or the total of expenditures and expenses in excess of $250,000, as reported on the fund financial statements, and each municipality beginning with the 2018-2019 fiscal year.

(c) Any special district with revenues or the total of expenditures and expenses in excess of $100,000, as reported on the fund financial statements, and each special district beginning with the 2018-2019 fiscal year.

~~(g) Each municipality with revenues or the total of expenditures and expenses between $100,000 and $250,000, as reported on the fund financial statements, which has not been subject to a financial audit pursuant to this subsection for the 2 preceding fiscal years.~~

~~(h) Each special district with revenues or the total of expenditures and expenses between $50,000 and $100,000, as reported on the fund financial statement, which has not been subject to a financial audit pursuant to this subsection for the 2 preceding fiscal years.~~

(7) All audits conducted pursuant to this section must be conducted in accordance with the rules of the Auditor General adopted pursuant to s. 11.45. Upon completion of the audit, the auditor shall prepare an audit report in accordance with the rules of the Auditor General. The audit report shall be filed with the Auditor General within 45 days after delivery of the

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audit report to the governing body of the audited entity, but no later than 6 ~~9~~ months after 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. If the Governor declares a state of emergency under s. 252.36(2) within 30 days after the submission deadline for the audit report, the Auditor General may extend the deadline up to an additional 90 days.

(8) If the audit report includes a recommendation that was included in the preceding financial audit report and remains unaddressed, the governing body of the audited entity, within 60 days after the delivery of the audit report to the governing body, shall indicate during a regularly scheduled public meeting whether it intends to take corrective action, the intended corrective action, and the timeframe for the corrective action. If the governing body indicates that it does not intend to take corrective action, it must explain its decision at the public meeting.

Section 16. Subsection (2) of section 218.391, Florida Statutes, is amended, and subsections (9) through (13) are added to that section, to read:

218.391 Auditor selection procedures.—

(2) The governing body of a ~~charter~~ county, municipality, special district, district school board, charter school, or charter technical career center shall establish an audit committee.

(a) At a minimum, the audit committee for a county must ~~Each noncharter county shall establish an audit committee that,~~

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~~at a minimum, shall~~ consist of each of the county officers elected pursuant to the county charter or s. 1(d), Art. VIII of the State Constitution, or their respective designees ~~a designee~~, and one member of the board of county commissioners or its designee.

(b) The audit committee for a municipality, special district, district school board, charter school, or charter technical career center shall consist of at least three members. One member of the audit committee must be a member of the governing body of an entity specified in this paragraph, who shall also serve as the chair of the committee.

(c) An employee, a chief executive officer, or a chief financial officer of the county, municipality, special district, district school board, charter school, or charter technical career center may not serve as a member of an audit committee established under this subsection.

(d) The primary purpose of the audit committee is to assist the governing body in selecting an auditor to conduct the annual financial audit required in s. 218.39; however, the audit committee may serve other audit oversight purposes as determined by the entity's governing body. The public may ~~shall~~ not be excluded from the proceedings under this section.

(9) For each audit required by s. 218.39, the auditor shall include the following information in the management letter prepared pursuant to s. 218.39(4):

(a) The date the entity's governing body approved the selection of the auditor and the date the entity and the auditor executed the most recent contract pursuant to subsection (7);

(b) The first fiscal year for which the auditor conducted

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the audit under the most recently executed contract pursuant to subsection (7); and

(c) The contract period, including renewals, and conditions under which the contract may be terminated or renewed.

(10) On each occasion that an entity contracts with an auditor to conduct an audit pursuant to s. 218.39, an affidavit shall be executed by the chair of the entity's governing body in a format prescribed in accordance with rules adopted by the Auditor General, affirming that the auditor was selected in compliance with the requirements of subsections (3)-(6). The affidavit must accompany the entity's first audit report prepared by the auditor under the most recently executed contract pursuant to subsection (7). The affidavit shall include the following information:

(a) The date the entity's governing body approved the selection of the auditor;

(b) The first fiscal year for which the auditor conducted the audit; and

(c) The contract period, including renewals, and conditions under which the contract may be terminated or renewed.

(11) If the entity fails to select the auditor in accordance with the requirements of subsections (3)-(6), the entity shall again perform the auditor selection process in accordance with this section to select an auditor to conduct audits for subsequent fiscal years if the original audit was performed under a multiyear contract.

(a) If performing the auditor selection process again in accordance with this section would preclude the entity from timely completing the annual financial audit required by s.

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218.39, the entity shall again perform the auditor selection process in accordance with this section for the subsequent annual financial audit. A multiyear contract entered into between an entity and an auditor after the effective date of this act may not prohibit or restrict an entity from complying with the section.

(b) If the entity fails to perform the auditor selection process again, pursuant to this subsection, the Legislative Auditing Committee shall determine whether the entity should be subject to state action pursuant to s. 11.40(2).

(12) If the entity fails to provide the Auditor General with the affidavit required by subsection (10), the Auditor General shall request that the entity provide the affidavit. The affidavit must be provided within 45 days after the date of the request. If the entity does not comply with the Auditor General's request, the Legislative Auditing Committee shall determine whether the entity should be subject to state action pursuant to s. 11.40(2).

(13) If the entity provides the Auditor General with the affidavit required in subsection (10) but failed to select the auditor in accordance with the requirements of subsections (3)-(6), the Legislative Auditing Committee shall determine whether the entity should be subject to state action pursuant to s. 11.40(2).

Section 17. Subsection (2) of section 286.0114, Florida Statutes, is amended to read:

286.0114 Public meetings; reasonable opportunity to be heard; attorney fees.—

(2) Members of the public shall be given a reasonable

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opportunity to be heard on a proposition before a board or commission. The opportunity to be heard need not occur at the same meeting at which the board or commission takes official action on the proposition if the opportunity occurs at a meeting that is during the decisionmaking process and is within reasonable proximity in time before the meeting at which the board or commission takes the official action. A board or commission may not require a member of the public to provide an advance written copy of his or her testimony or comments as a condition of being given the opportunity to be heard at a meeting. This section does not prohibit a board or commission from maintaining orderly conduct or proper decorum in a public meeting. The opportunity to be heard is subject to rules or policies adopted by the board or commission, as provided in subsection (4).

Section 18. Paragraph (e) of subsection (4), paragraph (d) of subsection (5), and paragraph (d) of subsection (6) of section 373.536, Florida Statutes, are amended, and paragraphs (e) and (f) are added to subsection (6) of that section, to read:

373.536 District budget and hearing thereon.—

(4) BUDGET CONTROLS; FINANCIAL INFORMATION.—

(e) ~~By September 1, 2012,~~ Each district shall provide a monthly financial statement in the form and manner prescribed by the Department of Financial Services to the district’s governing board and make such monthly financial statement available for public access on its website.

(5) TENTATIVE BUDGET CONTENTS AND SUBMISSION; REVIEW AND APPROVAL.—

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(d) Each district shall, by August 1 of each year, submit for review a tentative budget and a description of any significant changes from the preliminary budget submitted to the Legislature pursuant to s. 373.535 to the Governor, the President of the Senate, the Speaker of the House of Representatives, the chairs of all legislative committees and subcommittees having substantive or fiscal jurisdiction over water management districts, as determined by the President of the Senate or the Speaker of the House of Representatives, as applicable, the secretary of the department, and the governing body of each county in which the district has jurisdiction or derives any funds for the operations of the district. The tentative budget must be posted on the district's official website at least 2 days before budget hearings held pursuant to s. 200.065 or other law and must remain on the website for at least 45 days.

(6) FINAL BUDGET; ANNUAL AUDIT; CAPITAL IMPROVEMENTS PLAN; WATER RESOURCE DEVELOPMENT WORK PROGRAM.—

(d) The final adopted budget must be posted on the water management district's official website within 30 days after adoption and must remain on the website for at least 2 years.

(e) Beginning in the 2018-2019 fiscal year, the water management district budget officer shall electronically submit information regarding the final budget to the Office of Economic and Demographic Research in the format specified by the office within 30 days after adoption of the final budget. If the Governor declares a state of emergency under s. 252.36(2) within 30 days after the submission deadline, the office may extend the deadline up to an additional 90 days. The water management

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district budget officer shall also electronically submit to the clerk of the court in each county in which the district operates:

1. A copy of the information that was submitted to the office.

2. A copy of the final budget that was posted on the water management district's website.

3. A statement certifying that the items in subparagraphs 1. and 2. were timely submitted and posted.

(f) Beginning in the 2018-2019 fiscal year and notwithstanding any other penalty or remedy that may be authorized by law, if a water management district budget officer fails to submit information to the clerk of the court as required in paragraph (e), the clerk of the court shall notify the appropriate fiscal officer to suspend future salary payments for the executive director of that district. The clerk shall notify the fiscal officer to resume payments when the clerk receives the information.

Section 19. Paragraph (l) of subsection (12) of section 1001.42, Florida Statutes, is amended to read:

1001.42 Powers and duties of district school board.—The district school board, acting as a board, shall exercise all powers and perform all duties listed below:

(12) FINANCE.—Take steps to assure students adequate educational facilities through the financial procedure authorized in chapters 1010 and 1011 and as prescribed below:

(l) *Internal auditor.*—May employ an internal auditor to perform ongoing financial verification of the financial records of the school district and such other audits and reviews as the

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district school board directs for the purpose of determining:

1. The adequacy of internal controls designed to prevent and detect fraud, waste, and abuse as defined in s. 11.45(1).

2. Compliance with applicable laws, rules, contracts, grant agreements, district school board-approved policies, and best practices.

3. The efficiency of operations.

4. The reliability of financial records and reports.

5. The safeguarding of assets.

The internal auditor shall report directly to the district school board or its designee.

Section 20. Paragraph (j) of subsection (9) of section 1002.33, Florida Statutes, is amended to read:

1002.33 Charter schools.—

(9) CHARTER SCHOOL REQUIREMENTS.—

(j) The governing body of the charter school shall be responsible for:

1. Establishing and maintaining internal controls designed to:

a. Prevent and detect fraud, waste, and abuse as defined in s. 11.45(1).

b. Promote and encourage compliance with applicable laws, rules, contracts, grant agreements, and best practices.

c. Support economical and efficient operations.

d. Ensure reliability of financial records and reports.

e. Safeguard assets.

2.~~1.~~ Ensuring that the charter school has retained the services of a certified public accountant or auditor for the

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annual financial audit, pursuant to s. 1002.345(2), who shall submit the report to the governing body.

3.~~2.~~ Reviewing and approving the audit report, including audit findings and recommendations for the financial recovery plan.

4.a.~~3.a.~~ Performing the duties in s. 1002.345, including monitoring a corrective action plan.

b. Monitoring a financial recovery plan in order to ensure compliance.

5.~~4.~~ Participating in governance training approved by the department which must include government in the sunshine, conflicts of interest, ethics, and financial responsibility.

Section 21. Present subsections (6) through (10) of section 1002.37, Florida Statutes, are renumbered as subsections (7) through (11), respectively, present subsection (6) is amended, and a new subsection (6) is added to that section, to read:

1002.37 The Florida Virtual School.—

(6) The Florida Virtual School shall have an annual financial audit of its accounts and records conducted by an independent auditor who is a certified public accountant licensed under chapter 473. The independent auditor shall conduct the audit in accordance with rules adopted by the Auditor General pursuant to s. 11.45 and, upon completion of the audit, shall prepare an audit report in accordance with such rules. The audit report must include a written statement by the board of trustees describing corrective action to be taken in response to each of the recommendations of the independent auditor included in the audit report. The independent auditor shall submit the audit report to the board of trustees and the

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Auditor General no later than 9 months after the end of the preceding fiscal year.

(7) ~~(6)~~ The board of trustees shall annually submit to the Governor, the Legislature, the Commissioner of Education, and the State Board of Education the audit report prepared pursuant to subsection (6) and a complete and detailed report setting forth:

(a) The operations and accomplishments of the Florida Virtual School within the state and those occurring outside the state as Florida Virtual School Global.

(b) The marketing and operational plan for the Florida Virtual School and Florida Virtual School Global, including recommendations regarding methods for improving the delivery of education through the Internet and other distance learning technology.

(c) The assets and liabilities of the Florida Virtual School and Florida Virtual School Global at the end of the fiscal year.

~~(d) A copy of an annual financial audit of the accounts and records of the Florida Virtual School and Florida Virtual School Global, conducted by an independent certified public accountant and performed in accordance with rules adopted by the Auditor General.~~

(d) ~~(e)~~ Recommendations regarding the unit cost of providing services to students through the Florida Virtual School and Florida Virtual School Global. In order to most effectively develop public policy regarding any future funding of the Florida Virtual School, it is imperative that the cost of the program is accurately identified. The identified cost of the

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program must be based on reliable data.

(e)~~(f)~~ Recommendations regarding an accountability mechanism to assess the effectiveness of the services provided by the Florida Virtual School and Florida Virtual School Global.

Section 22. Subsection (5) is added to section 1010.01, Florida Statutes, to read:

1010.01 Uniform records and accounts.—

(5) Each school district, Florida College System institution, and state university shall establish and maintain internal controls designed to:

(a) Prevent and detect fraud, waste, and abuse as defined in s. 11.45(1).

(b) Promote and encourage compliance with applicable laws, rules, contracts, grant agreements, and best practices.

(c) Support economical and efficient operations.

(d) Ensure reliability of financial records and reports.

(e) Safeguard assets.

Section 23. Subsection (2) of section 1010.30, Florida Statutes, is amended to read:

1010.30 Audits required.—

(2) If a school district, Florida College System institution, or university audit report includes a recommendation that was included in the preceding financial audit report but remains unaddressed ~~an audit contains a significant finding~~, the district school board, the Florida College System institution board of trustees, or the university board of trustees, within 60 days after the delivery of the audit report to the school district, Florida College System institution, or university, shall indicate ~~conduct an audit~~

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~~overview~~ during a regularly scheduled public meeting whether it intends to take corrective action, the intended corrective action, and the timeframe for the corrective action. If the district school board, Florida College System institution board of trustees, or university board of trustees indicates that it does not intend to take corrective action, it shall explain its decision at the public meeting.

Section 24. Section 1011.03, Florida Statutes, is amended to read:

1011.03 Public hearings; budget submissions; penalties ~~to be submitted to Department of Education~~.—

(1) Each district school board shall cause a summary of its tentative budget, including the proposed millage levies as provided for by law, to be posted on the district's official website and advertised once in a newspaper of general circulation published in the district or to be posted at the courthouse if there be no such newspaper.

(2) The advertisement of a district that has been required by the Legislature to increase classroom expenditures pursuant to s. 1011.64 must include the following statement:

"This proposed budget reflects an increase in classroom expenditures as a percent of total current operating expenditures of XX percent over the (previous fiscal year) fiscal year. This increase in classroom expenditures is required by the Legislature because the district has performed below the required performance standard on XX of XX student performance standards for the (previous school year) school year. In order to achieve the legislatively required level of classroom

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expenditures as a percentage of total operating expenditures, the proposed budget includes an increase in overall classroom expenditures of $XX,XXX,XXX above the amount spent for this same purpose during the (previous fiscal year) fiscal year. In order to achieve improved student academic performance, this proposed increase is being budgeted for the following activities: ...(list activities and amount budgeted)....”

(3) The advertisement shall appear adjacent to the advertisement required pursuant to s. 200.065. The State Board of Education may adopt rules necessary to provide specific requirements for the format of the advertisement.

(4) The board shall hold public hearings to adopt tentative and final budgets pursuant to s. 200.065. The hearings shall be primarily for the purpose of hearing requests and complaints from the public regarding the budgets and the proposed tax levies and for explaining the budget and proposed or adopted amendments thereto, if any. The tentative budget must be posted on the district’s official website at least 2 days before the budget hearing held pursuant to s. 200.065 or other law. The final adopted budget must be posted on the district’s official website within 30 days after adoption. The board shall require the superintendent to transmit two copies of the adopted budget to the Department of Education as prescribed by law and rules of the State Board of Education.

(5)(a) Beginning in the 2018-2019 fiscal year, the district school board budget officer shall electronically submit information regarding the final budget to the Office of Economic and Demographic Research in the format specified by the office within 30 days after adoption of the final budget. If the

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Governor declares a state of emergency under s. 252.36(2) within 30 days after the submission deadline for the final budget, the office may extend the deadline up to an additional 90 days. The district school board budget officer shall also electronically submit to the clerk of the court:

1. A copy of the information that was submitted to the office.

2. A copy of the final budget that was posted on the district school board's website.

3. A statement certifying that the items in subparagraphs 1. and 2. were timely submitted and posted.

(b) Beginning in the 2018-2019 fiscal year and notwithstanding any other penalty or remedy that may be authorized by law, if the district school board budget officer fails to submit information to the clerk of the court as required in paragraph (a), the clerk of the court shall notify the appropriate fiscal officer to suspend future salary payments for the superintendent of that district. The clerk shall notify the appropriate fiscal officer to resume payments when the clerk receives the information.

(6)~~(5)~~ If the governing body of a district amends the budget, the adopted amendment must be posted on the official website of the district within 5 days after adoption.

Section 25. Subsection (1) of section 1011.60, Florida Statutes, is amended to read:

1011.60 Minimum requirements of the Florida Education Finance Program.—Each district which participates in the state appropriations for the Florida Education Finance Program shall provide evidence of its effort to maintain an adequate school

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program throughout the district and shall meet at least the following requirements:

(1) ACCOUNTS AND REPORTS.—Maintain adequate and accurate records, including a system of internal accounts for individual schools, and file with the Department of Education, in correct and proper form on or before the date due as fixed by law or rule, each annual or periodic report that is required by rules of the State Board of Education. A district school board that submits an annual financial report to the department must also electronically submit to the clerk of the court a copy of the report with a statement certifying that the report was timely filed with the department.

Section 26. (1) By July 15, 2018, the Office of Economic and Demographic Research shall prepare forms for use by counties, municipalities, special districts, water management districts, and school districts when submitting information regarding their final budgets to the office. The forms must group existing fiscal information in broad yet meaningful categories, but should not create new reporting requirements.

(2) By December 1, 2018, the office shall submit a report to the President of the Senate and the Speaker of the House of Representatives that:

(a) Identifies a structure to create unique area profiles for the counties, municipalities, special districts, water management districts, and school districts which would assist the public in making simple direct comparisons between the distinct entities.

(b) Provides recommendations for metrics for ranking the reporting entities based on the final budget information

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submitted to the office. The metrics must allow the public to make direct comparisons between the different local governments.

(c) Provides recommendations for mechanisms to submit the information in this subsection to the public in a cost-effective manner.

Section 27. Subsection (16) of section 165.0615, Florida Statutes, is amended to read:

165.0615 Municipal conversion of independent special districts upon elector-initiated and approved referendum.—

(16) If the incorporation plan is approved by a majority of the votes cast in the independent special district, the district shall notify the Special District Accountability Program pursuant to s. 189.016(2) and the local general-purpose governments in which any part of the independent special district is situated pursuant to s. 189.016(8) ~~s. 189.016(7)~~.

Section 28. Subsections (1) and (2) of section 189.066, Florida Statutes, are amended to read:

189.066 Effect of failure to file certain reports or information.—

(1) If an independent special district fails to file the reports or information required under s. 189.014, s. 189.015, s. 189.016(10) ~~s. 189.016(9)~~, or s. 189.08 with the local general-purpose government or governments in which it is located, the person authorized to receive and read the reports or information or the local general-purpose government shall notify the district's registered agent. If requested by the district, the local general-purpose government shall grant an extension of up to 30 days for filing the required reports or information. If the governing body of the local general-purpose government or

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governments determines that there has been an unjustified failure to file these reports or information, it shall notify the department, and the department may proceed pursuant to s. 189.067(1).

(2) If a dependent special district fails to file the reports or information required under s. 189.014, s. 189.015, or s. 189.016(10) ~~s. 189.016(9)~~ with the local governing authority to which it is dependent, the local governing authority shall take whatever steps it deems necessary to enforce the special district's accountability. Such steps may include, as authorized, withholding funds, removing governing body members at will, vetoing the special district's budget, conducting the oversight review process set forth in s. 189.068, or amending, merging, or dissolving the special district in accordance with the provisions contained in the ordinance that created the dependent special district.

Section 29. Paragraph (e) of subsection (2) and paragraph (g) of subsection (3) of section 189.074, Florida Statutes, are amended to read:

189.074 Voluntary merger of independent special districts.—Two or more contiguous independent special districts created by special act which have similar functions and elected governing bodies may elect to merge into a single independent district through the act of merging the component independent special districts.

(2) JOINT MERGER PLAN BY RESOLUTION.—The governing bodies of two or more contiguous independent special districts may, by joint resolution, endorse a proposed joint merger plan to commence proceedings to merge the districts pursuant to this

section.

(e) After the final public hearing, the governing bodies shall notify the supervisors of elections of the applicable counties in which district lands are located of the adoption of the resolution by each governing body. The supervisors of elections shall schedule a separate referendum for each component independent special district. The referenda may be held in each district on the same day, or on different days, but no more than 20 days apart.

1. Notice of a referendum on the merger of independent special districts must be provided pursuant to the notice requirements in s. 100.342. At a minimum, the notice must include:

a. A brief summary of the resolution and joint merger plan;

b. A statement as to where a copy of the resolution and joint merger plan may be examined;

c. The names of the component independent special districts to be merged and a description of their territory;

d. The times and places at which the referendum will be held; and

e. Such other matters as may be necessary to call, provide for, and give notice of the referendum and to provide for the conduct thereof and the canvass of the returns.

2. The referenda must be held in accordance with the Florida Election Code and may be held pursuant to ss. 101.6101-101.6107. All costs associated with the referenda shall be borne by the respective component independent special district.

3. The ballot question in such referendum placed before the qualified electors of each component independent special

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district to be merged must be in substantially the following form:

"Shall ...(name of component independent special district)... and ...(name of component independent special district or districts)... be merged into ...(name of newly merged independent district)...?

....YES
....NO"

4. If the component independent special districts proposing to merge have disparate millage rates, the ballot question in the referendum placed before the qualified electors of each component independent special district must be in substantially the following form:

"Shall ...(name of component independent special district)... and ...(name of component independent special district or districts)... be merged into ...(name of newly merged independent district)... if the voter-approved maximum millage rate within each independent special district will not increase absent a subsequent referendum?

....YES
....NO"

5. In any referendum held pursuant to this section, the ballots shall be counted, returns made and canvassed, and

results certified in the same manner as other elections or referenda for the component independent special districts.

6. The merger may not take effect unless a majority of the votes cast in each component independent special district are in favor of the merger. If one of the component districts does not obtain a majority vote, the referendum fails, and merger does not take effect.

7. If the merger is approved by a majority of the votes cast in each component independent special district, the merged independent district is created. Upon approval, the merged independent district shall notify the Special District Accountability Program pursuant to s. 189.016(2) and the local general-purpose governments in which any part of the component independent special districts is situated pursuant to s. 189.016(8) ~~s. 189.016(7)~~.

8. If the referendum fails, the merger process under this subsection may not be initiated for the same purpose within 2 years after the date of the referendum.

(3) QUALIFIED ELECTOR-INITIATED MERGER PLAN.—The qualified electors of two or more contiguous independent special districts may commence a merger proceeding by each filing a petition with the governing body of their respective independent special district proposing to be merged. The petition must contain the signatures of at least 40 percent of the qualified electors of each component independent special district and must be submitted to the appropriate component independent special district governing body no later than 1 year after the start of the qualified elector-initiated merger process.

(g) After the final public hearing, the governing bodies

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shall notify the supervisors of elections of the applicable counties in which district lands are located of the adoption of the resolution by each governing body. The supervisors of elections shall schedule a date for the separate referenda for each district. The referenda may be held in each district on the same day, or on different days, but no more than 20 days apart.

1. Notice of a referendum on the merger of the component independent special districts must be provided pursuant to the notice requirements in s. 100.342. At a minimum, the notice must include:

a. A brief summary of the resolution and elector-initiated merger plan;

b. A statement as to where a copy of the resolution and petition for merger may be examined;

c. The names of the component independent special districts to be merged and a description of their territory;

d. The times and places at which the referendum will be held; and

e. Such other matters as may be necessary to call, provide for, and give notice of the referendum and to provide for the conduct thereof and the canvass of the returns.

2. The referenda must be held in accordance with the Florida Election Code and may be held pursuant to ss. 101.6101-101.6107. All costs associated with the referenda shall be borne by the respective component independent special district.

3. The ballot question in such referendum placed before the qualified electors of each component independent special district to be merged must be in substantially the following form:

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"Shall ...(name of component independent special district)... and ...(name of component independent special district or districts)... be merged into ...(name of newly merged independent district)...?

....YES
....NO"

4. If the component independent special districts proposing to merge have disparate millage rates, the ballot question in the referendum placed before the qualified electors of each component independent special district must be in substantially the following form:

"Shall ...(name of component independent special district)... and ...(name of component independent special district or districts)... be merged into ...(name of newly merged independent district)... if the voter-approved maximum millage rate within each independent special district will not increase absent a subsequent referendum?

....YES
....NO"

5. In any referendum held pursuant to this section, the ballots shall be counted, returns made and canvassed, and results certified in the same manner as other elections or referenda for the component independent special districts.

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6. The merger may not take effect unless a majority of the votes cast in each component independent special district are in favor of the merger. If one of the component independent special districts does not obtain a majority vote, the referendum fails, and merger does not take effect.

7. If the merger is approved by a majority of the votes cast in each component independent special district, the merged district shall notify the Special District Accountability Program pursuant to s. 189.016(2) and the local general-purpose governments in which any part of the component independent special districts is situated pursuant to s. 189.016(8) ~~s. 189.016(7)~~.

8. If the referendum fails, the merger process under this subsection may not be initiated for the same purpose within 2 years after the date of the referendum.

Section 30. Subsection (3) of section 218.503, Florida Statutes, is amended to read:

218.503 Determination of financial emergency.—

(3) Upon notification that one or more of the conditions in subsection (1) have occurred or will occur if action is not taken to assist the local governmental entity or district school board, the Governor or his or her designee shall contact the local governmental entity or the Commissioner of Education or his or her designee shall contact the district school board, as appropriate, to determine what actions have been taken by the local governmental entity or the district school board to resolve or prevent the condition. The information requested must be provided within 45 days after the date of the request. If the local governmental entity or the district school board does not

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comply with the request, the Governor or his or her designee or the Commissioner of Education or his or her designee shall notify ~~the members of~~ the Legislative Auditing Committee, which ~~who~~ may take action pursuant to s. 11.40(2) ~~s. 11.40~~. The Governor or the Commissioner of Education, as appropriate, shall determine whether the local governmental entity or the district school board needs state assistance to resolve or prevent the condition. If state assistance is needed, the local governmental entity or district school board is considered to be in a state of financial emergency. The Governor or the Commissioner of Education, as appropriate, has the authority to implement measures as set forth in ss. 218.50-218.504 to assist the local governmental entity or district school board in resolving the financial emergency. Such measures may include, but are not limited to:

(a) Requiring approval of the local governmental entity's budget by the Governor or approval of the district school board's budget by the Commissioner of Education.

(b) Authorizing a state loan to a local governmental entity and providing for repayment of same.

(c) Prohibiting a local governmental entity or district school board from issuing bonds, notes, certificates of indebtedness, or any other form of debt until such time as it is no longer subject to this section.

(d) Making such inspections and reviews of records, information, reports, and assets of the local governmental entity or district school board as are needed. The appropriate local officials shall cooperate in such inspections and reviews.

(e) Consulting with officials and auditors of the local

governmental entity or the district school board and the appropriate state officials regarding any steps necessary to bring the books of account, accounting systems, financial procedures, and reports into compliance with state requirements.

(f) Providing technical assistance to the local governmental entity or the district school board.

(g)1. Establishing a financial emergency board to oversee the activities of the local governmental entity or the district school board. If a financial emergency board is established for a local governmental entity, the Governor shall appoint board members and select a chair. If a financial emergency board is established for a district school board, the State Board of Education shall appoint board members and select a chair. The financial emergency board shall adopt such rules as are necessary for conducting board business. The board may:

a. Make such reviews of records, reports, and assets of the local governmental entity or the district school board as are needed.

b. Consult with officials and auditors of the local governmental entity or the district school board and the appropriate state officials regarding any steps necessary to bring the books of account, accounting systems, financial procedures, and reports of the local governmental entity or the district school board into compliance with state requirements.

c. Review the operations, management, efficiency, productivity, and financing of functions and operations of the local governmental entity or the district school board.

d. Consult with other governmental entities for the consolidation of all administrative direction and support

services, including, but not limited to, services for asset sales, economic and community development, building inspections, parks and recreation, facilities management, engineering and construction, insurance coverage, risk management, planning and zoning, information systems, fleet management, and purchasing.

2. The recommendations and reports made by the financial emergency board must be submitted to the Governor for local governmental entities or to the Commissioner of Education and the State Board of Education for district school boards for appropriate action.

(h) Requiring and approving a plan, to be prepared by officials of the local governmental entity or the district school board in consultation with the appropriate state officials, prescribing actions that will cause the local governmental entity or district school board to no longer be subject to this section. The plan must include, but need not be limited to:

1. Provision for payment in full of obligations outlined in subsection (1), designated as priority items, which are currently due or will come due.

2. Establishment of priority budgeting or zero-based budgeting in order to eliminate items that are not affordable.

3. The prohibition of a level of operations which can be sustained only with nonrecurring revenues.

4. Provisions implementing the consolidation, sourcing, or discontinuance of all administrative direction and support services, including, but not limited to, services for asset sales, economic and community development, building inspections, parks and recreation, facilities management, engineering and

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construction, insurance coverage, risk management, planning and zoning, information systems, fleet management, and purchasing.

Section 31. The Legislature finds that a proper and legitimate state purpose is served when internal controls are established to prevent and detect fraud, waste, and abuse and to safeguard and account for government funds and property. Therefore, the Legislature determines and declares that this act fulfills an important state interest.

Section 32. 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 government accountability; amending s. 11.40, F.S.; requiring, rather than authorizing, the Legislative Auditing Committee to schedule hearings concerning certain governmental entities for failure to comply with certain financial audit requirements; amending s. 11.45, F.S.; defining the terms "abuse," "fraud," and "waste"; revising definitions; excluding water management districts from certain audit requirements; removing a cross-reference; authorizing the Auditor General to conduct audits of tourist development councils and county tourism promotion agencies; revising reporting requirements applicable to the Auditor General; amending s. 28.35, F.S.; revising reporting

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requirements applicable to the Florida Clerks of Court Operations Corporation; amending s. 43.16, F.S.; revising the responsibilities of the Justice Administrative Commission, each state attorney, each public defender, the criminal conflict and civil regional counsel, the capital collateral regional counsel, and the Guardian Ad Litem Program, to include the establishment and maintenance of certain internal controls; amending s. 112.061, F.S.; revising certain lodging rates for the purpose of reimbursement to specified employees; authorizing an employee to expend his or her funds for certain lodging expenses; defining the term "statewide travel management system"; requiring agencies and the judicial branch to report certain travel information of public officers and employees in the statewide travel management system; requiring executive branch state agencies and the judicial branch to use the statewide travel management system for certain purposes; amending ss. 129.03, 129.06, and 166.241, F.S.; requiring counties and municipalities to maintain certain budget documents on the entities' websites for a specified period; requiring county and municipality budget officers to submit certain budget information to specified entities within a certain timeframe; amending s. 189.016, F.S.; requiring special district budget officers to submit certain budget information to specified entities within a certain timeframe; amending s. 215.86, F.S.; revising the purposes for

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which management systems and internal controls must be established and maintained by each state agency and the judicial branch; amending s. 215.97, F.S.; revising certain audit threshold requirements; amending s. 215.985, F.S.; revising the requirements for a monthly financial statement provided by a water management district; amending s. 218.32, F.S.; revising certain reporting deadlines for an audit report and annual financial report of certain local governmental entities; providing an exception; prescribing duties of an independent certified public accountant in conducting an audit; providing legislative intent regarding the establishment of the Florida Open Financial Statement System; authorizing the Chief Financial Officer to consult with certain stakeholders for input on the design and implementation of the system; specifying requirements and procedures for the Chief Financial Officer in selecting and recruiting contractors for certain purposes; requiring the Chief Financial Officer to require completion of all work by a specified date; providing that if the Chief Financial Officer deems work products adequate, all local governmental financial statements pertaining to fiscal years ending on or after a specified date must meet certain requirements; providing for the suspension of salary payments to the head of a local governmental entity that does not submit certain financial information; authorizing the Department of Financial Services to

request additional information from a local governmental entity under certain circumstances; requiring a local governmental entity to comply with such requests within a specified timeframe; requiring the department to notify the Legislative Auditing Committee of noncompliance; authorizing the committee to take certain action; requiring the department to post annual financial reports for certain governmental entities on its website within a specified timeframe; amending s. 218.33, F.S.; requiring local governmental entities to establish and maintain internal controls to achieve specified purposes; amending s. 218.39, F.S.; requiring certain municipalities and special districts to have a certain audit performed beginning with a specified fiscal year; revising the deadline for an audit report; providing an exception; requiring the governing body of an audited entity to respond to audit recommendations under specified circumstances; amending s. 218.391, F.S.; revising membership for audit committees; prohibiting an audit committee member from being an employee, a chief executive officer, or a chief financial officer of the respective governmental entity; requiring an auditor to include certain information in a management letter; requiring the chair of a governmental entity's governing body to submit an affidavit containing certain information when the entity contracts with an auditor to conduct an audit; providing requirements and procedures for selecting an auditor; requiring the

Legislative Auditing Committee to determine whether a governmental entity should be subject to state action under certain circumstances; amending s. 286.0114, F.S.; prohibiting a board or commission from requiring an advance copy of testimony or comments from a member of the public as a precondition to being given the opportunity to be heard at a public meeting; amending s. 373.536, F.S.; deleting obsolete language; requiring water management districts to maintain certain budget documents on the districts' websites for a specified period; requiring district budget officers to submit certain budget information to specified entities within a certain timeframe; providing for the suspension of salary payments of a district executive director if the district does not submit such information; amending s. 1001.42, F.S.; authorizing additional internal audits as directed by the district school board; amending s. 1002.33, F.S.; revising the responsibilities of the governing board of a charter school to include the establishment and maintenance of internal controls; amending s. 1002.37, F.S.; requiring completion of an annual financial audit of the Florida Virtual School; specifying audit requirements; requiring an audit report to be submitted to the board of trustees of the Florida Virtual School and the Auditor General; deleting obsolete provisions; amending s. 1010.01, F.S.; requiring each school district, Florida College System institution, and state university to establish and

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maintain certain internal controls; amending s. 1010.30, F.S.; requiring a district school board, Florida College System institution board of trustees, or university board of trustees to respond to audit recommendations under certain circumstances; amending s. 1011.03, F.S.; requiring a district school board's budget officer to submit certain budget information to specified entities within a certain timeframe; providing for suspension of salary payments for a superintendent of a district that does not submit such information; amending s. 1011.60, F.S.; requiring district school boards that submit an annual financial report to the Department of Education to also electronically submit a copy to the clerk of the court; requiring the Office of Economic and Demographic Research to develop, by a specified date, certain forms for use by local governmental entities in reporting certain budget information; requiring the office to submit a report to the Legislature by a specified date; providing requirements for the report; amending ss. 165.0615, 189.066, 189.074, and 218.503, F.S.; conforming provisions and cross-references to changes made by the act; declaring that the act fulfills an important state interest; providing an effective date.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/02/2018	.	
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	.	

The Committee on Appropriations (Bradley) recommended the following:

Senate Amendment to Amendment (522564)

Delete lines 362 - 574
and insert:
(d)1. Beginning in the 2018-2019 fiscal year, the county budget officer shall electronically submit information regarding the final budget to the Office of Economic and Demographic Research in the format specified by the office within 30 days after adoption of the final budget. If the Governor declares a state of emergency pursuant to s. 252.36(2) within 30 days after

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the submission deadline, the office may extend the deadline up to an additional 90 days.

2. The county budget officer shall also electronically submit to the clerk of the court:

a. A copy of the information that was submitted to the office.

b. A copy of the final budget that was posted on the county's website.

c. A statement certifying that the items in sub-subparagraphs a. and b. were timely submitted and posted.

3. Subparagraph 2. does not apply to a charter county in which the clerk of the court is not the county auditor.

Section 7. Paragraph (f) of subsection (2) of section 129.06, Florida Statutes, is amended to read:

129.06 Execution and amendment of budget.—

(2) The board at any time within a fiscal year may amend a budget for that year, and may within the first 60 days of a fiscal year amend the budget for the prior fiscal year, as follows:

(f) Unless otherwise prohibited by law, if an amendment to a budget is required for a purpose not specifically authorized in paragraphs (a)-(e), the amendment may be authorized by resolution or ordinance of the board of county commissioners adopted following a public hearing.

1. The public hearing must be advertised at least 2 days, but not more than 5 days, before the date of the hearing. The advertisement must appear in a newspaper of paid general circulation and must identify the name of the taxing authority, the date, place, and time of the hearing, and the purpose of the

hearing. The advertisement must also identify each budgetary fund to be amended, the source of the funds, the use of the funds, and the total amount of each fund's appropriations.

2. If the board amends the budget pursuant to this paragraph, the adopted amendment must be posted on the county's official website within 5 days after adoption and must remain on the website for at least 2 years.

Section 8. Present subsections (4) and (5) of section 166.241, Florida Statutes, are renumbered as subsections (5) and (6), respectively, subsection (3) and present subsection (5) are amended, and a new subsection (4) is added to that section, to read:

166.241 Fiscal years, budgets, and budget amendments.—

(3) The tentative budget must be posted on the municipality's official website at least 2 days before the budget hearing, held pursuant to s. 200.065 or other law, to consider such budget and must remain on the website for at least 45 days. The final adopted budget must be posted on the municipality's official website within 30 days after adoption and must remain on the website for at least 2 years. If the municipality does not operate an official website, the municipality must, within a reasonable period of time as established by the county or counties in which the municipality is located, transmit the tentative budget and final budget to the manager or administrator of such county or counties who shall post the budgets on the county's website.

(4) Beginning in the 2018-2019 fiscal year, the municipality budget officer shall electronically submit information regarding the final budget to the Office of Economic

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and Demographic Research in the format specified by the office within 30 days after adoption of the final budget. If the Governor declares a state of emergency pursuant to s. 252.36(2) within 30 days after the submission deadline, the office may extend the deadline up to an additional 90 days. The municipality budget officer shall also electronically submit to the clerk of the court:

(a) A copy of the information that was submitted to the office.

(b) A copy of the final budget that was posted on the municipality's website.

(c) A statement certifying that the items in paragraphs (a) and (b) were timely submitted and posted.

(6) ~~(5)~~ If the governing body of a municipality amends the budget pursuant to paragraph (5)(c) ~~(4)(c)~~, the adopted amendment must be posted on the official website of the municipality within 5 days after adoption and must remain on the website for at least 2 years. If the municipality does not operate an official website, the municipality must, within a reasonable period of time as established by the county or counties in which the municipality is located, transmit the adopted amendment to the manager or administrator of such county or counties who shall post the adopted amendment on the county's website.

Section 9. Present subsections (5) through (10) of section 189.016, Florida Statutes, are renumbered as subsections (6) through (11), respectively, present subsections (7) and (10) are amended, and a new subsection (5) is added to that section, to read:

189.016 Reports; budgets; audits.—

(5) Beginning in the 2018-2019 fiscal year, the special district budget officer shall electronically submit information regarding the final budget to the Office of Economic and Demographic Research in the format specified by the office within 30 days after adoption of the final budget. If the Governor declares a state of emergency under s. 252.36(2) within 30 days after the submission deadline for the final budget, the office may extend the deadline up to an additional 90 days. The special district budget officer shall also electronically submit to the clerk of the court:

(a) A copy of the information that was submitted to the office.

(b) A copy of the final budget that was posted on the special district's website.

(c) A statement certifying that the items in paragraphs (a) and (b) were timely submitted and posted.

(8)~~(7)~~ If the governing body of a special district amends the budget pursuant to paragraph (7)(c) ~~(6)(c)~~, the adopted amendment must be posted on the official website of the special district within 5 days after adoption and must remain on the website for at least 2 years.

(11)~~(10)~~ All reports or information required to be filed with a local general-purpose government or governing authority under ss. 189.014, 189.015, and 189.08 and subsection (9) ~~(8)~~ must:

(a) If the local general-purpose government or governing authority is a county, be filed with the clerk of the board of county commissioners.

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(b) If the district is a multicounty district, be filed with the clerk of the county commission in each county.

(c) If the local general-purpose government or governing authority is a municipality, be filed at the place designated by the municipal governing body.

Section 10. Section 215.86, Florida Statutes, is amended to read:

215.86 Management systems and controls.—Each state agency and the judicial branch as defined in s. 216.011 shall establish and maintain management systems and internal controls designed to:

(1) Prevent and detect fraud, waste, and abuse as defined in s. 11.45(1). ~~that~~

(2) Promote and encourage compliance with applicable laws, rules, contracts, and grant agreements.~~;~~

(3) Support economical and ~~economic,~~ efficient~~, and effective~~ operations.~~;~~

(4) Ensure reliability of financial records and reports.~~;~~

(5) Safeguard ~~and safeguarding of~~ assets. ~~Accounting systems and procedures shall be designed to fulfill the requirements of generally accepted accounting principles.~~

Section 11. Paragraph (a) of subsection (2) of section 215.97, Florida Statutes, is amended to read:

215.97 Florida Single Audit Act.—

(2) As used in this section, the term:

(a) "Audit threshold" means the threshold amount used to determine when a state single audit or project-specific audit of a nonstate entity shall be conducted in accordance with this section. Each nonstate entity that expends a total amount of

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state financial assistance equal to or in excess of $750,000 in any fiscal year of such nonstate entity shall be required to have a state single audit~~,~~ or a project-specific audit~~,~~ for such fiscal year in accordance with the requirements of this section. ~~Every 2 years the Auditor General,~~ After consulting with the Executive Office of the Governor, the Department of Financial Services, and all state awarding agencies, the Auditor General shall periodically review the threshold amount for requiring audits under this section and may recommend any appropriate statutory change to revise the threshold amount in the annual report submitted pursuant to s. 11.45(7)(h) to the Legislature ~~adjust such threshold amount consistent with the purposes of this section~~.

Section 12. Subsection (11) of section 215.985, Florida Statutes, is amended to read:

215.985 Transparency in government spending.—

(11) Each water management district shall provide a monthly financial statement in the form and manner prescribed by the Department of Financial Services to the district's ~~its~~ governing board and make such monthly financial statement available for public access on its website.

Section 13. Section 218.32, Florida Statutes, is amended to read:

218.32 Annual financial reports; local governmental entities; Florida Open Financial Statement System.—

(1)(a) Each local governmental entity that is determined to be a reporting entity, as defined by generally accepted accounting principles, and each independent special district as defined in s. 189.012, shall submit to the department a copy of

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its annual financial report for the previous fiscal year in a format prescribed by the department. The annual financial report must include a list of each local governmental entity included in the report and each local governmental entity that failed to provide financial information as required by paragraph (b). The chair of the governing body and the chief financial officer of each local governmental entity shall sign the annual financial report submitted pursuant to this subsection attesting to the accuracy of the information included in the report. The county annual financial report must be a single document that covers each county agency.

(b) Each component unit, as defined by generally accepted accounting principles, of a local governmental entity shall provide the local governmental entity, within a reasonable time period as established by the local governmental entity, with financial information necessary to comply with the reporting requirements contained in this section.

(c) Each regional planning council created under s. 186.504, each local government finance commission, board, or council, and each municipal power corporation created as a separate legal or administrative entity by interlocal agreement under s. 163.01(7) shall submit to the department a copy of its audit report and an annual financial report for the previous fiscal year in a format prescribed by the department.

(d)1. Each local governmental entity that is required to provide for an audit under s. 218.39(1) must submit a copy of the audit report and annual financial report to the department within 45 days after the completion of the audit report but no later than 6 ~~9~~ months after the end of the fiscal year. If the

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Governor declares a state of emergency under s. 252.36(2) within 30 days after the submission deadline for the audit report and annual financial report, the department may extend the deadline up to an additional 90 days.

2. The local governmental entity must electronically submit to the clerk of the court a copy of its annual financial report and a statement certifying that the report was timely filed with the department.

3. Subparagraph 2. does not apply to a charter county in which the clerk of the court is not the county auditor.

110202

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/02/2018	.	
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The Committee on Appropriations (Stargel) recommended the following:

Senate Amendment to Amendment (522564) (with title amendment)

Delete lines 779 - 947
and insert:
career center may not serve as a voting member of an audit committee established under this subsection but may serve in a nonvoting advisory capacity.

(d) At least one member of the audit committee should have experience in finance, business, or government operations.

(e) The primary purpose of the audit committee is to assist the governing body in selecting an auditor to conduct the annual financial audit required in s. 218.39; however, the audit committee may serve other audit oversight purposes as determined by the entity's governing body. The public may ~~shall~~ not be excluded from the proceedings under this section.

(9) For each audit required by s. 218.39, the auditor shall include the following information in the management letter prepared pursuant to s. 218.39(4):

(a) The date the entity's governing body approved the selection of the auditor and the date the entity and the auditor executed the most recent contract pursuant to subsection (7);

(b) The first fiscal year for which the auditor conducted the audit under the most recently executed contract pursuant to subsection (7); and

(c) The contract period, including renewals, and conditions under which the contract may be terminated or renewed.

(10) On each occasion that an entity contracts with an auditor to conduct an audit pursuant to s. 218.39, an affidavit shall be executed by the chair of the entity's governing body in a format prescribed in accordance with rules adopted by the Auditor General, affirming that the auditor was selected in compliance with the requirements of subsections (3)-(6). The affidavit must, as a separate document, accompany the entity's first audit report prepared by the auditor under the most recently executed contract pursuant to subsection (7). The affidavit shall include the following information:

(a) The date the entity's governing body approved the selection of the auditor;

(b) The first fiscal year for which the auditor conducted the audit; and

(c) The contract period, including renewals, and conditions under which the contract may be terminated or renewed.

(11) If the entity fails to select the auditor in accordance with the requirements of subsections (3)-(6), the entity shall again perform the auditor selection process in accordance with this section to select an auditor to conduct audits for subsequent fiscal years if the original audit was performed under a multiyear contract.

(a) If performing the auditor selection process again in accordance with this section would preclude the entity from timely completing the annual financial audit required by s. 218.39, the entity shall again perform the auditor selection process in accordance with this section for the subsequent annual financial audit. A multiyear contract entered into between an entity and an auditor after the effective date of this act may not prohibit or restrict an entity from complying with the section.

(b) If the entity fails to perform the auditor selection process again, pursuant to this subsection, the Legislative Auditing Committee shall determine whether the entity should be subject to state action pursuant to s. 11.40(2).

(12) If the entity fails to provide the Auditor General with the affidavit required by subsection (10), the Auditor General shall request that the entity provide the affidavit. The affidavit must be provided within 45 days after the date of the request. If the entity does not comply with the Auditor General’s request, the Legislative Auditing Committee shall

determine whether the entity should be subject to state action pursuant to s. 11.40(2).

(13) If the entity provides the Auditor General with the affidavit required in subsection (10) but failed to select the auditor in accordance with the requirements of subsections (3)-(6), the Legislative Auditing Committee shall determine whether the entity should be subject to state action pursuant to s. 11.40(2).

Section 17. Subsection (2) of section 286.0114, Florida Statutes, is amended to read:

286.0114 Public meetings; reasonable opportunity to be heard; attorney fees.—

(2) Members of the public shall be given a reasonable opportunity to be heard on a proposition before a board or commission. The opportunity to be heard need not occur at the same meeting at which the board or commission takes official action on the proposition if the opportunity occurs at a meeting that is during the decisionmaking process and is within reasonable proximity in time before the meeting at which the board or commission takes the official action. A board or commission may not require a member of the public to provide an advance written copy of his or her testimony or comments as a condition of being given the opportunity to be heard at a meeting. This section does not prohibit a board or commission from maintaining orderly conduct or proper decorum in a public meeting. The opportunity to be heard is subject to rules or policies adopted by the board or commission, as provided in subsection (4).

Section 18. Paragraph (e) of subsection (4), paragraph (d)

of subsection (5), and paragraph (d) of subsection (6) of section 373.536, Florida Statutes, are amended, and paragraphs (e) and (f) are added to subsection (6) of that section, to read:

373.536 District budget and hearing thereon.—

(4) BUDGET CONTROLS; FINANCIAL INFORMATION.—

(e) ~~By September 1, 2012,~~ Each district shall provide a monthly financial statement in the form and manner prescribed by the Department of Financial Services to the district's governing board and make such monthly financial statement available for public access on its website.

(5) TENTATIVE BUDGET CONTENTS AND SUBMISSION; REVIEW AND APPROVAL.—

(d) Each district shall, by August 1 of each year, submit for review a tentative budget and a description of any significant changes from the preliminary budget submitted to the Legislature pursuant to s. 373.535 to the Governor, the President of the Senate, the Speaker of the House of Representatives, the chairs of all legislative committees and subcommittees having substantive or fiscal jurisdiction over water management districts, as determined by the President of the Senate or the Speaker of the House of Representatives, as applicable, the secretary of the department, and the governing body of each county in which the district has jurisdiction or derives any funds for the operations of the district. The tentative budget must be posted on the district's official website at least 2 days before budget hearings held pursuant to s. 200.065 or other law and must remain on the website for at least 45 days.

(6) FINAL BUDGET; ANNUAL AUDIT; CAPITAL IMPROVEMENTS PLAN; WATER RESOURCE DEVELOPMENT WORK PROGRAM.—

(d) The final adopted budget must be posted on the water management district's official website within 30 days after adoption and must remain on the website for at least 2 years.

(e) Beginning in the 2018-2019 fiscal year, the water management district budget officer shall electronically submit information regarding the final budget to the Office of Economic and Demographic Research in the format specified by the office within 30 days after adoption of the final budget. If the Governor declares a state of emergency under s. 252.36(2) within 30 days after the submission deadline, the office may extend the deadline up to an additional 90 days. The water management district budget officer shall also electronically submit to the clerk of the court in each county in which the district operates:

1. A copy of the information that was submitted to the office.

2. A copy of the final budget that was posted on the water management district's website.

3. A statement certifying that the items in subparagraphs 1. and 2. were timely submitted and posted.

(f) Beginning in the 2018-2019 fiscal year and notwithstanding any other penalty or remedy that may be authorized by law, if a water management district budget officer fails to submit information to the clerk of the court as required in paragraph (e), the clerk of the court shall notify the appropriate fiscal officer to suspend future salary payments for the executive director of that district. The clerk shall

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notify the fiscal officer to resume payments when the clerk receives the information.

Section 19. Paragraphs (b) and (l) of subsection (12) of section 1001.42, Florida Statutes, are amended to read:

1001.42 Powers and duties of district school board.—The district school board, acting as a board, shall exercise all powers and perform all duties listed below:

(12) FINANCE.—Take steps to assure students adequate educational facilities through the financial procedure authorized in chapters 1010 and 1011 and as prescribed below:

(b) *Annual budget.*—

1. Cause to be prepared, adopt, and have submitted to the Department of Education as required by law and rules of the State Board of Education, the annual school budget, such budget to be so prepared and executed as to promote the improvement of the district school system.

2. An individual school board member may request and shall receive any proposed, tentative, and official budget documents, including all supporting and background information.

(l) *Internal auditor.*—May or, in the case of a school district receiving annual federal, state, and local funds in excess of $500 million, shall employ an internal auditor. The scope of the internal auditor may not be restricted and must include every functional and program area of the school system.

1. The internal auditor shall ~~to~~ perform ongoing financial verification of the financial records of the school district, a comprehensive risk assessment of all areas of the school system every 5 years, and other audits and reviews as the district school board directs for determining:

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a. The adequacy of internal controls designed to prevent and detect fraud, waste, and abuse.

b. Compliance with applicable laws, rules, contracts, grant agreements, district school board-approved policies, and best practices.

c. The efficiency of operations.

d. The reliability of financial records and reports.

e. The safeguarding of assets.

f. Financial solvency.

g. Projected revenues and expenditures.

h. The rate of change in the general fund balance.

2. The internal auditor shall prepare audit reports of his or her findings and report directly to the district school board or its designee.

3. Any person responsible for furnishing or producing any book, record, paper, document, data, or sufficient information necessary to conduct a proper audit or examination which the internal auditor is by law authorized to perform is subject to the provisions of s. 11.47(3) and (4).

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

And the title is amended as follows:

Delete lines 1596 - 1623

and insert:

audit committees; prohibiting an employee, a chief executive officer, or a chief financial officer of the respective governmental entity from serving as a voting member of an audit committee; requiring an auditor to include certain information in a management

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letter; requiring the chair of a governmental entity's governing body to submit an affidavit containing certain information when the entity contracts with an auditor to conduct an audit; providing requirements and procedures for selecting an auditor; requiring the Legislative Auditing Committee to determine whether a governmental entity should be subject to state action under certain circumstances; amending s. 286.0114, F.S.; prohibiting a board or commission from requiring an advance copy of testimony or comments from a member of the public as a precondition to being given the opportunity to be heard at a public meeting; amending s. 373.536, F.S.; deleting obsolete language; requiring water management districts to maintain certain budget documents on the districts' websites for a specified period; requiring district budget officers to submit certain budget information to specified entities within a certain timeframe; providing for the suspension of salary payments of a district executive director if the district does not submit such information; amending s. 1001.42, F.S.; authorizing district school board members to request and receive specified budget information; requiring employment of internal auditors in certain school districts; revising provisions relating to the scope of such internal auditors; amending s. 1002.33, F.S.;

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/02/2018	.	
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The Committee on Appropriations (Stargel) recommended the following:

Senate Amendment to Amendment (522564)

Between lines 1495 and 1496
insert:
The Legislature also finds that a proper and legitimate state purpose is served when local governments ensure that the budgets, annual financial reports, and associated data for various governmental entities are available to, and usable by, the public.

703092

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/02/2018	.	
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The Committee on Appropriations (Stargel) recommended the following:

Senate Amendment to Amendment (522564) (with directory and title amendments)

Delete lines 311 - 333
and insert:
(9) RULES.—
(c) The Department of Management Services may adopt rules to administer the provisions of this section relating to the statewide travel management system.
(16) STATEWIDE TRAVEL MANAGEMENT SYSTEM.—

703092

(a) For purposes of this subsection, the term:

1. "Local constitutional officer" includes sheriffs, tax collectors, property appraisers, supervisors of elections, clerks of the circuit court, county commissioners, district school board members, and superintendents of schools.

2. "Reporting entity" includes each municipality, county, local constitutional officer, county school district, state college, state university, and water management district.

3. "Statewide travel management system" means the system used by the Department of Management Services to:

a. Collect and store information relating to public officer or employee travel information.

b. Standardize and automate agency travel management.

c. Allow for travel planning and approval, expense reporting, and reimbursement.

d. Allow travel information queries.

(b) Each executive branch state government agency and the judicial branch must report on the statewide travel management system all public officer and employee travel information, including, but not limited to, name and position title, purpose of travel, dates and location of travel, mode of travel, confirmation from the head of the agency or designee authorization if required, and total travel cost.

1. Each executive branch state government agency and the judicial branch must use the statewide travel management system for purposes of travel authorization and reimbursement.

2. By November 1, 2018, the Department of Management Services shall make available to the public all travel reports posted on the statewide travel management system for executive

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branch state government agencies and the judicial branch.

(c) Each reporting entity must post on the statewide travel management system information relating to all travel resulting in an overnight stay for public officers and employees, including, but not limited to, name and position title, purpose of travel, dates and location of travel, mode of travel, and total travel costs.

1. Each reporting entity shall post one travel report per entity. A local constitutional officer may post a separate travel report from the respective county travel report.

2. Every month, each reporting entity shall post a travel report for the previous month.

3. The Department of Management Services shall provide a format and method for reporting entities to post travel reports.

4. No later than November 1, 2019, each reporting entity shall post monthly travel reports relating to all travel resulting in an overnight stay for public officers and employees.

5. Beginning December 1, 2019, the Department of Management Services shall make available to the public all travel reports for reporting entities which are in the statewide travel management system.

6. The requirements of this paragraph are contingent upon the Legislature appropriating at least $5.4 million to the Department of Management Services for the 2018-2019 fiscal year to implement the system for the reporting entities.

(d) Travel reports made available on the statewide travel management system may not reveal information made confidential and exempt or exempt by law.

703092

1. A reporting entity must redact confidential and exempt or exempt information from a travel report before posting the report on the statewide travel management system. If the reporting entity becomes aware that an improperly redacted travel report has been posted, the entity must notify the Department of Management Services and immediately request removal of the travel report from the statewide travel management system. Within 7 business days of becoming aware that an improperly redacted travel report has been posted, the entity must post a properly redacted travel report on the statewide travel management system.

2. The Secretary of Management Services or an officer, an employee, or a contractor of the department is not responsible for redacting confidential and exempt or exempt information from a travel report posted on the statewide travel management system.

3. The posting of travel reports on the statewide travel management system or the provision of information on a website for public viewing and downloading does not supersede the duty of a reporting entity to respond to a public records request or subpoena for the information.

Section 6. The Legislature finds that a proper and legitimate state purpose is served when the travel records of state and local employees are transparent to members of the public. Therefore, the Legislature determines and declares that this act fulfills an important state interest.

====== D I R E C T O R Y C L A U S E A M E N D M E N T ======
And the directory clause is amended as follows:

703092

Delete line 267

and insert:

Statutes, is amended, paragraph (c) is added to subsection (9) of that section, and subsection (16) is added to that

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

And the title is amended as follows:

Delete lines 1531 - 1537

and insert:

authorizing the Department of Management Services to adopt rules for specified purposes; providing definitions; requiring executive branch state government agencies and the judicial branch to report certain travel information of public officers and employees in the statewide travel management system; requiring executive branch state government agencies and the judicial branch to use the statewide travel management system for certain purposes; requiring the Department of Management Services to make certain travel reports available to the public by a specified date; prescribing reporting requirements for the statewide travel management system for certain reporting entities; specifying that certain reporting requirements are contingent upon funding by the Legislature; specifying that travel reports may not reveal information confidential and exempt or exempt from public records requirements; providing for the redaction of such information from travel reports; specifying that the Secretary of Management Services

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or the Department of Management Services is not responsible for redacting such portions of travel reports; providing for construction; providing a declaration of important state interest; amending ss.

By the Committee on Community Affairs; and Senator Stargel

578-01099-18 2018354c1

A bill to be entitled

An act relating to government accountability; amending s. 11.40, F.S.; specifying that the Governor, the Commissioner of Education, or the designee of the Governor or of the commissioner, may notify the Legislative Auditing Committee of an entity's failure to comply with certain auditing and financial reporting requirements; amending s. 11.45, F.S.; defining the terms "abuse," "fraud," and "waste"; revising definitions; excluding water management districts from certain audit requirements; removing a cross-reference; authorizing the Auditor General to conduct audits of tourist development councils and county tourism promotion agencies; revising reporting requirements applicable to the Auditor General; amending s. 28.35, F.S.; revising reporting requirements applicable to the Florida Clerks of Court Operations Corporation; amending s. 43.16, F.S.; revising the responsibilities of the Justice Administrative Commission, each state attorney, each public defender, the criminal conflict and civil regional counsel, the capital collateral regional counsel, and the Guardian Ad Litem Program, to include the establishment and maintenance of certain internal controls; amending s. 112.061, F.S.; revising certain lodging rates for the purpose of reimbursement to specified employees; authorizing an employee to expend his or her funds for certain lodging expenses; defining the term "statewide travel management

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

578-01099-18 2018354c1

system"; requiring agencies and the judicial branch to report certain travel information of public officers and employees in the statewide travel management system; requiring executive branch state agencies and the judicial branch to use the statewide travel management system for certain purposes; amending ss. 129.03, 129.06, and 166.241, F.S.; requiring counties and municipalities to maintain certain budget documents on the entities' websites for a specified period; amending s. 215.86, F.S.; revising the purposes for which management systems and internal controls must be established and maintained by each state agency and the judicial branch; amending s. 215.97, F.S.; revising certain audit threshold requirements; amending s. 215.985, F.S.; revising the requirements for a monthly financial statement provided by a water management district; amending s. 218.32, F.S.; revising the requirements of the annual financial audit report of a local governmental entity; authorizing the Department of Financial Services to request additional information from a local governmental entity; requiring a local governmental entity to respond to such requests within a specified timeframe; requiring the department to notify the Legislative Auditing Committee of noncompliance; amending s. 218.33, F.S.; requiring local governmental entities to establish and maintain internal controls to achieve specified purposes; amending s. 218.39, F.S.; requiring an audited entity to respond to audit

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

recommendations under specified circumstances; amending s. 218.391, F.S.; revising membership for the audit committee; prohibiting an audit committee member from being an employee, a chief executive officer, or a chief financial officer of the respective governmental entity; requiring an auditor to include certain information in a management letter; requiring the chair of a governmental entity's governing body to submit an affidavit containing certain information when the entity contracts with an auditor to conduct an audit; providing requirements and procedures for selecting an auditor; requiring the Legislative Auditing Committee to determine whether a governmental entity should be subject to state action under certain circumstances; amending s. 286.0114, F.S.; prohibiting a board or commission from requiring an advance copy of testimony or comments from a member of the public as a precondition to being given the opportunity to be heard at a public meeting; amending s. 373.536, F.S.; deleting obsolete language; requiring water management districts to maintain certain budget documents on the districts' websites for a specified period; amending s. 1001.42, F.S.; authorizing additional internal audits as directed by the district school board; amending s. 1002.33, F.S.; revising the responsibilities of the governing board of a charter school to include the establishment and maintenance of internal controls; amending s. 1002.37, F.S.; requiring completion of an annual financial audit of

the Florida Virtual School; specifying audit requirements; requiring an audit report to be submitted to the board of trustees of the Florida Virtual School and the Auditor General; deleting obsolete provisions; amending s. 1010.01, F.S.; requiring each school district, Florida College System institution, and state university to establish and maintain certain internal controls; amending s. 1010.30, F.S.; requiring a district school board, Florida College System institution board of trustees, or university board of trustees to respond to audit recommendations under certain circumstances; amending s. 218.503, F.S.; conforming provisions and cross-references to changes made by the act; declaring that the act fulfills an important state interest; providing an effective date.

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

Section 1. Subsection (2) of section 11.40, Florida Statutes, is amended to read:

11.40 Legislative Auditing Committee.—

(2) Following notification by the Auditor General, the Department of Financial Services, ~~or~~ the Division of Bond Finance of the State Board of Administration, the Governor or his or her designee, or the Commissioner of Education or his or her designee of the failure of a local governmental entity, district school board, charter school, or charter technical career center to comply with the applicable provisions within s.

11.45(5)-(7), s. 218.32(1), s. 218.38, or s. 218.503(3), the Legislative Auditing Committee may schedule a hearing to determine if the entity should be subject to further state action. If the committee determines that the entity should be subject to further state action, the committee shall:

(a) In the case of a local governmental entity or district school board, direct the Department of Revenue and the Department of Financial Services to withhold any funds not pledged for bond debt service satisfaction which are payable to such entity until the entity complies with the law. The committee shall specify the date that such action must ~~shall~~ begin, and the directive must be received by the Department of Revenue and the Department of Financial Services 30 days before the date of the distribution mandated by law. The Department of Revenue and the Department of Financial Services may implement ~~the provisions of~~ this paragraph.

(b) In the case of a special district created by:

1. A special act, notify the President of the Senate, the Speaker of the House of Representatives, the standing committees of the Senate and the House of Representatives charged with special district oversight as determined by the presiding officers of each respective chamber, the legislators who represent a portion of the geographical jurisdiction of the special district, and the Department of Economic Opportunity that the special district has failed to comply with the law. Upon receipt of notification, the Department of Economic Opportunity shall proceed pursuant to s. 189.062 or s. 189.067. If the special district remains in noncompliance after the process set forth in s. 189.0651, or if a public hearing is not

held, the Legislative Auditing Committee may request the department to proceed pursuant to s. 189.067(3).

2. A local ordinance, notify the chair or equivalent of the local general-purpose government pursuant to s. 189.0652 and the Department of Economic Opportunity that the special district has failed to comply with the law. Upon receipt of notification, the department shall proceed pursuant to s. 189.062 or s. 189.067. If the special district remains in noncompliance after the process set forth in s. 189.0652, or if a public hearing is not held, the Legislative Auditing Committee may request the department to proceed pursuant to s. 189.067(3).

3. Any manner other than a special act or local ordinance, notify the Department of Economic Opportunity that the special district has failed to comply with the law. Upon receipt of notification, the department shall proceed pursuant to s. 189.062 or s. 189.067(3).

(c) In the case of a charter school or charter technical career center, notify the appropriate sponsoring entity, which may terminate the charter pursuant to ss. 1002.33 and 1002.34.

Section 2. Subsection (1), paragraph (j) of subsection (2), paragraph (u) of subsection (3), and paragraph (i) of subsection (7) of section 11.45, Florida Statutes, are amended, and paragraph (x) is added to subsection (3) of that section, to read:

11.45 Definitions; duties; authorities; reports; rules.—

(1) DEFINITIONS.—As used in ss. 11.40-11.51, the term:

(a) "Abuse" means behavior that is deficient or improper when compared with behavior that a prudent person would consider a reasonable and necessary operational practice given the facts

and circumstances. The term includes the misuse of authority or position for personal gain.

(b) ~~(a)~~ "Audit" means a financial audit, operational audit, or performance audit.

(c) ~~(b)~~ "County agency" means a board of county commissioners or other legislative and governing body of a county, however styled, including that of a consolidated or metropolitan government, a clerk of the circuit court, a separate or ex officio clerk of the county court, a sheriff, a property appraiser, a tax collector, a supervisor of elections, or any other officer in whom any portion of the fiscal duties of a body or officer expressly stated in this paragraph are ~~the above are under law~~ separately placed by law.

(d) ~~(c)~~ "Financial audit" means an examination of financial statements in order to express an opinion on the fairness with which they are presented in conformity with generally accepted accounting principles and an examination to determine whether operations are properly conducted in accordance with legal and regulatory requirements. Financial audits must be conducted in accordance with auditing standards generally accepted in the United States and government auditing standards as adopted by the Board of Accountancy. When applicable, the scope of financial audits must ~~shall~~ encompass the additional activities necessary to establish compliance with the Single Audit Act Amendments of 1996, 31 U.S.C. ss. 7501-7507, and other applicable federal law.

(e) "Fraud" means obtaining something of value through willful misrepresentation, including, but not limited to, the intentional misstatements or intentional omissions of amounts or

disclosures in financial statements to deceive users of financial statements, theft of an entity's assets, bribery, or the use of one's position for personal enrichment through the deliberate misuse or misapplication of an organization's resources.

(f) ~~(d)~~ "Governmental entity" means a state agency, a county agency, or any other entity, however styled, that independently exercises any type of state or local governmental function.

(g) ~~(e)~~ "Local governmental entity" means a county agency, municipality, tourist development council, county tourism promotion agency, or special district as defined in s. 189.012. The term~~, but~~ does not include any housing authority established under chapter 421.

(h) ~~(f)~~ "Management letter" means a statement of the auditor's comments and recommendations.

(i) ~~(g)~~ "Operational audit" means an audit whose purpose is to evaluate management's performance in establishing and maintaining internal controls, including controls designed to prevent and detect fraud, waste, and abuse, and in administering assigned responsibilities in accordance with applicable laws, administrative rules, contracts, grant agreements, and other guidelines. Operational audits must be conducted in accordance with government auditing standards. Such audits examine internal controls that are designed and placed in operation to promote and encourage the achievement of management's control objectives in the categories of compliance, economic and efficient operations, reliability of financial records and reports, and safeguarding of assets, and identify weaknesses in those internal controls.

(j) ~~(h)~~ "Performance audit" means an examination of a program, activity, or function of a governmental entity, conducted in accordance with applicable government auditing standards or auditing and evaluation standards of other appropriate authoritative bodies. The term includes an examination of issues related to:

1. Economy, efficiency, or effectiveness of the program.

2. Structure or design of the program to accomplish its goals and objectives.

3. Adequacy of the program to meet the needs identified by the Legislature or governing body.

4. Alternative methods of providing program services or products.

5. Goals, objectives, and performance measures used by the agency to monitor and report program accomplishments.

6. The accuracy or adequacy of public documents, reports, or requests prepared under the program by state agencies.

7. Compliance of the program with appropriate policies, rules, or laws.

8. Any other issues related to governmental entities as directed by the Legislative Auditing Committee.

(k) ~~(i)~~ "Political subdivision" means a separate agency or unit of local government created or established by law and includes, but is not limited to, the following and the officers thereof: authority, board, branch, bureau, city, commission, consolidated government, county, department, district, institution, metropolitan government, municipality, office, officer, public corporation, town, or village.

(l) ~~(j)~~ "State agency" means a separate agency or unit of

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state government created or established by law and includes, but is not limited to, the following and the officers thereof: authority, board, branch, bureau, commission, department, division, institution, office, officer, or public corporation, as the case may be, except any such agency or unit within the legislative branch of state government other than the Florida Public Service Commission.

(m) "Waste" means the act of using or expending resources unreasonably, carelessly, extravagantly, or for no useful purpose.

(2) DUTIES.—The Auditor General shall:

(j) Conduct audits of local governmental entities when determined to be necessary by the Auditor General, when directed by the Legislative Auditing Committee, or when otherwise required by law. No later than 18 months after the release of the audit report, the Auditor General shall perform such appropriate followup procedures as he or she deems necessary to determine the audited entity's progress in addressing the findings and recommendations contained within the Auditor General's previous report. The Auditor General shall notify each member of the audited entity's governing body and the Legislative Auditing Committee of the results of his or her determination. For purposes of this paragraph, local governmental entities do not include water management districts.

The Auditor General shall perform his or her duties independently but under the general policies established by the Legislative Auditing Committee. This subsection does not limit the Auditor General's discretionary authority to conduct other

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audits or engagements of governmental entities as authorized in subsection (3).

(3) AUTHORITY FOR AUDITS AND OTHER ENGAGEMENTS.—The Auditor General may, pursuant to his or her own authority, or at the direction of the Legislative Auditing Committee, conduct audits or other engagements as determined appropriate by the Auditor General of:

(u) The Florida Virtual School ~~pursuant to s. 1002.37~~.

(x) Tourist development councils and county tourism promotion agencies.

(7) AUDITOR GENERAL REPORTING REQUIREMENTS.—

(i) The Auditor General shall annually transmit by July 15, to the President of the Senate, the Speaker of the House of Representatives, and the Department of Financial Services, a list of all school districts, charter schools, charter technical career centers, Florida College System institutions, state universities, and local governmental entities ~~water management districts~~ that have failed to comply with the transparency requirements as identified in the audit reports reviewed pursuant to paragraph (b) and those conducted pursuant to subsection (2).

Section 3. Paragraph (d) of subsection (2) of section 28.35, Florida Statutes, is amended to read:

28.35 Florida Clerks of Court Operations Corporation.—

(2) The duties of the corporation shall include the following:

(d) Developing and certifying a uniform system of workload measures and applicable workload standards for court-related functions as developed by the corporation and clerk workload

performance in meeting the workload performance standards. These workload measures and workload performance standards shall be designed to facilitate an objective determination of the performance of each clerk in accordance with minimum standards for fiscal management, operational efficiency, and effective collection of fines, fees, service charges, and court costs. The corporation shall develop the workload measures and workload performance standards in consultation with the Legislature. When the corporation finds a clerk has not met the workload performance standards, the corporation shall identify the nature of each deficiency and any corrective action recommended and taken by the affected clerk of the court. For quarterly periods ending on the last day of March, June, September, and December of each year, the corporation shall notify the Legislature of any clerk not meeting workload performance standards and provide a copy of any corrective action plans. Such notifications shall be submitted no later than 45 days after the end of the preceding quarterly period. As used in this subsection, the term:

1. "Workload measures" means the measurement of the activities and frequency of the work required for the clerk to adequately perform the court-related duties of the office as defined by the membership of the Florida Clerks of Court Operations Corporation.

2. "Workload performance standards" means the standards developed to measure the timeliness and effectiveness of the activities that are accomplished by the clerk in the performance of the court-related duties of the office as defined by the membership of the Florida Clerks of Court Operations

Corporation.

Section 4. Present subsections (6) and (7) of section 43.16, Florida Statutes, are renumbered as subsections (7) and (8), respectively, and a new subsection (6) is added to that section, to read:

43.16 Justice Administrative Commission; membership, powers and duties.—

(6) The commission, each state attorney, each public defender, the criminal conflict and civil regional counsel, the capital collateral regional counsel, and the Guardian Ad Litem Program shall establish and maintain internal controls designed to:

(a) Prevent and detect fraud, waste, and abuse as defined in s. 11.45(1).

(b) Promote and encourage compliance with applicable laws, rules, contracts, grant agreements, and best practices.

(c) Support economical and efficient operations.

(d) Ensure reliability of financial records and reports.

(e) Safeguard assets.

Section 5. Subsection (6) of section 112.061, Florida Statutes, is amended, and subsection (16) is added to that section, to read:

112.061 Per diem and travel expenses of public officers, employees, and authorized persons.—

(6) RATES OF PER DIEM AND SUBSISTENCE ALLOWANCE.—For purposes of reimbursement rates and methods of calculation, per diem and subsistence allowances are provided as follows:

(a) All travelers shall be allowed for subsistence when traveling to a convention or conference or when traveling within

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or outside the state in order to conduct bona fide state business, which convention, conference, or business serves a direct and lawful public purpose with relation to the public agency served by the person attending such meeting or conducting such business, either of the following for each day of such travel at the option of the traveler:

1. Eighty dollars per diem; or

2. If actual expenses exceed $80, the amounts permitted in paragraph (b) for subsistence, plus actual expenses for lodging at a single-occupancy rate, except as provided in paragraph (c), to be substantiated by paid bills therefor.

When lodging or meals are provided at a state institution, the traveler shall be reimbursed only for the actual expenses of such lodging or meals, not to exceed the maximum provided for in this subsection.

(b) All travelers shall be allowed the following amounts for subsistence while on Class C travel on official business as provided in paragraph (5)(b):

1. Breakfast.....$6

2. Lunch.....$11

3. Dinner.....$19

(c) Actual expenses for lodging associated with the attendance of an employee of a state agency or the judicial branch at a meeting, conference, or convention organized or sponsored in whole or in part by a state agency or the judicial branch may not exceed $150 per day. However, an employee may expend his or her own funds for any lodging expenses that exceed $150 per day. For purposes of this paragraph, a meeting does not

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include travel activities for conducting an audit, examination, inspection, or investigation or travel activities related to a litigation or emergency response.

(d) ~~(c)~~ No one, whether traveling out of state or in state, shall be reimbursed for any meal or lodging included in a convention or conference registration fee paid by the state.

(16) STATEWIDE TRAVEL MANAGEMENT SYSTEM.—

(a) For purposes of this subsection, the term "statewide travel management system" means the system acquired by the Department of Management Services to:

1. Standardize and automate agency travel management;

2. Allow for travel planning and approval, expense reporting, and reimbursement; and

3. Allow a person to query travel information by public employee or officer name and position title, purpose of travel, dates and location of travel, mode of travel, confirmation of agency head or designee authorization if required, and total travel cost.

(b) All agencies and the judicial branch must report public officer and employee travel information in the statewide travel management system, including, but not limited to, officer or employee name and position title, purpose of travel, dates and location of travel, mode of travel, confirmation of agency head or designee authorization if required, and total travel cost. At a minimum, such information must be reported in the statewide travel management system on a monthly basis.

(c) All executive branch state agencies and the judicial branch must use the statewide travel management system for purposes of travel authorization and reimbursement.

Section 6. Paragraph (c) of subsection (3) of section 129.03, Florida Statutes, is amended to read:

129.03 Preparation and adoption of budget.—

(3) The county budget officer, after tentatively ascertaining the proposed fiscal policies of the board for the next fiscal year, shall prepare and present to the board a tentative budget for the next fiscal year for each of the funds provided in this chapter, including all estimated receipts, taxes to be levied, and balances expected to be brought forward and all estimated expenditures, reserves, and balances to be carried over at the end of the year.

(c) The board shall hold public hearings to adopt tentative and final budgets pursuant to s. 200.065. The hearings shall be primarily for the purpose of hearing requests and complaints from the public regarding the budgets and the proposed tax levies and for explaining the budget and any proposed or adopted amendments. The tentative budget must be posted on the county's official website at least 2 days before the public hearing to consider such budget and must remain on the website for at least 45 days. The final budget must be posted on the website within 30 days after adoption and must remain on the website for at least 2 years. The tentative budgets, adopted tentative budgets, and final budgets shall be filed in the office of the county auditor as a public record. Sufficient reference in words and figures to identify the particular transactions must ~~shall~~ be made in the minutes of the board to record its actions with reference to the budgets.

Section 7. Paragraph (f) of subsection (2) of section 129.06, Florida Statutes, is amended to read:

129.06 Execution and amendment of budget.—

(2) The board at any time within a fiscal year may amend a budget for that year, and may within the first 60 days of a fiscal year amend the budget for the prior fiscal year, as follows:

(f) Unless otherwise prohibited by law, if an amendment to a budget is required for a purpose not specifically authorized in paragraphs (a)-(e), the amendment may be authorized by resolution or ordinance of the board of county commissioners adopted following a public hearing.

1. The public hearing must be advertised at least 2 days, but not more than 5 days, before the date of the hearing. The advertisement must appear in a newspaper of paid general circulation and must identify the name of the taxing authority, the date, place, and time of the hearing, and the purpose of the hearing. The advertisement must also identify each budgetary fund to be amended, the source of the funds, the use of the funds, and the total amount of each fund's appropriations.

2. If the board amends the budget pursuant to this paragraph, the adopted amendment must be posted on the county's official website within 5 days after adoption and must remain on the website for at least 2 years.

Section 8. Subsections (3) and (5) of section 166.241, Florida Statutes, are amended to read:

166.241 Fiscal years, budgets, and budget amendments.—

(3) The tentative budget must be posted on the municipality's official website at least 2 days before the budget hearing, held pursuant to s. 200.065 or other law, to consider such budget and must remain on the website for at least

45 days. The final adopted budget must be posted on the municipality's official website within 30 days after adoption and must remain on the website for at least 2 years. If the municipality does not operate an official website, the municipality must, within a reasonable period of time as established by the county or counties in which the municipality is located, transmit the tentative budget and final budget to the manager or administrator of such county or counties who shall post the budgets on the county's website.

(5) If the governing body of a municipality amends the budget pursuant to paragraph (4)(c), the adopted amendment must be posted on the official website of the municipality within 5 days after adoption and must remain on the website for at least 2 years. If the municipality does not operate an official website, the municipality must, within a reasonable period of time as established by the county or counties in which the municipality is located, transmit the adopted amendment to the manager or administrator of such county or counties who shall post the adopted amendment on the county's website.

Section 9. Section 215.86, Florida Statutes, is amended to read:

215.86 Management systems and controls.—Each state agency and the judicial branch as defined in s. 216.011 shall establish and maintain management systems and internal controls designed to:

(1) Prevent and detect fraud, waste, and abuse as defined in s. 11.45(1). ~~that~~

(2) Promote and encourage compliance with applicable laws, rules, contracts, and grant agreements.~~;~~

(3) Support economical and ~~economic,~~ efficient~~, and effective~~ operations.~~.~~

(4) Ensure reliability of financial records and reports.~~.~~

(5) Safeguard ~~and safeguarding of~~ assets. ~~Accounting systems and procedures shall be designed to fulfill the requirements of generally accepted accounting principles.~~

Section 10. Paragraph (a) of subsection (2) of section 215.97, Florida Statutes, is amended to read:

215.97 Florida Single Audit Act.—

(2) As used in this section, the term:

(a) "Audit threshold" means the threshold amount used to determine when a state single audit or project-specific audit of a nonstate entity shall be conducted in accordance with this section. Each nonstate entity that expends a total amount of state financial assistance equal to or in excess of $750,000 in any fiscal year of such nonstate entity shall be required to have a state single audit~~,~~ or a project-specific audit~~,~~ for such fiscal year in accordance with the requirements of this section. ~~Every 2 years the Auditor General,~~ After consulting with the Executive Office of the Governor, the Department of Financial Services, and all state awarding agencies, the Auditor General shall periodically review the threshold amount for requiring audits under this section and may recommend any appropriate statutory change to revise the threshold amount in the annual report submitted pursuant to s. 11.45(7)(h) to the Legislature ~~adjust such threshold amount consistent with the purposes of this section~~.

Section 11. Subsection (11) of section 215.985, Florida Statutes, is amended to read:

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215.985 Transparency in government spending.—

(11) Each water management district shall provide a monthly financial statement in the form and manner prescribed by the Department of Financial Services to the district's ~~its~~ governing board and make such monthly financial statement available for public access on its website.

Section 12. Paragraph (d) of subsection (1) and subsection (2) of section 218.32, Florida Statutes, are amended to read:

218.32 Annual financial reports; local governmental entities.—

(1)

(d) Each local governmental entity that is required to provide for an audit under s. 218.39(1) must submit a copy of the audit report and annual financial report to the department within 45 days after the completion of the audit report but no later than 9 months after the end of the fiscal year. In conducting an audit of a local governmental entity pursuant to s. 218.39, an independent certified public accountant shall determine whether the entity's annual financial report is in agreement with the audited financial statements. If the audited financial statements are not in agreement with the annual financial report, the accountant shall specify and explain the significant differences that exist between the audited financial statements and the annual financial report.

(2) The department shall annually by December 1 file a verified report with the Governor, the Legislature, the Auditor General, and the Special District Accountability Program of the Department of Economic Opportunity showing the revenues, both locally derived and derived from intergovernmental transfers,

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and the expenditures of each local governmental entity, regional planning council, local government finance commission, and municipal power corporation that is required to submit an annual financial report. In preparing the verified report, the department may request additional information from the local governmental entity. The information requested must be provided to the department within 45 days after the request. If the local governmental entity does not comply with the request, the department shall notify the Legislative Auditing Committee, which may take action pursuant to s. 11.40(2). The report must include, but is not limited to:

(a) The total revenues and expenditures of each local governmental entity that is a component unit included in the annual financial report of the reporting entity.

(b) The amount of outstanding long-term debt by each local governmental entity. For purposes of this paragraph, the term "long-term debt" means any agreement or series of agreements to pay money, which, at inception, contemplate terms of payment exceeding 1 year in duration.

Section 13. Present subsection (3) of section 218.33, Florida Statutes, is renumbered as subsection (4), and a new subsection (3) is added to that section, to read:

218.33 Local governmental entities; establishment of uniform fiscal years and accounting practices and procedures.—

(3) Each local governmental entity shall establish and maintain internal controls designed to:

(a) Prevent and detect fraud, waste, and abuse as defined in s. 11.45(1).

(b) Promote and encourage compliance with applicable laws,

rules, contracts, grant agreements, and best practices.

(c) Support economical and efficient operations.

(d) Ensure reliability of financial records and reports.

(e) Safeguard assets.

Section 14. Present subsections (8) through (12) of section 218.39, Florida Statutes, are renumbered as subsections (9) through (13), respectively, and a new subsection (8) is added to that section, to read:

218.39 Annual financial audit reports.—

(8) If the audit report includes a recommendation that was included in the preceding financial audit report but remains unaddressed, the governing body of the audited entity, within 60 days after the delivery of the audit report to the governing body, shall indicate during a regularly scheduled public meeting whether it intends to take corrective action, the intended corrective action, and the timeframe for the corrective action. If the governing body indicates that it does not intend to take corrective action, it must explain its decision at the public meeting.

Section 15. Subsection (2) of section 218.391, Florida Statutes, is amended, and subsections (9) through (13) are added to that section, to read:

218.391 Auditor selection procedures.—

(2) The governing body of a ~~charter~~ county, municipality, special district, district school board, charter school, or charter technical career center shall establish an audit committee.

(a) The audit committee for a county ~~Each noncharter county shall establish an audit committee that~~, at a minimum, shall

consist of each of the county officers elected pursuant to the county charter or s. 1(d), Art. VIII of the State Constitution~~,~~ or their respective designees ~~a designee,~~ and one member of the board of county commissioners or its designee.

(b) The audit committee for a municipality, special district, district school board, charter school, or charter technical career center shall consist of at least three members. One member of the audit committee must be a member of the governing body of an entity specified in this paragraph, who shall also serve as the chair of the committee.

(c) An employee, chief executive officer, or chief financial officer of the county, municipality, special district, district school board, charter school, or charter technical career center may not serve as a member of an audit committee established under this subsection.

(d) The primary purpose of the audit committee is to assist the governing body in selecting an auditor to conduct the annual financial audit required in s. 218.39; however, the audit committee may serve other audit oversight purposes as determined by the entity's governing body. The public may ~~shall~~ not be excluded from the proceedings under this section.

(9) For each audit required by s. 218.39, the auditor shall include the following information in the management letter prepared pursuant to s. 218.39(4):

(a) The date the entity's governing body approved the selection of the auditor and the date the entity and the auditor executed the most recent contract pursuant to subsection (7);

(b) The first fiscal year for the auditor conducted the audit under the most recently executed contract pursuant to

subsection (7); and

(c) The contract period, including renewals, and conditions under which the contract may be terminated or renewed.

(10) On each occasion that an entity contracts with an auditor to conduct an audit pursuant to s. 218.39, an affidavit shall be executed by the chair of the entity's governing body in a format prescribed in accordance with rules adopted by the Auditor General, affirming that the auditor was selected in compliance with the requirements of subsections (3)-(6). The affidavit must accompany the entity's first audit report prepared by the auditor under the most recently executed contract pursuant to subsection (7). The affidavit shall include the following information:

(a) The date the entity's governing body approved the selection of the auditor;

(b) The first fiscal year for which the auditor conducted the audit; and

(c) The contract period, including renewals, and conditions under which the contract may be terminated or renewed.

(11) If the entity fails to select the auditor in accordance with the requirements of subsections (3)-(6), the entity shall again perform the auditor selection process in accordance with this section to select an auditor to conduct audits for subsequent fiscal years if the original audit was performed under a multiyear contract.

(a) If performing the auditor selection process again in accordance with this section would preclude the entity from timely completing the annual financial audit required by s. 218.39, the entity shall again perform the auditor selection

process in accordance with this section for the subsequent annual financial audit. A multiyear contract entered into between an entity and an auditor after the effective date of this act may not prohibit or restrict an entity from complying with the section.

(b) If the entity fails to perform the auditor selection process again, pursuant to this subsection, the Legislative Auditing Committee shall determine whether the entity should be subject to state action pursuant to s. 11.40(2).

(12) If the entity fails to provide the Auditor General with the affidavit required by subsection (10), the Auditor General shall request that the entity provide the affidavit. The affidavit must be provided within 45 days after the date of the request. If the entity does not comply with the Auditor General's request, the Legislative Auditing Committee shall determine whether the entity should be subject to state action pursuant to s. 11.40(2).

(13) If the entity provides the Auditor General with the affidavit required in subsection (10) but failed to select the auditor in accordance with the requirements of subsections (3)-(6), the Legislative Auditing Committee shall determine whether the entity should be subject to state action pursuant to s. 11.40(2).

Section 16. Subsection (2) of section 286.0114, Florida Statutes, is amended to read:

286.0114 Public meetings; reasonable opportunity to be heard; attorney fees.—

(2) Members of the public shall be given a reasonable opportunity to be heard on a proposition before a board or

commission. The opportunity to be heard need not occur at the same meeting at which the board or commission takes official action on the proposition if the opportunity occurs at a meeting that is during the decisionmaking process and is within reasonable proximity in time before the meeting at which the board or commission takes the official action. A board or commission may not require a member of the public to provide an advance written copy of his or her testimony or comments as a condition of being given the opportunity to be heard at a meeting. This section does not prohibit a board or commission from maintaining orderly conduct or proper decorum in a public meeting. The opportunity to be heard is subject to rules or policies adopted by the board or commission, as provided in subsection (4).

Section 17. Paragraph (e) of subsection (4), paragraph (d) of subsection (5), and paragraph (d) of subsection (6) of section 373.536, Florida Statutes, are amended to read:

373.536 District budget and hearing thereon.—

(4) BUDGET CONTROLS; FINANCIAL INFORMATION.—

(e) ~~By September 1, 2012,~~ Each district shall provide a monthly financial statement in the form and manner prescribed by the Department of Financial Services to the district's governing board and make such monthly financial statement available for public access on its website.

(5) TENTATIVE BUDGET CONTENTS AND SUBMISSION; REVIEW AND APPROVAL.—

(d) Each district shall, by August 1 of each year, submit for review a tentative budget and a description of any significant changes from the preliminary budget submitted to the

Legislature pursuant to s. 373.535 to the Governor, the President of the Senate, the Speaker of the House of Representatives, the chairs of all legislative committees and subcommittees having substantive or fiscal jurisdiction over water management districts, as determined by the President of the Senate or the Speaker of the House of Representatives, as applicable, the secretary of the department, and the governing body of each county in which the district has jurisdiction or derives any funds for the operations of the district. The tentative budget must be posted on the district's official website at least 2 days before budget hearings held pursuant to s. 200.065 or other law and must remain on the website for at least 45 days.

(6) FINAL BUDGET; ANNUAL AUDIT; CAPITAL IMPROVEMENTS PLAN; WATER RESOURCE DEVELOPMENT WORK PROGRAM.—

(d) The final adopted budget must be posted on the water management district's official website within 30 days after adoption and must remain on the website for at least 2 years.

Section 18. Paragraph (l) of subsection (12) of section 1001.42, Florida Statutes, is amended to read:

1001.42 Powers and duties of district school board.—The district school board, acting as a board, shall exercise all powers and perform all duties listed below:

(12) FINANCE.—Take steps to assure students adequate educational facilities through the financial procedure authorized in chapters 1010 and 1011 and as prescribed below:

(l) *Internal auditor.*—May employ an internal auditor to perform ongoing financial verification of the financial records of the school district and such other audits and reviews as the

district school board directs for the purpose of determining:

1. The adequacy of internal controls designed to prevent and detect fraud, waste, and abuse as defined in s. 11.45(1).

2. Compliance with applicable laws, rules, contracts, grant agreements, district school board-approved policies, and best practices.

3. The efficiency of operations.

4. The reliability of financial records and reports.

5. The safeguarding of assets.

The internal auditor shall report directly to the district school board or its designee.

Section 19. Paragraph (j) of subsection (9) of section 1002.33, Florida Statutes, is amended to read:

1002.33 Charter schools.—

(9) CHARTER SCHOOL REQUIREMENTS.—

(j) The governing body of the charter school shall be responsible for:

1. Establishing and maintaining internal controls designed to:

a. Prevent and detect fraud, waste, and abuse as defined in s. 11.45(1).

b. Promote and encourage compliance with applicable laws, rules, contracts, grant agreements, and best practices.

c. Support economical and efficient operations.

d. Ensure reliability of financial records and reports.

e. Safeguard assets.

2.~~1.~~ Ensuring that the charter school has retained the services of a certified public accountant or auditor for the

annual financial audit, pursuant to s. 1002.345(2), who shall submit the report to the governing body.

3.~~2.~~ Reviewing and approving the audit report, including audit findings and recommendations for the financial recovery plan.

4.a.~~3.a.~~ Performing the duties in s. 1002.345, including monitoring a corrective action plan.

b. Monitoring a financial recovery plan in order to ensure compliance.

5.~~4.~~ Participating in governance training approved by the department which must include government in the sunshine, conflicts of interest, ethics, and financial responsibility.

Section 20. Present subsections (6) through (10) of section 1002.37, Florida Statutes, are renumbered as subsections (7) through (11), respectively, present subsection (6) is amended, and a new subsection (6) is added to that section, to read:

1002.37 The Florida Virtual School.—

(6) The Florida Virtual School shall have an annual financial audit of its accounts and records conducted by an independent auditor who is a certified public accountant licensed under chapter 473. The independent auditor shall conduct the audit in accordance with rules adopted by the Auditor General pursuant to s. 11.45 and, upon completion of the audit, shall prepare an audit report in accordance with such rules. The audit report must include a written statement by the board of trustees describing corrective action to be taken in response to each of the recommendations of the independent auditor included in the audit report. The independent auditor shall submit the audit report to the board of trustees and the

Auditor General no later than 9 months after the end of the preceding fiscal year.

(7)~~(6)~~ The board of trustees shall annually submit to the Governor, the Legislature, the Commissioner of Education, and the State Board of Education the audit report prepared pursuant to subsection (6) and a complete and detailed report setting forth:

(a) The operations and accomplishments of the Florida Virtual School within the state and those occurring outside the state as Florida Virtual School Global.

(b) The marketing and operational plan for the Florida Virtual School and Florida Virtual School Global, including recommendations regarding methods for improving the delivery of education through the Internet and other distance learning technology.

(c) The assets and liabilities of the Florida Virtual School and Florida Virtual School Global at the end of the fiscal year.

~~(d) A copy of an annual financial audit of the accounts and records of the Florida Virtual School and Florida Virtual School Global, conducted by an independent certified public accountant and performed in accordance with rules adopted by the Auditor General.~~

(d)~~(c)~~ Recommendations regarding the unit cost of providing services to students through the Florida Virtual School and Florida Virtual School Global. In order to most effectively develop public policy regarding any future funding of the Florida Virtual School, it is imperative that the cost of the program is accurately identified. The identified cost of the

program must be based on reliable data.

(e)~~(f)~~ Recommendations regarding an accountability mechanism to assess the effectiveness of the services provided by the Florida Virtual School and Florida Virtual School Global.

Section 21. Subsection (5) is added to section 1010.01, Florida Statutes, to read:

1010.01 Uniform records and accounts.—

(5) Each school district, Florida College System institution, and state university shall establish and maintain internal controls designed to:

(a) Prevent and detect fraud, waste, and abuse as defined in s. 11.45(1).

(b) Promote and encourage compliance with applicable laws, rules, contracts, grant agreements, and best practices.

(c) Support economical and efficient operations.

(d) Ensure reliability of financial records and reports.

(e) Safeguard assets.

Section 22. Subsection (2) of section 1010.30, Florida Statutes, is amended to read:

1010.30 Audits required.—

(2) If a school district, Florida College System institution, or university audit report includes a recommendation that was included in the preceding financial audit report but remains unaddressed ~~an audit contains a significant finding~~, the district school board, the Florida College System institution board of trustees, or the university board of trustees, within 60 days after the delivery of the audit report to the school district, Florida College System institution, or university, shall indicate ~~conduct an audit~~

~~overview~~ during a regularly scheduled public meeting whether it intends to take corrective action, the intended corrective action, and the timeframe for the corrective action. If the district school board, Florida College System institution board of trustees, or university board of trustees indicates that it does not intend to take corrective action, it shall explain its decision at the public meeting.

Section 23. Subsection (3) of section 218.503, Florida Statutes, is amended to read:

218.503 Determination of financial emergency.—

(3) Upon notification that one or more of the conditions in subsection (1) have occurred or will occur if action is not taken to assist the local governmental entity or district school board, the Governor or his or her designee shall contact the local governmental entity or the Commissioner of Education or his or her designee shall contact the district school board, as appropriate, to determine what actions have been taken by the local governmental entity or the district school board to resolve or prevent the condition. The information requested must be provided within 45 days after the date of the request. If the local governmental entity or the district school board does not comply with the request, the Governor or his or her designee or the Commissioner of Education or his or her designee shall notify ~~the members of~~ the Legislative Auditing Committee, which ~~who~~ may take action pursuant to s. 11.40(2) ~~s. 11.40~~. The Governor or the Commissioner of Education, as appropriate, shall determine whether the local governmental entity or the district school board needs state assistance to resolve or prevent the condition. If state assistance is needed, the local governmental

entity or district school board is considered to be in a state of financial emergency. The Governor or the Commissioner of Education, as appropriate, has the authority to implement measures as set forth in ss. 218.50-218.504 to assist the local governmental entity or district school board in resolving the financial emergency. Such measures may include, but are not limited to:

(a) Requiring approval of the local governmental entity's budget by the Governor or approval of the district school board's budget by the Commissioner of Education.

(b) Authorizing a state loan to a local governmental entity and providing for repayment of same.

(c) Prohibiting a local governmental entity or district school board from issuing bonds, notes, certificates of indebtedness, or any other form of debt until such time as it is no longer subject to this section.

(d) Making such inspections and reviews of records, information, reports, and assets of the local governmental entity or district school board as are needed. The appropriate local officials shall cooperate in such inspections and reviews.

(e) Consulting with officials and auditors of the local governmental entity or the district school board and the appropriate state officials regarding any steps necessary to bring the books of account, accounting systems, financial procedures, and reports into compliance with state requirements.

(f) Providing technical assistance to the local governmental entity or the district school board.

(g)1. Establishing a financial emergency board to oversee the activities of the local governmental entity or the district

school board. If a financial emergency board is established for a local governmental entity, the Governor shall appoint board members and select a chair. If a financial emergency board is established for a district school board, the State Board of Education shall appoint board members and select a chair. The financial emergency board shall adopt such rules as are necessary for conducting board business. The board may:

a. Make such reviews of records, reports, and assets of the local governmental entity or the district school board as are needed.

b. Consult with officials and auditors of the local governmental entity or the district school board and the appropriate state officials regarding any steps necessary to bring the books of account, accounting systems, financial procedures, and reports of the local governmental entity or the district school board into compliance with state requirements.

c. Review the operations, management, efficiency, productivity, and financing of functions and operations of the local governmental entity or the district school board.

d. Consult with other governmental entities for the consolidation of all administrative direction and support services, including, but not limited to, services for asset sales, economic and community development, building inspections, parks and recreation, facilities management, engineering and construction, insurance coverage, risk management, planning and zoning, information systems, fleet management, and purchasing.

2. The recommendations and reports made by the financial emergency board must be submitted to the Governor for local governmental entities or to the Commissioner of Education and

the State Board of Education for district school boards for appropriate action.

(h) Requiring and approving a plan, to be prepared by officials of the local governmental entity or the district school board in consultation with the appropriate state officials, prescribing actions that will cause the local governmental entity or district school board to no longer be subject to this section. The plan must include, but need not be limited to:

1. Provision for payment in full of obligations outlined in subsection (1), designated as priority items, which are currently due or will come due.

2. Establishment of priority budgeting or zero-based budgeting in order to eliminate items that are not affordable.

3. The prohibition of a level of operations which can be sustained only with nonrecurring revenues.

4. Provisions implementing the consolidation, sourcing, or discontinuance of all administrative direction and support services, including, but not limited to, services for asset sales, economic and community development, building inspections, parks and recreation, facilities management, engineering and construction, insurance coverage, risk management, planning and zoning, information systems, fleet management, and purchasing.

Section 24. The Legislature finds that a proper and legitimate state purpose is served when internal controls are established to prevent and detect fraud, waste, and abuse and to safeguard and account for government funds and property. Therefore, the Legislature determines and declares that this act fulfills an important state interest.

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

Section 25. This act shall take effect July 1, 2018.

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

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LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
03/02/2018	.	
	.	
	.	
	.	

The Committee on Appropriations (Stargel) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (2) of section 11.40, Florida Statutes, is amended to read:

11.40 Legislative Auditing Committee.—

(2) Following notification by the Auditor General, the Department of Financial Services, ~~or~~ the Division of Bond Finance of the State Board of Administration, the Governor or

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his or her designee, or the Commissioner of Education or his or her designee of the failure of a local governmental entity, district school board, charter school, or charter technical career center to comply with the applicable provisions within s. 11.45(5)-(7), s. 218.32(1), s. 218.38, or s. 218.503(3), the Legislative Auditing Committee shall ~~may~~ schedule a hearing to determine if the entity should be subject to further state action. If the committee determines that the entity should be subject to further state action, the committee shall:

(a) In the case of a local governmental entity or district school board, direct the Department of Revenue and the Department of Financial Services to withhold any funds not pledged for bond debt service satisfaction which are payable to such entity until the entity complies with the law. The committee shall specify the date that such action must ~~shall~~ begin, and the directive must be received by the Department of Revenue and the Department of Financial Services 30 days before the date of the distribution mandated by law. The Department of Revenue and the Department of Financial Services may implement ~~the provisions of~~ this paragraph.

(b) In the case of a special district created by:

1. A special act, notify the President of the Senate, the Speaker of the House of Representatives, the standing committees of the Senate and the House of Representatives charged with special district oversight as determined by the presiding officers of each respective chamber, the legislators who represent a portion of the geographical jurisdiction of the special district, and the Department of Economic Opportunity that the special district has failed to comply with the law.

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Upon receipt of notification, the Department of Economic Opportunity shall proceed pursuant to s. 189.062 or s. 189.067. If the special district remains in noncompliance after the process set forth in s. 189.0651, or if a public hearing is not held, the Legislative Auditing Committee may request the department to proceed pursuant to s. 189.067(3).

2. A local ordinance, notify the chair or equivalent of the local general-purpose government pursuant to s. 189.0652 and the Department of Economic Opportunity that the special district has failed to comply with the law. Upon receipt of notification, the department shall proceed pursuant to s. 189.062 or s. 189.067. If the special district remains in noncompliance after the process set forth in s. 189.0652, or if a public hearing is not held, the Legislative Auditing Committee may request the department to proceed pursuant to s. 189.067(3).

3. Any manner other than a special act or local ordinance, notify the Department of Economic Opportunity that the special district has failed to comply with the law. Upon receipt of notification, the department shall proceed pursuant to s. 189.062 or s. 189.067(3).

(c) In the case of a charter school or charter technical career center, notify the appropriate sponsoring entity, which may terminate the charter pursuant to ss. 1002.33 and 1002.34.

Section 2. Subsection (1), paragraph (j) of subsection (2), paragraph (u) of subsection (3), and paragraph (i) of subsection (7) of section 11.45, Florida Statutes, are amended, and paragraph (y) is added to subsection (3) of that section, to read:

11.45 Definitions; duties; authorities; reports; rules.—

(1) DEFINITIONS.—As used in ss. 11.40-11.51, the term:

(a) "Abuse" means behavior that is deficient or improper when compared with behavior that a prudent person would consider a reasonable and necessary operational practice given the facts and circumstances. The term includes the misuse of authority or position for personal gain.

(b) ~~(a)~~ "Audit" means a financial audit, operational audit, or performance audit.

(c) ~~(b)~~ "County agency" means a board of county commissioners or other legislative and governing body of a county, however styled, including that of a consolidated or metropolitan government, a clerk of the circuit court, a separate or ex officio clerk of the county court, a sheriff, a property appraiser, a tax collector, a supervisor of elections, or any other officer in whom any portion of the fiscal duties of a body or officer expressly stated in this paragraph are ~~the above are under law~~ separately placed by law.

(d) ~~(c)~~ "Financial audit" means an examination of financial statements in order to express an opinion on the fairness with which they are presented in conformity with generally accepted accounting principles and an examination to determine whether operations are properly conducted in accordance with legal and regulatory requirements. Financial audits must be conducted in accordance with auditing standards generally accepted in the United States and government auditing standards as adopted by the Board of Accountancy. When applicable, the scope of financial audits must ~~shall~~ encompass the additional activities necessary to establish compliance with the Single Audit Act Amendments of 1996, 31 U.S.C. ss. 7501-7507, and other

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applicable federal law.

(e) "Fraud" means obtaining something of value through willful misrepresentation, including, but not limited to, the intentional misstatements or intentional omissions of amounts or disclosures in financial statements to deceive users of financial statements, theft of an entity's assets, bribery, or the use of one's position for personal enrichment through the deliberate misuse or misapplication of an organization's resources.

(f) ~~(d)~~ "Governmental entity" means a state agency, a county agency, or any other entity, however styled, that independently exercises any type of state or local governmental function.

(g) ~~(e)~~ "Local governmental entity" means a county agency, municipality, tourist development council, county tourism promotion agency, or special district as defined in s. 189.012. The term~~, but~~ does not include any housing authority established under chapter 421.

(h) ~~(f)~~ "Management letter" means a statement of the auditor's comments and recommendations.

(i) ~~(g)~~ "Operational audit" means an audit whose purpose is to evaluate management's performance in establishing and maintaining internal controls, including controls designed to prevent and detect fraud, waste, and abuse, and in administering assigned responsibilities in accordance with applicable laws, administrative rules, contracts, grant agreements, and other guidelines. Operational audits must be conducted in accordance with government auditing standards. Such audits examine internal controls that are designed and placed in operation to promote and encourage the achievement of management's control objectives

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in the categories of compliance, economic and efficient operations, reliability of financial records and reports, and safeguarding of assets, and identify weaknesses in those internal controls.

(j) ~~(h)~~ "Performance audit" means an examination of a program, activity, or function of a governmental entity, conducted in accordance with applicable government auditing standards or auditing and evaluation standards of other appropriate authoritative bodies. The term includes an examination of issues related to:

1. Economy, efficiency, or effectiveness of the program.

2. Structure or design of the program to accomplish its goals and objectives.

3. Adequacy of the program to meet the needs identified by the Legislature or governing body.

4. Alternative methods of providing program services or products.

5. Goals, objectives, and performance measures used by the agency to monitor and report program accomplishments.

6. The accuracy or adequacy of public documents, reports, or requests prepared under the program by state agencies.

7. Compliance of the program with appropriate policies, rules, or laws.

8. Any other issues related to governmental entities as directed by the Legislative Auditing Committee.

(k) ~~(i)~~ "Political subdivision" means a separate agency or unit of local government created or established by law and includes, but is not limited to, the following and the officers thereof: authority, board, branch, bureau, city, commission,

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consolidated government, county, department, district, institution, metropolitan government, municipality, office, officer, public corporation, town, or village.

(l) ~~(j)~~ "State agency" means a separate agency or unit of state government created or established by law and includes, but is not limited to, the following and the officers thereof: authority, board, branch, bureau, commission, department, division, institution, office, officer, or public corporation, as the case may be, except any such agency or unit within the legislative branch of state government other than the Florida Public Service Commission.

(m) "Waste" means the act of using or expending resources unreasonably, carelessly, extravagantly, or for no useful purpose.

(2) DUTIES.—The Auditor General shall:

(j) Conduct audits of local governmental entities when determined to be necessary by the Auditor General, when directed by the Legislative Auditing Committee, or when otherwise required by law. No later than 18 months after the release of the audit report, the Auditor General shall perform such appropriate followup procedures as he or she deems necessary to determine the audited entity's progress in addressing the findings and recommendations contained within the Auditor General's previous report. The Auditor General shall notify each member of the audited entity's governing body and the Legislative Auditing Committee of the results of his or her determination. For purposes of this paragraph, local governmental entities do not include water management districts.

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The Auditor General shall perform his or her duties independently but under the general policies established by the Legislative Auditing Committee. This subsection does not limit the Auditor General's discretionary authority to conduct other audits or engagements of governmental entities as authorized in subsection (3).

(3) AUTHORITY FOR AUDITS AND OTHER ENGAGEMENTS.—The Auditor General may, pursuant to his or her own authority, or at the direction of the Legislative Auditing Committee, conduct audits or other engagements as determined appropriate by the Auditor General of:

(u) The Florida Virtual School ~~pursuant to s. 1002.37~~.

(y) Tourist development councils and county tourism promotion agencies.

(7) AUDITOR GENERAL REPORTING REQUIREMENTS.—

(i) The Auditor General shall annually transmit by July 15, to the President of the Senate, the Speaker of the House of Representatives, and the Department of Financial Services, a list of all school districts, charter schools, charter technical career centers, Florida College System institutions, state universities, and local governmental entities ~~water management districts~~ that have failed to comply with the transparency requirements as identified in the audit reports reviewed pursuant to paragraph (b) and those conducted pursuant to subsection (2).

Section 3. Paragraph (d) of subsection (2) of section 28.35, Florida Statutes, is amended to read:

28.35 Florida Clerks of Court Operations Corporation.—

(2) The duties of the corporation shall include the

following:

(d) Developing and certifying a uniform system of workload measures and applicable workload standards for court-related functions as developed by the corporation and clerk workload performance in meeting the workload performance standards. These workload measures and workload performance standards shall be designed to facilitate an objective determination of the performance of each clerk in accordance with minimum standards for fiscal management, operational efficiency, and effective collection of fines, fees, service charges, and court costs. The corporation shall develop the workload measures and workload performance standards in consultation with the Legislature. When the corporation finds a clerk has not met the workload performance standards, the corporation shall identify the nature of each deficiency and any corrective action recommended and taken by the affected clerk of the court. For quarterly periods ending on the last day of March, June, September, and December of each year, the corporation shall notify the Legislature of any clerk not meeting workload performance standards and provide a copy of any corrective action plans. Such notifications shall be submitted no later than 45 days after the end of the preceding quarterly period. As used in this subsection, the term:

1. "Workload measures" means the measurement of the activities and frequency of the work required for the clerk to adequately perform the court-related duties of the office as defined by the membership of the Florida Clerks of Court Operations Corporation.

2. "Workload performance standards" means the standards

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developed to measure the timeliness and effectiveness of the activities that are accomplished by the clerk in the performance of the court-related duties of the office as defined by the membership of the Florida Clerks of Court Operations Corporation.

Section 4. Present subsections (6) and (7) of section 43.16, Florida Statutes, are renumbered as subsections (7) and (8), respectively, and a new subsection (6) is added to that section, to read:

43.16 Justice Administrative Commission; membership, powers and duties.—

(6) The commission, each state attorney, each public defender, the criminal conflict and civil regional counsel, the capital collateral regional counsel, and the Guardian Ad Litem Program shall establish and maintain internal controls designed to:

(a) Prevent and detect fraud, waste, and abuse as defined in s. 11.45(1).

(b) Promote and encourage compliance with applicable laws, rules, contracts, grant agreements, and best practices.

(c) Support economical and efficient operations.

(d) Ensure reliability of financial records and reports.

(e) Safeguard assets.

Section 5. Subsection (6) of section 112.061, Florida Statutes, is amended, and subsection (16) is added to that section, to read:

112.061 Per diem and travel expenses of public officers, employees, and authorized persons.—

(6) RATES OF PER DIEM AND SUBSISTENCE ALLOWANCE.—For

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purposes of reimbursement rates and methods of calculation, per diem and subsistence allowances are provided as follows:

(a) All travelers shall be allowed for subsistence when traveling to a convention or conference or when traveling within or outside the state in order to conduct bona fide state business, which convention, conference, or business serves a direct and lawful public purpose with relation to the public agency served by the person attending such meeting or conducting such business, either of the following for each day of such travel at the option of the traveler:

1. Eighty dollars per diem; or

2. If actual expenses exceed $80, the amounts permitted in paragraph (b) for subsistence, plus actual expenses for lodging at a single-occupancy rate, except as provided in paragraph (c), to be substantiated by paid bills therefor.

When lodging or meals are provided at a state institution, the traveler shall be reimbursed only for the actual expenses of such lodging or meals, not to exceed the maximum provided for in this subsection.

(b) All travelers shall be allowed the following amounts for subsistence while on Class C travel on official business as provided in paragraph (5)(b):

1. Breakfast.....$6
2. Lunch.....$11
3. Dinner.....$19

(c) Actual expenses for lodging associated with the attendance of an employee of a state agency or the judicial branch at a meeting, conference, or convention organized or

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sponsored in whole or in part by a state agency or the judicial branch may not exceed $150 per day. However, an employee may expend his or her own funds for any lodging expenses that exceed $150 per day. For purposes of this paragraph, a meeting does not include travel activities for conducting an audit, examination, inspection, or investigation or travel activities related to a litigation or emergency response.

(d) ~~(c)~~ No one, whether traveling out of state or in state, shall be reimbursed for any meal or lodging included in a convention or conference registration fee paid by the state.

(16) STATEWIDE TRAVEL MANAGEMENT SYSTEM.—

(a) For purposes of this subsection, the term "statewide travel management system" means the system acquired by the Department of Management Services to:

1. Standardize and automate agency travel management;

2. Allow for travel planning and approval, expense reporting, and reimbursement; and

3. Allow a person to query travel information by public employee or officer name and position title, purpose of travel, dates and location of travel, mode of travel, confirmation of agency head or designee authorization if required, and total travel cost.

(b) All agencies and the judicial branch must report public officer and employee travel information in the statewide travel management system, including, but not limited to, officer or employee name and position title, purpose of travel, dates and location of travel, mode of travel, confirmation of agency head or designee authorization if required, and total travel cost. At a minimum, such information must be reported in the statewide

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travel management system on a monthly basis.

(c) All executive branch state agencies and the judicial branch must use the statewide travel management system for purposes of travel authorization and reimbursement.

Section 6. Paragraph (c) of subsection (3) of section 129.03, Florida Statutes, is amended, and paragraph (d) is added to that subsection, to read:

129.03 Preparation and adoption of budget.—

(3) The county budget officer, after tentatively ascertaining the proposed fiscal policies of the board for the next fiscal year, shall prepare and present to the board a tentative budget for the next fiscal year for each of the funds provided in this chapter, including all estimated receipts, taxes to be levied, and balances expected to be brought forward and all estimated expenditures, reserves, and balances to be carried over at the end of the year.

(c) The board shall hold public hearings to adopt tentative and final budgets pursuant to s. 200.065. The hearings shall be primarily for the purpose of hearing requests and complaints from the public regarding the budgets and the proposed tax levies and for explaining the budget and any proposed or adopted amendments. The tentative budget must be posted on the county's official website at least 2 days before the public hearing to consider such budget and must remain on the website for at least 45 days. The final budget must be posted on the website within 30 days after adoption and must remain on the website for at least 2 years. The tentative budgets, adopted tentative budgets, and final budgets shall be filed in the office of the county auditor as a public record. Sufficient reference in words and

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figures to identify the particular transactions must ~~shall~~ be made in the minutes of the board to record its actions with reference to the budgets.

(d) Beginning in the 2018-2019 fiscal year, the county budget officer shall electronically submit information regarding the final budget to the Office of Economic and Demographic Research in the format specified by the office within 30 days after adoption of the final budget. If the Governor declares a state of emergency pursuant to s. 252.36(2) within 30 days after the submission deadline, the office may extend the deadline up to an additional 90 days. The county budget officer shall also electronically submit to the clerk of the court:

1. A copy of the information that was submitted to the office.

2. A copy of the final budget that was posted on the county's website.

3. A statement certifying that the items in subparagraphs 1. and 2. were timely submitted and posted.

Section 7. Paragraph (f) of subsection (2) of section 129.06, Florida Statutes, is amended to read:

129.06 Execution and amendment of budget.—

(2) The board at any time within a fiscal year may amend a budget for that year, and may within the first 60 days of a fiscal year amend the budget for the prior fiscal year, as follows:

(f) Unless otherwise prohibited by law, if an amendment to a budget is required for a purpose not specifically authorized in paragraphs (a)-(e), the amendment may be authorized by resolution or ordinance of the board of county commissioners

adopted following a public hearing.

1. The public hearing must be advertised at least 2 days, but not more than 5 days, before the date of the hearing. The advertisement must appear in a newspaper of paid general circulation and must identify the name of the taxing authority, the date, place, and time of the hearing, and the purpose of the hearing. The advertisement must also identify each budgetary fund to be amended, the source of the funds, the use of the funds, and the total amount of each fund's appropriations.

2. If the board amends the budget pursuant to this paragraph, the adopted amendment must be posted on the county's official website within 5 days after adoption and must remain on the website for at least 2 years.

Section 8. Present subsections (4) and (5) of section 166.241, Florida Statutes, are renumbered as subsections (5) and (6), respectively, subsection (3) and present subsection (5) are amended, and a new subsection (4) is added to that section, to read:

166.241 Fiscal years, budgets, and budget amendments.—

(3) The tentative budget must be posted on the municipality's official website at least 2 days before the budget hearing, held pursuant to s. 200.065 or other law, to consider such budget and must remain on the website for at least 45 days. The final adopted budget must be posted on the municipality's official website within 30 days after adoption and must remain on the website for at least 2 years. If the municipality does not operate an official website, the municipality must, within a reasonable period of time as established by the county or counties in which the municipality

is located, transmit the tentative budget and final budget to the manager or administrator of such county or counties who shall post the budgets on the county's website.

(4) Beginning in the 2018-2019 fiscal year, the municipality budget officer shall electronically submit information regarding the final budget to the Office of Economic and Demographic Research in the format specified by the office within 30 days after adoption of the final budget. If the Governor declares a state of emergency pursuant to s. 252.36(2) within 30 days after the submission deadline, the office may extend the deadline up to an additional 90 days. The municipality budget officer shall also electronically submit to the clerk of the court:

(a) A copy of the information that was submitted to the office.

(b) A copy of the final budget that was posted on the municipality's website.

(c) A statement certifying that the items in paragraphs (a) and (b) were timely submitted and posted.

(6) ~~(5)~~ If the governing body of a municipality amends the budget pursuant to paragraph (5)(c) ~~(4)(c)~~, the adopted amendment must be posted on the official website of the municipality within 5 days after adoption and must remain on the website for at least 2 years. If the municipality does not operate an official website, the municipality must, within a reasonable period of time as established by the county or counties in which the municipality is located, transmit the adopted amendment to the manager or administrator of such county or counties who shall post the adopted amendment on the county's

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website.

Section 9. Present subsections (5) through (10) of section 189.016, Florida Statutes, are renumbered as subsections (6) through (11), respectively, present subsections (7) and (10) are amended, and a new subsection (5) is added to that section, to read:

189.016 Reports; budgets; audits.—

(5) Beginning in the 2018-2019 fiscal year, the special district budget officer shall electronically submit information regarding the final budget to the Office of Economic and Demographic Research in the format specified by the office within 30 days after adoption of the final budget. If the Governor declares a state of emergency under s. 252.36(2) within 30 days after the submission deadline for the final budget, the office may extend the deadline up to an additional 90 days. The special district budget officer shall also electronically submit to the clerk of the court:

(a) A copy of the information that was submitted to the office.

(b) A copy of the final budget that was posted on the special district's website.

(c) A statement certifying that the items in paragraphs (a) and (b) were timely submitted and posted.

(8)~~(7)~~ If the governing body of a special district amends the budget pursuant to paragraph (7)(c) ~~(6)(c)~~, the adopted amendment must be posted on the official website of the special district within 5 days after adoption and must remain on the website for at least 2 years.

(11)~~(10)~~ All reports or information required to be filed

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with a local general-purpose government or governing authority under ss. 189.014, 189.015, and 189.08 and subsection (9) ~~(8)~~ must:

(a) If the local general-purpose government or governing authority is a county, be filed with the clerk of the board of county commissioners.

(b) If the district is a multicounty district, be filed with the clerk of the county commission in each county.

(c) If the local general-purpose government or governing authority is a municipality, be filed at the place designated by the municipal governing body.

Section 10. Section 215.86, Florida Statutes, is amended to read:

215.86 Management systems and controls.—Each state agency and the judicial branch as defined in s. 216.011 shall establish and maintain management systems and internal controls designed to:

(1) Prevent and detect fraud, waste, and abuse as defined in s. 11.45(1). ~~that~~

(2) Promote and encourage compliance with applicable laws, rules, contracts, and grant agreements.~~;~~

(3) Support economical and ~~economic,~~ efficient~~, and effective~~ operations.~~;~~

(4) Ensure reliability of financial records and reports.~~;~~

(5) Safeguard ~~and safeguarding of~~ assets. ~~Accounting systems and procedures shall be designed to fulfill the requirements of generally accepted accounting principles.~~

Section 11. Paragraph (a) of subsection (2) of section 215.97, Florida Statutes, is amended to read:

215.97 Florida Single Audit Act.—

(2) As used in this section, the term:

(a) "Audit threshold" means the threshold amount used to determine when a state single audit or project-specific audit of a nonstate entity shall be conducted in accordance with this section. Each nonstate entity that expends a total amount of state financial assistance equal to or in excess of $750,000 in any fiscal year of such nonstate entity shall be required to have a state single audit~~,~~ or a project-specific audit~~,~~ for such fiscal year in accordance with the requirements of this section. ~~Every 2 years the Auditor General,~~ After consulting with the Executive Office of the Governor, the Department of Financial Services, and all state awarding agencies, the Auditor General shall periodically review the threshold amount for requiring audits under this section and may recommend any appropriate statutory change to revise the threshold amount in the annual report submitted pursuant to s. 11.45(7)(h) to the Legislature ~~adjust such threshold amount consistent with the purposes of this section~~.

Section 12. Subsection (11) of section 215.985, Florida Statutes, is amended to read:

215.985 Transparency in government spending.—

(11) Each water management district shall provide a monthly financial statement in the form and manner prescribed by the Department of Financial Services to the district's ~~its~~ governing board and make such monthly financial statement available for public access on its website.

Section 13. Section 218.32, Florida Statutes, is amended to read:

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218.32 Annual financial reports; local governmental entities; Florida Open Financial Statement System.—

(1)(a) Each local governmental entity that is determined to be a reporting entity, as defined by generally accepted accounting principles, and each independent special district as defined in s. 189.012, shall submit to the department a copy of its annual financial report for the previous fiscal year in a format prescribed by the department. The annual financial report must include a list of each local governmental entity included in the report and each local governmental entity that failed to provide financial information as required by paragraph (b). The chair of the governing body and the chief financial officer of each local governmental entity shall sign the annual financial report submitted pursuant to this subsection attesting to the accuracy of the information included in the report. The county annual financial report must be a single document that covers each county agency.

(b) Each component unit, as defined by generally accepted accounting principles, of a local governmental entity shall provide the local governmental entity, within a reasonable time period as established by the local governmental entity, with financial information necessary to comply with the reporting requirements contained in this section.

(c) Each regional planning council created under s. 186.504, each local government finance commission, board, or council, and each municipal power corporation created as a separate legal or administrative entity by interlocal agreement under s. 163.01(7) shall submit to the department a copy of its audit report and an annual financial report for the previous

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fiscal year in a format prescribed by the department.

(d) Each local governmental entity that is required to provide for an audit under s. 218.39(1) must submit a copy of the audit report and annual financial report to the department within 45 days after the completion of the audit report but no later than 6 ~~9~~ months after the end of the fiscal year. If the Governor declares a state of emergency under s. 252.36(2) within 30 days after the submission deadline for the audit report and annual financial report, the department may extend the deadline up to an additional 90 days. The local governmental entity must electronically submit to the clerk of the court a copy of its annual financial report and a statement certifying that the report was timely filed with the department.

(e) In conducting an audit of a local governmental entity pursuant to s. 218.39, an independent certified public accountant shall determine whether the entity's annual financial report is in agreement with the audited financial statements. If the audited financial statements are not in agreement with the annual financial report, the accountant shall specify and explain the significant differences that exist between the audited financial statements and the annual financial report.

(f) 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)(f). The department must

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forward the financial information contained within the annual financial reports to the Auditor General in electronic form. If the Governor declares a state of emergency under s. 252.36(2) within 30 days after the submission deadline, the department may extend the deadline up to an additional 90 days. This paragraph does not apply to housing authorities created under chapter 421.

(g) ~~(f)~~ If the department does not receive a completed annual financial report from a local governmental entity within the required period, it shall notify the Legislative Auditing Committee and the Special District Accountability Program of the Department of Economic Opportunity by April 30 of the entity's failure to comply with the reporting requirements.

(h) ~~(g)~~ Each local governmental entity's website must provide a link to the department's website to view the entity's annual financial report submitted to the department pursuant to this section. If the local governmental entity does not have an official website, the county government's website must provide the required link for the local governmental entity.

(i) It is the intent of the Legislature to create the Florida Open Financial Statement System, an interactive repository for governmental financial statements.

1. The Chief Financial Officer may consult with stakeholders, including the department, the Auditor General, a representative of a municipality or county, a representative of a special district, a municipal bond investor, and an information technology professional employed in the private sector, for input on the design and implementation of the Florida Open Financial Statement System.

2. The Chief Financial Officer may choose contractors to

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build one or more extensible Business Reporting Language (XBRL) taxonomies suitable for state, county, municipal, and special district financial filings and to create a software tool that enables financial statement filers to easily create XBRL documents consistent with the taxonomy or taxonomies. The Chief Financial Officer shall recruit and select contractors through an open request for proposals process pursuant to chapter 287.

3. The Chief Financial Officer shall require all work to be completed no later than December 31, 2021.

4. If the Chief Financial Officer deems the work products adequate, all local governmental financial statements pertaining to fiscal years ending on or after September 1, 2022, must be filed in XBRL format and must meet the validation requirements of the relevant taxonomy.

5. A local government that commences filing in XBRL format may not be required to make filings in portable document format.

(j) Beginning in the 2018-2019 fiscal year and notwithstanding any other penalty or remedy provided by law, if a local governmental entity fails to submit information to the clerk of the court as required under paragraph (d), s. 129.03(3)(d), s. 166.241(4), or s. 189.016(5), as applicable, the clerk of the court shall notify the appropriate local fiscal officer to suspend future salary payments to the head of that local governmental entity. The clerk shall notify the appropriate local fiscal officer to resume payments when the clerk receives the information.

(2) The department shall annually by December 1 file a verified report with the Governor, the Legislature, the Auditor General, and the Special District Accountability Program of the

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Department of Economic Opportunity showing the revenues, both locally derived and derived from intergovernmental transfers, and the expenditures of each local governmental entity, regional planning council, local government finance commission, and municipal power corporation that is required to submit an annual financial report. In preparing the verified report, the department may request additional information from the local governmental entity. The information requested must be provided to the department within 45 days after the request. If the local governmental entity does not comply with the request, the department shall notify the Legislative Auditing Committee, which may take action pursuant to s. 11.40(2). The report must include, but is not limited to:

(a) The total revenues and expenditures of each local governmental entity that is a component unit included in the annual financial report of the reporting entity.

(b) The amount of outstanding long-term debt by each local governmental entity. For purposes of this paragraph, the term "long-term debt" means any agreement or series of agreements to pay money, which, at inception, contemplate terms of payment exceeding 1 year in duration.

(3) No later than 12 months after the end of the most recently completed fiscal year, the department shall post on its website the annual financial report for each local governmental entity and independent special district that is required to submit an annual financial report pursuant to subsection (1).

(4) ~~(3)~~ The department shall notify the President of the Senate and the Speaker of the House of Representatives of any municipality that has not reported any financial activity for

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the last 4 fiscal years. Such notice must be sufficient to initiate dissolution procedures as described in s. 165.051(1)(a). Any special law authorizing the incorporation or creation of the municipality must be included within the notification.

Section 14. Present subsection (3) of section 218.33, Florida Statutes, is renumbered as subsection (4), and a new subsection (3) is added to that section, to read:

218.33 Local governmental entities; establishment of uniform fiscal years and accounting practices and procedures.—

(3) Each local governmental entity shall establish and maintain internal controls designed to:

(a) Prevent and detect fraud, waste, and abuse as defined in s. 11.45(1).

(b) Promote and encourage compliance with applicable laws, rules, contracts, grant agreements, and best practices.

(c) Support economical and efficient operations.

(d) Ensure reliability of financial records and reports.

(e) Safeguard assets.

Section 15. Present subsections (8) through (12) of section 218.39, Florida Statutes, are renumbered as subsections (9) through (13), respectively, paragraphs (b), (c), (g), and (h) of subsection (1) and subsection (7) of that section are amended, and a new subsection (8) is added to that section, to read:

218.39 Annual financial audit reports.—

(1) 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

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Auditor General, each of the following entities shall have an annual financial audit of its accounts and records completed within 9 months after the end of its fiscal year by an independent certified public accountant retained by it and paid from its public funds:

(b) Any municipality with revenues or the total of expenditures and expenses in excess of $250,000, as reported on the fund financial statements, and each municipality beginning with the 2018-2019 fiscal year.

(c) Any special district with revenues or the total of expenditures and expenses in excess of $100,000, as reported on the fund financial statements, and each special district beginning with the 2018-2019 fiscal year.

~~(g) Each municipality with revenues or the total of expenditures and expenses between $100,000 and $250,000, as reported on the fund financial statements, which has not been subject to a financial audit pursuant to this subsection for the 2 preceding fiscal years.~~

~~(h) Each special district with revenues or the total of expenditures and expenses between $50,000 and $100,000, as reported on the fund financial statement, which has not been subject to a financial audit pursuant to this subsection for the 2 preceding fiscal years.~~

(7) All audits conducted pursuant to this section must be conducted in accordance with the rules of the Auditor General adopted pursuant to s. 11.45. Upon completion of the audit, the auditor shall prepare an audit report in accordance with the rules of the Auditor General. The audit report shall be filed with the Auditor General within 45 days after delivery of the

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audit report to the governing body of the audited entity, but no later than 6 ~~9~~ months after 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. If the Governor declares a state of emergency under s. 252.36(2) within 30 days after the submission deadline for the audit report, the Auditor General may extend the deadline up to an additional 90 days.

(8) If the audit report includes a recommendation that was included in the preceding financial audit report and remains unaddressed, the governing body of the audited entity, within 60 days after the delivery of the audit report to the governing body, shall indicate during a regularly scheduled public meeting whether it intends to take corrective action, the intended corrective action, and the timeframe for the corrective action. If the governing body indicates that it does not intend to take corrective action, it must explain its decision at the public meeting.

Section 16. Subsection (2) of section 218.391, Florida Statutes, is amended, and subsections (9) through (13) are added to that section, to read:

218.391 Auditor selection procedures.—

(2) The governing body of a ~~charter~~ county, municipality, special district, district school board, charter school, or charter technical career center shall establish an audit committee.

(a) At a minimum, the audit committee for a county must ~~Each noncharter county shall establish an audit committee that,~~

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~~at a minimum, shall~~ consist of each of the county officers elected pursuant to the county charter or s. 1(d), Art. VIII of the State Constitution, or their respective designees ~~a designee~~, and one member of the board of county commissioners or its designee.

(b) The audit committee for a municipality, special district, district school board, charter school, or charter technical career center shall consist of at least three members. One member of the audit committee must be a member of the governing body of an entity specified in this paragraph, who shall also serve as the chair of the committee.

(c) An employee, a chief executive officer, or a chief financial officer of the county, municipality, special district, district school board, charter school, or charter technical career center may not serve as a member of an audit committee established under this subsection.

(d) The primary purpose of the audit committee is to assist the governing body in selecting an auditor to conduct the annual financial audit required in s. 218.39; however, the audit committee may serve other audit oversight purposes as determined by the entity's governing body. The public may ~~shall~~ not be excluded from the proceedings under this section.

(9) For each audit required by s. 218.39, the auditor shall include the following information in the management letter prepared pursuant to s. 218.39(4):

(a) The date the entity's governing body approved the selection of the auditor and the date the entity and the auditor executed the most recent contract pursuant to subsection (7);

(b) The first fiscal year for which the auditor conducted

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the audit under the most recently executed contract pursuant to subsection (7); and

(c) The contract period, including renewals, and conditions under which the contract may be terminated or renewed.

(10) On each occasion that an entity contracts with an auditor to conduct an audit pursuant to s. 218.39, an affidavit shall be executed by the chair of the entity's governing body in a format prescribed in accordance with rules adopted by the Auditor General, affirming that the auditor was selected in compliance with the requirements of subsections (3)-(6). The affidavit must accompany the entity's first audit report prepared by the auditor under the most recently executed contract pursuant to subsection (7). The affidavit shall include the following information:

(a) The date the entity's governing body approved the selection of the auditor;

(b) The first fiscal year for which the auditor conducted the audit; and

(c) The contract period, including renewals, and conditions under which the contract may be terminated or renewed.

(11) If the entity fails to select the auditor in accordance with the requirements of subsections (3)-(6), the entity shall again perform the auditor selection process in accordance with this section to select an auditor to conduct audits for subsequent fiscal years if the original audit was performed under a multiyear contract.

(a) If performing the auditor selection process again in accordance with this section would preclude the entity from timely completing the annual financial audit required by s.

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218.39, the entity shall again perform the auditor selection process in accordance with this section for the subsequent annual financial audit. A multiyear contract entered into between an entity and an auditor after the effective date of this act may not prohibit or restrict an entity from complying with the section.

(b) If the entity fails to perform the auditor selection process again, pursuant to this subsection, the Legislative Auditing Committee shall determine whether the entity should be subject to state action pursuant to s. 11.40(2).

(12) If the entity fails to provide the Auditor General with the affidavit required by subsection (10), the Auditor General shall request that the entity provide the affidavit. The affidavit must be provided within 45 days after the date of the request. If the entity does not comply with the Auditor General's request, the Legislative Auditing Committee shall determine whether the entity should be subject to state action pursuant to s. 11.40(2).

(13) If the entity provides the Auditor General with the affidavit required in subsection (10) but failed to select the auditor in accordance with the requirements of subsections (3)-(6), the Legislative Auditing Committee shall determine whether the entity should be subject to state action pursuant to s. 11.40(2).

Section 17. Subsection (2) of section 286.0114, Florida Statutes, is amended to read:

286.0114 Public meetings; reasonable opportunity to be heard; attorney fees.—

(2) Members of the public shall be given a reasonable

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opportunity to be heard on a proposition before a board or commission. The opportunity to be heard need not occur at the same meeting at which the board or commission takes official action on the proposition if the opportunity occurs at a meeting that is during the decisionmaking process and is within reasonable proximity in time before the meeting at which the board or commission takes the official action. A board or commission may not require a member of the public to provide an advance written copy of his or her testimony or comments as a condition of being given the opportunity to be heard at a meeting. This section does not prohibit a board or commission from maintaining orderly conduct or proper decorum in a public meeting. The opportunity to be heard is subject to rules or policies adopted by the board or commission, as provided in subsection (4).

Section 18. Paragraph (e) of subsection (4), paragraph (d) of subsection (5), and paragraph (d) of subsection (6) of section 373.536, Florida Statutes, are amended, and paragraphs (e) and (f) are added to subsection (6) of that section, to read:

373.536 District budget and hearing thereon.—

(4) BUDGET CONTROLS; FINANCIAL INFORMATION.—

(e) ~~By September 1, 2012,~~ Each district shall provide a monthly financial statement in the form and manner prescribed by the Department of Financial Services to the district’s governing board and make such monthly financial statement available for public access on its website.

(5) TENTATIVE BUDGET CONTENTS AND SUBMISSION; REVIEW AND APPROVAL.—

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(d) Each district shall, by August 1 of each year, submit for review a tentative budget and a description of any significant changes from the preliminary budget submitted to the Legislature pursuant to s. 373.535 to the Governor, the President of the Senate, the Speaker of the House of Representatives, the chairs of all legislative committees and subcommittees having substantive or fiscal jurisdiction over water management districts, as determined by the President of the Senate or the Speaker of the House of Representatives, as applicable, the secretary of the department, and the governing body of each county in which the district has jurisdiction or derives any funds for the operations of the district. The tentative budget must be posted on the district's official website at least 2 days before budget hearings held pursuant to s. 200.065 or other law and must remain on the website for at least 45 days.

(6) FINAL BUDGET; ANNUAL AUDIT; CAPITAL IMPROVEMENTS PLAN; WATER RESOURCE DEVELOPMENT WORK PROGRAM.—

(d) The final adopted budget must be posted on the water management district's official website within 30 days after adoption and must remain on the website for at least 2 years.

(e) Beginning in the 2018-2019 fiscal year, the water management district budget officer shall electronically submit information regarding the final budget to the Office of Economic and Demographic Research in the format specified by the office within 30 days after adoption of the final budget. If the Governor declares a state of emergency under s. 252.36(2) within 30 days after the submission deadline, the office may extend the deadline up to an additional 90 days. The water management

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district budget officer shall also electronically submit to the clerk of the court in each county in which the district operates:

1. A copy of the information that was submitted to the office.

2. A copy of the final budget that was posted on the water management district's website.

3. A statement certifying that the items in subparagraphs 1. and 2. were timely submitted and posted.

(f) Beginning in the 2018-2019 fiscal year and notwithstanding any other penalty or remedy that may be authorized by law, if a water management district budget officer fails to submit information to the clerk of the court as required in paragraph (e), the clerk of the court shall notify the appropriate fiscal officer to suspend future salary payments for the executive director of that district. The clerk shall notify the fiscal officer to resume payments when the clerk receives the information.

Section 19. Paragraph (l) of subsection (12) of section 1001.42, Florida Statutes, is amended to read:

1001.42 Powers and duties of district school board.—The district school board, acting as a board, shall exercise all powers and perform all duties listed below:

(12) FINANCE.—Take steps to assure students adequate educational facilities through the financial procedure authorized in chapters 1010 and 1011 and as prescribed below:

(l) *Internal auditor.*—May employ an internal auditor to perform ongoing financial verification of the financial records of the school district and such other audits and reviews as the

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district school board directs for the purpose of determining:

1. The adequacy of internal controls designed to prevent and detect fraud, waste, and abuse as defined in s. 11.45(1).

2. Compliance with applicable laws, rules, contracts, grant agreements, district school board-approved policies, and best practices.

3. The efficiency of operations.

4. The reliability of financial records and reports.

5. The safeguarding of assets.

The internal auditor shall report directly to the district school board or its designee.

Section 20. Paragraph (j) of subsection (9) of section 1002.33, Florida Statutes, is amended to read:

1002.33 Charter schools.—

(9) CHARTER SCHOOL REQUIREMENTS.—

(j) The governing body of the charter school shall be responsible for:

1. Establishing and maintaining internal controls designed to:

a. Prevent and detect fraud, waste, and abuse as defined in s. 11.45(1).

b. Promote and encourage compliance with applicable laws, rules, contracts, grant agreements, and best practices.

c. Support economical and efficient operations.

d. Ensure reliability of financial records and reports.

e. Safeguard assets.

2.~~1.~~ Ensuring that the charter school has retained the services of a certified public accountant or auditor for the

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annual financial audit, pursuant to s. 1002.345(2), who shall submit the report to the governing body.

3.~~2.~~ Reviewing and approving the audit report, including audit findings and recommendations for the financial recovery plan.

4.a.~~3.a.~~ Performing the duties in s. 1002.345, including monitoring a corrective action plan.

b. Monitoring a financial recovery plan in order to ensure compliance.

5.~~4.~~ Participating in governance training approved by the department which must include government in the sunshine, conflicts of interest, ethics, and financial responsibility.

Section 21. Present subsections (6) through (10) of section 1002.37, Florida Statutes, are renumbered as subsections (7) through (11), respectively, present subsection (6) is amended, and a new subsection (6) is added to that section, to read:

1002.37 The Florida Virtual School.—

(6) The Florida Virtual School shall have an annual financial audit of its accounts and records conducted by an independent auditor who is a certified public accountant licensed under chapter 473. The independent auditor shall conduct the audit in accordance with rules adopted by the Auditor General pursuant to s. 11.45 and, upon completion of the audit, shall prepare an audit report in accordance with such rules. The audit report must include a written statement by the board of trustees describing corrective action to be taken in response to each of the recommendations of the independent auditor included in the audit report. The independent auditor shall submit the audit report to the board of trustees and the

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Auditor General no later than 9 months after the end of the preceding fiscal year.

(7) ~~(6)~~ The board of trustees shall annually submit to the Governor, the Legislature, the Commissioner of Education, and the State Board of Education the audit report prepared pursuant to subsection (6) and a complete and detailed report setting forth:

(a) The operations and accomplishments of the Florida Virtual School within the state and those occurring outside the state as Florida Virtual School Global.

(b) The marketing and operational plan for the Florida Virtual School and Florida Virtual School Global, including recommendations regarding methods for improving the delivery of education through the Internet and other distance learning technology.

(c) The assets and liabilities of the Florida Virtual School and Florida Virtual School Global at the end of the fiscal year.

~~(d) A copy of an annual financial audit of the accounts and records of the Florida Virtual School and Florida Virtual School Global, conducted by an independent certified public accountant and performed in accordance with rules adopted by the Auditor General.~~

(d) ~~(e)~~ Recommendations regarding the unit cost of providing services to students through the Florida Virtual School and Florida Virtual School Global. In order to most effectively develop public policy regarding any future funding of the Florida Virtual School, it is imperative that the cost of the program is accurately identified. The identified cost of the

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program must be based on reliable data.

(e)~~(f)~~ Recommendations regarding an accountability mechanism to assess the effectiveness of the services provided by the Florida Virtual School and Florida Virtual School Global.

Section 22. Subsection (5) is added to section 1010.01, Florida Statutes, to read:

1010.01 Uniform records and accounts.—

(5) Each school district, Florida College System institution, and state university shall establish and maintain internal controls designed to:

(a) Prevent and detect fraud, waste, and abuse as defined in s. 11.45(1).

(b) Promote and encourage compliance with applicable laws, rules, contracts, grant agreements, and best practices.

(c) Support economical and efficient operations.

(d) Ensure reliability of financial records and reports.

(e) Safeguard assets.

Section 23. Subsection (2) of section 1010.30, Florida Statutes, is amended to read:

1010.30 Audits required.—

(2) If a school district, Florida College System institution, or university audit report includes a recommendation that was included in the preceding financial audit report but remains unaddressed ~~an audit contains a significant finding~~, the district school board, the Florida College System institution board of trustees, or the university board of trustees, within 60 days after the delivery of the audit report to the school district, Florida College System institution, or university, shall indicate ~~conduct an audit~~

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~~overview~~ during a regularly scheduled public meeting whether it intends to take corrective action, the intended corrective action, and the timeframe for the corrective action. If the district school board, Florida College System institution board of trustees, or university board of trustees indicates that it does not intend to take corrective action, it shall explain its decision at the public meeting.

Section 24. Section 1011.03, Florida Statutes, is amended to read:

1011.03 Public hearings; budget submissions; penalties ~~to be submitted to Department of Education~~.—

(1) Each district school board shall cause a summary of its tentative budget, including the proposed millage levies as provided for by law, to be posted on the district's official website and advertised once in a newspaper of general circulation published in the district or to be posted at the courthouse if there be no such newspaper.

(2) The advertisement of a district that has been required by the Legislature to increase classroom expenditures pursuant to s. 1011.64 must include the following statement:

"This proposed budget reflects an increase in classroom expenditures as a percent of total current operating expenditures of XX percent over the (previous fiscal year) fiscal year. This increase in classroom expenditures is required by the Legislature because the district has performed below the required performance standard on XX of XX student performance standards for the (previous school year) school year. In order to achieve the legislatively required level of classroom

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expenditures as a percentage of total operating expenditures, the proposed budget includes an increase in overall classroom expenditures of $XX,XXX,XXX above the amount spent for this same purpose during the (previous fiscal year) fiscal year. In order to achieve improved student academic performance, this proposed increase is being budgeted for the following activities: ...(list activities and amount budgeted)....”

(3) The advertisement shall appear adjacent to the advertisement required pursuant to s. 200.065. The State Board of Education may adopt rules necessary to provide specific requirements for the format of the advertisement.

(4) The board shall hold public hearings to adopt tentative and final budgets pursuant to s. 200.065. The hearings shall be primarily for the purpose of hearing requests and complaints from the public regarding the budgets and the proposed tax levies and for explaining the budget and proposed or adopted amendments thereto, if any. The tentative budget must be posted on the district’s official website at least 2 days before the budget hearing held pursuant to s. 200.065 or other law. The final adopted budget must be posted on the district’s official website within 30 days after adoption. The board shall require the superintendent to transmit two copies of the adopted budget to the Department of Education as prescribed by law and rules of the State Board of Education.

(5)(a) Beginning in the 2018-2019 fiscal year, the district school board budget officer shall electronically submit information regarding the final budget to the Office of Economic and Demographic Research in the format specified by the office within 30 days after adoption of the final budget. If the

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Governor declares a state of emergency under s. 252.36(2) within 30 days after the submission deadline for the final budget, the office may extend the deadline up to an additional 90 days. The district school board budget officer shall also electronically submit to the clerk of the court:

1. A copy of the information that was submitted to the office.

2. A copy of the final budget that was posted on the district school board's website.

3. A statement certifying that the items in subparagraphs 1. and 2. were timely submitted and posted.

(b) Beginning in the 2018-2019 fiscal year and notwithstanding any other penalty or remedy that may be authorized by law, if the district school board budget officer fails to submit information to the clerk of the court as required in paragraph (a), the clerk of the court shall notify the appropriate fiscal officer to suspend future salary payments for the superintendent of that district. The clerk shall notify the appropriate fiscal officer to resume payments when the clerk receives the information.

(6)~~(5)~~ If the governing body of a district amends the budget, the adopted amendment must be posted on the official website of the district within 5 days after adoption.

Section 25. Subsection (1) of section 1011.60, Florida Statutes, is amended to read:

1011.60 Minimum requirements of the Florida Education Finance Program.—Each district which participates in the state appropriations for the Florida Education Finance Program shall provide evidence of its effort to maintain an adequate school

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program throughout the district and shall meet at least the following requirements:

(1) ACCOUNTS AND REPORTS.—Maintain adequate and accurate records, including a system of internal accounts for individual schools, and file with the Department of Education, in correct and proper form on or before the date due as fixed by law or rule, each annual or periodic report that is required by rules of the State Board of Education. A district school board that submits an annual financial report to the department must also electronically submit to the clerk of the court a copy of the report with a statement certifying that the report was timely filed with the department.

Section 26. (1) By July 15, 2018, the Office of Economic and Demographic Research shall prepare forms for use by counties, municipalities, special districts, water management districts, and school districts when submitting information regarding their final budgets to the office. The forms must group existing fiscal information in broad yet meaningful categories, but should not create new reporting requirements.

(2) By December 1, 2018, the office shall submit a report to the President of the Senate and the Speaker of the House of Representatives that:

(a) Identifies a structure to create unique area profiles for the counties, municipalities, special districts, water management districts, and school districts which would assist the public in making simple direct comparisons between the distinct entities.

(b) Provides recommendations for metrics for ranking the reporting entities based on the final budget information

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submitted to the office. The metrics must allow the public to make direct comparisons between the different local governments.

(c) Provides recommendations for mechanisms to submit the information in this subsection to the public in a cost-effective manner.

Section 27. Subsection (16) of section 165.0615, Florida Statutes, is amended to read:

165.0615 Municipal conversion of independent special districts upon elector-initiated and approved referendum.—

(16) If the incorporation plan is approved by a majority of the votes cast in the independent special district, the district shall notify the Special District Accountability Program pursuant to s. 189.016(2) and the local general-purpose governments in which any part of the independent special district is situated pursuant to s. 189.016(8) ~~s. 189.016(7)~~.

Section 28. Subsections (1) and (2) of section 189.066, Florida Statutes, are amended to read:

189.066 Effect of failure to file certain reports or information.—

(1) If an independent special district fails to file the reports or information required under s. 189.014, s. 189.015, s. 189.016(10) ~~s. 189.016(9)~~, or s. 189.08 with the local general-purpose government or governments in which it is located, the person authorized to receive and read the reports or information or the local general-purpose government shall notify the district's registered agent. If requested by the district, the local general-purpose government shall grant an extension of up to 30 days for filing the required reports or information. If the governing body of the local general-purpose government or

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governments determines that there has been an unjustified failure to file these reports or information, it shall notify the department, and the department may proceed pursuant to s. 189.067(1).

(2) If a dependent special district fails to file the reports or information required under s. 189.014, s. 189.015, or s. 189.016(10) ~~s. 189.016(9)~~ with the local governing authority to which it is dependent, the local governing authority shall take whatever steps it deems necessary to enforce the special district's accountability. Such steps may include, as authorized, withholding funds, removing governing body members at will, vetoing the special district's budget, conducting the oversight review process set forth in s. 189.068, or amending, merging, or dissolving the special district in accordance with the provisions contained in the ordinance that created the dependent special district.

Section 29. Paragraph (e) of subsection (2) and paragraph (g) of subsection (3) of section 189.074, Florida Statutes, are amended to read:

189.074 Voluntary merger of independent special districts.—Two or more contiguous independent special districts created by special act which have similar functions and elected governing bodies may elect to merge into a single independent district through the act of merging the component independent special districts.

(2) JOINT MERGER PLAN BY RESOLUTION.—The governing bodies of two or more contiguous independent special districts may, by joint resolution, endorse a proposed joint merger plan to commence proceedings to merge the districts pursuant to this

section.

(e) After the final public hearing, the governing bodies shall notify the supervisors of elections of the applicable counties in which district lands are located of the adoption of the resolution by each governing body. The supervisors of elections shall schedule a separate referendum for each component independent special district. The referenda may be held in each district on the same day, or on different days, but no more than 20 days apart.

1. Notice of a referendum on the merger of independent special districts must be provided pursuant to the notice requirements in s. 100.342. At a minimum, the notice must include:

a. A brief summary of the resolution and joint merger plan;

b. A statement as to where a copy of the resolution and joint merger plan may be examined;

c. The names of the component independent special districts to be merged and a description of their territory;

d. The times and places at which the referendum will be held; and

e. Such other matters as may be necessary to call, provide for, and give notice of the referendum and to provide for the conduct thereof and the canvass of the returns.

2. The referenda must be held in accordance with the Florida Election Code and may be held pursuant to ss. 101.6101-101.6107. All costs associated with the referenda shall be borne by the respective component independent special district.

3. The ballot question in such referendum placed before the qualified electors of each component independent special

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district to be merged must be in substantially the following form:

"Shall ...(name of component independent special district)... and ...(name of component independent special district or districts)... be merged into ...(name of newly merged independent district)...?

....YES
....NO"

4. If the component independent special districts proposing to merge have disparate millage rates, the ballot question in the referendum placed before the qualified electors of each component independent special district must be in substantially the following form:

"Shall ...(name of component independent special district)... and ...(name of component independent special district or districts)... be merged into ...(name of newly merged independent district)... if the voter-approved maximum millage rate within each independent special district will not increase absent a subsequent referendum?

....YES
....NO"

5. In any referendum held pursuant to this section, the ballots shall be counted, returns made and canvassed, and

results certified in the same manner as other elections or referenda for the component independent special districts.

6. The merger may not take effect unless a majority of the votes cast in each component independent special district are in favor of the merger. If one of the component districts does not obtain a majority vote, the referendum fails, and merger does not take effect.

7. If the merger is approved by a majority of the votes cast in each component independent special district, the merged independent district is created. Upon approval, the merged independent district shall notify the Special District Accountability Program pursuant to s. 189.016(2) and the local general-purpose governments in which any part of the component independent special districts is situated pursuant to s. 189.016(8) ~~s. 189.016(7)~~.

8. If the referendum fails, the merger process under this subsection may not be initiated for the same purpose within 2 years after the date of the referendum.

(3) QUALIFIED ELECTOR-INITIATED MERGER PLAN.—The qualified electors of two or more contiguous independent special districts may commence a merger proceeding by each filing a petition with the governing body of their respective independent special district proposing to be merged. The petition must contain the signatures of at least 40 percent of the qualified electors of each component independent special district and must be submitted to the appropriate component independent special district governing body no later than 1 year after the start of the qualified elector-initiated merger process.

(g) After the final public hearing, the governing bodies

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shall notify the supervisors of elections of the applicable counties in which district lands are located of the adoption of the resolution by each governing body. The supervisors of elections shall schedule a date for the separate referenda for each district. The referenda may be held in each district on the same day, or on different days, but no more than 20 days apart.

1. Notice of a referendum on the merger of the component independent special districts must be provided pursuant to the notice requirements in s. 100.342. At a minimum, the notice must include:

a. A brief summary of the resolution and elector-initiated merger plan;

b. A statement as to where a copy of the resolution and petition for merger may be examined;

c. The names of the component independent special districts to be merged and a description of their territory;

d. The times and places at which the referendum will be held; and

e. Such other matters as may be necessary to call, provide for, and give notice of the referendum and to provide for the conduct thereof and the canvass of the returns.

2. The referenda must be held in accordance with the Florida Election Code and may be held pursuant to ss. 101.6101-101.6107. All costs associated with the referenda shall be borne by the respective component independent special district.

3. The ballot question in such referendum placed before the qualified electors of each component independent special district to be merged must be in substantially the following form:

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"Shall ...(name of component independent special district)... and ...(name of component independent special district or districts)... be merged into ...(name of newly merged independent district)...?

....YES
....NO"

4. If the component independent special districts proposing to merge have disparate millage rates, the ballot question in the referendum placed before the qualified electors of each component independent special district must be in substantially the following form:

"Shall ...(name of component independent special district)... and ...(name of component independent special district or districts)... be merged into ...(name of newly merged independent district)... if the voter-approved maximum millage rate within each independent special district will not increase absent a subsequent referendum?

....YES
....NO"

5. In any referendum held pursuant to this section, the ballots shall be counted, returns made and canvassed, and results certified in the same manner as other elections or referenda for the component independent special districts.

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6. The merger may not take effect unless a majority of the votes cast in each component independent special district are in favor of the merger. If one of the component independent special districts does not obtain a majority vote, the referendum fails, and merger does not take effect.

7. If the merger is approved by a majority of the votes cast in each component independent special district, the merged district shall notify the Special District Accountability Program pursuant to s. 189.016(2) and the local general-purpose governments in which any part of the component independent special districts is situated pursuant to s. 189.016(8) ~~s. 189.016(7)~~.

8. If the referendum fails, the merger process under this subsection may not be initiated for the same purpose within 2 years after the date of the referendum.

Section 30. Subsection (3) of section 218.503, Florida Statutes, is amended to read:

218.503 Determination of financial emergency.—

(3) Upon notification that one or more of the conditions in subsection (1) have occurred or will occur if action is not taken to assist the local governmental entity or district school board, the Governor or his or her designee shall contact the local governmental entity or the Commissioner of Education or his or her designee shall contact the district school board, as appropriate, to determine what actions have been taken by the local governmental entity or the district school board to resolve or prevent the condition. The information requested must be provided within 45 days after the date of the request. If the local governmental entity or the district school board does not

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comply with the request, the Governor or his or her designee or the Commissioner of Education or his or her designee shall notify ~~the members of~~ the Legislative Auditing Committee, which ~~who~~ may take action pursuant to s. 11.40(2) ~~s. 11.40~~. The Governor or the Commissioner of Education, as appropriate, shall determine whether the local governmental entity or the district school board needs state assistance to resolve or prevent the condition. If state assistance is needed, the local governmental entity or district school board is considered to be in a state of financial emergency. The Governor or the Commissioner of Education, as appropriate, has the authority to implement measures as set forth in ss. 218.50-218.504 to assist the local governmental entity or district school board in resolving the financial emergency. Such measures may include, but are not limited to:

(a) Requiring approval of the local governmental entity's budget by the Governor or approval of the district school board's budget by the Commissioner of Education.

(b) Authorizing a state loan to a local governmental entity and providing for repayment of same.

(c) Prohibiting a local governmental entity or district school board from issuing bonds, notes, certificates of indebtedness, or any other form of debt until such time as it is no longer subject to this section.

(d) Making such inspections and reviews of records, information, reports, and assets of the local governmental entity or district school board as are needed. The appropriate local officials shall cooperate in such inspections and reviews.

(e) Consulting with officials and auditors of the local

governmental entity or the district school board and the appropriate state officials regarding any steps necessary to bring the books of account, accounting systems, financial procedures, and reports into compliance with state requirements.

(f) Providing technical assistance to the local governmental entity or the district school board.

(g)1. Establishing a financial emergency board to oversee the activities of the local governmental entity or the district school board. If a financial emergency board is established for a local governmental entity, the Governor shall appoint board members and select a chair. If a financial emergency board is established for a district school board, the State Board of Education shall appoint board members and select a chair. The financial emergency board shall adopt such rules as are necessary for conducting board business. The board may:

a. Make such reviews of records, reports, and assets of the local governmental entity or the district school board as are needed.

b. Consult with officials and auditors of the local governmental entity or the district school board and the appropriate state officials regarding any steps necessary to bring the books of account, accounting systems, financial procedures, and reports of the local governmental entity or the district school board into compliance with state requirements.

c. Review the operations, management, efficiency, productivity, and financing of functions and operations of the local governmental entity or the district school board.

d. Consult with other governmental entities for the consolidation of all administrative direction and support

services, including, but not limited to, services for asset sales, economic and community development, building inspections, parks and recreation, facilities management, engineering and construction, insurance coverage, risk management, planning and zoning, information systems, fleet management, and purchasing.

2. The recommendations and reports made by the financial emergency board must be submitted to the Governor for local governmental entities or to the Commissioner of Education and the State Board of Education for district school boards for appropriate action.

(h) Requiring and approving a plan, to be prepared by officials of the local governmental entity or the district school board in consultation with the appropriate state officials, prescribing actions that will cause the local governmental entity or district school board to no longer be subject to this section. The plan must include, but need not be limited to:

1. Provision for payment in full of obligations outlined in subsection (1), designated as priority items, which are currently due or will come due.

2. Establishment of priority budgeting or zero-based budgeting in order to eliminate items that are not affordable.

3. The prohibition of a level of operations which can be sustained only with nonrecurring revenues.

4. Provisions implementing the consolidation, sourcing, or discontinuance of all administrative direction and support services, including, but not limited to, services for asset sales, economic and community development, building inspections, parks and recreation, facilities management, engineering and

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construction, insurance coverage, risk management, planning and zoning, information systems, fleet management, and purchasing.

Section 31. The Legislature finds that a proper and legitimate state purpose is served when internal controls are established to prevent and detect fraud, waste, and abuse and to safeguard and account for government funds and property. Therefore, the Legislature determines and declares that this act fulfills an important state interest.

Section 32. 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 government accountability; amending s. 11.40, F.S.; requiring, rather than authorizing, the Legislative Auditing Committee to schedule hearings concerning certain governmental entities for failure to comply with certain financial audit requirements; amending s. 11.45, F.S.; defining the terms "abuse," "fraud," and "waste"; revising definitions; excluding water management districts from certain audit requirements; removing a cross-reference; authorizing the Auditor General to conduct audits of tourist development councils and county tourism promotion agencies; revising reporting requirements applicable to the Auditor General; amending s. 28.35, F.S.; revising reporting

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requirements applicable to the Florida Clerks of Court Operations Corporation; amending s. 43.16, F.S.; revising the responsibilities of the Justice Administrative Commission, each state attorney, each public defender, the criminal conflict and civil regional counsel, the capital collateral regional counsel, and the Guardian Ad Litem Program, to include the establishment and maintenance of certain internal controls; amending s. 112.061, F.S.; revising certain lodging rates for the purpose of reimbursement to specified employees; authorizing an employee to expend his or her funds for certain lodging expenses; defining the term "statewide travel management system"; requiring agencies and the judicial branch to report certain travel information of public officers and employees in the statewide travel management system; requiring executive branch state agencies and the judicial branch to use the statewide travel management system for certain purposes; amending ss. 129.03, 129.06, and 166.241, F.S.; requiring counties and municipalities to maintain certain budget documents on the entities' websites for a specified period; requiring county and municipality budget officers to submit certain budget information to specified entities within a certain timeframe; amending s. 189.016, F.S.; requiring special district budget officers to submit certain budget information to specified entities within a certain timeframe; amending s. 215.86, F.S.; revising the purposes for

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which management systems and internal controls must be established and maintained by each state agency and the judicial branch; amending s. 215.97, F.S.; revising certain audit threshold requirements; amending s. 215.985, F.S.; revising the requirements for a monthly financial statement provided by a water management district; amending s. 218.32, F.S.; revising certain reporting deadlines for an audit report and annual financial report of certain local governmental entities; providing an exception; prescribing duties of an independent certified public accountant in conducting an audit; providing legislative intent regarding the establishment of the Florida Open Financial Statement System; authorizing the Chief Financial Officer to consult with certain stakeholders for input on the design and implementation of the system; specifying requirements and procedures for the Chief Financial Officer in selecting and recruiting contractors for certain purposes; requiring the Chief Financial Officer to require completion of all work by a specified date; providing that if the Chief Financial Officer deems work products adequate, all local governmental financial statements pertaining to fiscal years ending on or after a specified date must meet certain requirements; providing for the suspension of salary payments to the head of a local governmental entity that does not submit certain financial information; authorizing the Department of Financial Services to

request additional information from a local governmental entity under certain circumstances; requiring a local governmental entity to comply with such requests within a specified timeframe; requiring the department to notify the Legislative Auditing Committee of noncompliance; authorizing the committee to take certain action; requiring the department to post annual financial reports for certain governmental entities on its website within a specified timeframe; amending s. 218.33, F.S.; requiring local governmental entities to establish and maintain internal controls to achieve specified purposes; amending s. 218.39, F.S.; requiring certain municipalities and special districts to have a certain audit performed beginning with a specified fiscal year; revising the deadline for an audit report; providing an exception; requiring the governing body of an audited entity to respond to audit recommendations under specified circumstances; amending s. 218.391, F.S.; revising membership for audit committees; prohibiting an audit committee member from being an employee, a chief executive officer, or a chief financial officer of the respective governmental entity; requiring an auditor to include certain information in a management letter; requiring the chair of a governmental entity's governing body to submit an affidavit containing certain information when the entity contracts with an auditor to conduct an audit; providing requirements and procedures for selecting an auditor; requiring the

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Legislative Auditing Committee to determine whether a governmental entity should be subject to state action under certain circumstances; amending s. 286.0114, F.S.; prohibiting a board or commission from requiring an advance copy of testimony or comments from a member of the public as a precondition to being given the opportunity to be heard at a public meeting; amending s. 373.536, F.S.; deleting obsolete language; requiring water management districts to maintain certain budget documents on the districts' websites for a specified period; requiring district budget officers to submit certain budget information to specified entities within a certain timeframe; providing for the suspension of salary payments of a district executive director if the district does not submit such information; amending s. 1001.42, F.S.; authorizing additional internal audits as directed by the district school board; amending s. 1002.33, F.S.; revising the responsibilities of the governing board of a charter school to include the establishment and maintenance of internal controls; amending s. 1002.37, F.S.; requiring completion of an annual financial audit of the Florida Virtual School; specifying audit requirements; requiring an audit report to be submitted to the board of trustees of the Florida Virtual School and the Auditor General; deleting obsolete provisions; amending s. 1010.01, F.S.; requiring each school district, Florida College System institution, and state university to establish and

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maintain certain internal controls; amending s. 1010.30, F.S.; requiring a district school board, Florida College System institution board of trustees, or university board of trustees to respond to audit recommendations under certain circumstances; amending s. 1011.03, F.S.; requiring a district school board's budget officer to submit certain budget information to specified entities within a certain timeframe; providing for suspension of salary payments for a superintendent of a district that does not submit such information; amending s. 1011.60, F.S.; requiring district school boards that submit an annual financial report to the Department of Education to also electronically submit a copy to the clerk of the court; requiring the Office of Economic and Demographic Research to develop, by a specified date, certain forms for use by local governmental entities in reporting certain budget information; requiring the office to submit a report to the Legislature by a specified date; providing requirements for the report; amending ss. 165.0615, 189.066, 189.074, and 218.503, F.S.; conforming provisions and cross-references to changes made by the act; declaring that the act fulfills an important state interest; providing an effective date.

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-2-18
Meeting Date

354
Bill Number (if applicable)

Topic GOVERNMENT ACCOUNTABILITY

Amendment Barcode (if applicable)

Name LAUREN YOUMANS

Job Title

Address 100 N. MONROE ST
Street

Phone 2541838

TAL 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 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)

3-2-18
Meeting Date

354
Bill Number (if applicable)

522564
Amendment Barcode (if applicable)

Topic Government Accountability

Name Justin Thames

Job Title Director of Governmental Affairs

Address 119 S. Monroe St.
Street

Phone 528-2209

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

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)

3/2/18
Meeting Date

354
Bill Number (if applicable)

522564
Amendment Barcode (if applicable)

Topic Government Accountability

Name Amber Hughes

Job Title Sr. Legislative Advocate

Address PO Box 1757
Street

Phone 850-701-3621

Tallahassee FL 32302
City *State* *Zip*

Email ahughes@flcities.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida League of Cities

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/2/18
Meeting Date

354
Bill Number (if applicable)

703092
Amendment Barcode (if applicable)

Topic State wide Travel Management

Name Amber Hughes

Job Title Sr. Legislative Advocate

Address PO Box 1757
Street

Tall FL 32302
City *State* *Zip*

Phone 701-3621

Email ahughes@flcities.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida League of Cities

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-2-18
Meeting Date

~~SB 354~~
Bill Number (if applicable)

703092
Amendment Barcode (if applicable)

Topic GOVERNMENT ACCOUNTABILITY

Name LAURA YOUMANS

Job Title

Address 101 N. MONROE ST
Street

TAL FL 32301
City *State* *Zip*

Phone 521-1332

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FLORIDA ASSOCIATION OF COUNTIES

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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 422 (707324)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Health and Human Services) and Senator Gibson
SUBJECT:	Elder Abuse Fatality Review Teams
DATE:	March 1, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hendon	Hendon	CF	**Favorable**
2.	Loe	Williams	AHS	**Recommend: Fav/CS**
3.	Loe	Hansen	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 422 authorizes the establishment of elder abuse fatality review teams on a voluntary basis in each judicial circuit to review fatal incidents of elder abuse, and make policy and other recommendations to help prevent future incidents of elder abuse-related fatalities. The bill exempts certain information and records acquired by a review team from discovery or introduction into evidence in specified actions or proceedings. The review teams are assigned to the Department of Elder Affairs (DOEA) for administrative purposes only. The DOEA must submit a report, annually by November 1, that summarizes the findings and recommendations of the review teams to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Department of Children and Families.

The bill adds elder abuse fatality review teams to the list of persons and entities authorized pursuant to s. 415.107(3), F.S., to have access to records concerning reports of abuse, neglect, or exploitation of a vulnerable adult, including reports made to the central abuse hotline, otherwise held confidential and exempt from s. 119.07(1), F.S.

The bill will increase state expenditures by an indeterminate amount. The Department of Elder Affairs will experience an increase in workload related to submitting the required report and providing administrative support to the review teams; however, these costs can be absorbed within existing resources.

The bill takes effect on July 1, 2018.

II. Present

There are currently no designated Elder Abuse Fatality Review Teams in Florida. The Adult Protective Services Program, under the Department of Children and Families (DCF), is responsible for preventing further harm to vulnerable adults who are victims of abuse, neglect, exploitation, or self-neglect. The mandatory reporting requirement of persons who are required to investigate reports of abuse, neglect, or exploitation also extends to alleged deaths due to abuse or neglect.

The Florida Abuse Hotline, administered by the DCF, screens allegations of adult abuse and neglect to determine whether the information meets the criteria of an abuse report. If the criteria are met, a protective investigation is initiated to confirm whether there is evidence that abuse has occurred; whether that is an immediate or long-term risk to the victim; and whether the victim needs additional services to safeguard his or her well-being.[1]

Section 415.1034, F.S., enumerates persons that have an immediate, mandatory requirement to report to the central abuse hotline if they know, have suspicion, or have reasonable cause to suspect that a vulnerable adult has been or is being abused, neglected, or exploited. Additionally, any person required to investigate reports of abuse, neglect, or exploitation and who has reasonable cause to suspect that a vulnerable adult died as a result of abuse, neglect, or exploitation shall immediately report the suspicion to the appropriate medical examiner, the appropriate criminal justice agency and to the DCF, notwithstanding the existence of a death certificate signed by a practicing physician.[2]

The DCF is required, upon receipt of a report alleging abuse, neglect, or exploitation of a vulnerable adult, to begin within 24 hours a protective investigation of the matter.[3] For each report it receives, the DCF shall perform an onsite investigation to determine, among other things, if the person meets the definition of a vulnerable adult and, if so, if the person is in need of services; whether there is an indication that the vulnerable adult was abused, neglected, or exploited; and if protective, treatment, and ameliorative services are necessary to safeguard and ensure the vulnerable adult's well-being.[4]

Section 415.1102, F.S., authorizes the DCF to develop, maintain, and coordinate the services of one or more multidisciplinary adult protection teams in each of its regions. A "multidisciplinary adult protection team" is defined as a team of two or more persons trained in the prevention, identification, and treatment of abuse of elderly persons.[5] The multidisciplinary teams may be composed of, but are not limited to, psychiatrists, psychologists, or other trained counseling personnel; law enforcement officers; medical personal with experience or training to provide

[1]Florida Department of Children and Families; Protecting Vulnerable Adults, *available at:* http://www.myflfamilies.com/service-programs/adult-protective-services/protecting-vulnerable-adults (last visited Nov. 7, 2017).
[2] Section 415.1034(2), F.S.
[3] Section 415.104(1), F.S.
[4] Section 415.104(2), F.S.
[5] Section 415.1102(1), F.S.

health services; social workers who have experience or training in the prevention of abuse of the elderly or dependent persons; and public and professional guardians.[6] The multidisciplinary team is convened to supplement the protective services activities of the Adult Protective Services program of the DCF.[7]

Section 415.107(3), F.S., enumerates persons and entities that may have access to records concerning reports of abuse, neglect, or exploitation of a vulnerable adult, including reports made to the central abuse hotline, otherwise held confidential and exempt from s. 119.07(1), F.S. The identity of any person reporting abuse, neglect, or exploitation of a vulnerable person shall not be released to these persons and entities.

III. Effect of Proposed Changes:

Section 1 creates s. 415.1103, F.S., to authorize the creation of an elder abuse fatality review team on a voluntary basis in each judicial circuit[8] to review fatal or near-fatal incidents of abuse, neglect, or violence against the elderly. Each review team is composed of volunteers from numerous state and local agencies as well as community partners.[9] Each volunteer serves without compensation for a two-year term. Each team will determine the number of cases it will review and must limit its review to closed cases in which an elderly person's death is verified to have been caused by abuse or neglect in order to avoid interference with an ongoing criminal investigation or prosecution.

The elder abuse fatality team's review may include a review of events leading up to the incident, available community resources, actions taken by systems and individuals related to the incident, and any other information deemed relevant to the team. The review team is directed to make policy and other recommendations, which include system improvements and necessary resources, training, or other information to prevent future incidents of elder abuse deaths. Each team is required to submit its findings and recommendations to the DOEA annually by September 1. By November 1 each year, the DOEA shall prepare a summary report of the information provided by the review teams, and submit the report to the Executive Office of the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Department of Children and Families.

The bill exempts a member of a review team in the performance of his or her duties as a review team member from monetary liability. Additionally, all information and records acquired by an elder abuse fatality review team are not subject to discovery or introduction into evidence in any

[6] Section 415.1102(2), F.S.
[7] Section 415.1102(3), F.S.
[8] There are currently 20 judicial circuits in Florida.
[9] The bill provides for membership to include, but not be limited to, the following or their representatives: law enforcement agencies; the state attorney; the medical examiner; a county court judge; adult protective services; an Aging and Disability Resource Center; the State Long-Term Care Ombudsman program; the Agency for Health Care Administration; the Office of the Attorney General; the office of court administration; the clerk of the court; a victim services program; an elder law attorney; emergency services personnel; a certified domestic violence center; an advocacy organization for victims of sexual violence; a funeral home director; a forensic pathologist; a geriatrician; a geriatric nurse; a geriatric psychiatrist or other individual licensed to offer behavioral health services; a hospital discharge planner; a public guardian; and other persons with knowledge regarding fatal incidents of elder abuse, domestic violence, or sexual violence.

civil or criminal action. The elder abuse fatality review teams are assigned to the Department of Elder Affairs for administrative purposes only.

Section 2 adds elder abuse fatality review teams to the list of persons and entities authorized pursuant to s. 415.107(3), F.S., to have access to records concerning reports of abuse, neglect, or exploitation of a vulnerable adult, including reports made to the central abuse hotline, otherwise held confidential and exempt from s. 119.07(1), F.S.

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:

Any public records or open meetings issues are addressed in SB 424.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of Elder Affairs will incur additional costs associated with providing administrative support to the various elder abuse fatality review teams, and submitting the required annual report; however, these costs can be absorbed within existing resources. Other public agencies whose staff serve on the review teams may incur some costs.

VI. Technical Deficiencies:

The bill does not specify the appointing authority for the members of the review team. As a result, anyone that falls within the particular membership categories may "volunteer" to participate on the review team. This may raise concerns because the review team has access to information that is otherwise confidential and exempt from public disclosure.

VII. Related Issues:

The bill does not define the term "elder," specifically the age at which a person is deemed to be an elder, which may lead to inconsistency in the cases a team chooses to review. Providing a definition of "elder" which establishes, at a minimum, the age of a person eligible for a team review will allow for more standardized comparability amongst the separate reports required to be submitted by each team.

VIII. Statutes Affected:

This bill creates section 415.1103 of the Florida Statutes.

The bill amends section 415.107 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 January 10, 2018:

The committee substitute makes the following changes:

- Makes the establishment of an elder abuse fatality review team voluntary in each judicial circuit in Florida;
- Requires the scope of the review team be limited to closed cases in which abuse or neglect is verified;
- Requires the review teams to submit recommendations by September 1 annually to the DOEA;
- Requires the DOEA to compile the recommendations of the review teams into a single report to be submitted to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Department of Children and Families by November 1 annually; and
- Adds elder abuse fatality review teams to the list of persons and entities authorized pursuant to s. 415.107(3), F.S., to have access to records concerning reports of abuse, neglect, or exploitation of a vulnerable adult, including reports made to the central abuse hotline, otherwise held confidential and exempt from s. 119.07(1), F.S.

B. Amendments:

None.

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

913150

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/02/2018	.	
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The Committee on Appropriations (Gibson) recommended the following:

Senate Amendment (with title amendment)

Before line 29
insert:
Section 1. Section 415.101, Florida Statutes, is amended to read:
415.101 Adult Protective Services Act; legislative intent.—
(1) Sections 415.101-415.113 may be cited as the "Adult Protective Services Act."
(2) The Legislature recognizes that there are many persons

913150

in this state who, because of age or disability, are in need of protective services. Such services should allow such an individual the same rights as other citizens and, at the same time, protect the individual from abuse, neglect, and exploitation. It is the intent of the Legislature to provide for the detection and correction of abuse, neglect, and exploitation through social services and criminal investigations and to establish a program of protective services for all vulnerable adults in need of them. It is intended that the mandatory reporting of such cases will cause the protective services of the state to be brought to bear in an effort to prevent further abuse, neglect, and exploitation of vulnerable adults. In taking this action, the Legislature intends to place the fewest possible restrictions on personal liberty and the exercise of constitutional rights, consistent with due process and protection from abuse, neglect, and exploitation. Further, the Legislature intends to encourage the constructive involvement of families in the care and protection of vulnerable adults or elderly persons. It is the intent of the Legislature that each protective investigator, as defined in s. 415.102, earn and maintain a valid certification as a protective investigator through a third party credentialing entity in accordance with s. 402.40(3).

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

And the title is amended as follows:

Between lines 2 and 3

insert:

amending s. 415.101, F.S.; revising legislative

913150

intent;

707324

576-02005A-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 elder abuse fatality review teams; creating s. 415.1103, F.S.; authorizing the establishment of elder abuse fatality review teams in each judicial circuit housed, for administrative purposes only, in the Department of Elderly Affairs; providing conditions for team establishment and organization; specifying review team duties; providing review teams with access to and use of records; requiring each review team to submit an annual report by a certain date to the Department of Elderly Affairs containing specified information; requiring the department to prepare an annual report by a certain date with such information to the Governor, the Legislature, and the Department of Children and Families; exempting certain information and records from discovery; providing exceptions; prohibiting a member from testifying about information or records presented during meetings or activities of the team; providing immunity from monetary liability for members under certain conditions; prohibiting review teams and review team members from disclosing confidential information; amending s. 415.107, F.S.; requiring that elder abuse fatality review teams be granted access to certain records; providing an effective date.

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

707324

576-02005A-18

Section 1. Section 415.1103, Florida Statutes, is created to read:

415.1103 Elder abuse fatality review teams.—

(1)(a) An elder abuse fatality review team may be established in each judicial circuit to review deaths of elderly persons alleged or found to have been caused by, or related to, abuse or neglect. The teams are housed, for administrative purposes only, in the Department of Elderly Affairs.

(b) An elder abuse fatality review team may include, but is not limited to, representatives from the following entities within the review team's judicial circuit:

1. Law enforcement agencies;
2. The state attorney;
3. The medical examiner;
4. A county court judge;
5. Adult protective services;
6. The area agency on aging;
7. The State Long-Term Care Ombudsman Program;
8. The Agency for Health Care Administration;
9. The Office of the Attorney General;
10. The Office of the State Courts Administrator;
11. The clerk of the court;
12. A victim services program;
13. An elder law attorney;
14. Emergency services personnel;
15. A certified domestic violence center;
16. An advocacy organization for victims of sexual violence;

17. A funeral home director;

18. A forensic pathologist;

19. A geriatrician;

20. A geriatric nurse;

21. A geriatric psychiatrist or other individual licensed to offer behavioral health services;

22. A hospital discharge planner;

23. A public guardian; or

24. Any other persons who have knowledge regarding fatal incidents of elder abuse, domestic violence, or sexual violence, including knowledge of research, policy, law, and other matters connected with such incidents involving elders or who are recommended for inclusion by the review team.

(c) A person eligible under paragraph (b) may initiate the establishment of a team in his or her judicial circuit and call the first organizational meeting of the team. At the initial meeting, members of the team shall choose two members to serve as co-chairs.

(d) Participation in a review team is voluntary. Members of the review team shall serve without compensation and may not be reimbursed for per diem or travel expenses.

(e) Members shall serve for terms of 2 years, to be staggered as determined by the co-chairs. Chairs may be reelected by a majority of the review team but not for more than 2 consecutive terms.

(f) A review team shall determine the local operations of the team, including, but not limited to, the process for case selection, which must be limited to closed cases in which an elderly person’s death is verified to have been caused by abuse

or neglect, and the meeting schedule, to include at least one meeting in each fiscal year.

(g) Administrative costs of operating the review team shall be borne by the team members or entities whom they represent.

(2) An elder abuse fatality review team must do all of the following:

(a) Review deaths of elderly persons in its judicial circuit alleged or found to have been caused by, or related to, abuse or neglect.

(b) Consider the events leading up to a fatal incident, available community resources, current law and policies, and the actions taken by systems and individuals related to the fatal incident.

(c) Identify gaps, deficiencies, or problems in the delivery of services to elderly persons by public and private agencies which may be related to deaths reviewed by the team.

(d) Whenever possible, develop a communitywide approach to address causes of, and contributing factors to, deaths reviewed by the team.

(e) Develop practice standards and recommend changes in law, rules, and policies to support the care of elderly persons and prevent elder abuse deaths.

(3)(a) Upon written request from a co-chair of a review team, the following information or records pertaining to an elderly person whose death is being reviewed by the team shall be disclosed:

1. Information and records held by a criminal justice agency, as defined in s. 119.011(4), not including active criminal intelligence or investigative information, as defined

in s. 119.011(3).

2. Information and records from Adult Protective Services pursuant to s. 415.107(3)(m).

3. An autopsy report from the Medical Examiner's Office, not including materials protected under s. 406.135.

(b) Review teams may share with each other any relevant information that pertains to the review of the death of an elderly person.

(c) A team member may not contact, interview, or obtain information by request directly from a member of the deceased elder's family as part of the review, unless a team member is authorized to do so in the course of his or her employment duties. A member of the deceased elder's family may voluntarily provide records or information to a review team.

(4)(a) By September 1 of each year, each review team shall submit a report to the Department of Elderly Affairs, including, but not limited to:

1. Descriptive statistics regarding cases reviewed by the review team, including demographic information regarding victims and caregivers, and the causes and nature of deaths;

2. Current policies, procedures, rules, or statutes that the review team identified as contributing to the incidence of elder abuse and elder deaths, and recommendations for system improvement and needed resources, training, or information dissemination to address those identified issues;

3. Any other recommendations to prevent deaths from elder abuse, based on an analysis of the data and information presented in the report; and

4. Any steps taken by the review team and public and

private agencies to implement necessary changes and improve the coordination of services and reviews.

(b) By November 1 of each year, the Department of Elderly Affairs shall prepare a summary report of the information required by paragraph (a), which shall be provided to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Department of Children and Families.

(5) Information and records acquired by an elder abuse fatality review team are not subject to discovery or introduction into evidence in any civil or criminal action or administrative or disciplinary proceeding by any state or local government department or agency if the information or records arose out of the matters that are the subject of review by a review team, unless the information and records are not discoverable from any other source. Information and records that are available from other sources are not immune from discovery or introduction into evidence solely because the information, documents, or records were presented to or reviewed by a review team.

(6) A person who has attended a meeting of the review team or who has otherwise participated in the activities authorized by this section may not be allowed or required to testify in any civil, criminal, administrative, or disciplinary proceeding as to any records or information produced or presented to a team during a meeting or other activity authorized by this section, unless such testimony is necessary to determine the records or information that was available to the fatality review team. However, this paragraph does not prevent any person who testifies before the team or who is a member of the team from

testifying as to matters otherwise within his or her knowledge.

(7) There is no monetary liability on the part of, and a cause of action for damages may not arise against, any member of an elder abuse fatality review team in the performance of his or her duties as a review team member in regard to any discussions by, or deliberations or recommendations of, the team or the member, unless such member acted in bad faith, with wanton and willful disregard of human rights, safety, or property.

(8) Elder abuse fatality review teams and their members may not disclose any information that is confidential pursuant to law.

Section 2. Paragraph (m) is added to subsection (3) of section 415.107, Florida Statutes, to read:

415.107 Confidentiality of reports and records.—

(3) Access to all records, excluding the name of the reporter which shall be released only as provided in subsection (6), shall be granted only to the following persons, officials, and agencies:

(m) An elder abuse fatality review team established under s. 415.1103(1) that is reviewing the death of an elderly person.

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/SB 422
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Health and Human Services) and Senator Gibson
SUBJECT:	Elder Abuse Fatality Review Teams
DATE:	March 6, 2018
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hendon	Hendon	CF	**Favorable**
2.	Loe	Williams	AHS	**Recommend: Fav/CS**
3.	Loe	Hansen	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 422 authorizes the establishment of elder abuse fatality review teams on a voluntary basis in each judicial circuit to review fatal incidents of elder abuse, and make policy and other recommendations to help prevent future incidents of elder abuse-related fatalities. The bill exempts certain information and records acquired by a review team from discovery or introduction into evidence in specified actions or proceedings. The review teams are assigned to the Department of Elder Affairs (DOEA) for administrative purposes only. The DOEA must submit a report, annually by November 1, that summarizes the findings and recommendations of the review teams to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Department of Children and Families.

The bill adds elder abuse fatality review teams to the list of persons and entities authorized pursuant to s. 415.107(3), F.S., to have access to records concerning reports of abuse, neglect, or exploitation of a vulnerable adult, including reports made to the central abuse hotline, otherwise held confidential and exempt from s. 119.07(1), F.S.

The bill expands the legislative intent of the Adult Protective Services Act to state that each adult protective investigator of the Department of Children and Families (DCF) should earn and maintain a valid certification as a protective investigator from a third-party credentialing agency.

The bill will increase state expenditures in the DOEA by an indeterminate amount. The DOEA will experience an increase in workload related to submitting the required report and providing administrative support to the review teams; however, these costs can be absorbed within existing resources.

The bill has no impact on state expenditures in the DCF.

The bill takes effect on July 1, 2018.

II. Present

Adult Protective Services Act

Established in ch. 415, F.S., the Adult Protective Services Act (the Act) creates a structure of support, mandatory reporting, investigatory, referral, and other related services provided by the Department of Children and Families (DCF) to ensure the protection of vulnerable individuals over the age of 18 from abuse, neglect, and exploitation.

The Act establishes a toll-free hotline for the public and certain individuals[1] to report incidents when there is suspicion of abuse, neglect, or exploitation of a vulnerable adult. These reported incidences are investigated by protective investigators of the DCF. A protective investigator is an authorized agent of the DCF who receives and investigates reports of abuse, neglect, or exploitation of vulnerable adults.[2] The DCF is required to provide, within existing resources, appropriate preservice and in-service training for adult protective investigation staff.[3]

Elder Abuse Fatality Review Teams

There are currently no designated Elder Abuse Fatality Review Teams in Florida. The Adult Protective Services Program, under the Department of Children and Families (DCF), is responsible for preventing further harm to vulnerable adults who are victims of abuse, neglect, exploitation, or self-neglect. The mandatory reporting requirement of persons who are required to investigate reports of abuse, neglect, or exploitation also extends to alleged deaths due to abuse or neglect.

The Florida Abuse Hotline, administered by the DCF, screens allegations of adult abuse and neglect to determine whether the information meets the criteria of an abuse report. If the criteria are met, a protective investigation is initiated to confirm whether there is evidence that abuse has occurred; whether that is an immediate or long-term risk to the victim; and whether the victim needs additional services to safeguard his or her well-being.[4]

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[1] Section 415.1034(1)(a), F.S.
[2] Section 415.102(21), F.S.
[3] Section 415.1105(a), F.S.
[4] Florida Department of Children and Families; Protecting Vulnerable Adults, *available at:* http://www.myflfamilies.com/service-programs/adult-protective-services/protecting-vulnerable-adults (last visited Nov. 7, 2017).

Section 415.1034, F.S., enumerates persons that have an immediate, mandatory requirement to report to the central abuse hotline if they know, have suspicion, or have reasonable cause to suspect that a vulnerable adult has been or is being abused, neglected, or exploited. Additionally, any person required to investigate reports of abuse, neglect, or exploitation and who has reasonable cause to suspect that a vulnerable adult died as a result of abuse, neglect, or exploitation shall immediately report the suspicion to the appropriate medical examiner, the appropriate criminal justice agency and to the DCF, notwithstanding the existence of a death certificate signed by a practicing physician.[5]

The DCF is required, upon receipt of a report alleging abuse, neglect, or exploitation of a vulnerable adult, to begin within 24 hours a protective investigation of the matter.[6] For each report it receives, the DCF shall perform an onsite investigation to determine, among other things, if the person meets the definition of a vulnerable adult and, if so, if the person is in need of services; whether there is an indication that the vulnerable adult was abused, neglected, or exploited; and if protective, treatment, and ameliorative services are necessary to safeguard and ensure the vulnerable adult's well-being.[7]

Section 415.1102, F.S., authorizes the DCF to develop, maintain, and coordinate the services of one or more multidisciplinary adult protection teams in each of its regions. A "multidisciplinary adult protection team" is defined as a team of two or more persons trained in the prevention, identification, and treatment of abuse of elderly persons.[8] The multidisciplinary teams may be composed of, but are not limited to, psychiatrists, psychologists, or other trained counseling personnel; law enforcement officers; medical personal with experience or training to provide health services; social workers who have experience or training in the prevention of abuse of the elderly or dependent persons; and public and professional guardians.[9] The multidisciplinary team is convened to supplement the protective services activities of the Adult Protective Services program of the DCF.[10]

Section 415.107(3), F.S., enumerates persons and entities that may have access to records concerning reports of abuse, neglect, or exploitation of a vulnerable adult, including reports made to the central abuse hotline, otherwise held confidential and exempt from s. 119.07(1), F.S. The identity of any person reporting abuse, neglect, or exploitation of a vulnerable person shall not be released to these persons and entities.

III. Effect of Proposed Changes:

Section 1 amends s. 415.101(2), F.S., to expand the legislative intent of the Adult Protective Services Act to state that each adult protective investigator of the DCF should earn and maintain a valid certification as a protective investigator from a third-party credentialing agency.

[5] Section 415.1034(2), F.S.
[6] Section 415.104(1), F.S.
[7] Section 415.104(2), F.S.
[8] Section 415.1102(1), F.S.
[9] Section 415.1102(2), F.S.
[10] Section 415.1102(3), F.S.

Section 2 creates s. 415.1103, F.S., to authorize the creation of an elder abuse fatality review team on a voluntary basis in each judicial circuit[11] to review fatal or near-fatal incidents of abuse, neglect, or violence against the elderly. Each review team is composed of volunteers from numerous state and local agencies as well as community partners.[12] Each volunteer serves without compensation for a two-year term. Each team will determine the number of cases it will review and must limit its review to closed cases in which an elderly person's death is verified to have been caused by abuse or neglect in order to avoid interference with an ongoing criminal investigation or prosecution.

The elder abuse fatality team's review may include a review of events leading up to the incident, available community resources, actions taken by systems and individuals related to the incident, and any other information deemed relevant to the team. The review team is directed to make policy and other recommendations, which include system improvements and necessary resources, training, or other information to prevent future incidents of elder abuse deaths. Each team is required to submit its findings and recommendations to the DOEA annually by September 1. By November 1 each year, the DOEA shall prepare a summary report of the information provided by the review teams, and submit the report to the Executive Office of the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Department of Children and Families.

The bill exempts a member of a review team in the performance of his or her duties as a review team member from monetary liability. Additionally, all information and records acquired by an elder abuse fatality review team are not subject to discovery or introduction into evidence in any civil or criminal action. The elder abuse fatality review teams are assigned to the Department of Elder Affairs for administrative purposes only.

Section 3 adds elder abuse fatality review teams to the list of persons and entities authorized pursuant to s. 415.107(3), F.S., to have access to records concerning reports of abuse, neglect, or exploitation of a vulnerable adult, including reports made to the central abuse hotline, otherwise held confidential and exempt from s. 119.07(1), F.S.

Section 4 provides an effective date of July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

[11] There are currently 20 judicial circuits in Florida.

[12] The bill provides for membership to include, but not be limited to, the following or their representatives: law enforcement agencies; the state attorney; the medical examiner; a county court judge; adult protective services; an Aging and Disability Resource Center; the State Long-Term Care Ombudsman program; the Agency for Health Care Administration; the Office of the Attorney General; the office of court administration; the clerk of the court; a victim services program; an elder law attorney; emergency services personnel; a certified domestic violence center; an advocacy organization for victims of sexual violence; a funeral home director; a forensic pathologist; a geriatrician; a geriatric nurse; a geriatric psychiatrist or other individual licensed to offer behavioral health services; a hospital discharge planner; a public guardian; and other persons with knowledge regarding fatal incidents of elder abuse, domestic violence, or sexual violence.

B. Public Records/Open Meetings Issues:

Any public records or open meetings issues are addressed in SB 424.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The title of the bill is narrowly defined as an act relating to elder abuse fatality review teams, and should be broadened to include the portion of the bill that expands the legislative intent of the Adult Protective Services Act related to adult protective investigator certification.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

If the cost of the credentialing is borne by the protective investigator, it is estimated that each certification will cost approximately $250; however, the bill does not establish any penalties for the failure of a protective investigator to earn or maintain a valid certification from a third-party credentialing entity.

C. Government Sector Impact:

The bill will not increase state expenditures in the DCF. The DCF is required to provide appropriate preservice and in-service training for adult protective investigation staff within available resources of the department.[13] If the cost of the credentialing is borne by the DCF, it is estimated that each certification will cost approximately $250.

The Department of Elder Affairs will incur additional costs associated with providing administrative support to the various elder abuse fatality review teams, and submitting the required annual report; however, these costs can be absorbed within existing resources. Other public agencies whose staff serve on the review teams may incur some costs.

VI. Technical Deficiencies:

The bill does not specify the appointing authority for the members of the review team. As a result, anyone that falls within the particular membership categories may "volunteer" to participate on the review team. This may raise concerns because the review team has access to information that is otherwise confidential and exempt from public disclosure.

[13] *Supra* note 3.

VII. Related Issues:

The bill amends the legislative intent of the Adult Protective Services Act but does not amend any other section of statute, such as s. 415.1105(a), F.S., to require the DCF to certify the protective investigators, or the protective investigators to certify themselves at their own expense, using a third-party credentialing agency. Section 415.1105(a), F.S., authorizes the DCF to provide, within available resources, appropriate preservice and in-service training for adult protective investigation staff. This would have the effect of nullifying any responsibility of the DCF to contract with a third-party credentialing agency without an additional appropriation by the Legislature.

The bill does not define the term "elder," specifically the age at which a person is deemed to be an elder, which may lead to inconsistency in the cases a team chooses to review. Providing a definition of "elder" which establishes, at a minimum, the age of a person eligible for a team review will allow for more standardized comparability amongst the separate reports required to be submitted by each team.

VIII. Statutes Affected:

This bill creates section 415.1103 of the Florida Statutes.

The bill amends sections 415.107 and 415.101 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 March 2, 2018:
The committee substitute makes the following changes:

- Expands the legislative intent of the Adult Protective Services Act to state that each adult protective investigator of the DCF should be certified as a protective investigator by a third-party credentialing agency;
- Makes the establishment of an elder abuse fatality review team voluntary in each judicial circuit in Florida;
- Requires the scope of the review team be limited to closed cases in which abuse or neglect is verified;
- Requires the review teams to submit recommendations by September 1 annually to the DOEA;
- Requires the DOEA to compile the recommendations of the review teams into a single report to be submitted to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Department of Children and Families by November 1 annually; and
- Adds elder abuse fatality review teams to the list of persons and entities authorized pursuant to s. 415.107(3), F.S., to have access to records concerning reports of abuse,

neglect, or exploitation of a vulnerable adult, including reports made to the central abuse hotline, otherwise held confidential and exempt from s. 119.07(1), F.S.

B. Amendments:

None.

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

By Senator Gibson

6-00430B-18 2018422__

A bill to be entitled

An act relating to elder abuse fatality review teams; creating s. 415.1103, F.S.; providing legislative findings; creating elder abuse fatality review teams in each judicial circuit housed, for administrative purposes only, in the Department of Elderly Affairs; providing for membership; specifying the duties of the review teams; providing immunity from liability for acts conducted in furtherance of a review team's duties; prohibiting a review team and its members from disclosing certain information; exempting certain information and records acquired by a review team from discovery or introduction into evidence in specified actions or proceedings; providing an exception; prohibiting a person from being required to testify regarding records or information produced or presented during meetings or other activities of a review team; providing an exception; requiring each judicial circuit to organize by public notice the review team's initial meeting; providing requirements for the initial meeting; providing an effective date.

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

Section 1. Section 415.1103, Florida Statutes, is created to read:

415.1103 Elder abuse fatality review teams.—

(1) The Legislature finds that elder abuse is a serious issue and that fatality review teams raise awareness in the

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

6-00430B-18 2018422__

community of the serious nature and potential lethality of elder abuse in this state, support the enactment of protections and reforms that will help prevent abuse-related deaths in the future, and help ensure that victims of elder abuse receive needed services.

(2) Effective December 31, 2018, an elder abuse fatality review team must be established in each judicial circuit to review the facts and circumstances in cases involving abuse-related deaths. The teams shall be housed, for administrative purposes only, in the Department of Elderly Affairs.

(3) The elder abuse fatality review teams are composed of volunteers, each of whom shall serve without compensation for a term of 2 years. The review team membership may include, but is not limited to, the following or their representatives:

(a) Law enforcement agencies.

(b) The state attorney.

(c) The medical examiner.

(d) A county court judge.

(e) Adult protective services.

(f) The Aging and Disability Resource Center.

(g) The State Long-Term Care Ombudsman Program.

(h) The Agency for Health Care Administration.

(i) The Office of the Attorney General.

(j) The office of court administration.

(k) The clerk of the court.

(l) A victim services program.

(m) An elder law attorney.

(n) Emergency services personnel.

(o) A certified domestic violence center.

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

(p) An advocacy organization for victims of sexual violence.

(q) A funeral home director.

(r) A forensic pathologist.

(s) A geriatrician.

(t) A geriatric nurse.

(u) A geriatric psychiatrist or other individual licensed to offer behavioral health services.

(v) A hospital discharge planner.

(w) A public guardian.

(x) Other persons who have knowledge regarding fatal incidents of elder abuse, domestic violence, or sexual violence, including knowledge of research, policy, law, and other matters connected with such incidents or who are recommended for inclusion by the review team.

(4) Each elder abuse fatality review team shall do all of the following:

(a) Limit its review to cases that have been closed, to avoid interference with or influencing the outcome of an ongoing criminal investigation or prosecution.

(b) Determine the number of cases it will review in which an elderly person's death is verified to have been caused by abuse or neglect.

(c) After reviewing those cases, make policy and other recommendations as to how incidents of abuse-related fatalities may be prevented.

(d) Submit its recommendations to the Office of the Governor, the President of the Senate, the Speaker of the House of Representatives, the Department of Children and Families, and

the Department of Elder Affairs.

(5)(a) The elder abuse fatality review teams must be provided access to any information or records contained in a closed file that pertains to an elder whose death is subject to review by a team, including information or records from a law enforcement agency, which are determined necessary for the team to carry out its duties.

(b) The review teams shall review the events leading up to a fatal incident, available community resources, the actions taken by systems and individuals related to the fatal incident, and any other information deemed relevant by the team.

(6) There is no monetary liability on the part of, and a cause of action for damages may not arise against, any member of an elder abuse fatality review team in the performance of his or her duties as a review team member.

(7) Elder abuse fatality review teams and their members may not disclose any information that is not otherwise a public record.

(8) Information and records acquired by an elder abuse fatality review team are not subject to discovery or introduction into evidence in any civil or criminal action or administrative or disciplinary proceeding by any department or employing agency if the information or records arose out of matters that are the subject of evaluation and review by the elder abuse fatality review team. However, information, documents, and records that are available from other sources are not immune from discovery or introduction into evidence solely because the information, documents, or records were presented to or reviewed by a review team. A person who has attended a

meeting of an elder abuse fatality review team may not be required to testify in any civil, criminal, administrative, or disciplinary proceedings as to any records or information produced or presented to the team during meetings or other activities authorized by this section. However, review team members may be required to testify as to matters otherwise within their personal knowledge.

(9) The chief judge or his or her representative from each judicial circuit shall provide public notice of the initial meeting of the review team in its circuit. At the initial meeting, the volunteers shall choose two members who shall serve as co-chairs of the review team. The co-chairs shall determine the frequency of the meetings in the circuit and submit the team's recommendations as provided in paragraph (4)(d).

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

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

THE FLORIDA SENATE
Tallahassee, Florida 32399-1100

SENATOR AUDREY GIBSON
6th District

SENATE APPROPRIATIONS
RECEIVED
18 JAN 30 PM 4:25
SENT TO: CHAIRMAN
STAFF DIR. STAFF

COMMITTEES:
Military and Veterans Affairs, Space, and Domestic Security, *Chair*
Appropriations
Appropriations Subcommittee on Transportation, Tourism, and Economic Development
Commerce and Tourism
Judiciary
Regulated Industries
Joint Legislative Auditing Committee

January 24, 2018

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

Chair Bradley:

I respectfully request that SB 422, relating to elder abuse fatality review teams, be placed on the next committee agenda.

SB 422, creates an elder abuse fatality team housed in each judicial circuit to review closed file cases from the State Attorney's Office to make access to legislature and government on preventing fatal elder abuse.

Thank you for your time and consideration.

Sincerely,

Audrey Gibson
State Senator
District 6

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-2-18
Meeting Date

422
Bill Number (if applicable)

913150
Amendment Barcode (if applicable)

Topic Elder Abuse facility Review

Name Albert Balido

Job Title

Address 201 W Park Ave # 100
Street
Tall. FL 32301
City *State* *Zip*

Phone 8502513440

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Certification Board

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons 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 424
INTRODUCER:	Governmental Oversight and Accountability Committee and Senator Gibson
SUBJECT:	Public Records and Public Meetings/Elder Abuse Fatality Review Team
DATE:	March 1, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hendon	Hendon	CF	**Favorable**
2.	Peacock	Caldwell	GO	**Fav/CS**
3.	Loe	Hansen	AP	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 424 creates a public records exemption for certain information obtained by an elder abuse fatality review team as authorized by SB 422. This includes information contained in a record created by an elder abuse fatality review team that reveals the identity of a victim of elder abuse. The bill exempts from public meetings requirements those portions of a meeting that would reveal information that is made confidential and exempt under this bill.

The bill provides that the exemption is subject to the Open Government Sunset Review Act, and stands repealed on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature. The bill provides a statement of public necessity as required by the Florida Constitution.

The bill creates a new public records exemption, and therefore requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage.

The bill has no impact on state revenues or expenditures.

The effective date of the bill is contingent upon, and concurrent with, passage of SB 422, which has an effective date of July 1, 2018.

II. Present Situation:

Public Records Law

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

In addition to the Florida Constitution, the Florida Statutes provides that the public may access legislative and executive branch records.[3] Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act. The Public Records Act states:

> [I]t is the policy of this state that all state, county and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.[4]

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or the method of transmission.[5] The Florida Supreme Court has interpreted public records as being "any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type."[6] A violation of the Public Records Act may result in civil or criminal liability.[7]

The Legislature may create an exemption to public records requirements.[8] An exemption must pass by a two-thirds vote of the House and the Senate.[9] In addition, an exemption must explicitly lay out the public necessity justifying the exemption, and the exemption must be no broader than necessary to accomplish the stated purpose of the exemption.[10] A statutory exemption that does not meet these criteria may be unconstitutional and may not be judicially saved.[11]

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[1] FLA. CONST., art. I, s. 24(a).
[2] *Id*.
[3] The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature's records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislatures are primarily located in s. 11.0431(2)-(3), F.S.
[4] Section 119.01(1), F.S.
[5] Section 119.011(12), F.S., defines "public record" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."
[6] *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc*., 379 So. 2d 633, 640 (Fla. 1980).
[7] Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.
[8] FLA. CONST., art. I, s. 24(c).
[9] *Id*.
[10] *Id*.
[11] *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So.2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define

When creating a public records exemption, the Legislature may provide that a record is "confidential and exempt" or "exempt."[12] Records designated as "confidential and exempt" may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as "exempt" are not required to be made available for public inspection, but may be released at the discretion of the records custodian under certain circumstances.[13]

Open Meetings Laws

The Florida Constitution provides that the public has a right to access governmental meetings.[14] Each collegial body must provide notice of its meetings to the public and permit the public to attend any meeting where official acts are taken or public business is transacted or discussed.[15] This applies to the meetings of any collegial body of the executive branch of state government, counties, municipalities, school districts, or special districts.[16]

Section 286.011, F.S., which is known as the "Government in the Sunshine Law,"[17] or the "Sunshine Law,"[18] requires all meetings of any board or commission of any state or local agency or authority where official acts are to be taken be open to the public.[19] The board or commission must provide the public reasonable notice of such meetings.[20] Public meetings may not be held at any location that discriminates on the basis of sex, age, race, creed, color, origin, or economic status or operates in a manner that unreasonably restricts the public's access to the facility.[21] Minutes of a public meeting must be promptly recorded and open to public inspection.[22] Failure to abide by open meetings requirements will invalidate any resolution, rule, or formal action adopted at a meeting.[23] A public officer or member of a governmental entity who violates the Sunshine Law is subject to civil and criminal penalties.[24]

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important terms and did not justify the breadth of the exemption. *Id*. at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id*. at 196.

[12] If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

[13] *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

[14] FLA. CONST., art. I, s. 24(b).

[15] *Id*.

[16] FLA. CONST., art. I, s. 24(b). Meetings of the Legislature are governed by Article III, section 4(e) of the Florida Constitution, which states: "The rules of procedure of each house shall further provide that all prearranged gatherings, between more than two members of the legislature, or between the governor, the president of the senate, or the speaker of the house of representatives, the purpose of which is to agree upon formal legislative action that will be taken at a subsequent time, or at which formal legislative action is taken, regarding pending legislation or amendments, shall be reasonably open to the public."

[17] *Times Pub. Co. v. Williams*, 222 So. 2d 470, 472 (Fla. 2d DCA 1969).

[18] *Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693, 695 (Fla. 1969).

[19] Section 286.011(1)-(2), F.S.

[20] *Id.*

[21] Section 286.011(6), F.S.

[22] Section 286.011(2), F.S.

[23] Section 286.011(1), F.S.

[24] Section 286.011(3), F.S.

The Legislature may create an exemption to open meetings requirements by passing a general law by a two-thirds vote of the House and the Senate.[25] The exemption must explicitly lay out the public necessity justifying the exemption, and must be no broader than necessary to accomplish the stated purpose of the exemption.[26] A statutory exemption that does not meet these two criteria may be unconstitutional and may not be judicially saved.[27]

Open Government Sunset Review Act

The Open Government Sunset Review Act (OGSR) prescribes a legislative review process for newly created or substantially amended public records.[28] The OGSR provides that an exemption automatically repeals on October 2 of the fifth year after creation or substantial amendment. The Legislature must reenact an exemption in order to save the exemption from repeal.[29] In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption.

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than necessary to accomplish the stated purpose of the exemption.[30] The Legislature must find that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption. An exemption serves an identifiable purpose if it meets one of the following criteria:

- Allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;[31]
- Release of sensitive personal information would be defamatory or would jeopardize an individual's safety;[32,33] or
- Protects trade or business secrets.[34]

The OGSR requires specific questions be considered during the review process.[35] The OGSR asks the Legislature to question carefully the purpose and necessity of reenacting the exemption.

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[25] FLA. CONST., art. I, s. 24(c).
[26] *Id*.
[27] *See supra* note 12.
[28] Section 119.15, F.S. According to s. 119.15(4)(b), F.S., a substantially amended exemption is one that is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to s. 119.15(2), F.S.
[29] Section 119.15(3), F.S.
[30] Section 119.15(6)(b), F.S.
[31] Section 119.15(6)(b)1., F.S.
[32] Section 119.15(6)(b)2., F.S.
[33] Only personal identifying information is exempt if this public purpose is cited as the basis of an exemption.
[34] Section 119.15(6)(b)3., F.S.
[35] Section 119.15(6)(a), F.S. The specified questions are:

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

A public necessity statement and a two-thirds vote of the members present and voting in each house of the Legislature are required for final passage if the Legislature expands an exemption.[36] A public necessity statement and a two-thirds vote of the members present and voting in each house of the Legislature are not required for final passage if the exemption is reenacted without substantive changes or if the exemption is narrowed. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless otherwise provided for by law.[37]

III. Effect of Proposed Changes:

Section 1 amends s. 415.1103, F.S., to provide that any information that is confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution obtained by an elder abuse fatality review team when conducting a review retains its confidential or exempt status when held by the review team. The bill creates a public records exemption for information contained in a record created by an elder abuse fatality review team that reveals the identity of a victim of elder abuse as authorized in SB 422.

This section provides that portions of meetings of a review team where confidential or exempt information or the identity of a victim of elder abuse is discussed are exempt from s. 286.011, F.S., and s. 24(b), Art. I of the State Constitution.

The exemption is subject to the OGSR and stands repealed on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill creates a new public records exemption, and therefore requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage.

Section 2 provides a statement of public necessity as required by the Florida Constitution. It states that sensitive personal information concerning victims of elder abuse would be disclosed and open communication and coordination between the parties involved in the elder abuse fatality review would be hampered without the exemption.

Section 3 provides an effective date that is contingent upon, and concurrent with, passage of SB 422, which has an effective date of July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

[36] FLA. CONST., art. I, s. 24(c).
[37] Section 119.15(7), F.S.

B. Public Records/Open Meetings Issues:

Voting Requirement

Article I, Section 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting in each house of the Legislature for a public records exemption to pass.

Breadth of Exemption

Article I, Section 24(c) of the Florida Constitution requires a newly created public records exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill provides that information that is confidential and exempt from s. 119.07(1), F.S., remain confidential and exempt when held by an elder abuse fatality review team. The bill allows a record created by a review team that identifies the victim of elder abuse to remain confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. This bill appears to be no broader than necessary to accomplish the public necessity for this public records exemption.

Portions of meetings of an elder abuse fatality review team at which confidential or exempt information or the identity of a victim of elder abuse is discussed would be exempt from s. 286.011, F.S., and s. 24(b), Art. I of the State Constitution.

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:

SB 422 authorizes the establishment of elder abuse fatality review teams to review fatal incidents of elder abuse.

VIII. Statutes Affected:

This bill substantially amends s. 415.1103 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 Governmental Oversight and Accountability on January 10, 2018:
The Committee Substitute:

- Corrects technical deficiencies regarding terminology for public records and meetings; and
- Provides citations to SB 422, the linked bill for the public records exemption.

B. Amendments:

None.

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

By the Committee on Governmental Oversight and Accountability; and Senator Gibson

585-01960-18 2018424c1

A bill to be entitled

An act relating to public records and public meetings; amending s. 415.1103, F.S.; specifying that information obtained by an elder abuse fatality review team which is exempt or confidential and exempt from public records requirements retains its protected status; providing an exemption from public records requirements for identifying information of an elder abuse victim in records created by a review team; providing an exemption from public meetings requirements for portions of review team meetings at which exempt or confidential and exempt information or the identity of an elder abuse victim is discussed; providing for future legislative review and repeal; providing statements of public necessity; providing a contingent effective date.

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

Section 1. Subsections (9), (10), and (11) are added to section 415.1103, Florida Statutes, as created by SB 422, to read:

415.1103 Elder abuse fatality review teams.—

(9)(a) Any information that is exempt or confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution and that is obtained by an elder abuse fatality review team conducting a review under this section retains its exempt or confidential and exempt status when held by an elder abuse fatality review team.

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(b) Any information contained in a record created by an elder abuse fatality review team which reveals the identity of a victim of elder abuse is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(10) Portions of meetings of an elder abuse fatality review team at which exempt or confidential and exempt information or the identity of a victim of elder abuse is discussed are exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution.

(11) Subsections (9) and (10) are subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. (1) The Legislature finds that it is a public necessity that information that is exempt or confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution remain exempt or confidential and exempt when held by an elder abuse fatality review team and that any information contained in a record created by an elder abuse fatality review team which reveals the identity of a victim of elder abuse be confidential and exempt from public records requirements. Otherwise, sensitive personal information concerning victims of elder abuse would be disclosed and open communication and coordination among the parties involved in the elder abuse fatality review teams would be hampered. The harm that would result from the release of such information substantially outweighs any public benefit that would be achieved by disclosure.

(2) The Legislature further finds that it is a public necessity that portions of meetings of an elder abuse fatality

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review team at which exempt or confidential and exempt information or the identity of a victim of elder abuse is discussed be exempt from s. 286.011, Florida Statutes, and s. 24(b), Article I of the State Constitution. The failure to close portions of meetings at which exempt or confidential and exempt information or the identity of a victim of elder abuse are discussed would defeat the purpose of the public records exemption. Further, the Legislature finds that the exemption is narrowly tailored to apply to only certain portions of meetings of elder abuse fatality review teams to allow for public oversight.

Section 3. This act shall take effect on the same date that SB 422 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

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 Legislative Auditing Committee

January 24, 2018

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

Chair Bradley:

I respectfully request that SB 424, relating to public records and public meetings/elder abuse fatality review teams, be placed on the next committee agenda.

SB 424, exempts certain information obtained by an elder abuse fatality review team that was already exempt before receiving the closed file.

Thank you for your time and consideration.

Sincerely,

Audrey Gibson
State Senator
District 6

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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/CS/SB 620 (741326)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Finance and Tax); Commerce and Tourism Committee; and Senator Passidomo and others
SUBJECT:	Disaster Preparedness Tax Exemption
DATE:	March 1, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Little	McKay	CM	**Fav/CS**
2.	Gross	Diez-Arguelles	AFT	**Recommend: Fav/CS**
3.	Gross	Hansen	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 620 provides a documentary stamp tax exemption for any loan made by the Florida Small Business Emergency Bridge Loan Program in response to a disaster that results in a state of emergency, or any loan made by the Agricultural Economic Development Program.

The bill also establishes two 7-day periods during which items purchased for disaster preparedness and protection are exempt from state sales and use tax and county discretionary sales surtaxes. The first period begins Friday, June 1, 2018, and ends Thursday, June 7, 2018, which coincides with the start of the Atlantic hurricane season. The second period begins Friday, July 6, 2018, and ends Thursday, July 12, 2018.

Exempt items include: light sources, radios, tarps, "tie-down" kits, fuel tanks, batteries, cellular telephone chargers, portable power banks, food storage coolers, generators, carbon monoxide detectors, reusable ice, locator beacons,

The Revenue Estimating Conference (REC) estimates that this bill will reduce General Revenue Fund receipts by $9.9 million and reduce local government revenues by $2.6 million in Fiscal Year 2018-2019.

The bill appropriates $70,072 in nonrecurring funds from the General Revenue Fund to the Department of Revenue to administer the sales tax holidays.

The bill is effective upon becoming law.

II. Present Situation:

Emergency Loans

The Excise Tax on Documents (documentary stamp tax) is levied on promissory notes, nonnegotiable notes, written obligations to pay money, and assignments of salaries, wages, or other compensation at the rate of 35 cents per $100 or fraction thereof of the indebtedness or obligation evidenced thereby. The tax on these documents may not exceed $2,450.[1]

The Florida Small Business Emergency Loan Program is part of Florida's response to disasters. The program's purpose is to provide short-term, interest-free working capital loans that are intended to "bridge the gap" between the time a major catastrophe hits and when a business has secured longer term recovery resources. Loans are awarded in amounts from $1,000 to $50,000, with terms of 90 or 180 days, and must be paid in full by the end of the loan term.[2]

The program was first activated following Hurricane Andrew and has been activated 20 additional times since then. In response to Hurricane Irma in September 2017, the program has made 829 small business loans totaling $27,719,793 and 49 citrus-related loans totaling $5,728,000.[3]

The Agricultural Economic Development Program[4] provides for disaster loans and grants for agricultural producers who have experienced losses from a natural disaster or a socio-economic condition or event. The loans and grants may be used to:

- Restore or replace essential physical property or remove debris from essential physical property;
- Pay all or part of production costs associated with the disaster year;
- Pay essential family living expenses; or
- Restructure farm debts.

Agricultural producers having parcels of land in production not exceeding 300 acres are eligible for loans under this program, and funds may be issued as direct loans or as loan guarantees for up to 90 percent of the total loan, in amounts not less than $30,000 and not more than $300,000. Loan applicants must provide at least ten percent equity.[5] This program has not been funded by the Legislature, and no loans have been made.[6]

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[1] Section 201.08(1)(a), F.S.
[2] http://www.floridadisasterloan.org/ last visited January 12, 2018.
[3] Total amounts as of January 8, 2018.
[4] Section 570.82, F.S.
[5] *Id*.
[6] Florida Legislature, Office of Economic and Demographic Research, Revenue Estimating Conference, *Disaster Loans*, Proposed Language, Jan 12, 2018 Revenue Impact Results, *available at http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2018/_pdf/page278-281.pdf*.

Florida Sales and Use Tax

Florida levies a six percent sales and use tax on the sale or rental of most tangible personal property, admissions,[7] transient rentals,[8] rental of commercial real estate,[9] and a limited number of services. Chapter 212, F.S., contains statutory provisions authorizing the levy and collection of Florida's sales and use tax, as well as the exemptions and credits applicable to certain items or uses under specified circumstances. There are currently more than 250 exemptions, exclusions, deductions, and credits from the sales and use tax.[10] Sales tax is added to the price of the taxable good or service and collected from the purchaser at the time of sale.[11]

In addition to the state tax, s. 212.055, F.S., authorizes counties to impose nine local discretionary sales surtaxes. A surtax applies to "all transactions occurring in the county which transactions are subject to the state tax imposed on sales, use, services, rental, admissions, and other transactions by [ch. 212, F.S.], and on communications services as defined in ch. 202, F.S."[12] The discretionary sales surtax is based on the tax rate imposed by the county where the taxable goods or services are sold, or are delivered into. Discretionary sales surtax rates currently levied vary by county in a range from 0.5 percent to 1.5.[13]

Disaster Preparedness

Previous legislatures have approved sales tax exemptions for specified items in preparation for the Atlantic hurricane season, which typically begins on June 1st of each year.[14]

The Florida Division of Emergency Management recommends having a plan and preparing property to prevent damage. Additionally, the Division of Emergency Management recommends having a disaster supply kit with items such as a battery-operated radio, flashlight, batteries, and first-aid kit.[15]

The Federal Emergency Management Agency (FEMA) educates Americans on how to prepare for emergencies through Ready, a public service advertising campaign.[16] In addition to the items listed in the paragraph above, FEMA recommends cell phone chargers, inverters, or solar chargers as items to include in an emergency preparedness supply kit.[17]

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[7] Section 212.04, F.S.
[8] Section 212.03, F.S.
[9] Section 212.031, F.S.
[10] *See* Office of Economic and Demographic Research, The Florida Legislature, *Florida Tax Handbook,* 164-170 (2017).
[11] Florida Dept. of Revenue, *Who must pay tax? Partial list of taxable business activities, available at* http://dor.myflorida.com/dor/taxes/sales_tax.html (last visited Nov. 15, 2017).
[12] Section 212.054, F.S.
[13] Florida Legislature, Office of Economic and Demographic Research, *Florida Tax Handbook,* 2017 Local Discretionary Sales Surtax Rates in Florida's Counties, 224-225 (2017), *available at* http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2017.pdf (last visited Nov. 15, 2017).
[14] National Oceanic and Atmospheric Administration, *Frequently Asked Questions, available at,* http://www.aoml.noaa.gov/hrd/tcfaq/G1.html (last visited Nov. 15, 2017).
[15] Florida Division of Emergency Management, *Emergency Kit, Make a Plan, Be Informed, available at,* http://www.floridadisaster.org/documents/EmergencyKit-FDEM.pdf (last visited Nov. 15, 2017).
[16] Federal Emergency Management Agency, *Ready.gov, available at,* http://www.ready.gov (last visited Nov. 15, 2017).
[17] Federal Emergency Management Agency, *Build A Kit, available at,* https://www.ready.gov/build-a-kit (last visited Nov. 15, 2017).

III. Effect of Proposed Changes:

Section 1 provides an exemption from documentary stamp tax for any loan made by the Florida Small Business Emergency Loan Program in response to a disaster for which the governor declares a state of emergency pursuant to s. 252.36, F.S., or any loan made by the Agricultural Economic Development Program.

Section 2 establishes two 7-day periods during which items purchased for disaster preparedness and protection are exempt from the sales and use tax and local discretionary sales surtaxes. The first exemption period begins at 12:01 a.m. on Friday, June 1, 2018, and ends at 11:59 p.m. on Thursday, June 7, 2018. The second exemption period begins at 12:01 a.m. on Friday, July 6, 2018 and ends at 11:59 on Thursday, July 12, 2018. The following items are exempt:

- A portable self-powered light source selling for $20 or less.
- A portable self-powered radio, two-way radio, or weather band radio selling for $75 or less.
- A tarpaulin or other flexible waterproof sheeting selling for $50 or less.
- An item typically sold or advertised as a ground anchor system or tie-down kit selling for $50 or less.
- A gas or diesel fuel tank selling for $25 or less.
- A package of AAA-cell, AA-cell, C-cell, D-cell, 6-volt, or 9-volt batteries, excluding automobile and boat batteries, selling for $30 or less.
- A portable power bank intended to be used to charge cellular telephones and other small electronic devices and selling for $75 or less.
- A cellular telephone charger selling for $40 or less.
- A non-electric food storage cooler selling for $30 or less.
- A carbon monoxide detector selling for $75 or less.
- Reusable ice selling for $10 or less.
- A single product consisting of two or more of the previously listed items selling for $75 or less.
- A portable generator selling for $1,000 or less used to provide light, support communications, or preserve food during a power outage.
- A standby generator selling for $5,000 or less which is intended to be permanently affixed to real property.
- A personal locator beacon selling for $600 or less.
- An emergency position-indicating radio beacon selling for $1,500 or less.

Sales within public lodging establishments,[18] theme parks or entertainment complexes,[19] or airports[20] are not exempt from taxes under this bill.

The bill authorizes the Department of Revenue (DOR) to adopt emergency rules in order to implement the sales tax exemption.

Section 3 appropriates $70,072 in nonrecurring funds from the General Revenue Fund to the DOR in Fiscal Year 2017-18 to administer the holidays.

[18] Section 509.013(4), F.S.
[19] Section 509.013(9), F.S.
[20] Section 330.27(2), F.S.

Section 4 provides that the bill is effective upon becoming law.

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,[21] which for Fiscal Year 2017-2018, is $2.1 million or less.[22]

The Revenue Estimating Conference estimates this bill will reduce the authority that counties have to raise revenue from the local options sales tax by $1.3 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 that the documentary stamp tax exemption provided by this bill will reduce General Revenue Fund receipts and state trust fund receipts by an indeterminate amount in Fiscal Year 2018-2019 and each year thereafter.[23]

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[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*, (September 2011), *available at* http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf (last visited Nov. 9, 2017).

[22] 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).

[23] *Supra note 6.*

The Revenue Estimating Conference estimates that the disaster preparedness sales tax holidays in this bill will reduce General Revenue Fund receipts by $9.9 million and reduce local government revenues by $2.6 million in Fiscal Year 2018-2019.[24]

B. Private Sector Impact:

Indeterminate, but positive. Consumers may see a reduction in the cost of the specified products related to disaster preparation and protection.

C. Government Sector Impact:

The DOR estimates the cost associated with notifying businesses of the sales tax exemption, by printing and mailing a tax information publication, will be approximately $70,072.[25]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill creates section 201.25 of the Florida Statutes.
The bill creates an 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 Finance and Tax on January 16, 2018:
The committee substitute (CS) exempts from the tax on documents:

- Loans made by the Florida Small Business Emergency Bridge Loan Program that are in response to a disaster, which disaster must be declared by executive order or proclamation by the Governor.
- Loans made by the Agricultural Economic Development Program.

The CS creates two 7-day periods when items purchased for disaster preparedness are exempt from sales tax. The first period, beginning at 12:01 a.m. on Friday, June 1, 2018, and ending Thursday, June 7, 2018, coincides with the start of the Atlantic hurricane

[24] Florida Legislature, Office of Economic and Demographic Research, Revenue Estimating Conference, *Disaster Preparedness Holiday, SB620-Proposed Amendment*, Jan 12, 2018 Revenue Impact Results, *available at http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2018/_pdf/page295-301.pdf.*
[25] Florida Department of Revenue, *2018 Agency Legislative Bill Analysis: SB 620* (Nov. 3, 3017) (on file with the Senate Commerce and Tourism Committee).

season. The second period begins at 12:01 a.m. on Friday, July 6, 2018, and ends Thursday, July 12, 2018.

The CS removes from the list of exempt items in CS/SB 620:
- Cellphone batteries;
- Storm shutter devices;
- External portable computer drives; and
- Inverters or uninterruptible power supply systems.

The CS adds to the list of exempt items in CS/SB 620:
- Portable power banks intended to be used to charge cellular telephones and other small electronic devices.
- Standby generators intended to be permanently affixed to real property selling for $5,000 or less.

CS by Commerce and Tourism Committee on November 13, 2017:
The bill is amended to specify the amount of the appropriation to the DOR to administer the sales tax exemption. For the 2017-2018 fiscal year, the bill appropriates $70,072 in nonrecurring funds from the General Revenue Fund to the DOR.

B. Amendments:

None.

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

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/02/2018	.	
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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. Effective January 1, 2019, subsection (6) of section 28.241, Florida Statutes, is amended to read:

28.241 Filing fees for trial and appellate proceedings.—

(6) From each attorney appearing pro hac vice, the clerk of the circuit court shall collect a fee of $100 for deposit into the State Courts Revenue Trust Fund ~~General Revenue Fund~~.

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Section 2. Section 159.621, Florida Statutes, is amended to read:

159.621 Housing bonds exempted from taxation; notes and mortgages exempted from excise tax on documents.—

(1) The bonds of a housing finance authority issued under this act, together with all notes, mortgages, security agreements, letters of credit, or other instruments which arise out of or are given to secure the repayment of bonds issued in connection with the financing of any housing development under this part, as well as the interest thereon and income therefrom, shall be exempt from all taxes.

(2) Any note or mortgage given in connection with a loan made by or on behalf of a housing finance authority under s. 159.608(8) is exempt from the excise tax on documents under chapter 201 if, at the time the note or mortgage is recorded, the housing finance authority records an affidavit signed by an agent of the housing authority which affirms that the loan was made by or on behalf of the housing finance authority. The documentation must be in the form of an affidavit or letter from the housing finance authority and signed by the agent of the authority. The affidavit or letter must be recorded with the mortgage.

The exemptions ~~exemption~~ granted by this section do not apply ~~shall not~~ ~~be applicable~~ to any tax imposed by chapter 220 on interest, income, or profits on debt obligations owned by corporations or to a deed for property financed by a housing finance authority.

Section 3. Effective upon this act becoming a law, section

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193.0237, Florida Statutes, is created to read:

193.0237 Assessment of multiple parcel buildings.—

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

(a) "Multiple parcel building" means a building, other than a building consisting entirely of a single condominium, timeshare, or cooperative, which contains separate parcels that are vertically located, in whole or in part, on or over the same land.

(b) "Parcel" means a portion of a multiple parcel building which is identified in a recorded instrument by a legal description that is sufficient for record ownership and conveyance by deed separately from any other portion of the building.

(c) "Recorded instrument" means a declaration, covenant, easement, deed, plat, agreement, or other legal instrument, other than a lease, mortgage, or lien, which describes one or more parcels in a multiple parcel building and which is recorded in the public records of the county where the multiple parcel building is located.

(2) The value of land upon which a multiple parcel building is located, regardless of ownership, may not be separately assessed and must be allocated among and included in the just value of all the parcels in the multiple parcel building as provided in subsection (3).

(3) The property appraiser, for assessment purposes, must allocate all of the just value of the land among the parcels in a multiple parcel building in the same proportion that the just value of the improvements in each parcel bears to the total just value of all the improvements in the entire multiple parcel

building.

(4) A condominium, timeshare, or cooperative may be created within a parcel in a multiple parcel building. Any land value allocated to the just value of a parcel containing a condominium must be further allocated among the condominium units in that parcel in the manner required in s. 193.023(5). Any land value allocated to the just value of a parcel containing a cooperative must be further allocated among the cooperative units in that parcel in the manner required in s. 719.114.

(5) Each parcel in a multiple parcel building must be assigned a separate tax folio number. However, if a condominium or cooperative is created within any such parcel, a separate tax folio number must be assigned to each condominium unit or cooperative unit, rather than to the parcel in which it was created.

(6) All provisions of a recorded instrument affecting a parcel in a multiple parcel building, which parcel has been sold for taxes or special assessments, survive and are enforceable after the issuance of a tax deed or master's deed, or upon foreclosure of an assessment, a certificate or lien, a tax deed, a tax certificate, or a tax lien, to the same extent that such provisions would be enforceable against a voluntary grantee of the title immediately before the delivery of the tax deed, master's deed, or clerk's certificate of title as provided in s. 197.573.

(7) This section applies to any land on which a multiple parcel building is substantially completed as of January 1 of the respective assessment year. This section applies to assessments beginning in the 2018 calendar year.

Section 4. Section 193.4516, Florida Statutes, is created to read:

193.4516 Assessment of citrus fruit packing and processing equipment rendered unused due to Hurricane Irma or citrus greening.—

(1) For purposes of ad valorem taxation, and applying to the 2018 tax roll only, tangible personal property owned and operated by a citrus fruit packing or processing facility is deemed to have a market value no greater than its value for salvage, provided the tangible personal property is no longer used in the operation of the facility due to the effects of Hurricane Irma or to citrus greening.

(2) As used in this section, the term "citrus" has the same meaning as provided in s. 581.011(7).

Section 5. The creation by this act of s. 193.4516, Florida Statutes, applies to the 2018 property tax roll.

Section 6. Subsection (8) is added to section 193.461, Florida Statutes, to read:

193.461 Agricultural lands; classification and assessment; mandated eradication or quarantine program.—

(8) Lands classified for assessment purposes as agricultural lands, which are not being used for agricultural production due to a hurricane that made landfall in this state during calendar year 2017, must continue to be classified as agricultural lands for assessment purposes through December 31, 2022, unless the lands are converted to a nonagricultural use. Lands converted to nonagricultural use are not covered by this subsection and must be assessed as otherwise provided by law.

Section 7. The amendment made by this act to s. 193.461,

Florida Statutes, applies to the 2018 property tax roll.

Section 8. Subsection (2) of section 196.173, Florida Statutes, is amended to read:

196.173 Exemption for deployed servicemembers.—

(2) The exemption is available to servicemembers who were deployed during the preceding calendar year on active duty outside the continental United States, Alaska, or Hawaii in support of any of the following military operations:

(a) Operation Joint Task Force Bravo, which began in 1995.

(b) Operation Joint Guardian, which began on June 12, 1999.

(c) Operation Noble Eagle, which began on September 15, 2001.

(d) Operation Enduring Freedom, which began on October 7, 2001, and ended on December 31, 2014.

(e) Operations in the Balkans, which began in 2004.

(f) Operation Nomad Shadow, which began in 2007.

(g) Operation U.S. Airstrikes Al Qaeda in Somalia, which began in January 2007.

(h) Operation Copper Dune, which began in 2009.

(i) Operation Georgia Deployment Program, which began in August 2009.

~~(j) Operation New Dawn, which began on September 1, 2010, and ended on December 15, 2011.~~

~~(k) Operation Odyssey Dawn, which began on March 19, 2011, and ended on October 31, 2011.~~

(j) ~~(l)~~ Operation Spartan Shield, which began in June 2011.

(k) ~~(m)~~ Operation Observant Compass, which began in October 2011.

(l) ~~(n)~~ Operation Inherent Resolve, which began on August 8,

2014.

(m) ~~(o)~~ Operation Atlantic Resolve, which began in April 2014.

(n) ~~(p)~~ Operation Freedom's Sentinel, which began on January 1, 2015.

(o) ~~(q)~~ Operation Resolute Support, which began in January 2015.

The Department of Revenue shall notify all property appraisers and tax collectors in this state of the designated military operations.

Section 9. Subsection (1) of section 196.24, Florida Statutes, is amended to read:

196.24 Exemption for disabled ex-servicemember or surviving spouse; evidence of disability.—

(1) Any ex-servicemember, as defined in s. 196.012, who is a bona fide resident of the state, who was discharged under honorable conditions, and who has been disabled to a degree of 10 percent or more by misfortune or while serving during a period of wartime service as defined in s. 1.01(14) is entitled to the exemption from taxation provided for in s. 3(b), Art. VII of the State Constitution as provided in this section. Property to the value of $5,000 of such a person is exempt from taxation. The production by him or her of a certificate of disability from the United States Government or the United States Department of Veterans Affairs or its predecessor before the property appraiser of the county wherein the ex-servicemember's property lies is prima facie evidence of the fact that he or she is entitled to the exemption. The unremarried surviving spouse of

such a disabled ex-servicemember ~~who, on the date of the disabled ex-servicemember's death, had been married to the disabled ex-servicemember for at least 5 years~~ is also entitled to the exemption.

Section 10. Effective upon this act becoming a law, section 197.3631, Florida Statutes, is amended to read:

197.3631 Non-ad valorem assessments; general provisions.—

(1) Non-ad valorem assessments as defined in s. 197.3632 may be collected pursuant to the method provided for in ss. 197.3632 and 197.3635. Non-ad valorem assessments may also be collected pursuant to any alternative method which is authorized by law, but such alternative method shall not require the tax collector or property appraiser to perform those services as provided for in ss. 197.3632 and 197.3635. However, a property appraiser or tax collector may contract with a local government to supply information and services necessary for any such alternative method. Section 197.3632 is additional authority for local governments to impose and collect non-ad valorem assessments supplemental to the home rule powers pursuant to ss. 125.01 and 166.021 and chapter 170, or any other law. Any county operating under a charter adopted pursuant to s. 11, Art. VIII of the Constitution of 1885, as amended, as referred to in s. 6(e), Art. VIII of the Constitution of 1968, as amended, may use any method authorized by law for imposing and collecting non-ad valorem assessments.

(2) For non-ad valorem special assessments based on the size or area of the land containing a multiple parcel building, regardless of ownership, the special assessment must be levied on and allocated among all the parcels in the multiple parcel

building on the same basis that the land value is allocated among the parcels in s. 193.0237(3). For non-ad valorem assessments not based on the size or area of the land, each parcel in the multiple parcel building shall be subject to a separate assessment. For purposes of this subsection, the terms "multiple parcel building" and "parcel" have the meanings as provided in s. 193.0237(1).

Section 11. Effective upon this act becoming a law, section 197.572, Florida Statutes, is amended to read:

197.572 Easements for conservation purposes, ~~or for~~ public service purposes, support of certain improvements, or for drainage or ingress and egress survive tax sales and deeds.—When any lands are sold for the nonpayment of taxes, or any tax certificate is issued thereon by a governmental unit or agency or pursuant to any tax lien foreclosure proceeding, the title to the lands shall continue to be subject to any easement for conservation purposes as provided in s. 704.06 or for telephone, telegraph, pipeline, power transmission, or other public service purpose; and shall continue to be subject to any easement that supports improvements that may be constructed above the lands; and any easement for the purposes of drainage or of ingress and egress to and from other land. The easement and the rights of the owner of it shall survive and be enforceable after the execution, delivery, and recording of a tax deed, a master's deed, or a clerk's certificate of title pursuant to foreclosure of a tax deed, tax certificate, or tax lien, to the same extent as though the land had been conveyed by voluntary deed. The easement must be evidenced by written instrument recorded in the office of the clerk of the circuit court in the county where

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such land is located before the recording of such tax deed or master's deed, or, if not recorded, an easement for a public service purpose must be evidenced by wires, poles, or other visible occupation, an easement for drainage must be evidenced by a waterway, water bed, or other visible occupation, and an easement for the purpose of ingress and egress must be evidenced by a road or other visible occupation to be entitled to the benefit of this section; however, this shall apply only to tax deeds issued after the effective date of this act.

Section 12. Effective upon this act becoming a law, subsections (1) and (2) of section 197.573, Florida Statutes, are amended to read:

197.573 Survival of restrictions and covenants after tax sale.—

(1) When a deed or other recorded instrument in the chain of title contains restrictions and covenants running with the land, as hereinafter defined and limited, the restrictions and covenants shall survive and be enforceable after the issuance of a tax deed or master's deed, or a clerk's certificate of title upon foreclosure of a tax deed, tax certificate, or tax lien, to the same extent that it would be enforceable against a voluntary grantee of the owner of the title immediately before the delivery of the tax deed, master's deed, or clerk's certificate of title.

(2) This section applies ~~shall apply~~ to the usual restrictions and covenants limiting the use of property; the type, character and location of building; covenants against nuisances and what the former parties deemed to be undesirable conditions, in, upon, and about the property; and other similar

restrictions and covenants; but this section does ~~shall~~ not protect covenants that:

(a) Create ~~creating~~ any debt or lien against or upon the property, except one providing for satisfaction or survival of a lien of record held by a municipal or county governmental unit, or one providing a lien for assessments accruing after such tax deed, master's deed, or clerk's certificate of title to a condominium association, homeowners' association, property owners' association, or person having assessment powers under such covenants; or

(b) Require ~~requiring~~ the grantee to expend money for any purpose, except one that may require that the premises be kept in a sanitary or sightly condition or one to abate nuisances or undesirable conditions.

Section 13. Subsection (7) of section 201.02, Florida Statutes, is amended to read:

201.02 Tax on deeds and other instruments relating to real property or interests in real property.—

(7) Taxes imposed by this section do not apply to:

(a) A deed, transfer, or conveyance between spouses or former spouses pursuant to an action for dissolution of their marriage wherein the real property is or was their marital home or an interest therein. Taxes paid pursuant to this section shall be refunded in those cases in which a deed, transfer, or conveyance occurred 1 year before a dissolution of marriage. This paragraph ~~subsection~~ applies in spite of any consideration as defined in subsection (1). This paragraph ~~subsection~~ does not apply to a deed, transfer, or conveyance executed before July 1, 1997.

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(b) A deed or other instrument that transfers or conveys homestead property or any interest in homestead property between spouses, if the only consideration for the transfer or conveyance is the amount of a mortgage or other lien encumbering the homestead property at the time of the transfer or conveyance and if the deed or other instrument is recorded within 1 year after the date of the marriage. This paragraph applies to transfers or conveyances from one spouse to another, from one spouse to both spouses, or from both spouses to one spouse. For the purpose of this paragraph, the term "homestead property" has the same meaning as the term "homestead" as defined in s. 192.001.

Section 14. Section 201.25, Florida Statutes, is created to read:

201.25 Tax exemptions for certain loans.—There shall be exempt from all taxes imposed by this chapter:

(1) Any loan made by the Florida Small Business Emergency Bridge Loan Program in response to a disaster that results in a state of emergency declared by executive order or proclamation of the Governor pursuant to s. 252.36.

(2) Any loan made by the Agricultural Economic Development Program pursuant to s. 570.82.

Section 15. Subsections (3) and (8) of section 206.9952, Florida Statutes, are amended to read:

206.9952 Application for license as a natural gas fuel retailer.—

(3)(a) Any person who acts as a natural gas retailer and does not hold a valid natural gas fuel retailer license shall pay a penalty of $200 for each month of operation without a

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license. This paragraph expires December 31, 2023 ~~2018~~.

(b) Effective January 1, 2024 ~~2019~~, any person who acts as a natural gas fuel retailer and does not hold a valid natural gas fuel retailer license shall pay a penalty of 25 percent of the tax assessed on the total purchases made during the unlicensed period.

(8) With the exception of a state or federal agency or a political subdivision licensed under this chapter, each person, as defined in this part, who operates as a natural gas fuel retailer shall report monthly to the department and pay a tax on all natural gas fuel purchases beginning January 1, 2024 ~~2019~~.

Section 16. Subsection (2) of section 206.9955, Florida Statutes, is amended to read:

206.9955 Levy of natural gas fuel tax.—

(2) Effective January 1, 2024 ~~2019~~, the following taxes shall be imposed:

(a) An excise tax of 4 cents upon each motor fuel equivalent gallon of natural gas fuel.

(b) An additional tax of 1 cent upon each motor fuel equivalent gallon of natural gas fuel, which is designated as the "ninth-cent fuel tax."

(c) An additional tax of 1 cent on each motor fuel equivalent gallon of natural gas fuel by each county, which is designated as the "local option fuel tax."

(d) An additional tax on each motor fuel equivalent gallon of natural gas fuel, which is designated as the "State Comprehensive Enhanced Transportation System Tax," at a rate determined pursuant to this paragraph. Before January 1, 2024, and each year thereafter ~~Each calendar year~~, the department

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shall determine the tax rate applicable to the sale of natural gas fuel for the following 12-month period beginning January 1, rounded to the nearest tenth of a cent, by adjusting the ~~initially established~~ tax rate of 5.8 cents per gallon by the percentage change in the average of the Consumer Price Index issued by the United States Department of Labor for the most recent 12-month period ending September 30, compared to the base year average, which is the average for the 12-month period ending September 30, 2013.

(e)1. An additional tax is imposed on each motor fuel equivalent gallon of natural gas fuel for the privilege of selling natural gas fuel. Before January 1, 2024, and each year thereafter ~~Each calendar year~~, the department shall determine the tax rate applicable to the sale of natural gas fuel, rounded to the nearest tenth of a cent, for the following 12-month period beginning January 1, ~~. The tax rate is calculated~~ by adjusting the ~~initially established~~ tax rate of 9.2 cents per gallon by the percentage change in the average of the Consumer Price Index issued by the United States Department of Labor for the most recent 12-month period ending September 30, compared to the base year average, which is the average for the 12-month period ending September 30, 2013.

2. The department is authorized to adopt rules and publish forms to administer this paragraph.

Section 17. Subsection (1) of section 206.996, Florida Statutes, is amended to read:

206.996 Monthly reports by natural gas fuel retailers; deductions.—

(1) For the purpose of determining the amount of taxes

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imposed by s. 206.9955, each natural gas fuel retailer shall file beginning with February 2024 ~~2019~~, and each month thereafter, no later than the 20th day of each month, monthly reports electronically with the department showing information on inventory, purchases, nontaxable disposals, taxable uses, and taxable sales in gallons of natural gas fuel for the preceding month. However, if the 20th day of the month falls on a Saturday, Sunday, or federal or state legal holiday, a return must be accepted if it is electronically filed on the next succeeding business day. The reports must include, or be verified by, a written declaration stating that such report is made under the penalties of perjury. The natural gas fuel retailer shall deduct from the amount of taxes shown by the report to be payable an amount equivalent to 0.67 percent of the taxes on natural gas fuel imposed by s. 206.9955(2)(a) and (e), which deduction is allowed to the natural gas fuel retailer to compensate it for services rendered and expenses incurred in complying with the requirements of this part. This allowance is not deductible unless payment of applicable taxes is made on or before the 20th day of the month. This subsection may not be construed as authorizing a deduction from the constitutional fuel tax or the fuel sales tax.

Section 18. Section 210.205, Florida Statutes, is created to read:

210.205 Cigarette tax distribution reporting.—By March 15 of each year, each entity that received a distribution pursuant to s. 210.20(2)(b) in the preceding calendar year shall report to the Office of Economic and Demographic Research the following information:

(1) An itemized accounting of all expenditures of the funds distributed in the preceding calendar year, including amounts spent on debt service.

(2) A statement indicating what portion of the distributed funds have been pledged for debt service.

(3) The original principal amount and current debt service schedule of any bonds or other borrowing for which the distributed funds have been pledged for debt service.

Section 19. Effective January 1, 2019, paragraphs (c) and (d) of subsection (1) of section 212.031, Florida Statutes, are amended to read:

212.031 Tax on rental or license fee for use of real property.—

(1)

(c) For the exercise of such privilege, a tax is levied at the rate of 5.7 ~~5.8~~ percent of and on the total rent or license fee charged for such real property by the person charging or collecting the rental or license fee. The total rent or license fee charged for such real property shall include payments for the granting of a privilege to use or occupy real property for any purpose and shall include base rent, percentage rents, or similar charges. Such charges shall be included in the total rent or license fee subject to tax under this section whether or not they can be attributed to the ability of the lessor’s or licensor’s property as used or operated to attract customers. Payments for intrinsically valuable personal property such as franchises, trademarks, service marks, logos, or patents are not subject to tax under this section. In the case of a contractual arrangement that provides for both payments taxable as total

rent or license fee and payments not subject to tax, the tax shall be based on a reasonable allocation of such payments and shall not apply to that portion which is for the nontaxable payments.

(d) When the rental or license fee of any such real property is paid by way of property, goods, wares, merchandise, services, or other thing of value, the tax shall be at the rate of 5.7 ~~5.8~~ percent of the value of the property, goods, wares, merchandise, services, or other thing of value.

Section 20. Paragraph (d) of subsection (2) of section 212.055, Florida Statutes, is amended to read:

212.055 Discretionary sales surtaxes; legislative intent; authorization and use of proceeds.—It is the legislative intent that any authorization for imposition of a discretionary sales surtax shall be published in the Florida Statutes as a subsection of this section, irrespective of the duration of the levy. Each enactment shall specify the types of counties authorized to levy; the rate or rates which may be imposed; the maximum length of time the surtax may be imposed, if any; the procedure which must be followed to secure voter approval, if required; the purpose for which the proceeds may be expended; and such other requirements as the Legislature may provide. Taxable transactions and administrative procedures shall be as provided in s. 212.054.

(2) LOCAL GOVERNMENT INFRASTRUCTURE SURTAX.—

(d) The proceeds of the surtax authorized by this subsection and any accrued interest shall be expended by the school district, within the county and municipalities within the county, or, in the case of a negotiated joint county agreement,

within another county, to finance, plan, and construct infrastructure; to acquire any interest in land for public recreation, conservation, or protection of natural resources or to prevent or satisfy private property rights claims resulting from limitations imposed by the designation of an area of critical state concern; to provide loans, grants, or rebates to residential or commercial property owners who make energy efficiency improvements to their residential or commercial property, if a local government ordinance authorizing such use is approved by referendum; or to finance the closure of county-owned or municipally owned solid waste landfills that have been closed or are required to be closed by order of the Department of Environmental Protection. Any use of the proceeds or interest for purposes of landfill closure before July 1, 1993, is ratified. The proceeds and any interest may not be used for the operational expenses of infrastructure, except that a county that has a population of fewer than 75,000 and that is required to close a landfill may use the proceeds or interest for long-term maintenance costs associated with landfill closure. Counties, as defined in s. 125.011, and charter counties may, in addition, use the proceeds or interest to retire or service indebtedness incurred for bonds issued before July 1, 1987, for infrastructure purposes, and for bonds subsequently issued to refund such bonds. Any use of the proceeds or interest for purposes of retiring or servicing indebtedness incurred for refunding bonds before July 1, 1999, is ratified.

1. For the purposes of this paragraph, the term "infrastructure" means:

a. Any fixed capital expenditure or fixed capital outlay

associated with the construction, reconstruction, or improvement of public facilities that have a life expectancy of 5 or more years, any related land acquisition, land improvement, design, and engineering costs, and all other professional and related costs required to bring the public facilities into service. For purposes of this sub-subparagraph, the term "public facilities" means facilities as defined in s. 163.3164(38), s. 163.3221(13), or s. 189.012(5), and includes facilities that are necessary to carry out governmental purposes, including, but not limited to, fire stations, general governmental office buildings, and animal shelters, regardless of whether the facilities are owned by the local taxing authority or another governmental entity.

b. A fire department vehicle, an emergency medical service vehicle, a sheriff's office vehicle, a police department vehicle, or any other vehicle, and the equipment necessary to outfit the vehicle for its official use or equipment that has a life expectancy of at least 5 years.

c. Any expenditure for the construction, lease, or maintenance of, or provision of utilities or security for, facilities, as defined in s. 29.008.

d. Any fixed capital expenditure or fixed capital outlay associated with the improvement of private facilities that have a life expectancy of 5 or more years and that the owner agrees to make available for use on a temporary basis as needed by a local government as a public emergency shelter or a staging area for emergency response equipment during an emergency officially declared by the state or by the local government under s. 252.38. Such improvements are limited to those necessary to comply with current standards for public emergency evacuation

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shelters. The owner must enter into a written contract with the local government providing the improvement funding to make the private facility available to the public for purposes of emergency shelter at no cost to the local government for a minimum of 10 years after completion of the improvement, with the provision that the obligation will transfer to any subsequent owner until the end of the minimum period.

e. Any land acquisition expenditure for a residential housing project in which at least 30 percent of the units are affordable to individuals or families whose total annual household income does not exceed 120 percent of the area median income adjusted for household size, if the land is owned by a local government or by a special district that enters into a written agreement with the local government to provide such housing. The local government or special district may enter into a ground lease with a public or private person or entity for nominal or other consideration for the construction of the residential housing project on land acquired pursuant to this sub-subparagraph.

f. Instructional technology used solely in a school district's classrooms. As used in this sub-subparagraph, the term "instructional technology" means an interactive device that assists a teacher in instructing a class or a group of students, and includes the necessary hardware and software to operate the interactive device. The term also includes support systems in which an interactive device may mount and is not required to be affixed to the facilities.

2. For the purposes of this paragraph, the term "energy efficiency improvement" means any energy conservation and

efficiency improvement that reduces consumption through conservation or a more efficient use of electricity, natural gas, propane, or other forms of energy on the property, including, but not limited to, air sealing; installation of insulation; installation of energy-efficient heating, cooling, or ventilation systems; installation of solar panels; building modifications to increase the use of daylight or shade; replacement of windows; installation of energy controls or energy recovery systems; installation of electric vehicle charging equipment; installation of systems for natural gas fuel as defined in s. 206.9951; and installation of efficient lighting equipment.

3. Notwithstanding any other provision of this subsection, a local government infrastructure surtax imposed or extended after July 1, 1998, may allocate up to 15 percent of the surtax proceeds for deposit into a trust fund within the county's accounts created for the purpose of funding economic development projects having a general public purpose of improving local economies, including the funding of operational costs and incentives related to economic development. The ballot statement must indicate the intention to make an allocation under the authority of this subparagraph.

Section 21. Paragraph (p) of subsection (5) and paragraphs (p) and (ff) of subsection (7) of section 212.08, Florida Statutes, are amended, and paragraph (ooo) is added to subsection (7) of that section, to read:

212.08 Sales, rental, use, consumption, distribution, and storage tax; specified exemptions.—The sale at retail, the rental, the use, the consumption, the distribution, and the

storage to be used or consumed in this state of the following are hereby specifically exempt from the tax imposed by this chapter.

(5) EXEMPTIONS; ACCOUNT OF USE.—

(p) *Community contribution tax credit for donations.*—

1. Authorization.—Persons who are registered with the department under s. 212.18 to collect or remit sales or use tax and who make donations to eligible sponsors are eligible for tax credits against their state sales and use tax liabilities as provided in this paragraph:

a. The credit shall be computed as 50 percent of the person’s approved annual community contribution.

b. The credit shall be granted as a refund against state sales and use taxes reported on returns and remitted in the 12 months preceding the date of application to the department for the credit as required in sub-subparagraph 3.c. If the annual credit is not fully used through such refund because of insufficient tax payments during the applicable 12-month period, the unused amount may be included in an application for a refund made pursuant to sub-subparagraph 3.c. in subsequent years against the total tax payments made for such year. Carryover credits may be applied for a 3-year period without regard to any time limitation that would otherwise apply under s. 215.26.

c. A person may not receive more than $200,000 in annual tax credits for all approved community contributions made in any one year.

d. All proposals for the granting of the tax credit require the prior approval of the Department of Economic Opportunity.

e. The total amount of tax credits which may be granted for

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all programs approved under this paragraph, s. 220.183, and s. 624.5105 is $10.5 million in the 2018-2019 fiscal year, $17 million ~~$21.4 million~~ in the 2019-2020 ~~2017-2018~~ fiscal year, and $10.5 million in each fiscal year thereafter for projects that provide housing opportunities for persons with special needs or homeownership opportunities for low-income households or very-low-income households and $3.5 million each fiscal year for all other projects. As used in this paragraph, the term "person with special needs" has the same meaning as in s. 420.0004 and the terms "low-income person," "low-income household," "very-low-income person," and "very-low-income household" have the same meanings as in s. 420.9071.

f. A person who is eligible to receive the credit provided in this paragraph, s. 220.183, or s. 624.5105 may receive the credit only under one section of the person's choice.

2. Eligibility requirements.—

a. A community contribution by a person must be in the following form:

(I) Cash or other liquid assets;

(II) Real property, including 100 percent ownership of a real property holding company;

(III) Goods or inventory; or

(IV) Other physical resources identified by the Department of Economic Opportunity.

For purposes of this sub-subparagraph, the term "real property holding company" means a Florida entity, such as a Florida limited liability company, that is wholly owned by the person; is the sole owner of real property, as defined in s.

192.001(12), located in the state; is disregarded as an entity for federal income tax purposes pursuant to 26 C.F.R. s. 301.7701-3(b)(1)(ii); and at the time of contribution to an eligible sponsor, has no material assets other than the real property and any other property that qualifies as a community contribution.

b. All community contributions must be reserved exclusively for use in a project. As used in this sub-subparagraph, the term "project" means activity undertaken by an eligible sponsor which is designed to construct, improve, or substantially rehabilitate housing that is affordable to low-income households or very-low-income households; designed to provide housing opportunities for persons with special needs; designed to provide commercial, industrial, or public resources and facilities; or designed to improve entrepreneurial and job-development opportunities for low-income persons. A project may be the investment necessary to increase access to high-speed broadband capability in a rural community that had an enterprise zone designated pursuant to chapter 290 as of May 1, 2015, including projects that result in improvements to communications assets that are owned by a business. A project may include the provision of museum educational programs and materials that are directly related to a project approved between January 1, 1996, and December 31, 1999, and located in an area which was in an enterprise zone designated pursuant to s. 290.0065 as of May 1, 2015. This paragraph does not preclude projects that propose to construct or rehabilitate housing for low-income households or very-low-income households on scattered sites or housing opportunities for persons with special needs. With respect to housing,

contributions may be used to pay the following eligible special needs, low-income, and very-low-income housing-related activities:

(I) Project development impact and management fees for special needs, low-income, or very-low-income housing projects;

(II) Down payment and closing costs for persons with special needs, low-income persons, and very-low-income persons;

(III) Administrative costs, including housing counseling and marketing fees, not to exceed 10 percent of the community contribution, directly related to special needs, low-income, or very-low-income projects; and

(IV) Removal of liens recorded against residential property by municipal, county, or special district local governments if satisfaction of the lien is a necessary precedent to the transfer of the property to a low-income person or very-low-income person for the purpose of promoting home ownership. Contributions for lien removal must be received from a nonrelated third party.

c. The project must be undertaken by an "eligible sponsor," which includes:

(I) A community action program;

(II) A nonprofit community-based development organization whose mission is the provision of housing for persons with specials needs, low-income households, or very-low-income households or increasing entrepreneurial and job-development opportunities for low-income persons;

(III) A neighborhood housing services corporation;

(IV) A local housing authority created under chapter 421;

(V) A community redevelopment agency created under s.

163.356;

(VI) A historic preservation district agency or organization;

(VII) A local workforce development board;

(VIII) A direct-support organization as provided in s. 1009.983;

(IX) An enterprise zone development agency created under s. 290.0056;

(X) A community-based organization incorporated under chapter 617 which is recognized as educational, charitable, or scientific pursuant to s. 501(c)(3) of the Internal Revenue Code and whose bylaws and articles of incorporation include affordable housing, economic development, or community development as the primary mission of the corporation;

(XI) Units of local government;

(XII) Units of state government; or

(XIII) Any other agency that the Department of Economic Opportunity designates by rule.

A contributing person may not have a financial interest in the eligible sponsor.

d. The project must be located in an area which was in an enterprise zone designated pursuant to chapter 290 as of May 1, 2015, or a Front Porch Florida Community, unless the project increases access to high-speed broadband capability in a rural community that had an enterprise zone designated pursuant to chapter 290 as of May 1, 2015, but is physically located outside the designated rural zone boundaries. Any project designed to construct or rehabilitate housing for low-income households or

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very-low-income households or housing opportunities for persons with special needs is exempt from the area requirement of this sub-subparagraph.

e.(I) If, during the first 10 business days of the state fiscal year, eligible tax credit applications for projects that provide housing opportunities for persons with special needs or homeownership opportunities for low-income households or very-low-income households are received for less than the annual tax credits available for those projects, the Department of Economic Opportunity shall grant tax credits for those applications and grant remaining tax credits on a first-come, first-served basis for subsequent eligible applications received before the end of the state fiscal year. If, during the first 10 business days of the state fiscal year, eligible tax credit applications for projects that provide housing opportunities for persons with special needs or homeownership opportunities for low-income households or very-low-income households are received for more than the annual tax credits available for those projects, the Department of Economic Opportunity shall grant the tax credits for those applications as follows:

(A) If tax credit applications submitted for approved projects of an eligible sponsor do not exceed $200,000 in total, the credits shall be granted in full if the tax credit applications are approved.

(B) If tax credit applications submitted for approved projects of an eligible sponsor exceed $200,000 in total, the amount of tax credits granted pursuant to sub-sub-sub-subparagraph (A) shall be subtracted from the amount of available tax credits, and the remaining credits shall be

granted to each approved tax credit application on a pro rata basis.

(II) If, during the first 10 business days of the state fiscal year, eligible tax credit applications for projects other than those that provide housing opportunities for persons with special needs or homeownership opportunities for low-income households or very-low-income households are received for less than the annual tax credits available for those projects, the Department of Economic Opportunity shall grant tax credits for those applications and shall grant remaining tax credits on a first-come, first-served basis for subsequent eligible applications received before the end of the state fiscal year. If, during the first 10 business days of the state fiscal year, eligible tax credit applications for projects other than those that provide housing opportunities for persons with special needs or homeownership opportunities for low-income households or very-low-income households are received for more than the annual tax credits available for those projects, the Department of Economic Opportunity shall grant the tax credits for those applications on a pro rata basis.

3. Application requirements.—

a. An eligible sponsor seeking to participate in this program must submit a proposal to the Department of Economic Opportunity which sets forth the name of the sponsor, a description of the project, and the area in which the project is located, together with such supporting information as is prescribed by rule. The proposal must also contain a resolution from the local governmental unit in which the project is located certifying that the project is consistent with local plans and

regulations.

b. A person seeking to participate in this program must submit an application for tax credit to the Department of Economic Opportunity which sets forth the name of the sponsor, a description of the project, and the type, value, and purpose of the contribution. The sponsor shall verify, in writing, the terms of the application and indicate its receipt of the contribution, and such verification must accompany the application for tax credit. The person must submit a separate tax credit application to the Department of Economic Opportunity for each individual contribution that it makes to each individual project.

c. A person who has received notification from the Department of Economic Opportunity that a tax credit has been approved must apply to the department to receive the refund. Application must be made on the form prescribed for claiming refunds of sales and use taxes and be accompanied by a copy of the notification. A person may submit only one application for refund to the department within a 12-month period.

4. Administration.—

a. The Department of Economic Opportunity may adopt rules necessary to administer this paragraph, including rules for the approval or disapproval of proposals by a person.

b. The decision of the Department of Economic Opportunity must be in writing, and, if approved, the notification shall state the maximum credit allowable to the person. Upon approval, the Department of Economic Opportunity shall transmit a copy of the decision to the department.

c. The Department of Economic Opportunity shall

periodically monitor all projects in a manner consistent with available resources to ensure that resources are used in accordance with this paragraph; however, each project must be reviewed at least once every 2 years.

d. The Department of Economic Opportunity shall, in consultation with the statewide and regional housing and financial intermediaries, market the availability of the community contribution tax credit program to community-based organizations.

(7) MISCELLANEOUS EXEMPTIONS.—Exemptions provided to any entity by this chapter do not inure to any transaction that is otherwise taxable under this chapter when payment is made by a representative or employee of the entity by any means, including, but not limited to, cash, check, or credit card, even when that representative or employee is subsequently reimbursed by the entity. In addition, exemptions provided to any entity by this subsection do not inure to any transaction that is otherwise taxable under this chapter unless the entity has obtained a sales tax exemption certificate from the department or the entity obtains or provides other documentation as required by the department. Eligible purchases or leases made with such a certificate must be in strict compliance with this subsection and departmental rules, and any person who makes an exempt purchase with a certificate that is not in strict compliance with this subsection and the rules is liable for and shall pay the tax. The department may adopt rules to administer this subsection.

(p) *Section 501(c)(3) organizations.*—

1. ~~Also~~ Exempt from the tax imposed by this chapter are

sales or leases to organizations determined by the Internal Revenue Service to be currently exempt from federal income tax pursuant to s. 501(c)(3) of the Internal Revenue Code of 1986, as amended, if such leases or purchases are used in carrying on their customary nonprofit activities, unless such organizations are subject to a final disqualification order issued by the Department of Agriculture and Consumer Services pursuant to s. 496.430.

2. Exempt from the tax imposed by this chapter is tangible personal property purchased for resale by a dealer and subsequently donated to an organization determined by the Internal Revenue Service to be currently exempt from federal income tax pursuant to s. 501(c)(3) of the Internal Revenue Code of 1986, as amended, unless such organization is subject to a final disqualification order issued by the Department of Agriculture and Consumer Services pursuant to s. 496.430. As used in this subparagraph, the term "donate" means any transfer of title or possession of tangible personal property to a s. 501(c)(3) organization for no consideration.

(ff) *Certain electricity or steam uses.*—

1. Subject to the provisions of subparagraph 4., charges for electricity or steam used to operate machinery and equipment at a fixed location in this state when such machinery and equipment is used to manufacture, process, compound, produce, or prepare for shipment items of tangible personal property for sale, or to operate pollution control equipment, recycling equipment, maintenance equipment, or monitoring or control equipment used in such operations are exempt to the extent provided in this paragraph. If 75 percent or more of the

electricity or steam used at the fixed location is used to operate qualifying machinery or equipment, 100 percent of the charges for electricity or steam used at the fixed location are exempt. If less than 75 percent but 50 percent or more of the electricity or steam used at the fixed location is used to operate qualifying machinery or equipment, 50 percent of the charges for electricity or steam used at the fixed location are exempt. If less than 50 percent of the electricity or steam used at the fixed location is used to operate qualifying machinery or equipment, none of the charges for electricity or steam used at the fixed location are exempt.

2. This exemption applies only to industries classified under SIC Industry Major Group Numbers 10, 12, 13, 14, 20, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, and 39 and Industry Group Number 212 and industries classified under NAICS code 423930. As used in this paragraph, "SIC" means those classifications contained in the Standard Industrial Classification Manual, 1987, as published by the Office of Management and Budget, Executive Office of the President. As used in this subparagraph, the term "NAICS" means those classifications contained in the North American Industry Classification System, as published in 2007 by the Office of Management and Budget, Executive Office of the President.

3. Possession by a seller of a written certification by the purchaser, certifying the purchaser's entitlement to an exemption permitted by this subsection, relieves the seller from the responsibility of collecting the tax on the nontaxable amounts, and the department shall look solely to the purchaser for recovery of such tax if it determines that the purchaser was

not entitled to the exemption.

4. Such exemption shall be applied as follows: beginning July 1, 2000, 100 percent of the charges for such electricity or steam shall be exempt.

(ooo) *Recycling roll off containers.*—Recycling roll off containers purchased by a business whose primary business activity is within the industry classified under NAICS code 423930 and which are used exclusively for business activities within the industry classified under NAICS code 423930 are exempt from the tax imposed by this chapter. As used in this paragraph, the term "NAICS" means those classifications contained in the North American Industry Classification System, as published in 2007 by the Office of Management and Budget, Executive Office of the President.

Section 22. Subsection (11) of section 212.12, Florida Statutes, is amended to read:

212.12 Dealer's credit for collecting tax; penalties for noncompliance; powers of Department of Revenue in dealing with delinquents; brackets applicable to taxable transactions; records required.—

(11) The department shall make available in an electronic format or otherwise the tax amounts and brackets applicable to all taxable transactions that occur in counties that have a surtax at a rate other than 1 percent which would otherwise have been transactions taxable at the rate of 6 percent. Likewise, the department shall make available in an electronic format or otherwise the tax amounts and brackets applicable to transactions taxable at 4.35 percent pursuant to s. 212.05(1)(e)1.c. or the applicable tax rate pursuant to s.

212.031(1) and on transactions which would otherwise have been so taxable in counties which have adopted a discretionary sales surtax.

Section 23. Section 212.205, Florida Statutes, is created to read:

212.205 Sales tax distribution reporting.—By March 15 of each year, each person who received a distribution pursuant to s. 212.20(6)(d)6.b.-f. in the preceding calendar year shall report to the Office of Economic and Demographic Research the following information:

(1) An itemized accounting of all expenditures of the funds distributed in the preceding calendar year, including amounts spent on debt service.

(2) A statement indicating what portion of the distributed funds have been pledged for debt service.

(3) The original principal amount, and current debt service schedule of any bonds or other borrowing for which the distributed funds have been pledged for debt service.

Section 24. Section 218.135, Florida Statutes, is created to read:

218.135 Offset for tax loss associated with reductions in value of certain citrus fruit packing and processing equipment.—

(1) For the 2018-2019 fiscal year, the Legislature shall appropriate moneys to offset the reductions in ad valorem tax revenue experienced by fiscally constrained counties, as defined in s. 218.67(1), which occur as a direct result of the implementation of s. 193.4516. The moneys appropriated for this purpose shall be distributed in January 2019 among the fiscally constrained counties based on each county's proportion of the

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total reduction in ad valorem tax revenue resulting from the implementation s. 193.4516.

(2) On or before November 15, 2018, each fiscally constrained county shall apply to the Department of Revenue to participate in the distribution of the appropriation and provide documentation supporting the county's estimated reduction in ad valorem tax revenue in the form and manner prescribed by the department. The documentation must include an estimate of the reduction in taxable value directly attributable to the implementation of s. 193.4516 for all county taxing jurisdictions within the county and shall be prepared by the property appraiser in each fiscally constrained county. The documentation shall also include the county millage rates applicable in all such jurisdictions for the current year. For purposes of this section, each fiscally constrained county's reduction in ad valorem tax revenue shall be calculated as 95 percent of the estimated reduction in taxable value multiplied by the applicable millage rate for each county taxing jurisdiction in the current year. If a fiscally constrained county fails to apply for the distribution, its share shall revert to the fund from which the appropriation was made.

Section 25. For the 2018-2019 fiscal year, the sum of $650,000 in nonrecurring funds is appropriated from the General Revenue Fund to the Department of Revenue to implement the provisions of s. 218.135, Florida Statutes.

Section 26. Paragraph (c) of subsection (1) of section 220.183, Florida Statutes, is amended to read:

220.183 Community contribution tax credit.—

(1) AUTHORIZATION TO GRANT COMMUNITY CONTRIBUTION TAX

CREDITS; LIMITATIONS ON INDIVIDUAL CREDITS AND PROGRAM SPENDING.—

(c) The total amount of tax credit which may be granted for all programs approved under this section, s. 212.08(5)(p), and s. 624.5105 is $10.5 million in the 2018-2019 fiscal year, $17 million ~~$21.4 million~~ in the 2019-2020 ~~2017-2018~~ fiscal year, and $10.5 million in each fiscal year thereafter for projects that provide housing opportunities for persons with special needs as defined in s. 420.0004 and homeownership opportunities for low-income households or very-low-income households as defined in s. 420.9071 and $3.5 million each fiscal year for all other projects.

Section 27. Paragraph (f) of subsection (2) of section 220.1845, Florida Statutes, is amended to read:

220.1845 Contaminated site rehabilitation tax credit.—

(2) AUTHORIZATION FOR TAX CREDIT; LIMITATIONS.—

(f) The total amount of the tax credits which may be granted under this section is $21 million in the 2018-2019 fiscal year and $10 million each fiscal year thereafter.

Section 28. Effective January 1, 2019, subsection (9) of section 318.14, Florida Statutes, is amended to read:

318.14 Noncriminal traffic infractions; exception; procedures.—

(9) Any person who does not hold a commercial driver license or commercial learner’s permit and who is cited while driving a noncommercial motor vehicle for an infraction under this section other than a violation of s. 316.183(2), s. 316.187, or s. 316.189 when the driver exceeds the posted limit by 30 miles per hour or more, s. 320.0605, s. 320.07(3)(a) or

(b), s. 322.065, s. 322.15(1), s. 322.61, or s. 322.62 may, in lieu of a court appearance, elect to attend in the location of his or her choice within this state a basic driver improvement course approved by the Department of Highway Safety and Motor Vehicles. In such a case, adjudication must be withheld, any civil penalty that is imposed by s. 318.18(3) must be reduced by 18 percent, and points, as provided by s. 322.27, may not be assessed. However, a person may not make an election under this subsection if the person has made an election under this subsection in the preceding 12 months. A person may not make more than five elections within his or her lifetime under this subsection. The requirement for community service under s. 318.18(8) is not waived by a plea of nolo contendere or by the withholding of adjudication of guilt by a court. ~~If a person makes an election to attend a basic driver improvement course under this subsection, 18 percent of the civil penalty imposed under s. 318.18(3) shall be deposited in the State Courts Revenue Trust Fund; however, that portion is not revenue for purposes of s. 28.36 and may not be used in establishing the budget of the clerk of the court under that section or s. 28.35.~~

Section 29. Effective January 1, 2019, paragraph (b) of subsection (1) of section 318.15, Florida Statutes, is amended to read:

318.15 Failure to comply with civil penalty or to appear; penalty.—

(1)

(b) However, a person who elects to attend driver improvement school and has paid the civil penalty as provided in s. 318.14(9), but who subsequently fails to attend the driver

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improvement school within the time specified by the court is ~~shall be~~ deemed to have admitted the infraction and shall be adjudicated guilty. If the person received ~~In such a case in which there was~~ an 18-percent reduction pursuant to s. 318.14(9) ~~as it existed before February 1, 2009~~, the person must pay the clerk of the court that amount and a processing fee of up to $18, after which ~~no~~ additional penalties, court costs, or surcharges may not ~~shall~~ be imposed for the violation. In all other such cases, the person must pay the clerk a processing fee of up to $18, after which ~~no~~ additional penalties, court costs, or surcharges may not ~~shall~~ be imposed for the violation. The clerk of the court shall notify the department of the person's failure to attend driver improvement school and points shall be assessed pursuant to s. 322.27.

Section 30. Paragraphs (m) and (n) of subsection (4) of section 320.08, Florida Statutes, are amended to read:

320.08 License taxes.—Except as otherwise provided herein, there are hereby levied and imposed annual license taxes for the operation of motor vehicles, mopeds, motorized bicycles as defined in s. 316.003(3), tri-vehicles as defined in s. 316.003, and mobile homes as defined in s. 320.01, which shall be paid to and collected by the department or its agent upon the registration or renewal of registration of the following:

(4) HEAVY TRUCKS, TRUCK TRACTORS, FEES ACCORDING TO GROSS VEHICLE WEIGHT.—

(m) Notwithstanding the declared gross vehicle weight, a truck tractor used within the state ~~a 150-mile radius of its home address~~ is eligible for a license plate for a fee of $324 flat if:

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1. The truck tractor is used exclusively for hauling forestry products; or

2. The truck tractor is used primarily for the hauling of forestry products, and is also used for the hauling of associated forestry harvesting equipment used by the owner of the truck tractor.

Of the fee imposed by this paragraph, $84 shall be deposited into the General Revenue Fund.

(n) A truck tractor or heavy truck, not operated as a for-hire vehicle and~~,~~ which is engaged exclusively in transporting raw, unprocessed, and nonmanufactured agricultural or horticultural products within the state ~~a 150-mile radius of its home address,~~ is eligible for a restricted license plate for a fee of:

1. If such vehicle's declared gross vehicle weight is less than 44,000 pounds, $87.75 flat, of which $22.75 shall be deposited into the General Revenue Fund.

2. If such vehicle's declared gross vehicle weight is 44,000 pounds or more and such vehicle only transports from the point of production to the point of primary manufacture; to the point of assembling the same; or to a shipping point of a rail, water, or motor transportation company, $324 flat, of which $84 shall be deposited into the General Revenue Fund.

Such not-for-hire truck tractors and heavy trucks used exclusively in transporting raw, unprocessed, and nonmanufactured agricultural or horticultural products may be incidentally used to haul farm implements and fertilizers

delivered direct to the growers. The department may require any documentation deemed necessary to determine eligibility before ~~prior to~~ issuance of this license plate. For the purpose of this paragraph, "not-for-hire" means the owner of the motor vehicle must also be the owner of the raw, unprocessed, and nonmanufactured agricultural or horticultural product, or the user of the farm implements and fertilizer being delivered.

Section 31. Subsection (4) of section 376.30781, Florida Statutes, is amended to read:

376.30781 Tax credits for rehabilitation of drycleaning-solvent-contaminated sites and brownfield sites in designated brownfield areas; application process; rulemaking authority; revocation authority.—

(4) The Department of Environmental Protection is responsible for allocating the tax credits provided for in s. 220.1845, which may not exceed a total of $21 million in tax credits in fiscal year 2018-2019 and $10 million in tax credits each fiscal year thereafter.

Section 32. Paragraph (c) of subsection (1) of section 624.5105, Florida Statutes, is amended to read:

624.5105 Community contribution tax credit; authorization; limitations; eligibility and application requirements; administration; definitions; expiration.—

(1) AUTHORIZATION TO GRANT TAX CREDITS; LIMITATIONS.—

(c) The total amount of tax credit which may be granted for all programs approved under this section and ss. 212.08(5)(p) and 220.183 is $10.5 million in the 2018-2019 fiscal year, $17 million ~~$21.4 million~~ in the 2019-2020 ~~2017-2018~~ fiscal year, and $10.5 million in each fiscal year thereafter for projects

that provide housing opportunities for persons with special needs as defined in s. 420.0004 or homeownership opportunities for low-income or very-low-income households as defined in s. 420.9071 and $3.5 million each fiscal year for all other projects.

Section 33. Effective January 1, 2019, subsection (3) of section 741.01, Florida Statutes, is amended to read:

741.01 County court judge or clerk of the circuit court to issue marriage license; fee.—

(3) An additional fee of $25 shall be paid to the clerk upon receipt of the application for issuance of a marriage license. The moneys collected shall be remitted by the clerk to the Department of Revenue, monthly, for deposit in the State Courts Revenue Trust Fund ~~General Revenue Fund~~.

Section 34. Clothing and school supplies; sales tax holiday.—

(1) The tax levied under chapter 212, Florida Statutes, may not be collected during the period from August 3, 2018, through August 5, 2018, on the retail sale of:

(a) Clothing, wallets, or bags, including handbags, backpacks, fanny packs, and diaper bags, but excluding briefcases, suitcases, and other garment bags, having a sales price of $60 or less per item. As used in this paragraph, the term "clothing" means:

1. Any article of wearing apparel intended to be worn on or about the human body, excluding watches, watchbands, jewelry, umbrellas, and handkerchiefs; and

2. All footwear, excluding skis, swim fins, roller blades, and skates.

(b) School supplies having a sales price of $15 or less per item. As used in this paragraph, the term "school supplies" means pens, pencils, erasers, crayons, notebooks, notebook filler paper, legal pads, binders, lunch boxes, construction paper, markers, folders, poster board, composition books, poster paper, scissors, cellophane tape, glue or paste, rulers, computer disks, protractors, compasses, and calculators.

(2) The tax exemptions provided in this section do not apply to sales within a theme park or entertainment complex as defined in s. 509.013(9), Florida Statutes, within a public lodging establishment as defined in s. 509.013(4), Florida Statutes, or within an airport as defined in s. 330.27(2), Florida Statutes.

(3) The tax exemptions provided in this section may apply at the option of a dealer if less than 5 percent of the dealer's gross sales of tangible personal property in the prior calendar year are comprised of items that would be exempt under this section. If a qualifying dealer chooses not to participate in the tax holiday, by August 1, 2018, the dealer must notify the Department of Revenue in writing of its election to collect sales tax during the holiday and must post a copy of that notice in a conspicuous location at its place of business.

(4) The Department of Revenue may, and all conditions are deemed met to, adopt emergency rules pursuant to s. 120.54(4), Florida Statutes, to administer this section.

(5) For the 2017-2018 fiscal year, the sum of $243,814 in nonrecurring funds is appropriated from the General Revenue Fund to the Department of Revenue for the purpose of implementing this section. Funds remaining unexpended or unencumbered from

this appropriation as of June 30, 2018, shall revert and be reappropriated for the same purpose in the 2018-2019 fiscal year.

(6) This section shall take effect upon this act becoming a law.

Section 35. Disaster preparedness supplies; sales tax holiday.—

(1) The tax levied under chapter 212, Florida Statutes, may not be collected during the period from June 1, 2018, through June 7, 2018, on the retail sale of:

(a) A portable self-powered light source selling for $20 or less.

(b) A portable self-powered radio, two-way radio, or weather-band radio selling for $50 or less.

(c) A tarpaulin or other flexible waterproof sheeting selling for $50 or less.

(d) An item normally sold as, or generally advertised as, a ground anchor system or tie-down kit and selling for $50 or less.

(e) A gas or diesel fuel tank selling for $25 or less.

(f) A package of AAA-cell, AA-cell, C-cell, D-cell, 6-volt, or 9- volt batteries, excluding automobile and boat batteries, selling for $30 or less.

(g) A nonelectric food storage cooler selling for $30 or less.

(h) A portable generator used to provide light or communications or preserve food in the event of a power outage and selling for $750 or less.

(i) Reusable ice selling for $10 or less.

(2) The Department of Revenue may, and all conditions are deemed met to, adopt emergency rules pursuant to s. 120.54(4), Florida Statutes, to administer this section.

(3) The tax exemptions provided in this section do not apply to sales within a theme park or entertainment complex as defined in s. 509.013(9), Florida Statutes, within a public lodging establishment as defined in s. 509.013(4), Florida Statutes, or within an airport as defined in s. 330.27(2), Florida Statutes.

(4) For the 2017-2018 fiscal year, the sum of $70,072 in nonrecurring funds is appropriated from the General Revenue Fund to the Department of Revenue for the purpose of implementing this section.

(5) This section shall take effect upon this act becoming a law.

Section 36. Equipment used to generate emergency electric energy.—

(1) The purchase of any equipment to generate emergency electric energy at a nursing home facility as defined in s. 400.021(12) or an assisted living facility as defined in s. 429.02(5), is exempt from the tax imposed under chapter 212, Florida Statutes, during the period from July 1, 2017, through December 31, 2018. The electric energy that is generated must be used at the home or facility and meet the energy needs for emergency generation for that size and class of facility.

(2) The purchaser of the equipment must provide the dealer with an affidavit certifying that the equipment will only be used as provided in subsection (1).

(3) The exemption provided in subsection (1) is limited to

a maximum of $15,000 in tax for the purchase of equipment for any single facility.

(4)(a) The exemption under this section may be applied at the time of purchase or is available through a refund from the Department of Revenue of previously paid taxes. For purchases made before the effective date of this section, an application for refund must be submitted to the department within 6 months after the effective date of this section. For purchases made on or after the effective date of this section, if the exemption was not applied to the purchase, an application for refund must be submitted to the department within 6 months after the date of purchase.

(b) The purchaser of the emergency electric equipment applying for a refund under this subsection must provide the department with an affidavit certifying that the equipment will only be used as provided in subsection (1).

(5) A person furnishing a false affidavit to the dealer pursuant to subsection (2) or the Department of Revenue pursuant to subsection (4) is subject to the penalty set forth in s. 212.085 and as otherwise authorized by law.

(6) The Department of Revenue may, and all conditions are deemed met to, adopt emergency rules pursuant to s. 120.54(4), Florida Statutes, to administer this section.

(7) Notwithstanding any other law, emergency rules adopted pursuant to subsection (6) are effective for 6 months after adoption and may be renewed during the pendency of procedures to adopt permanent rules addressing the subject of the emergency rules.

(8) This section is considered a revenue law for the

purposes of ss. 213.05 and 213.06, Florida Statutes, and s. 72.011, Florida Statutes, applies to this section.

(9) This section shall take effect upon becoming a law and operates retroactively to July 1, 2017.

Section 37. Fencing materials used in agriculture.—

(1) The purchase of fencing materials used in the repair of farm fences on land classified as agricultural under s. 193.461, Florida Statutes, is exempt from the tax imposed under chapter 212, Florida Statutes, during the period from September 10, 2017, through May 31, 2018, if the fencing materials will be or were used to repair damage to fences that occurred as a direct result of the impact of Hurricane Irma. The exemption provided by this section is available only through a refund from the Department of Revenue of previously paid taxes.

(2) To receive a refund pursuant to this section, the owner of the fencing materials or the real property into which the fencing materials were incorporated must apply to the Department of Revenue by December 31, 2018. The refund application must include the following information:

(a) The name and address of the person claiming the refund.

(b) The address and assessment roll parcel number of the agricultural land in which the fencing materials was or will be used.

(c) The sales invoice or other proof of purchase of the fencing materials, showing the amount of sales tax paid, the date of purchase, and the name and address of the dealer from whom the materials were purchased.

(d) An affidavit executed by the owner of the fencing materials or the real property into which the fencing materials

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were or will be incorporated, including a statement that the fencing materials were or will be used to repair fencing damaged as a direct result of the impact of Hurricane Irma.

(3) A person furnishing a false affidavit to the Department of Revenue pursuant to subsection (2) is subject to the penalty set forth in s. 212.085 and as otherwise authorized by law.

(4) The Department of Revenue may, and all conditions are deemed met to, adopt emergency rules pursuant to s. 120.54(4), Florida Statutes, to administer this section.

(5) Notwithstanding any other law, emergency rules adopted pursuant to subsection (4) are effective for 6 months after adoption and may be renewed during the pendency of procedures to adopt permanent rules addressing the subject of the emergency rules.

(6) This section is considered a revenue law for the purposes of ss. 213.05 and 213.06, Florida Statutes, and s. 72.011, Florida Statutes, applies to this section.

(7) This section shall take effect upon becoming a law and operates retroactively to September 10, 2017.

Section 38. Building materials used in the repair of nonresidential farm buildings damaged by Hurricane Irma.—

(1) Building materials used to repair a nonresidential farm building damaged as a direct result of the impact of Hurricane Irma and purchased during the period from September 10, 2017, through May 31, 2018, are exempt from the tax imposed under chapter 212, Florida Statutes. The exemption provided by this section is available only through a refund of previously paid taxes.

(2) For purposes of the exemption provided in this section,

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the term:

(a) "Building materials" means tangible personal property that becomes a component part of a nonresidential farm building.

(b) "Nonresidential farm building" has the same meaning as in s. 604.50, Florida Statutes.

(3) To receive a refund pursuant to this section, the owner of the building materials or of the real property into which the building materials will be or were incorporated must apply to the Department of Revenue by December 31, 2018. The refund application must include the following information:

(a) The name and address of the person claiming the refund.

(b) The address and assessment roll parcel number of the real property where the building materials were or will be used.

(c) The sales invoice or other proof of purchase of the building materials, showing the amount of sales tax paid, the date of purchase, and the name and address of the dealer from whom the materials were purchased.

(d) An affidavit executed by the owner of the building materials or the real property into which the building materials will be or were incorporated, including a statement that the building materials were or will be used to repair the nonresidential farm building damaged as a direct result of the impact of Hurricane Irma.

(4) A person furnishing a false affidavit to the Department of Revenue pursuant to subsection (3) is subject to the penalty set forth in s. 212.085 and as otherwise provided by law.

(5) The Department of Revenue may, and all conditions are deemed met to, adopt emergency rules pursuant to s. 120.54(4), Florida Statutes, to administer this section.

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(6) Notwithstanding any other law, emergency rules adopted pursuant to subsection (5) are effective for 6 months after adoption and may be renewed during the pendency of procedures to adopt permanent rules addressing the subject of the emergency rules.

(7) This section is considered a revenue law for the purposes of ss. 213.05 and 213.06, Florida Statutes, and s. 72.011, Florida Statutes, applies to this section.

(8) This section shall take effect upon becoming a law and operates retroactively to September 10, 2017.

Section 39. Refund of fuel taxes used for agricultural shipment after Hurricane Irma.—

(1) Fuel purchased and used in this state during the period from September 10, 2017, through June 30, 2018, which is or was used in any motor vehicle driven or operated upon the public highways of this state for agricultural shipment is exempt from all state and county taxes authorized or imposed under parts I and II of chapter 206, Florida Statutes, excluding the taxes imposed under s. 206.41(1)(a) and (h), Florida Statutes. The exemption provided by this section is available to the fuel purchaser in an amount equal to the fuel tax imposed on fuel that was purchased for agricultural shipment during the period from September 10, 2017, through June 30, 2018. The exemption provided by this section is only available through a refund from the Department of Revenue.

(2) For purposes of the exemption provided in this section, the term:

(a) "Agricultural processing or storage facility" means property used or useful in separating, cleaning, processing,

converting, packaging, handling, storing, and other activities necessary to prepare crops, livestock, related products, and other products of agriculture, and includes nonfarm facilities that produce agricultural products in whole or in part through natural processes, animal husbandry, and apiaries.

(b) "Agricultural product" means the natural products of a farm, nursery, grove, orchard, vineyard, garden, or apiary, including livestock as defined in s. 585.01(13).

(c) "Agricultural shipment" means the transport of any agricultural product from a farm, nursery, grove, orchard, vineyard, garden, or apiary to an agricultural processing or storage facility.

(d) "Fuel" means motor fuel or diesel fuel, as those terms are defined in ss. 206.01 and 206.86, respectively.

(e) "Fuel tax" means all state and county taxes authorized or imposed under chapter 206, Florida Statutes, on fuel.

(f) "Motor vehicle" and "public highways" have the same meanings as in s. 206.01, Florida Statutes.

(3) To receive a refund pursuant to this section, the fuel purchaser must apply to the Department of Revenue by December 31, 2018. The refund application must include the following information:

(a) The name and address of the person claiming the refund.

(b) The names and addresses of up to three owners of farms, nurseries, groves, orchards, vineyards, gardens, or apiaries whose agricultural products were shipped by the person seeking the refund pursuant to this section.

(c) The sales invoice or other proof of purchase of the fuel, showing the number of gallons of fuel purchased, the type

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of fuel purchased, the date of purchase, and the name and place of business of the dealer from whom the fuel was purchased.

(d) The license number or other identification number of the motor vehicle that used the exempt fuel.

(e) An affidavit executed by the person seeking the refund pursuant to this section, including a statement that he or she purchased and used the fuel for which the refund is being claimed during the period from September 10, 2017, through June 30, 2018, for an agricultural shipment.

(4) A person furnishing a false affidavit to the Department of Revenue pursuant to subsection (3) is subject to the penalty set forth in s. 206.11 and as otherwise provided by law.

(5) The tax imposed under s. 212.0501 does not apply to fuel that is exempt under this section and for which a fuel purchaser received a refund under this section.

(6) The Department of Revenue may, and all conditions are deemed met to, adopt emergency rules pursuant to s. 120.54(4), Florida Statutes, to administer this section.

(7) Notwithstanding any other law, emergency rules adopted pursuant to subsection (6) are effective for 6 months after adoption and may be renewed during the pendency of procedures to adopt permanent rules addressing the subject of the emergency rules.

(8) This section is considered a revenue law for the purposes of ss. 213.05 and 213.06, Florida Statutes, and s. 72.011, Florida Statutes, applies to this section.

(9) This section shall take effect upon becoming a law and operate retroactively to September 10, 2017.

Section 40. Paragraph (m) is added to subsection (8) of

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section 193.155, Florida Statutes, to read:

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

(8) Property assessed under this section shall be assessed at less than just value when the person who establishes a new homestead has received a homestead exemption as of January 1 of either of the 2 immediately preceding years. A person who establishes a new homestead as of January 1, 2008, is entitled to have the new homestead assessed at less than just value only if that person received a homestead exemption on January 1, 2007, and only if this subsection applies retroactive to January 1, 2008. For purposes of this subsection, a husband and wife who owned and both permanently resided on a previous homestead shall each be considered to have received the homestead exemption even though only the husband or the wife applied for the homestead exemption on the previous homestead. The assessed value of the newly established homestead shall be determined as provided in this subsection.

(m) For purposes of receiving an assessment reduction pursuant to this subsection, an owner of a homestead property that was significantly damaged or destroyed as a result of a named tropical storm or hurricane may elect, in the calendar year following the named tropical storm or hurricane, to have the significantly damaged or destroyed homestead deemed to have been abandoned as of the date of the named tropical storm or

hurricane even though the owner received a homestead exemption on the property as of January 1 of the year immediately following the named tropical storm or hurricane. The election provided for in this paragraph is available only if the owner establishes a new homestead as of January 1 of the second year immediately following the storm or hurricane. This paragraph shall apply to homestead property damaged or destroyed on or after January 1, 2017.

Section 41. Paragraph (g) of subsection (7) of section 163.01, Florida Statutes, is amended to read:

163.01 Florida Interlocal Cooperation Act of 1969.—

(7)

(g)1. Notwithstanding any other provisions of this section, any separate legal entity created under this section, the membership of which is limited to municipalities and counties of the state, and which may include a special district in addition to a municipality or county or both, may acquire, own, construct, improve, operate, and manage public facilities, or finance facilities on behalf of any person, relating to a governmental function or purpose, including, but not limited to, wastewater facilities, water or alternative water supply facilities, and water reuse facilities, which may serve populations within or outside of the members of the entity. Notwithstanding s. 367.171(7), any separate legal entity created under this paragraph is not subject to Public Service Commission jurisdiction. The separate legal entity may not provide utility services within the service area of an existing utility system unless it has received the consent of the utility.

2. For purposes of this paragraph, the term:

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a. "Host government" means the governing body of the county, if the largest number of equivalent residential connections currently served by a system of the utility is located in the unincorporated area, or the governing body of a municipality, if the largest number of equivalent residential connections currently served by a system of the utility is located within that municipality's boundaries.

b. "Separate legal entity" means any entity created by interlocal agreement the membership of which is limited to two or more special districts, municipalities, or counties of the state, but which entity is legally separate and apart from any of its member governments.

c. "System" means a water or wastewater facility or group of such facilities owned by one entity or affiliate entities.

d. "Utility" means a water or wastewater utility and includes every person, separate legal entity, lessee, trustee, or receiver owning, operating, managing, or controlling a system, or proposing construction of a system, who is providing, or proposes to provide, water or wastewater service to the public for compensation.

3. A separate legal entity that seeks to acquire any utility shall notify the host government in writing by certified mail about the contemplated acquisition not less than 30 days before any proposed transfer of ownership, use, or possession of any utility assets by such separate legal entity. The potential acquisition notice shall be provided to the legislative head of the governing body of the host government and to its chief administrative officer and shall provide the name and address of a contact person for the separate legal entity and information

identified in s. 367.071(4)(a) concerning the contemplated acquisition.

4.a. Within 30 days following receipt of the notice, the host government may adopt a resolution to become a member of the separate legal entity, adopt a resolution to approve the utility acquisition, or adopt a resolution to prohibit the utility acquisition by the separate legal entity if the host government determines that the proposed acquisition is not in the public interest. A resolution adopted by the host government which prohibits the acquisition may include conditions that would make the proposal acceptable to the host government.

b. If a host government adopts a membership resolution, the separate legal entity shall accept the host government as a member on the same basis as its existing members before any transfer of ownership, use, or possession of the utility or the utility facilities. If a host government adopts a resolution to approve the utility acquisition, the separate legal entity may complete the acquisition. If a host government adopts a prohibition resolution, the separate legal entity may not acquire the utility within that host government’s territory without the specific consent of the host government by future resolution. If a host government does not adopt a prohibition resolution or an approval resolution, the separate legal entity may proceed to acquire the utility after the 30-day notice period without further notice.

5. After the acquisition or construction of any utility systems by a separate legal entity created under this paragraph, revenues or any other income may not be transferred or paid to a member of a separate legal entity, or to any other special

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district, county, or municipality, from user fees or other charges or revenues generated from customers that are not physically located within the jurisdictional or service delivery boundaries of the member, special district, county, or municipality receiving the transfer or payment. Any transfer or payment to a member, special district, or other local government must be solely from user fees or other charges or revenues generated from customers that are physically located within the jurisdictional or service delivery boundaries of the member, special district, or local government receiving the transfer of payment.

6. This section is an alternative provision otherwise provided by law as authorized in s. 4, Art. VIII of the State Constitution for any transfer of power as a result of an acquisition of a utility by a separate legal entity from a municipality, county, or special district.

7. The entity may finance or refinance the acquisition, construction, expansion, and improvement of such facilities relating to a governmental function or purpose through the issuance of its bonds, notes, or other obligations under this section or as otherwise authorized by law. The entity has all the powers provided by the interlocal agreement under which it is created or which are necessary to finance, own, operate, or manage the public facility, including, without limitation, the power to establish rates, charges, and fees for products or services provided by it, the power to levy special assessments, the power to sell or finance all or a portion of such facility, and the power to contract with a public or private entity to manage and operate such facilities or to provide or receive

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facilities, services, or products. Except as may be limited by the interlocal agreement under which the entity is created, all of the privileges, benefits, powers, and terms of s. 125.01, relating to counties, and s. 166.021, relating to municipalities, are fully applicable to the entity. However, neither the entity nor any of its members on behalf of the entity may exercise the power of eminent domain over the facilities or property of any existing water or wastewater plant utility system, nor may the entity acquire title to any water or wastewater plant utility facilities, other facilities, or property which was acquired by the use of eminent domain after the effective date of this act. Bonds, notes, and other obligations issued by the entity are issued on behalf of the public agencies that are members of the entity.

8. Any entity created under this section may also issue bond anticipation notes in connection with the authorization, issuance, and sale of bonds. The bonds may be issued as serial bonds or as term bonds or both. Any entity may issue capital appreciation bonds or variable rate bonds. Any bonds, notes, or other obligations must be authorized by resolution of the governing body of the entity and bear the date or dates; mature at the time or times, not exceeding 40 years from their respective dates; bear interest at the rate or rates; be payable at the time or times; be in the denomination; be in the form; carry the registration privileges; be executed in the manner; be payable from the sources and in the medium or payment and at the place; and be subject to the terms of redemption, including redemption prior to maturity, as the resolution may provide. If any officer whose signature, or a facsimile of whose signature,

appears on any bonds, notes, or other obligations ceases to be an officer before the delivery of the bonds, notes, or other obligations, the signature or facsimile is valid and sufficient for all purposes as if he or she had remained in office until the delivery. The bonds, notes, or other obligations may be sold at public or private sale for such price as the governing body of the entity shall determine. Pending preparation of the definitive bonds, the entity may issue interim certificates, which shall be exchanged for the definitive bonds. The bonds may be secured by a form of credit enhancement, if any, as the entity deems appropriate. The bonds may be secured by an indenture of trust or trust agreement. In addition, the governing body of the legal entity may delegate, to an officer, official, or agent of the legal entity as the governing body of the legal entity may select, the power to determine the time; manner of sale, public or private; maturities; rate of interest, which may be fixed or may vary at the time and in accordance with a specified formula or method of determination; and other terms and conditions as may be deemed appropriate by the officer, official, or agent so designated by the governing body of the legal entity. However, the amount and maturity of the bonds, notes, or other obligations and the interest rate of the bonds, notes, or other obligations must be within the limits prescribed by the governing body of the legal entity and its resolution delegating to an officer, official, or agent the power to authorize the issuance and sale of the bonds, notes, or other obligations.

9. Bonds, notes, or other obligations issued under this paragraph may be validated as provided in chapter 75. The

complaint in any action to validate the bonds, notes, or other obligations must be filed only in the Circuit Court for Leon County. The notice required to be published by s. 75.06 must be published in Leon County and in each county that is a member of the entity issuing the bonds, notes, or other obligations, or in which a member of the entity is located, and the complaint and order of the circuit court must be served only on the State Attorney of the Second Judicial Circuit and on the state attorney of each circuit in each county that is a member of the entity issuing the bonds, notes, or other obligations or in which a member of the entity is located. Section 75.04(2) does not apply to a complaint for validation brought by the legal entity.

10. The accomplishment of the authorized purposes of a legal entity created under this paragraph is in all respects for the benefit of the people of the state, for the increase of their commerce and prosperity, and for the improvement of their health and living conditions. Since the legal entity will perform essential governmental functions <u>for the public health, safety, and welfare</u> in accomplishing its purposes, the legal entity is not required to pay any taxes or assessments of any kind whatsoever upon any property acquired or used by it for such purposes or upon any revenues at any time received by it<u>, whether the property is within or outside the jurisdiction of members of the entity. The exemption provided in this paragraph applies regardless of whether the separate legal entity enters into agreements with private firms or entities to manage, operate, or improve the utilities owned by the separate legal entity</u>. The bonds, notes, and other obligations of an entity,

their transfer, and the income therefrom, including any profits made on the sale thereof, are at all times free from taxation of any kind by the state or by any political subdivision or other agency or instrumentality thereof. The exemption granted in this subparagraph is not applicable to any tax imposed by chapter 220 on interest, income, or profits on debt obligations owned by corporations.

Section 42. Subsection (2) of section 206.052, Florida Statutes, is renumbered as subsection (3), and a new subsection (2) is added to that section, to read:

206.052 Export of tax-free fuels.—

(2) A terminal supplier may purchase taxable motor fuels from another terminal supplier at a terminal without paying the tax imposed pursuant to this part only under the following circumstances:

(a) The terminal supplier who purchased the motor fuel will sell the motor fuel to a licensed exporter for immediate export from the state.

(b) The terminal supplier who purchased the motor fuel has designated to the terminal supplier who sold the motor fuel the destination for delivery of the fuel to a location outside the state.

(c) The terminal supplier who purchased the motor fuel is licensed in the state of destination and has supplied the terminal supplier who sold the motor fuel with that license number.

(d) The licensed exporter has not been barred from making tax-free exports by the department for violation of s. 206.051(5).

(e) The terminal supplier who sold the motor fuel to the other terminal supplier collects and remits to the state of destination all taxes imposed by the destination state on the fuel.

Section 43. Effective July 1, 2019, section 206.9826, Florida Statutes, is created to read:

206.9826 Refund for certain air carriers.—An air carrier conducting scheduled operations or all-cargo operations that are authorized under 14 C.F.R. part 121, 14 C.F.R. part 129, or 14 C.F.R. part 135, is entitled to receive a refund of 1.42 cents per gallon of the taxes imposed by this part on aviation fuel purchased by such air carrier. The refund provided under this section plus the refund provided under s. 206.9855 may not exceed 4.27 cents per gallon of aviation fuel purchased by an air carrier.

Section 44. The amendments made by this act to ss. 197.3631, 197.572, and 197.573, Florida Statutes, and the creation by this act of s. 193.0237, Florida Statutes, first apply to taxes and special assessments levied in 2018.

Section 45. For the 2018-2019 fiscal year, the sum of $91,319 in nonrecurring funds is appropriated from the General Revenue Fund to the Department of Revenue to implement the provisions of this act.

Section 46. Except as otherwise expressly provided in this act and except for this section, which shall take effect upon this act becoming a law, this act shall take effect July 1, 2018.

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

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And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to taxation; amending s. 28.241, F.S.; specifying that certain filing fees for trial and appellate proceedings must be deposited into the State Courts Revenue Trust Fund rather than the General Revenue Fund; amending s. 159.621, F.S.; providing a documentary stamp tax exemption for notes and mortgages that are given in connection with a loan made by or on behalf of a housing financing authority; providing requirements for the exemption; revising applicability; creating s. 193.0237, F.S.; defining terms; prohibiting separate ad valorem taxes or non-ad valorem assessments against the land upon which a multiple parcel building is located; specifying requirements for property appraisers in allocating the value of land containing a multiple parcel building among the parcels; providing that a condominium, timeshare, or cooperative may be created within a parcel in a multiple parcel building; specifying the allocation of land value to the assessed value of parcels containing condominiums and of parcels containing cooperatives; requiring each parcel in a multiple parcel building to be assigned a tax folio number; providing an exception; providing construction relating to the survival and enforceability of recorded instrument provisions affecting a certain

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parcel in a multiple parcel building; providing applicability; creating s. 193.4516, F.S.; specifying a limitation on ad valorem tax assessments for tangible personal property that is owned and operated by a citrus fruit packing or processing facility and that is unused due to the effects of a certain hurricane or to citrus greening; defining the term "citrus"; providing retroactive applicability; amending s. 193.461, F.S.; providing that certain lands classified for assessment purposes as agricultural lands which are not being used for agricultural production must continue to be classified as agricultural lands until a specified date; providing construction; providing applicability; amending s. 196.173, F.S.; revising the military operations that qualify certain servicemembers for an additional ad valorem tax exemption; amending s. 196.24, F.S.; deleting a condition for unremarried spouses of deceased disabled ex-servicemembers to claim a certain ad valorem tax exemption; amending s. 197.3631, F.S.; specifying requirements for the levy and allocation of non-ad valorem assessments on land containing a multiple parcel building; defining the terms "multiple parcel building" and "parcel"; amending s. 197.572, F.S.; providing that easements supporting improvements that may be constructed above lands survive tax sales and deeds of such lands; amending s. 197.573, F.S.; specifying that a provision relating to the survival and enforceability of

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restrictions and covenants after a tax sale applies to recorded instruments other than deeds; revising covenants that are excluded from applicability; amending s. 201.02, F.S.; providing a documentary stamp tax exemption for certain instruments transferring or conveying homestead property interests between spouses; providing applicability; defining the term "homestead property"; creating s. 201.25, F.S.; providing exemptions from documentary stamp taxes for certain loans made by the Florida Small Business Emergency Bridge Loan Program and the Agricultural Economic Development Program; amending s. 206.9952, F.S.; conforming provisions to changes made by the act; amending s. 206.9955, F.S.; delaying the effective date of certain taxes on natural gas fuel; revising the calculation of certain taxes by the Department of Revenue; amending s. 206.996, F.S.; conforming a provision to changes made by the act; creating s. 210.205, F.S.; requiring the H. Lee Moffitt Cancer Center and Research Institute to report information regarding the expenditure of cigarette tax distributions to the Office of Economic and Demographic Research; amending s. 212.031, F.S.; reducing the tax levied on rental or license fees charged for the use of real property; amending s. 212.055, F.S.; revising the definition of the term "infrastructure" for purposes of the local government infrastructure surtax; amending s. 212.08, F.S.; revising, at specified timeframes, the total amount of

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community contribution tax credits which may be granted; providing an exemption from the sales and use tax for certain tangible personal property donated by a dealer to certain s. 501(c)(3) organizations; defining the term "donate"; revising applicability of a sales and use tax exemption for certain charges for electricity and steam uses; defining the term "NAICS"; providing a sales and use tax exemption for recycling roll off containers used by certain businesses for certain purposes; defining the term "NAICS"; amending s. 212.12, F.S.; requiring the department to make available the tax amounts and brackets applicable to transactions subject to the sales tax on commercial leases of real property; creating s. 212.205, F.S.; requiring certain recipients of sales tax distributions to report information related to expenditures of those distributions to the Office of Economic and Demographic Research; creating s. 218.135, F.S.; requiring the Legislature to appropriate funds to offset reductions in ad valorem taxes as a result of certain assessment limitations on the value of certain citrus packing and processing equipment; specifying requirements for such counties and jurisdictions to apply to participate in the distribution; specifying the calculation of such reductions; providing for a reversion of a share of funds if such county or jurisdiction fails to apply; providing an appropriation; amending s. 220.183, F.S.; revising, at specified timeframes, the total amount of

community contribution tax credits that may be granted; amending s. 220.1845, F.S.; increasing, for a specified fiscal year, the total amount of contaminated site rehabilitation tax credits; amending s. 318.14, F.S.; providing a specified reduction in civil penalty for persons who are cited for certain noncriminal traffic infractions and who elect to attend a certain driver improvement course; deleting the requirement that a specified percentage of the civil penalty be deposited in the State Courts Revenue Trust Fund; amending s. 318.15, F.S.; conforming a provision to changes made by the act; amending s. 320.08, F.S.; revising a condition under which certain truck tractors and heavy trucks used for certain purposes are eligible for specified license plate fees; amending s. 376.30781, F.S.; increasing, for a specified fiscal year, the total amount of tax credits for the rehabilitation of drycleaning-solvent-contaminated sites and brownfield sites in designated brownfield areas; amending s. 624.5105, F.S.; revising, at specified timeframes, the total amount of community contribution tax credits that may be granted; amending s. 741.01, F.S.; providing for a certain fee paid to the clerk of the circuit court for the issuance of a marriage license to be deposited into the State Courts Revenue Trust Fund, rather than the General Revenue Fund; providing sales tax exemptions for the retail sale of certain clothing and school supplies during a specified timeframe; defining

terms; providing exceptions; authorizing certain dealers to opt out of participating in such tax exemption; providing requirements for such dealers; authorizing the department to adopt emergency rules; providing an appropriation; providing a sales tax exemption for specified disaster preparedness supplies during a specified timeframe; authorizing the department to adopt emergency rules; providing exceptions to the exemption; providing an appropriation; providing a sales tax exemption, during a specified timeframe, for certain equipment used to generate emergency electric energy in nursing homes and assisted living facilities; requiring a purchaser to provide a dealer with a specified affidavit; specifying a limit to the exemption; providing procedures and requirements for filing applications for a refund of previously paid taxes; providing penalties for the furnishing of false affidavits; providing rulemaking authority to the department; providing construction; providing retroactive operation; providing a sales tax exemption for certain fencing materials used in agriculture during a specified timeframe; providing procedures and requirements for filing applications for the refund of previously paid taxes; providing penalties for the furnishing of false affidavits; providing rulemaking authority to the department; providing construction; providing retroactive applicability; providing a sales tax exemption for certain building materials used to

repair nonresidential farm buildings and purchased during a specified timeframe; defining terms; providing procedures and requirements for filing applications for a refund of taxes previously paid; providing penalties for the furnishing of false affidavits; providing rulemaking authority to the department; providing construction; providing retroactive applicability; providing an exemption from taxes on fuel used for agricultural shipment and purchased and used during a specified timeframe; defining terms; providing procedures and requirements for filing applications for a refund of previously paid taxes; providing penalties for the furnishing of false affidavits; providing applicability of a certain tax; providing rulemaking authority to the department; providing construction; providing retroactive applicability; amending s. 193.155, F.S.; providing that owners of homestead property that was significantly damaged or destroyed as a result of a named tropical storm or hurricane may elect to have such property deemed abandoned, for the purpose of receiving a certain assessment reduction, if the owner establishes a new homestead property by a specified date; providing retroactive applicability; amending s. 163.01, F.S.; specifying the applicability of a certain tax exemption for property located within or outside the jurisdiction of specified legal entities created under the Florida Interlocal Cooperation Act of 1969; amending s. 206.052, F.S.; exempting certain

terminal suppliers from paying the motor fuel tax under specified circumstances; creating s. 206.9826, F.S.; providing that certain air carriers are entitled to receive a specified refund on purchased aviation fuel; specifying a limitation on such refund; providing applicability; providing an appropriation; providing effective dates.

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576-02117-18

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

A bill to be entitled

An act relating to tax exemptions; creating s. 201.25, F.S.; providing exemptions from excise taxes on documents for certain loans made by the Florida Small Business Emergency Bridge Loan Program and the Agricultural Economic Development Program; providing a sales and use tax exemption during specified periods for certain tangible personal property related to disaster preparedness; providing exceptions to the exemption; authorizing the Department of Revenue to adopt emergency rules; providing an appropriation; providing an effective date.

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

Section 1. Section 201.25, Florida Statutes, is created to read:

201.25 Tax exemptions for certain loans.—There shall be exempt from all taxes imposed by this chapter:

(1) Any loan made by the Florida Small Business Emergency Bridge Loan Program in response to a disaster that results in a state of emergency declared by executive order or proclamation of the Governor pursuant to s. 252.36.

(2) Any loan made by the Agricultural Economic Development Program pursuant to s. 570.82.

Section 2. Disaster preparedness tax exemption.—

(1) The tax levied under chapter 212, Florida Statutes, may

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not be collected during the period from 12:01 a.m. on June 1, 2018, through 11:59 p.m. on June 7, 2018, and from 12:01 a.m. on July 6, 2018, through 11:59 p.m. on July 12, 2018, on the sale of any of the following:

(a) A portable self-powered light source selling for $20 or less.

(b) A portable self-powered radio, two-way radio, or weather band radio selling for $75 or less.

(c) A tarpaulin or other flexible waterproof sheeting selling for $50 or less.

(d) An item typically sold or advertised as a ground anchor system or tie-down kit selling for $50 or less.

(e) A gas or diesel fuel tank selling for $25 or less.

(f) A package of AAA-cell, AA-cell, C-cell, D-cell, 6-volt, or 9-volt batteries, excluding automobile and boat batteries, selling for $30 or less.

(g) A portable power bank intended to be used to charge cellular telephones and other small electronic devices and selling for $75 or less.

(h) A cellular telephone charger selling for $40 or less.

(i) A nonelectric food storage cooler selling for $30 or less.

(j) A carbon monoxide detector selling for $75 or less.

(k) Reusable ice selling for $10 or less.

(l) A single product consisting of two or more of the items listed in paragraphs (a)-(k) and selling for $75 or less.

(m) A portable generator that is used to provide light, support communications, or preserve food during a power outage and selling for $1,000 or less.

(n) A standby generator intended to be permanently affixed to real property and selling for $5,000 or less.

(o) A personal locator beacon selling for $600 or less.

(p) An emergency position-indicating radio beacon selling for $1,500 or less.

(2) The tax exemption provided in this section does not apply to sales within a public lodging establishment as defined in s. 509.013(4), Florida Statutes, a theme park or entertainment complex as defined in s. 509.013(9), Florida Statutes, or an airport as defined in s. 330.27(2), Florida Statutes.

(3) The Department of Revenue may, and all conditions are deemed met to, adopt emergency rules pursuant to ss. 120.536(1) and 120.54, Florida Statutes, to implement this section.

Section 3. For the 2017-2018 fiscal year, the sum of $70,072 in nonrecurring funds is appropriated from the General Revenue Fund to the Department of Revenue to administer the tax exemption for the purchase of tangible personal property relating to disaster preparedness specified under this act.

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 620
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Finance and Tax); Commerce and Tourism Committee; and Senator Passidomo and others
SUBJECT:	Taxation
DATE:	March 5, 2018
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Little	McKay	CM	**Fav/CS**
2.	Gross	Diez-Arguelles	AFT	**Recommend: Fav/CS**
3.	Diez-Arguelles	Hansen	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 620 provides for a number of tax reductions and modifications. The bill:

- Creates a 3-day back-to-school tax holiday for clothing and school supplies from August 3, 2018, through August 5, 2018.
- Creates a 7-day disaster preparedness holiday from June 1, 2018, through June 7, 2018.
- Exempts from sales and use tax generators purchased for use at nursing homes or assisted living facilities from July 1, 2017, through December 31, 2018.
- Exempts from sales and use tax the purchase of fencing materials for repairs of fences on agricultural lands that were damaged by Hurricane Irma. The exemption runs from September 10, 2017, through May 31, 2018.
- Exempts from sales and use tax building materials used to repair nonresidential farm buildings damaged by Hurricane Irma. The exemption runs from September 10, 2017, through May 31, 2018.
- Provides a refund of fuel taxes paid during the period September 10, 2017, through June 30, 2018, for motor vehicles used for agricultural shipment.
- Authorizes a homestead owner whose homestead is significantly damaged by a named tropical storm or hurricane to treat the homestead as abandoned on the date of the tropical storm or hurricane for property tax purposes.
- Exempts from documentary stamp tax certain notes and mortgages made by a housing finance authority.

- Provides for a reduced property tax assessment on citrus fruit packing and processing equipment impacted by Hurricane Irma or citrus greening. The bill provides for a distribution to fiscally constrained counties to offset the impact of the reduced property tax assessment.
- Allows agricultural lands that are not currently productive due to Hurricane Irma to retain their agricultural classification for 5 years.
- Redirects certain filing fees from the General Revenue Fund to the State Courts Revenue Trust Fund.
- Provides for the assessment of multiple parcel buildings.
- Updates the list of deployments that qualify for the deployed servicemember property tax exemption.
- Authorizes surviving spouses of certain disabled veterans to continue to receive property tax benefits regardless of the time the spouses were married.
- Specifies the property liens that survive a tax sale.
- Exempts from documentary stamp tax certain deeds transferred between spouses.
- Exempts from documentary stamp tax certain loans related to the Florida Small Business Emergency Bridge Loan Program and the Agricultural Economic Development Program.
- Delays the imposition of Florida's natural gas fuel tax from 2019 to 2024.
- Requires reports from recipients of cigarette tax distributions.
- Expands the definition of "infrastructure" for purposes of the Local Government Infrastructure Surtax.
- Increases the Community Contribution Tax Credits available in Fiscal Year 2019-2020 for projects that provide housing opportunities for certain persons and households from $10.5 million to $17 million.
- Exempts from the sales and use tax certain tangible personal property donated to charities.
- Provides a sales and use tax exemption for steam or electricity purchased for use in recycling.
- Exempts from sales and use tax roll-off containers used by recyclers.
- Requires some entities that receive sales tax distributions to report certain information to the Office of Economic and Demographic Research.
- Expands the distance that farm trucks can travel with a restricted license plate.
- Increases the tax credits available in Fiscal Year 2018-2019 for the rehabilitation of brownfields from $10 million to $21 million.
- Exempts from property tax property owned by the Florida Governmental Utility Authority located within a non-member county.
- Reduces the aviation fuel tax rate for air carriers who conduct scheduled operations or all-cargo operations.

The bill will reduce state revenues by $103.4 million in Fiscal Year 2018-2019, with a $60.4 million recurring reduction. General Revenue Fund receipts will be reduced by $73.8 million in Fiscal Year 2018-2019, with a $39.3 million recurring reduction. State trust fund receipts will be reduced by $4.0 million in Fiscal Year 2018-2019, with a $14.5 million recurring reduction. Local government receipts will be reduced by $25.7 million in Fiscal Year 2018-2019, with a $6.5 million recurring reduction.

Non-recurring General Revenue Fund and local government receipts will be reduced by $6.0 million and $0.5 million in Fiscal Year 2019-2020, respectively.

The total tax reductions proposed by the bill are represented by the sum of the recurring impacts, reflecting the annual value of permanent tax reductions when fully implemented, and the 1-year only tax reductions, reflecting temporary tax reductions. The total of $148.9 million in tax reductions proposed by the bill is the sum of $60.4 million (recurring), $82.0 million (1-year only tax cuts in Fiscal Year 2018-2019), and $6.5 million (1-year only tax reductions after Fiscal Year 2019-2020).

The bill makes the following appropriations:

- For Fiscal Year 2017-2018, the bill appropriates $243,814 in nonrecurring funds from the General Revenue Fund to the Department of Revenue to implement the back-to-school sales tax holiday.
- For Fiscal Year 2017-2018, the bill appropriates $70,072 in nonrecurring funds from the General Revenue Fund to the Department of Revenue to implement the disaster preparedness sales tax holiday.
- For Fiscal Year 2018-2019, the bill appropriates $91,319 in nonrecurring funds from the General Revenue Fund to the Department of Revenue to implement the provisions in the bill.
- For Fiscal Year 2018-2019, the bill appropriates $650,000 in nonrecurring funds from the General Revenue Fund to the Department of Revenue for fiscally constrained counties affected by the provisions of the bill that reduce property tax assessments for tangible personal property impacted by Hurricane Irma and citrus greening.

The bill provides an effective date of July 1, 2018, unless another date is expressed in the bill.

II. Present Situation:

The discussion of the present situation is included below in Section III, Effect of Proposed Changes.

III. Effect of Proposed Changes:

Sections 1 and 33 – Court Fees

Present situation: Section 28.241(6), F.S., imposes a $100 filing fee on attorneys wishing to appear pro hac vice[1] in trial and appellate proceedings in the state. The fee is deposited into the General Revenue Fund.

Section 741.01, F.S., imposes on every application for a marriage license a fee of $2, remitted to the clerk for receiving the application; a fee of $25, remitted by the clerk to the Department of Revenue (DOR) for deposit into the Domestic Violence Trust Fund; and an additional fee of $25, remitted by the clerk to DOR for deposit into the General Revenue Fund.

Proposed change: The bill redirects from the General Revenue Fund to the State Courts Revenue Trust Fund both the fee imposed for appearing pro hac vice and the additional marriage license fee.

[1] An attorney licensed in another state, but not a member of the Florida Bar, may appear in trial and appellate proceedings under certain circumstances. This is referred to as appearing Pro Hac Vice. See: https://www.floridabar.org/rules/upl/upl002/#E-FilingProHacVice (last visited Mar. 1, 2018).

Section 2 – Loans Issued by Local Housing Finance Authorities

Present situation: Current law authorizes each county to create by ordinance a Housing Finance Authority (HFA) to encourage investment in construction and rehabilitation of suitable affordable housing units.[2] HFAs have the authority to issue bonds and use the bond proceeds to raise capital for financing of qualifying housing projects.[3] Bonds issued by a HFA, and all notes, mortgages, or other instruments given to secure repayment of the bonds, are exempt from all taxes.[4]

HFAs also have the authority to make conventional loans with funds derived from sources other than bond proceeds,[5] for instance, loans made to persons who otherwise cannot borrow from conventional lending sources.[6] However, even though bonds issued by a HFA and financial instruments given to secure repayment of the bonds are tax exempt, notes and mortgages pertaining to loans made by a HFA other than as part of a bond transaction remain subject to documentary stamp tax at a rate of 35 cents per $100 of the consideration paid therefor.[7]

Proposed change: The bill provides an exemption from documentary stamp taxes for any note or mortgage given in connection with a loan made by or on behalf of a housing finance authority. In order to qualify for the exemption, the housing authority must, at the time the note or mortgage is recorded, record an affidavit signed by an agent of the housing authority affirming that the loan was made by or on behalf of the housing finance authority.

Sections 3, 10, 11 and 12 – Multiple Parcel Buildings

Present situation: Currently, a building is treated as a single parcel of property for property tax purposes, unless portions of the building are legally separated, such as a condominium. If the ownership of the property is not legally separated, the owner of the building may require the users of the building to contribute toward payment of taxes on the value of the land under the building. When a party fails to make its contribution, a tax certificate could be sold or the property could eventually be sold for nonpayment of taxes.

Section 197.572, F.S., provides that when any lands are sold for nonpayment of taxes, or any tax certificate is issued, the title to the land shall continue to be subject to any easement or public service purpose and shall continue to be subject to any easement for the purposes of drainage or of ingress and egress to and from other land.

Section 197.573, F.S., provides that when a deed in the chain of title contains restrictions and covenants running with the land, the restrictions and covenants shall survive and be enforceable after the issuance of a tax deed or master's deed, or a clerk's certificate of title upon foreclosure of a tax deed, tax certificate, or tax lien, to the same extent that it would be enforceable against a

[2] Chapter 159, F.S.
[3] Section 159.612(2), F.S.
[4] Section 159.621, F.S.
[5] For example, funds from the State Housing Initiatives Partnership pursuant to ch. 420, F.S.
[6] Section 159.608(8), F.S.
[7] Section 201.08, F.S.

voluntary grantee of the owner of the title immediately before the delivery of the tax deed, master's deed, or clerk's certificate of title.

Proposed change: The bill creates s. 193.0237, F.S., providing for assigning parcel numbers to sections of a building and then allocating the value of the land among the parcels. The bill defines a multiple parcel building as a building, other than one consisting entirely of a single condominium, timeshare, or cooperative, which contains separate parcels that are vertically located, in whole or in part, on or over the same land.

The bill prohibits separate ad valorem or non-ad valorem assessments against the land upon which the multiple parcel building is located. The property appraiser is required to allocate all of the just value of the land among the parcels in the multiple parcel building in the same proportion that the just value of the improvements in each parcel bears to the total just value of all the improvements in the entire multiple parcel building. Each parcel in a multiple parcel building must also be assigned a separate tax folio number.

The bill provides that a condominium, timeshare, or cooperative may be created within a parcel in the multiple parcel building. However, any land value allocated to the just value of a parcel containing a condominium or cooperative must be further allocated among the units pursuant to ss. 193.023(5) and 719.114, F.S., respectively. If a condominium or cooperative is created within a parcel, a separate tax folio number must be assigned to each unit.

The bill provides that all provisions of a recorded instrument affecting a parcel in a multiple parcel building, which parcel has been sold for taxes or special assessments, survive and are enforceable to the same extent that they would be enforceable against a voluntary grantee of the title immediately before the delivery of the tax deed, master’s deed, or clerk’s certificate of title as provided in s. 197.573, F.S.

The bill amends s. 197.3631, F.S., providing that non-ad valorem special assessments based on the size of the area of the land containing a multiple parcel building, regardless of ownership, must be levied on and allocated among all parcels in the multiple parcel building on the same basis that the land value is allocated among parcels. For non-ad valorem assessments not based on the size or area of the land, each parcel in the multiple parcel building is subject to a separate assessment.

The bill amends s. 197.572, F.S., providing that when lands are sold for nonpayment of taxes, the issuance of a tax certificate, or pursuant to any tax lien foreclosure proceeding, the title to the land will continue to be subject to any surviving easements for conservation purposes or other public service purpose and shall continue to be subject to any easement for “support of improvements that may be constructed above the lands,” and for the purposes of drainage or of ingress and egress to and from other land.

The bill amends s. 197.573(1), F.S., to provide that when a deed or other recorded instrument in the chain of title contains restrictions and covenants running the land, the restrictions and covenants shall survive and be enforceable after the issuance of a tax deed or master's deed, or a clerk's certificate of title upon foreclosure of a tax deed, tax certificate, or tax lien, to the same

extent that it would be enforceable against a voluntary grantee of the owner of the title immediately before the delivery of the tax deed, master's deed, or clerk's certificate of title.

Sections 4, 5, 24 and 25 – Assessment of Citrus Fruit Packing and Processing Equipment

Present situation: Counties, municipalities, school districts, and some special districts have the authority to levy ad valorem ("property") taxes.[8] Property tax applies to real property and tangible personal property.

"Tangible personal property" means all goods, chattels, and other articles of value (not including vehicles) capable of manual possession and whose chief value is intrinsic to the article itself.[9] All tangible personal property is subject to ad valorem taxation unless expressly exempted.[10] Household goods and personal effects,[11] items of inventory,[12] and up to $25,000 of assessed value for each tangible personal property tax return[13] are exempt from ad valorem taxation.

For purposes of ad valorem property taxation, agricultural equipment that is located on property classified as agricultural under s. 193.461, F.S., and is obsolete and no longer usable for its intended purpose is deemed to have a market value no greater than its value for salvage.[14]

Proposed change: The bill creates s. 193.4516, F.S., providing that tangible personal property owned and operated by a citrus fruit packing or processing facility shall be deemed to have a market value no greater than its salvage value, provided the tangible personal property is no longer used in the operation of the facility due to the effects of Hurricane Irma or citrus greening. This valuation will be effective only for the 2018 tax year.

The bill also creates s. 218.135, F.S., to direct the legislature to provide fiscally constrained counties[15] an appropriation to offset the reduction in ad valorem tax revenue which occur as a direct result of the implementation of s. 193.4516, F.S. The affected counties must apply to DOR and provide supporting documentation to receive an appropriation. Appropriations will be distributed to the affected counties in January of each fiscal year in proportion of the total reduction in ad valorem tax revenue resulting from the implementation of s. 193.4516, F.S.

The bill appropriates $650,000 for the 2018-2019 fiscal year from the General Revenue Fund to the Department of Revenue to provide the offset for fiscally constrained counties.

Sections 6 and 7 – Agricultural Classification of Lands impacted by Hurricane Irma

Present situation: Florida requires all property to be assessed at its "just value" unless the state constitution provides an exception,[16] and just valuation requires property to be valued at its

[8] FLA. CONST. art VII, s. 9.
[9] Section 192.001(11)(d), F.S.
[10] Section 196.001(1), F.S.
[11] Section 196.181, F.S.
[12] Section 196.185, F.S.
[13] Section 196.183, F.S.
[14] Section 193.4615, F.S.
[15] *See* s. 218.67(1), F.S.
[16] FLA. CONST. art. VII, s. 4

highest and best use.[17] Agricultural land is one exception to the highest and best use requirement.[18] Agricultural land is assessed based on its current use as agricultural land, which generally results in a lower assessment. However, when agricultural land ceases to be used for bona fide agricultural purposes, it no longer qualifies for its agricultural assessment.[19]

Proposed change: The bill provides that lands that were classified as agricultural but are not actively used for agricultural production due to a hurricane that made landfall in Florida in 2017 must continue to be assessed as agricultural lands until December 31, 2022, unless the lands are converted to nonagricultural use. The bill applies this treatment to the 2018 property tax roll.

Section 8 – Ad Valorem Exemption for Deployed Servicemembers

Present situation: The Florida Constitution grants an exemption for military servicemembers that have Florida homesteads and are deployed on active duty outside the continental United States, Alaska or Hawaii in support of military operations designated by the Legislature.[20] The exemption is equal to the taxable value of the qualifying servicemember's homestead on January 1 of the year in which the exemption is sought, multiplied by the number of days that the servicemember was on a qualifying deployment in the preceding calendar year, and divided by the number of days in that year.[21]

By January 15 of each year, the Department of Military Affairs (DMA) must submit to the President of the Senate, the Speaker of the House of Representatives, and the tax committees of each house of the Legislature a report of all known and unclassified military operations outside the continental United States, Alaska, or Hawaii for which servicemembers based in the continental United States have been deployed during the previous calendar year.[22]

Proposed change: The bill updates the statutory list of military operations eligible for the exemption by specifying that Operation Enduring Freedom ended on December 31, 2014, and by removing from the list Operations New Dawn and Odyssey Dawn that ended on December 15, 2011, and October 31, 2011, respectively; these operations are no longer relevant for purposes of the tax exemption.

Section 9 – Ad Valorem Exemption for Unmarried Surviving Spouse of a Disabled Ex-Servicemember

Present situation: Current law provides a $5,000 property tax exemption to any resident ex-servicemember who was honorably discharged and has been disabled to a degree of 10 percent or more by misfortune or while serving during a period of wartime service.[23] This exemption is extended to the surviving spouse of the disabled ex-servicemember if, at the time of the disabled

[17] *See Lanier v. Walt Disney World Co.*, 316 So. 2d 59 (Fla. 4th DCA 1975)
[18] FLA. CONST. art. VII, s.4(a)
[19] Section 193.461(4)(b), F.S.
[20] FLA. CONST. art. VII, s. 3(g); s. 196.173, F.S.
[21] Section 196.173(4), F.S.
[22] Section 196.173(3), F.S.
[23] Section 196.24, F.S.

ex-servicemember's death, the unremarried surviving spouse was married to the ex-servicemember for at least five years.[24]

Proposed change: The bill removes the requirement that the unremarried surviving spouse of a disabled ex-servicemember be married for at least five years on the date of the ex-servicemember's death in order to be entitled to the $5,000 property tax exemption.

Section 13 – Spousal Homestead Transfers

Present situation: Florida imposes a documentary stamp tax on tax deeds and other documents related to real property at the rate of 70 cents per $100 of the consideration paid therefor.[25] Consideration is defined to include, but is not limited to, the money paid or agreed to be paid; the discharge of an obligation; and the amount of any mortgage, purchase money mortgage lien, or other encumbrance, whether or not the underlying indebtedness is assumed.[26]

Current law provides a documentary stamp tax exemption for a deed, transfer, or conveyance between spouses or former spouses pursuant to an action for dissolution of their marriage if the real property is or was their marital home.[27] This exemption also applies to conveyances that occurred within one year before the dissolution of marriage.

Except for the exemption discussed above, there is no documentary stamp tax exemption for transfers or conveyances between spouses. For instance, if a spouse owned real property before his or her marriage and added the other spouse's name to the deed subsequent to their marriage, documentary stamp tax would be imposed on the transaction.

Proposed change: The bill provides an exemption from documentary stamp taxes for a deed or other instrument that transfers or conveys homestead property, or any interest therein, between spouses. The exemption applies if:

- The only consideration for the transfer or conveyance is the amount of a mortgage or other lien encumbering the homestead property at the time of the transfer or conveyance; and
- The deed or other instrument is recorded within one year after the date of the marriage.

This exemption applies to transfers or conveyances between spouses, regardless of whether the transfer or conveyance is from one spouse to another, from one spouse to both spouses, or from both spouses to one spouse.

Section 14 – Small Business Emergency Bridge Loans

Present situation: The Excise Tax on Documents (documentary stamp tax) is levied on promissory notes, nonnegotiable notes, written obligations to pay money, and assignments of salaries, wages, or other compensation at the rate of 35 cents per $100 or fraction thereof of the

[24] *Id.*
[25] Section 201.02(1)(a), F.S.
[26] Section 201.02(1)(a), F.S.
[27] Section 201.02(7), F.S.

indebtedness or obligation evidenced thereby. The tax on these documents may not exceed $2,450.[28]

The Florida Small Business Emergency Loan Program is part of Florida's response to disasters. The program's purpose is to provide short-term, interest-free working capital loans that are intended to "bridge the gap" between the time a major catastrophe hits and when a business has secured longer term recovery resources. Loans are awarded in amounts from $1,000 to $50,000, with terms of 90 or 180 days, and must be paid in full by the end of the loan term.[29]

The program was first activated following Hurricane Andrew and has been activated 20 additional times since then. In response to Hurricane Irma in September 2017, the program has made 829 small business loans totaling $27,719,793 and 49 citrus-related loans totaling $5,728,000.[30]

The Agricultural Economic Development Program[31] provides for disaster loans and grants for agricultural producers who have experienced losses from a natural disaster or a socio-economic condition or event. The loans and grants may be used to:

- Restore or replace essential physical property or remove debris from essential physical property;
- Pay all or part of production costs associated with the disaster year;
- Pay essential family living expenses; or
- Restructure farm debts.

Agricultural producers having parcels of land in production not exceeding 300 acres are eligible for loans under this program, and funds may be issued as direct loans or as loan guarantees for up to 90 percent of the total loan, in amounts not less than $30,000 and not more than $300,000. Loan applicants must provide at least ten percent equity.[32] This program has not been funded by the Legislature, and no loans have been made.[33]

Proposed change: The bill creates s. 201.25, F.S., providing an exemption from documentary stamp tax for any loan made by the Florida Small Business Emergency Loan Program in response to a disaster for which the governor declares a state of emergency pursuant to s. 252.36, F.S., or any loan made by the Agricultural Economic Development Program.

[28] Section 201.08(1)(a), F.S.
[29] http://www.floridadisasterloan.org/ (last visited Mar. 2, 2018).
[30] Total amounts as of January 8, 2018.
[31] Section 570.82, F.S.
[32] *Id*.
[33] Florida Legislature, Office of Economic and Demographic Research, Revenue Estimating Conference, *Disaster Loans*, Proposed Language, Jan 12, 2018 Revenue Impact Results, *available at http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2018/_pdf/page278-281.pdf*.

Sections 15, 16 and 17 – Natural Gas Fuel Tax

Present situation: In 2013, CS/CS/HB 579 established a fuel tax rate structure for motor vehicles powered by natural gas and repealed the decal fee imposed on "alternative fuel" vehicles.[34] The bill also provided an exemption from the new rate structure until December 31, 2018, and exempted from the sales and use tax natural gas and natural gas fuel when placed into the fuel system of a motor vehicle.[35]

Beginning January 1, 2019, the following taxes are imposed on natural gas fuel:
- An excise tax of 4 cents upon each motor fuel equivalent gallon of natural gas fuel.
- An additional tax of 1 cent upon each motor fuel equivalent gallon[36] of natural gas fuel, which is designated as the "ninth-cent fuel tax."
- An additional tax of 1 cent on each motor fuel equivalent gallon of natural gas fuel by each county, which is designated as the "local option fuel tax."
- An additional tax on each motor fuel equivalent gallon of natural gas fuel, which is designated as the "State Comprehensive Enhanced Transportation System (SCETS) Tax," at a rate determined by statute.[37]
- An additional tax is imposed on each motor fuel equivalent gallon of natural gas fuel "for the privilege of selling natural gas fuel," designated as the "fuel sales tax," at a rate determined by statute.[38]

Proposed change: The bill clarifies s. 206.9955, F.S., to delay the imposition of the tax on natural gas fuel used in motor vehicles from January 1, 2019, to January 1, 2024.

In addition, the bill clarifies the formula used to adjust the tax rates and sets the 12-month period ending September 30, 2013, as the base year in the formula.

The bill also:
- Amends s. 206.9952(3), F.S.:
  - to delay the expiration of a $200 penalty for each month a person acts as a natural gas retailer without a valid natural gas fuel retailer license from December 31, 2018, to December 31, 2023.

[34] The bill created a new Part V of Ch. 206, F.S., consisting of ss. 206.9951 – 206.998, entitled 'NATURAL GAS FUEL." It repealed various provisions, including ss. 206.877 and 206.89, F.S.; and it amended and relocated various provisions to the new Part V. *See supra* note 4 for a detailed analysis of the bill.
[35] *See* s. 212.08(4)(a)2., F.S.
[36] "Motor fuel equivalent gallon" is defined in s. 206.9951(1), F.S., to mean the volume of natural gas fuel it takes to equal the energy content of one gallon of motor fuel. Section 206.9955, F.S., currently defines the motor fuel equivalent gallon for compressed natural gas, liquefied natural gas, and liquefied petroleum gas.
[37] Paragraph (d) of s. 206.9955(2), F.S., currently requires the DOR, each calendar year, to determine the tax rate applicable to the sale of natural gas fuel for the following 12-month period beginning January 1, rounded to the nearest tenth of a cent, by adjusting the initially established rate of **5.8 cents per gallon** by the percentage change in the average of the Consumer Price Index issued by the United States Department of Labor for the most recent 12-month period ending September 30.
[38] Paragraph (e) of s. 206.9955(2), F.S., currently requires the DOR, each calendar year, to determine the tax rate applicable to the sale of natural gas fuel, rounded to the nearest tenth of a cent, for the following 12-month period beginning January 1. The tax rate is to be calculated by adjusting the initially established tax rate of **9.2 cents per gallon** by the percentage change in the average of the Consumer Price Index for the most recent 12-month period ending September 30.

- to delay the effective date of the penalty of 25 percent of the tax that is assessed on the total purchases made during the person's unlicensed period until January 1, 2024.

- Amends s. 206.966, F.S., to delay the date on which natural gas fuel retailers are required to begin filing related monthly reports with the DOR from February 2019 to February 2024.

Section 18 – Moffitt Distribution

Present situation: Chapter 210, F.S., governs taxes on tobacco products. Cigarette tax collections received by the Division of Alcoholic Beverages and Tobacco (division) in the Department of Business and Professional Regulation are deposited into the Cigarette Tax Collection Trust Fund. Section 210.20, F.S., provides for the payment of monthly distributions as follows:
From the total amount of cigarette tax collections:[39]

- 8.0 percent service charge to the General Revenue Fund; [40] and
- 0.9 percent to the Alcoholic Beverage and Tobacco Trust Fund.

From the remaining net collections:[41]

- 2.9 percent to the Revenue Sharing Trust Fund for Counties;
- 29.3 percent to the Public Medical Assistance Trust Fund;
- 4.04 percent of fiscal year 2001-2002 cigarette tax collections to the Moffitt Center;[42] and
- 1.0 percent, not to exceed $3 million annually, to the Biomedical Research Trust Fund in the Department of Health (DOH).

After the above distributions are made, the remaining balance of net cigarette tax collections is deposited in the General Revenue Fund.[43]

Proposed change: The bill creates reporting requirements for distributions from cigarette tax collections going to the Moffitt Center. By March 15 of each year, the Center shall report to the Office of Economic and Demographic Research the following information:

- An itemized accounting of all expenditures of the distributed funds, including amounts spent on debt service.
- A statement indicating what portion of the distributed funds have been pledged for debt service.
- The original principal amount, and current debt service schedule of any bonds or other borrowing for which the distributed funds have been pledged or debt service.

[39] *See* s. 210.20(2)(a), F.S.
[40] *See* s. 215.20(1), F.S. concerning the appropriation of the eight percent service charge to the General Revenue Fund.
[41] *See* s. 210.20(2)(a), F.S.
[42] *See* s. 210.20(2)(b), F.S. The distribution of cigarette tax funds to the Moffitt Center was initiated in 1998, using 2.59 percent for the calculation on net cigarette tax collections. *See* ch. 98-286, Laws of Fla. The last adjustment to the percentage for the calculation occurred in 2014, when the percentage was set at the current 4.04 percent from July 1, 2014 through June 30, 2017. *See* s. 8 of ch. 2014-38, Laws of Fla.
[43] *See* s. 210.20(b), F.S.

Section 19 – Sales Tax on Commercial Rent

Present situation: Since 1969, Florida has imposed a sales tax on the total rent charged for the rental, lease, or license to use commercial real property.[44] Sales tax is due at the rate of 5.8 percent on the total rent paid and county sales surtax can also be levied.[45] If the tenant makes payments such as mortgage, ad valorem taxes, or insurance on behalf of the property owner, such payments are also classified as rent and are subject to the tax.

Commercial real property includes land, buildings, office or retail space, convention or meeting rooms, airport tie-downs, and parking and docking spaces. It may also involve the granting of a license to use real property for placement of vending, amusement, or newspaper machines. However, there are several commercial rentals that are not subject to tax, including:

- Rentals of real property assessed as agricultural;
- Rentals to nonprofit organizations that hold a current Florida consumer's certificate of exemption;
- Rentals to federal, state, county, or city government agencies;
- Properties used exclusively as dwelling units; and
- Public streets or roads used for transportation purposes.[46]

Proposed change: The bill reduces the state tax rate on rental, lease or license to use commercial real property from 5.8 percent to 5.7 percent, beginning January 1, 2019.

Section 20 – Local Government Infrastructure Surtax

Present situation: There are nine discretionary sales surtaxes that serve as revenue sources for county and municipal governments and school districts.[47] A surtax applies to all taxable transactions that are subject to Florida's sales and use tax.

The local government infrastructure surtax allows a qualifying county to levy a discretionary sales surtax of 0.5 percent or one percent pursuant to an ordinance enacted by a majority of the members of the county and approved by a majority of the electors of the county voting in a referendum on the surtax.[48] Surtax proceeds are distributed to the county and the municipalities within the county according to an interlocal agreement between the county governing authority and the governing bodies of the municipalities representing a majority of the county's municipal population. If there is no interlocal agreement, the proceeds are distributed according to the formula in s. 218.62, F.S.[49]

The proceeds of the surtax and any accrued interest must be spent only to:

[44] Chapter 1969-222, Laws of Fla.
[45] Section 212.031, F.S., and Rule 12A-1.070, F.A.C.
[46] *See* s. 212.031(1)(a)1.-13., F.S.
[47] Section 212.055, F.S.
[48] Section 212.055(2)(a)1., F.S.
[49] Section 212.055(2)(c)1., F.S. The agreement may include a school district with the consent of the county governing authority and the governing bodies of the municipalities.

- Finance, plan, and construct infrastructure;
- Acquire land for public recreation, conservation, or protection of natural resources;
- Provide loans, grants, or rebates to residential or commercial property owners who make energy efficiency improvements to their residential or commercial property, if a local government ordinance authorizing the use is approved by referendum; or
- Finance the closure of county-owned or municipally owned solid waste landfills that are closed or are required to be closed by order of the Department of Environmental Protection.[50]

The term "infrastructure" includes any fixed capital expenditure or fixed capital outlay associated with the construction, reconstruction, or improvement of public facilities that have a life expectancy of 5 or more years, any related land acquisition, land improvement, design, and engineering costs, and all other professional and related costs required to bring the public facilities into service.[51]

Prior to 2016, the term "public facilities" was not specifically defined. In 2016, the Legislature defined the term "public facilities" to mean facilities as defined in three other sections of law (ss. 163.3164(38), 163.3221(13), and 189.012(5), F.S.), regardless of whether the facilities are owned by the local taxing authority or another governmental entity.

Generally, the three incorporated sections define "public facilities" as major capital improvements, including transportation, sanitary sewer, solid waste, drainage, potable water, educational, parks and recreational facilities (two of the three sections also include health system facilities). However, the incorporation of the specific statutory definitions into the definition of "public facilities" may have had the unintended consequence of limiting the authorized use of the surtax revenues to only the listed facilities.

Proposed change: The bill amends s. 212.055(2), F.S., to clarify that the definition of "public facilities" means facilities that are necessary to carry out governmental purposes, including but not limited to fire stations, general governmental office buildings, animal shelters, or facilities defined in ss. 163.3164(38), 163.3221(13), and 189.012(5), F.S.

The bill also adds to the definition of "infrastructure" instructional technology used in a school district's classroom. Instructional technology is defined as an interactive device that assists a teacher in instructing as class or a group of students. The hardware and software necessary to operate the interactive device and a support system in which an interactive device may mount are also included as authorized expenditures.

Sections 21, 26 and 32 – Community Contribution Tax Credit Program

Present situation: In 1980, the Legislature established the Community Contribution Tax Credit Program ("CCTCP") to encourage private sector participation in community revitalization and housing projects.[52] Broadly, the CCTCP offers tax credits to businesses or persons ("taxpayers")

[50] Section 212.055(2)(d), F.S.
[51] Section 212.055(2)(d)1.a., F.S.
[52] Chapter 80-249, Laws of Fla. The CCTCP is one of the state incentives available under the Florida Enterprise Zone Act, which was partially repealed on December 31, 2015. Sections 290.007(3) and 290.016, F.S.

anywhere in Florida that contribute[53] to certain projects undertaken by approved CCTCP sponsors.[54]

Eligible sponsors under the CCTCP include a wide variety of community organizations, housing organizations, historic preservation organizations, units of state and local government, and regional workforce boards.[55] As of February 2018, the CCTCP had 124 approved sponsors.[56]

Eligible projects include activities undertaken by an eligible sponsor that are designed to accomplish one of the following purposes:

- To construct, improve, or substantially rehabilitate housing that is affordable to low-income households or very-low-income households as those terms are defined in s. 420.9071;
- To provide commercial, industrial, or public resources and facilities; or
- To improve entrepreneurial and job-development opportunities for low-income persons.[57]

In addition, eligible projects must be located in an area that was designated as an enterprise zone as of May 1, 2015,[58] or a Front Porch Florida Community, with two exceptions. First, any project designed to construct or rehabilitate housing for low-income households or very-low-income households as those terms are defined in s. 420.9071, F.S., is exempt from the area requirement. Second, any project designed to provide increased access to high-speed broadband capabilities that includes coverage in a rural community that had an enterprise zone designation as of May 1, 2015, may locate the project's infrastructure in any area of a rural county (inside or outside of the zone).

The CCTCP credit is calculated as 50 percent of the taxpayer's annual contribution, but a taxpayer may not receive more than $200,000 in credits in any one year.[59] The taxpayer may use the credit against corporate income tax, insurance premiums tax, or as a refund against sales tax.[60] Unused credits against corporate income taxes and insurance premium taxes may be carried forward for five years.[61] Unused credits against sales taxes may be carried forward for three years.[62]

DOR may approve $10.5 million in annual funding for projects that provide homeownership opportunities for low-income and very-low-income households or housing opportunities for persons with special needs and $3.5 million for all other projects.

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[53] Sections 212.08(5)(p)2.a., 220.183(2)(a), and 624.5105(5)(a), F.S., require community contributions to be in the form of cash or other liquid assets, real property, goods or inventory, or other physical resources.
[54] *See* ss. 212.08(5)(p); 220.183; and 624.5105, F.S.
[55] *See* ss. 212.08(5)(p)2.c.; 220.183(2)(c); and 624.5105(2)(c), F.S.
[56] Email correspondence with DEO staff, Feb. 8, 2018, on file with the Senate Appropriations Subcommittee on Finance and Tax.
[57] Sections 212.08(5)(p)2.b.; 220.183(2)(d); 624.5105(2)(b); and 220.03(1)(t), F.S.
[58] The Florida Enterprise Zone Act was partially repealed as of December 31, 2015- see ch. 2015-221, Laws of Fla.; s. 290.016, F.S.
[59] Sections 212.08(5)(p)1.; 220.183 (1)(a) and (b); and 624.5105(1), F.S.
[60] *See* ss. 212.08(5)(p); 220.183; and 624.5105, F.S.
[61] Sections 220.183(1)(e) and (g); and 624.5105, F.S.
[62] Section 212.08(5)(p)1.b. and f., F.S.

The Legislature extended the CCTCP in 1984, 1994, 2005, 2014, and 2015,[63] and made the program permanent in 2017.[64] It has also amended the annual tax credit allocation of the CCTCP on numerous occasions.[65] The CCTCP cap, which started at $3 million annually, is currently set at $21.4 million for fiscal year 2017-18; for fiscal years after 2017-18, the cap is set at $14 million.

Proposed change: The bill provides a one-time additional tax credit authorization of $6.5 million for Fiscal Year 2019-20 for projects that provide homeownership opportunities for low-income and very-low-income households or housing opportunities for persons with special needs. The annual credit authorization for all other projects will remain at $3.5 million. Thus, the tax credit authorization for all projects in Fiscal Year 2019-20 is $20.5 million.

Section 21 – Donations to Charities; Exemptions for Recycling Containers and Electricity

Florida levies a 6 percent sales and use tax on the sale or rental of most tangible personal property, admissions,[66] transient rentals,[67] rental of commercial real estate,[68] and a limited number of services. Chapter 212, F.S., contains statutory provisions authorizing the levy and collection of Florida's sales and use tax, as well as the exemptions and credits applicable to certain items or uses under specified circumstances. There are currently more than 250 exemptions, exclusions, deductions, and credits from the sales and use tax.[69] Sales tax is added to the price of the taxable good or service and collected from the purchaser at the time of sale.[70]

Florida imposes sales tax[71] at the rate of 4.35 percent and gross receipts tax[72] at the rate of 2.6 percent on charges for electrical power or energy.

Donations to Charities

Present situation: Section 212.08(7), F.S., exempts from the sales and use tax the sale or lease of tangible personal property made to an organization determined to be exempt from federal income tax pursuant to s. 501(c)(3) of the Internal Revenue Code of 1986. However, donations made by entities that purchase items for resale must pay tax on the acquisition cost of the tangible personal property that is subsequently donated.

Proposed change: The bill amends s. 212.08(7)(p), F.S., to exempt from the sales and use tax tangible personal property that was purchased for resale by a dealer but whose purchase was subsequently donated to a tax-exempt entity.

[63] Chapters 84-356, 94-136, 2005-282, 2014-38, and 2015-221, Laws of Fla.
[64] Chapter 2017-36, Laws of Fla.
[65] *See* chs. 94-136, 98-219, 99-265, 2005-282, 2006-78, 2008-153, 2015-221, and 2017-36, Laws of Fla.
[66] Section 212.04, F.S.
[67] Section 212.03, F.S.
[68] Section 212.031, F.S.
[69] *See* Office of Economic and Demographic Research, The Florida Legislature, *Florida Tax Handbook*, 164-170 (2017).
[70] Florida Dept. of Revenue, *Who must pay tax? Partial list of taxable business activities, available at* http://dor.myflorida.com/dor/taxes/sales_tax.html (last visited Mar. 3, 2018).
[71] Section 212.05(1)(e)1.c., F.S.
[72] Section 203.01(1)(b)4., F.S.

Exemption for Electricity Used by Certain Recyclers

Present situation: Section 212.08(7)(ff), F.S., exempts electricity or steam used to operate machinery and equipment at a fixed location in this state. Such machinery and equipment must be used to manufacture, process, compound, produce, or prepare for shipment items of tangible personal property for sale, or to operate pollution control equipment, recycling equipment, maintenance equipment, or monitoring or control equipment used in such operations. This exemption applies only to specific industries classified under the Standard Industrial Classification (SIC) Manual, 1987, as published by the Office of Management and Budget, Executive Office of the President.

Proposed change: The bill amends s. 212.08(7)(ff), F.S., to add "Recyclable Material Merchant Wholesalers" as classified under the North American Classification System code 423930 to the industries exempted from the tax on electricity or steam. Businesses under this NAICS code primarily engage in the merchant wholesale distribution of automotive scrap, industrial scrap, and other recyclable materials. Included in this industry are auto wreckers primarily engaged in dismantling motor vehicles for the purpose of wholesaling scrap.[73]

Exemption for Roll-off Containers Used by Certain Recyclers

Present situation: Current law imposes sales and use tax on roll-off containers purchased and used by a business primarily engaged in the distribution of recycled materials.

Proposed change: The bill creates s. 212.08(7)(ooo), F.S., to exempt roll-off containers purchased by a business classified under NAICS code 423930 and engages in the distribution of recycled materials. The roll-off containers must be used exclusively by the business for recycling purposes.

Section 22 – Tax Amounts and Tax Brackets

Present situation: The DOR must make available the tax amounts and tax brackets applicable for:

- Transactions that occur in counties that have a surtax at a rate other than 1 percent.
- Sales of electrical power or energy taxed at a rate of 4.35 percent.
- Transactions that would otherwise have been taxable in counties that have adopted a discretionary sales tax.

Proposed change: The bill amends s. 212.12(11), F.S., to provide that the DOR must make available the tax amounts and tax brackets applicable to the commercial rental tax rate under s. 212.031,(1), F.S.

Section 23 – Sales Tax Distribution Reporting

Present situation: Section 212.20, F.S., provides for the distribution of all tax or fee revenue collected or received by DOR under ch. 212, F.S., as well as certain communication service taxes

[73] United State Census Bureau, *North American Industry Classification System, 2007 NAICS Definition*, available at: https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=423930&search=2007+NAICS+Search (last visited Mar. 3, 2018).

and gross receipt taxes. Depending on the specific tax or fee source, distributions are made first to various state trust funds, then to the local government in which the tax or fee was collected, and then to certain applicants that qualify under economic development programs created by the Legislature. For example, after the distributions under ss. 212.20(6)(a)-(d)6.a., F.S., are made, the remaining tax and fee revenues are distributed as follows:

- $166,667 monthly to professional sports franchise facilities certified pursuant to s. 288.1162, F.S., and $41,667 monthly to spring training franchise facilities certified pursuant to s. 288.11621, F.S.[74]
- $166,667 monthly to the professional golf hall of fame certified pursuant to s. 288.1168, F.S.[75]
- $83,333 monthly to certain spring training franchise facilities certified pursuant to s. 288.11631, F.S.[76]
- Monthly distributions of an amount to be determined by DEO to each local government that is certified pursuant to s. 288.11625, F.S., for the public purpose of constructing, reconstructing, renovating, or improving a sports facility.[77]

While DEO must certify the persons that receive a distribution described above prior to receiving the distributions, current law does not require annual reporting of the manner in which the distributions are spent or whether, and to what extent, the distributions are pledged for debt service.

Proposed changes: The bill creates reporting requirements for persons that receive a distribution pursuant to ss. 212.20(6)(d)6.b.-f., F.S. By March 15 of each year, such persons receiving distributions in the prior calendar year shall report to the Office of Economic and Demographic Research the following information:

- An itemized accounting of all expenditures of the funds distributed in the prior calendar, including amounts spent on debt service.
- A statement indicating what portion of the distributed funds have been pledged for debt service.
- The original principal amount, and current debt service schedule of any bonds or other borrowing for which the distributed funds have been pledged for debt service.

Sections 27 and 31 – Voluntary Cleanup Tax Credit Program - Brownfields Tax Credit

Present situation: The Department of Environmental Protection (DEP) is authorized to issue $10 million annually in tax credits as an incentive to encourage site rehabilitation in brownfield areas and to encourage voluntary cleanup of certain other types of contaminated sites. This corporate income tax credit may be taken in the amount of 50 percent of the costs of voluntary cleanup activity that is integral to site rehabilitation at the following sites:

- A site eligible for state-funded cleanup under the Drycleaning Solvent Cleanup Program;[78]

[74] Section 212.20(6)(d)6.b., F.S.
[75] Section 212.20(6)(d)6.c., F.S.
[76] Section 212.20(6)(d)6.e., F.S.
[77] Section 212.20(6)(d)6.f., F.S.
[78] Section 376.30781, F.S.

- A drycleaning solvent contaminated site at which the real property owner undertakes voluntary cleanup, provided that the real property owner has never been the owner or operator of the drycleaning facility; or
- A brownfield site in a designated brownfield area.[79]

Eligible tax credit applicants may receive up to $500,000 per site per year in tax credits plus an additional 25 percent supplemental tax credit for those applicants that completed site rehabilitation and received a Site Rehabilitation Completion Order from the DEP. This additional supplemental credit has a $500,000 cap. Businesses are also allowed a one-time application for an additional 25 percent of the total site rehabilitation costs, up to $500,000, for brownfield sites at which the land use is restricted to affordable housing. They may also submit a one-time application claiming 50 percent of the costs, up to $500,000, for removal, transportation and disposal of solid waste at a brownfield site.

Site rehabilitation tax credit applications must be complete and submitted by January 31 of each year. In the event that approved tax credit applications exceed the $10 million annual authorization, the statute provides for remaining applications to roll over into the next fiscal year to receive tax credits in first come, first served order from the next year's authorization. These tax credits may be applied toward corporate income tax in Florida. The tax credits may be transferred one time, although they may succeed to a surviving or acquiring entity after merger or acquisition.

Since 1998, the VCTC Program has approved $81.7 million in VCTCs,[80] and total requests for tax credits have met or exceeded the annual authorization since 2007.[81] As of February 1, 2018, DEP had a backlog of $10.2 million in approved tax credits that have not been funded.[82] On July 1, 2018, the $10 million annual authorization for Fiscal Year 2018-19 becomes available which will reduce the current backlog to $200,000. However, the $12.8 million in tax credits applied for 2017 costs when added to the $200,000 tax credits outstanding will create a backlog of approximately $13 million[83] that will be partially funded when the $10 million annually authorized credit amount becomes available on July 1, 2019.

Proposed Change: The bill provides a one-time additional tax credit authorization of $11 million for Fiscal Year 2018-19.

Sections 28 and 29 – Traffic Fine Reduction for Driver Improvement Course Attendance

Present situation: A person who commits a noncriminal traffic infraction and is issued a citation, must elect to appear before a designated official, pay the citation, or enter into a payment plan

[79] Section 220.1845, F.S.
[80] Florida Brownfields Redevelopment Program, 2016-17 Annual Report, on file with the Senate Appropriations Subcommittee on Finance and Tax. Unavailable online as of Feb. 1, 2018.
[81] DEP, Florida Brownfields Redevelopment Program, 2016 Annual Report, no longer available at: http://www.dep.state.fl.us/Waste/quick_topics/publications/wc/brownfields/AnnualReport/2016/2015-16_FDEP_Annual.pdf (last visited March 22, 2017).
[82] Email correspondence with DEP staff, Feb. 1, 2018, on file with Senate Appropriations Subcommittee on Finance and Tax.
[83] Note that, for various reasons, not all of the $12.8 million in tax credits applied for will be approved.

with the clerk of court within 30 days after the citation is issued to avoid having his or her driver license suspended.[84]

Section 318.14(9), F.S., provides that a person who does not hold a commercial driver license or commercial learner's permit and who is cited while driving a noncommercial motor vehicle for a noncriminal traffic infraction may, in lieu of a court appearance, elect to attend a basic driver improvement course.[85] If a driver improvement course is completed, adjudication is withheld and points[86] are not assessed against the person's driver license.

If a person completes a basic driver improvement course, 18 percent of the civil penalty imposed[87] is deposited in the State Courts Revenue Trust Fund.

A person who elects to attend driver improvement school and has paid the civil penalty,[88] but who subsequently fails to attend the driver improvement school within the time specified by the court is deemed to have admitted the infraction and is adjudicated guilty.[89] In such a case, the clerk of the court notifies the Department of Highway Safety and Motor Vehicles (DHSMV) of the person's failure to attend driver improvement school and points are assessed on the person's driver license.

The cost of driver improvement courses range from $15 to $40, depending on the provider.[90]

Proposed change: The bill amends s. 318.14(9), F.S., providing a reduction of 18 percent on the civil penalty for a noncriminal traffic infraction if the person elects to attend driver improvement school. The bill also removes the provision that 18 percent of the civil penalty from those attending driver improvement schools is deposited into the State Courts Revenue Trust Fund. Therefore, the bill reduces the fine for those attending a driver improvement course and reduces the revenue provided to the State Courts Revenue Trust Fund.

The bill also amends s. 318.15(1)(b), F.S., making conforming changes regarding the reduction in fines for those who elect to attend a driver improvement course.

Section 30 – Transportation of Agriculture, Horticulture, and Forestry Products

Present situation: Florida imposes an annual license tax for the operation of motor vehicles, which is paid to the Department of Highway Safety and Motor Vehicles upon the registration or renewal of each vehicle. The amount of the tax depends on the type and size of the vehicle.

Currently, restricted license plates with a reduced annual license tax are available for an eligible truck tractor or heavy truck not operated as a for-hire vehicle, which is engaged exclusively in

[84] Section 318.14, F.S.
[85] Driver improvement courses must be approved by the DHSMV.
[86] Points are provided for in s. 322.27, F.S.
[87] *See* s. 318.18(3), F.S. The civil penalty varies by violation.
[88] The civil penalty is provided for in s. 318.14(9), F.S.
[89] Section 318.15(1)(b), F.S.
[90] DHSMV, *2017 Agency Legislative Bill Analysis: HB 547*, on file with the Senate Appropriations Subcommittee on Finance and Tax.

transporting raw, unprocessed, and non-manufactured agriculture or horticultural products or forestry products within a 150-mile radius of its home address.

Proposed change: The bill amends s. 320.08, F.S, to expand the eligibility for the restricted license plate to include such trucks that operate anywhere within the state.

Sections 34 and 35 – Back to School and Disaster Preparedness Sales Tax Holidays

Back-to-school

Present situation: Since 1998, the Legislature has enacted 22 temporary periods (commonly called "sales tax holidays") during which certain household items, household appliances, clothing, footwear, books, and/or school supply items were exempted from the state sales tax and county discretionary sales surtaxes.

The "Florida Residents' Tax Relief Act of 1998" established Florida's first back-to-school sales tax holiday, during which time clothing purchases of $50 or less were exempt from tax.[91] In 1999, the legislature added backpacks to the tax holiday;[92] and included school supplies in 2001.[93] In 2013, personal computers and related accessories that were purchased for noncommercial home or personal use with a sales price of $750 or less were exempt.[94] Since 1998, the duration of back-to-school sales tax holidays have varied from 3 to 10 days, as have the type and value of exempt items.

For the 2017-2018 school year, 41 of Florida school districts (61 percent) held their opening day for students during the first week of August (Aug. 7 – 11). Another 23 districts (34 percent) had opening days during the second week of August.

Proposed change: The bill provides for a 3-day sales tax holiday from August 3, 2018, through August 5, 2018. During the holiday, the following items that cost $60 or less are exempt from the state sales tax and county discretionary sales surtaxes:

- Clothing (defined as an "article of wearing apparel intended to be worn on or about the human body," but excluding watches, watchbands, jewelry, umbrellas, and handkerchiefs);
- Footwear (excluding skis, swim fins, roller blades, and skates);
- Wallets; and
- Bags (including handbags, backpacks, fanny packs, and diaper bags, but excluding briefcases, suitcases, and other garment bags).

The bill also exempts "school supplies" that cost $15 or less per item during the holiday.

The bill allows the back-to-school sales tax holiday to apply at the option of the dealer if less than five percent of the dealer's gross sales of tangible personal property in the prior calendar year are comprised of items that would be exempt under the holiday. If a qualifying dealer

[91] Chapter 98-341, Laws of Fla.
[92] Chapter 99-229, Laws of Fla.
[93] Chapter 2001-148, Laws of Fla.
[94] Chapter 2013-42, s. 42 Laws of Fla.

chooses not to participate in the tax holiday, by August 1, 2018, the dealer must notify the DOR in writing of its election to collect sales tax during the holiday and must post a copy of that notice in a conspicuous location at its place of business. The bill authorizes the DOR to adopt emergency rules to implement the provisions of the holidays.

The bill appropriates $243,814 in nonrecurring funds from the General Revenue Fund for the 2017-2018 fiscal year to the Department of Revenue to administer this sales tax holiday.

Disaster Preparedness

Present situation: In 2017, the Florida Office of Insurance Regulation estimated a gross probable loss of over $7 billion due to Hurricane Irma in 2017, $1 billion due to hurricanes Hermine and Mathew in 2016,[95] $25 billion due to four hurricanes in 2004, and $10.8 billion due to four hurricanes in 2005.[96] Tropical Storm Fay was estimated to have resulted in $242 million of damage in 2008.[97] The Florida Division of Emergency Management recommends having a disaster supply kit with items such as a battery operated radio, flashlight, batteries, and first-aid kit.[98]

Proposed change: The bill provides for a 7-day sales tax holiday from June 1, 2018, through June 7, 2018, for specified items related to disaster preparedness. During the holiday, the following items are exempt from the state sales tax and county discretionary sales surtaxes:

- A portable self-powered light source selling for $20 or less;
- A portable self-powered radio, two-way radio, or weather band radio selling for $50 or less;
- A tarpaulin or other flexible waterproof sheeting selling for $50 or less;
- A ground anchor system or tie-down kit selling for $50 or less;
- A gas or diesel fuel tank selling for $25 or less;
- A package of AAA-cell, AA-cell, C-cell, D-cell, 6-volt, or 9-volt batteries, excluding automobile and boat batteries, selling for $30 or less;
- A nonelectric food storage cooler selling for $30 or less;
- A portable generator that is used to provide light or communications or preserve food in the event of a power outage selling for $750 or less; and
- Reusable ice selling for $10 or less.

The bill appropriates $70,072 in nonrecurring funds from the General Revenue Fund for the 2017-2018 fiscal year to the Department of Revenue to administer this sales tax holiday.

Both the back-to-school and disaster preparedness sales tax holidays in the bill do not apply to the following sales:

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[95] Florida Office of Insurance Regulation, Catastrophe Report, available at: https://www.floir.com/Office/HurricaneSeason/HurricaneIrmaClaimsData.aspx (last visited Mar. 03, 2018).
[96] Florida Office of Insurance Regulation, *Florida Office of Insurance Regulation Hurricane Summary Data*, available at: http://www.floir.com/siteDocuments/HurricaneSummary20042005.pdf
[97] Florida Office of Insurance Regulation, *Florida Office of Insurance Regulation Hurricane Summary Data*, available at: http://www.floir.com/siteDocuments/HurricaneSummary2008.pdf.
[98] Florida Division of Emergency Management, *Disaster Supply Kit*, https://www.floridadisaster.org/plan--prepare/disaster-supply-kit/ (last visited Mar. 03, 2018).

- Sales within a theme park or entertainment complex, as defined in s. 509.013(9), F.S.;
- Sales within a public lodging establishment, as defined in s. 509.013(4), F.S.; and
- Sales within an airport, as defined in s. 330.27(2), F.S.

Section 36 – Generators for Nursing Homes and Assisted Living Facilities

Present situation: There is currently no sales tax exemption for the purchase of generators for assisted living facilities or nursing homes. In September 2017, in response to electrical outages caused by Hurricane Irma, the Agency for Health Care Administration (AHCA) and the Department of Elder Affairs (DEA) published Emergency Rules to require nursing homes and assisted living facilities to comply with an emergency power plan.[99] Nursing homes and assisted living facilities were required to provide a detailed plan which included the acquisition of a sufficient generator or generators to ensure ambient temperatures at facilities will be maintained at 80 degrees or less for a minimum of 96 hours in the event of a loss of power. Facilities must also acquire and maintain sufficient fuel to ensure that in an emergency the generators can function as required, and must acquire services necessary to install, maintain, and test the equipment to ensure the safe and sufficient operation of the generator system. Facilities must have implemented their plan within sixty days of September 16, 2017. Additional Emergency Rules were subsequently published to provide for exceptions for the implementation timeline.[100]

DEA and AHCA have certified to the Department of State permanent rules concerning emergency environmental control for assisted living facilities[101] and nursing homes[102] and both have requested that these rules be ratified during the 2018 Legislative Session.[103] Each rule requires that facilities licensed prior to the effective date of the rule shall have implemented the plan no later than June 1, 2018, but provides for extensions up to January 1, 2019 under certain conditions.

Proposed change: The bill provides an exemption from the sales and use tax for the purchase of generators used to generate emergency electric energy at nursing homes or assisted living facilities. The exemption is available at the time or purchase or through a refund of previously paid taxes and applies to purchases made between July 1, 2017 and December 31, 2018. The exemption is limited to a maximum of $15,000 in tax for the purchase of generators for any one facility.

A purchaser must provide an affidavit to a seller certifying that the equipment will only be used for the above purposes. A similar requirement is made when applying to DOR for a refund.

[99] Florida Emergency Rules 58AER17-1 and 59AER17-1.
[100] Florida Emergency Rules 58AER17-2 and 59AER17-2.
[101] Rule 58A-5.036, as certified by the Agency for Elder Affairs, Feb. 2, 2018.
[102] Rule 59A-4.1265, as certified by the Agency for Health Care Administration, Feb. 2, 2018.
[103] Letters of request on file with the Senate Appropriations Subcommittee on Finance and Tax.

Section 37 – Fencing Materials / Hurricane Irma

Present situation: Current law exempts from the sales and use tax certain items used for agricultural purposes and nets used by commercial fisheries.[104] The exemption is not allowed unless the purchaser or lessee signs a certificate stating that the item to be exempted is for the exclusive use designated in s. 212.08(5)(a), F.S.

Hurricane Irma's path coincided with some of Florida's most productive agricultural regions in the state, and consequently it caused major losses to all segments of agriculture production, including crop losses and damaged infrastructure (such as destroyed fences, shade structures, and ground cover for row crops). Preliminary estimates for total losses (crops and infrastructure) reported by the Department of Agriculture and Consumer Services (DACS) to Florida's agricultural sectors are over $2 billion.[105]

Proposed change: The bill provides an exemption from the sales and use tax for the purchase of fencing materials used in the repair of farm fences on lands classified as agricultural under s. 193.461, F.S., if the fencing materials will be or were used to repair damage to fences that occurred as a direct result of the impact of Hurricane Irma.

The exemption is available through a refund of previously paid taxes and applies to purchases made between September 10, 2017, and May 31, 2018.

To receive a refund, the owner of the fencing materials or the real property into which the materials were incorporated must apply to the DOR by December 31, 2018 and include the following information:

- The name and address of the person claiming the refund.
- The address and assessment roll parcel number of the agricultural land where the fencing materials will be or were used.
- The sales invoice or other proof of purchase of the fencing materials, showing the amount of sales tax paid, the date of purchase, and the name and address of the sales tax dealer from whom the materials were purchased.
- An affidavit executed by the owner of the fencing materials including a statement that the fencing materials were or will be used to repair fencing damaged as a direct result of the impact of Hurricane Irma.

Section 38 – Building Materials for Nonresidential Farm Buildings / Hurricane Irma

Present situation: Current law defines a "nonresidential farm building" as any temporary or permanent building or support structure that is classified as a nonresidential farm building on a farm under s. 553.73(10)(c) or that is used primarily for agricultural purposes, is located on land that is an integral part of a farm operation or is classified as agricultural land under s. 193.461,

[104] Section 212.08(5)(a), F.S.
[105] Florida Department of Agriculture and Consumer Services (DACS), *Hurricane Irma's Damage to Florida Agriculture*, October 4, 2017, available at: https://www.freshfromflorida.com/content/download/77515/2223098/FDACS+Irma+Agriculture+Assessment.pdf

F.S., and is not intended to be used as a residential dwelling.[106] The term includes barns, greenhouses, shade houses, farm offices, storage buildings, and poultry houses.

Generally, sales and use tax are currently levied on the purchase of tangible personal property that is used in the construction or repair of buildings and other projects, unless specifically exempted under current law.[107] There is currently no general sales tax exemption for the purchase of tangible personal property used in the construction or repair of nonresidential farm buildings.

Hurricane Irma caused major losses to Florida's agricultural landscapes, and damage to nonresidential farm building is a part of the agricultural infrastructure losses.

Proposed change: The bill provides an exemption from the sales and use tax for the purchase of certain building materials used to repair nonresidential farm buildings that were damaged as a direct result of Hurricane Irma. The exemption is available through a refund of previously paid taxes and applies to purchases made between September 10, 2017, and May 31, 2018. The exempt building materials are broadly defined as tangible personal property that becomes a component part of a nonresidential farm building.

To receive a refund, the owner of the building materials must apply to the DOR by December 31, 2018 and include the following information:

- The name and address of the person claiming the refund.
- The address and assessment roll parcel number of the real property where the building materials will be or were used.
- The sales invoice or other proof of purchase of the building materials, showing the amount of sales tax paid, the date of purchase, and the name and address of the sales tax dealer from whom the materials were purchased.
- An affidavit executed by the owner of the building materials including a statement that the building materials were or will be used to repair the nonresidential farm building damaged as a direct result of the impact of Hurricane Irma.

Section 39 – Refund of Fuel Taxes / Hurricane Irma

Present situation: Motor fuel and diesel fuel are subject to state taxation pursuant to ch. 206, F.S. The tax rate is a combination of several state and local rates, and the revenue collected is distributed to various state trust funds and to local governments for revenue sharing purposes.[108] For 2017, the combined state tax rate is 24.8 cents per gallon.[109] In addition, the retail sale of motor and diesel fuel is subject to sales tax under ch. 212, F.S., under certain circumstances if fuel taxes have not been paid.[110]

[106] Section 604.50, F.S.
[107] For example, s. 212.08(7)(r), F.S., exempts the sale of building materials that are used in new construction located in a rural area of opportunity.
[108] Section 206.41, F.S.
[109] Revenue Estimating Conference, 2018 FLORIDA TAX HANDBOOK, pp. 126-127, available at: http://edr.state.fl.us/content/revenues/reports/tax-handbook/taxhandbook2018.pdf
[110] Sections 212.18(3) and 212.0501, F.S.; Rule 12B-5.120, F.A.C.

Current law exempts the sale or use of motor and diesel fuel for agricultural or farm purposes;[111] however, agricultural or farm purposes are generally defined to mean "used exclusively on a farm or for processing farm products on the farm, and does not include fuel used in any vehicle or equipment operated upon public highways of the state."[112]

Proposed change: The bill creates an exemption from state and local taxes imposed on motor fuel and diesel under parts I and II, ch. 206, F.S.,[113] for fuel that is used for the transportation of agricultural products from the farm or agricultural land to a facility used to process, package, or store the product.

The exemption is available through a refund of previously paid taxes and applies to purchases made between September 10, 2017, and June 30, 2018. Excluded from this exemption are the "constitutional fuel tax" levied under s. 9(c), Art. XII of the 1968 State Constitution, and the 0.125 cents per gallon levied to defray expenses for motor fuel inspection, testing and analysis by the Department of Agriculture and Consumer Services.[114]

To receive a refund, the fuel purchaser must apply to the DOR by December 31, 2018, and include the following information:

- The name and address of the person claiming the refund.
- The name and address of up to three owners of a farm or agricultural land whose agricultural product was shipped by the fuel purchaser.
- The sales invoice or other proof of purchase of the fuel, showing the number of gallons of fuel purchased, the type of fuel purchased, the date of purchase, and the name and place of business of the dealer from whom the fuel was purchased.
- The license number, or other identification number, of the motor vehicle that used the exempt fuel.
- An affidavit executed by the fuel purchaser including a statement that he or she purchased and used the fuel in a manner that qualifies for this exemption.

Section 40 – Save Our Homes Portability Affected by Storm Damage

Present situation: The "Save Our Homes" amendment to the Florida Constitution was approved by voters in 1992.[115] This amendment limits annual assessment increases to the lower of: 3% of the assessment for the prior year or the change in the Consumer Price Index (CPI) for all urban consumers. See Fla. Const., art. VII, s. 4(d)(1). The operation of this provision over time results in the market value of a homestead property exceeding its assessed value for property tax purposes if the property owner does not sell the property.

[111] Sections 206.41(4)(c), 206.64, 206.874(2)-(3), and 212.0501, F.S.
[112] The restriction does not apply to fuel used on highways to move equipment from one farm to another.
[113] The exemption does not include the 2 cent per gallon "second gas tax" imposed pursuant to art. XII, sec. 9(c), Fla. Const. under s. 206.41(1)(a), F.S., or the 0.125 cents per gallon inspection fee imposed under s. 206.41(1)(h), F.S.
[114] Sections 206.41(1)(a) and (h), F.S.
[115] Section 193.155(1), F.S.

Section 193.155(8), F.S., allows a homestead to be assessed at less than just value when the person who establishes a new homestead has received a homestead exemption as of January 1 of either of the two immediately preceding years. Property owners who relocate to a new homestead may also transfer or "port" up to $500,000 of their accrued benefit, also known as the Save our Home (SOH) benefit, to the new homestead.

Section 193.155(8)(g), F.S., provides that for purposes of receiving an assessment reduction pursuant to this subsection, a person entitled to assessment under this section may abandon his or her property even though it remains his or her primary residence by notifying the property appraiser of the county where the homestead is located. The notification must be in writing and delivered at the same time as or before timely filing a new application for homestead exemption on the property.

Proposed change: The bill amends s. 193.155(8). F.S., and creates a new paragraph to allow owners of homestead property that was significantly damaged or destroyed as a result of a named tropical storm or hurricane to elect to have the property deemed abandoned if the owner establishes a new homestead by January 1 of the second year immediately following the storm or hurricane. This will allow the owner of the homestead property to keep their SOH benefit if they move from the significantly damaged or destroyed property to establish a new homestead by the end of the year following the storm.

Section 41 – Ad Valorem Taxes on Water and Wastewater Utilities

Present Situation: Section 163.01, F.S., also known as the Florida Interlocal Cooperation Act of 1969, enables local governments to cooperate with other localities on a basis of mutual advantage to provide services and facilities that will best address the geographic, economic, population, and other factors that affect the needs and development of local communities. The act authorizes public agencies to exercise jointly, by contract in the form of an interlocal agreement, any power, privilege, or authority shared by those agencies in order to more efficiently provide services and facilities.

An interlocal agreement may provide for a separate legal or administrative entity to administer or execute the agreement, which may be a commission, board, or council constituted pursuant to the agreement. Section 163.01(7), F.S. provides a separate legal entity may acquire, own, construct, improve, operate, and manage public facilities, or finance facilities on behalf of any person, relating to a governmental function or purpose, including, but not limited to, wastewater facilities, water or alternative water supply facilities, and water reuse facilities, which may serve populations within or outside of the members of the entity. Since the legal entities created under the Florida Interlocal Act of 1969 perform essential governmental functions they are not required to pay any taxes or assessments of any kind on property acquired to perform such functions. In a recent circuit court case, the court concluded that water and wastewater facilities owned by an entity created under ch. 163 were not exempt from ad valorem taxes, despite the exemption provided in s. 163.01(7), F.S.[116] The court reasoned that the facilities did not serve a governmental function or purpose for members located within the entity when the facilities only

[116] *Florida Governmental Utility Authority v. Tim Parker and Linda Myers*, Case Number 2014-CA-000472, Fla. 7th Judicial Circuit (December 8, 2016), per curium affirmed, *Florida Governmental Utility Authority v. Tim Parker and Linda Myers*, Case No. 5D17-93, Slip Opinion 2017 WL 6624263, (Fla. 5th DCA Dec. 26, 2017)

served members located outside the entity The court also declined to interpret the exemption provided in s. 163.01(7) as an ad valorem exemption because the language in the statute does not specifically mention ad valorem taxation. Lastly, the court reasoned that the facilities were subject to taxation when the entity contracted a private entity to perform the water treatment services because that private entity would be subject to tax had it owned the property,

Proposed Change: This bill amends s. 163.01, F.S., to clarify that any separate legal entity created under the Florida Interlocal Cooperation Act of 1969 is not required to pay any taxes or assessments, including ad valorem tax, on property acquired or used by the entity to perform essential governmental functions regardless of whether the property is located within or outside of the jurisdiction of the members of the entity. The bill also clarifies that the entity, in performance of its authorized purposes, provides essential governmental functions for the public health, safety and welfare of the people of the state and not just the members located within the entity. Further, the bill clarifies that the exemption is not affected by the entity entering into agreements with private entities for services related to utilities owned by the separate legal entity.

Section 42 – Export of Motor Fuels

Present situation: Chapter 206, F.S., provides for the licensing of a person engaged in business as a terminal supplier, importer, exporter, blender, biodiesel manufacturer, or wholesaler of motor fuel within this state.[117] Generally, taxes on motor fuel are imposed on all of the following:[118]

- The removal of motor fuel in this state from a terminal[119] if the motor fuel is removed at the rack.[120]
- The removal of motor fuel in this state from any refinery under certain circumstances.
- The entry of motor fuel into this state for sale, consumption, use, or warehousing under certain circumstances.
- The removal of motor fuel in this state to an unregistered person, unless there was a prior taxable removal, entry, or sale of the motor fuel.
- The removal or sale of blended motor fuel in this state by the blender thereof.

However, current law exempts the purchase of taxable motor fuels at a terminal by a licensed exporter only under the following circumstances:

- The exporter has designated to the terminal supplier the destination for delivery of the fuel to a location outside the state;
- The exporter is licensed in the state of destination and has supplied the terminal supplier with that license number;
- The exporter has not been barred from making tax-free exports by the department for violation of s. 206.051(5); and

[117] Section 206.02, F.S.
[118] Section 206.41(6), F.S.
[119] "Terminal" means a storage and distribution facility for taxable motor or diesel fuel, supplied by pipeline or marine vessel, that has the capacity to receive and store a bulk transfer of taxable motor or diesel fuel. *See* s. 206.01(18), F.S.
[120] "Rack" means the part of a terminal or refinery by which fuel is physically removed into tanker trucks or rail cars. *See* s. 206.01(12), F.S.

- The terminal supplier collects and remits to the state of destination all taxes imposed on said fuel by the destination state.

If a licensed exporter pays Florida motor fuel taxes, the exporter can take a credit on its monthly fuel tax return or apply for a refund of Florida fuel tax paid on fuel exported from the state.[121] Terminal suppliers may exchange fuel above the loading rack of a terminal with other terminal suppliers without paying motor fuel taxes,[122] but fuel tax must be paid by a terminal supplier that purchases motor fuel at the rack from another terminal supplier.

When a terminal supplier purchases motor fuel at the rack from another terminal supplier and subsequently resells the motor fuel to an exporter, the purchasing terminal supplier must pay Florida motor fuel tax on his purchase and charge Florida motor fuel tax to the exporter on the resale. Although the exporter may take a credit or refund for the Florida motor fuel tax (as described above), the exporter must first pay the Florida motor fuel tax as well as the motor fuel tax in the state to which the fuel will be exported.

Proposed change: The bill amends s. 206.052, F.S., to provide an exemption from motor fuel taxes for a terminal supplier that purchases motor fuel from another terminal supplier at a terminal under the following circumstances:

- The terminal supplier who purchased the motor fuels sells the motor fuels to a licensed exporter for immediate export from the state.
- The terminal supplier who purchased the motor fuels has designated to the terminal supplier who sold the motor fuels the destination for delivery of the fuel to a location outside the state.
- The terminal supplier who purchased the motor fuels is licensed in the state of destination and has supplied the terminal supplier who sold the motor fuels with that license number.
- The licensed exporter has not been barred from making tax-free exports by the department for violation of s. 206.051(5).
- The terminal supplier who sold the motor fuels collects and remits to the state of destination all taxes imposed on said fuel by the destination state.

Section 43 – Aviation Fuel Taxes

Present situation: Florida law imposes an excise tax of 6.9 cents on every gallon of aviation fuel sold in the state or brought into the state for use.[123] Aviation fuel is defined as "fuel for use in aircraft, and includes aviation gasoline and aviation turbine fuels and kerosene, as determined by the American Society for Testing Materials specifications D-910 or D-1655 or current specifications."[124]

In 2016, the Legislature amended the fuel tax laws by removing an exemption available to certain air carriers and reducing the tax rate on all air carriers.[125] The 2016 law changes provided a delayed effective date to July 1, 2019. Beginning in fiscal year 2019-2020, the excise tax on

[121] Section 206.051(4), F.S.
[122] Rule 12B-5.050, F.A.C.
[123] Section 206.9825, F.S.
[124] Section 206.9815, F.S.
[125] Chapter 2016-220, Laws of Fla.

aviation fuel will be 4.27 per gallon, and collections of aviation fuel tax in fiscal year 2019-20 are estimated to be $27.7 million, net of refunds.

The Federal Aviation Administration (FAA) is the agency within the United States Department of Transportation (USDOT) that, among other things, regulates the air transportation system in the United States.[126] Title 14 of the Code of Federal Regulations, in part, provides the licensing, certification, and operational specifications for all aviation activities in the United States. Federal regulations define "air carrier" to mean a person who undertakes directly by lease, or other arrangement, to engage in air transportation. Part 121 provides the operating requirements for domestic, flag, and supplemental operations. Part 125 provides for the certification and operation requirements for airplanes having a seating capacity of 20 or more passengers or a maximum payload capacity of 6,000 pounds or more; part 125 also provides rules governing person on board such aircrafts. Part 135 provides the operating requirements for commuter and on-demand operations and rules governing persons on board such aircrafts.

The FAA imposes certain restrictions on the uses of revenues for airport operators that accept Federal assistance.[127] Generally, revenues from state and local taxes on aviation fuel may only be used for certain aviation-related purposes such as airport operating costs, or in the case of state taxes, a "state aviation program."[128] However, the revenue from state and local taxes on aviation fuel which were in effect prior to December 30, 1987, is considered "grandfathered" and is eligible for use for otherwise impermissible expenditures.[129] On November 7, 2014, the FAA clarified its interpretation of the federal requirements for the use of revenue derived from taxes on aviation fuel, and requested each state to validate compliance with this FAA regulation.[130] On April 26, 2016, the Florida Department of Transportation validated the state's compliance with the FAA regulation.[131]

Any air carrier that is in the business of transporting persons or property for compensation or hire by air is entitled to receive a refund of aviation fuel taxes paid on fuel purchased by the carrier, not to exceed 0.6 percent of the wages paid by the carrier to employees located or based within this state and covered by the reemployment compensation provisions of ch. 443, F.S.[132]

Proposed change: Beginning July 1, 2019, the bill provides a refund of 1.42 cent per gallon of the aviation fuel taxes imposed on fuel purchased by an air carrier who conducts scheduled operations or all-cargo operations that are authorized under 14 C.F.R. parts 121, 129, or 135,

[126] USDOT, Administrations, available at: http://www.dot.gov/administrations (last visited Mar. 03, 2018).
[127] 49 U.S.C. §§ 47107(b) and 47133; Public Law Nos. 97-248 and 100-223.
[128] "State aviation program" is not defined, but generally refers to state programs that support capital improvements or operating costs of airports; FAA, Policy and Procedures Concerning the use of Airport Revenue: Proceeds from Taxes on Aviation Fuel, 79 FR 66282, available at: https://www.faa.gov/airports/resources/publications/federal_register_notices/ (last visited Mar. 03, 2018).
[129] Dec. 30, 1987, is the "grandfather" deadline because The Airport and Airway Safety and Capacity Expansion Act of 1987, Public Law 100–223, passed on that date, which first required state and local taxes on aviation fuel to be spent on airport-related purposes.
[130] FAA, Policy and Procedures Concerning the use of Airport Revenue: Proceeds from Taxes on Aviation Fuel, 79 FR 66282, available at: https://www.faa.gov/airports/resources/publications/federal_register_notices/ (last visited Mar. 03, 2018).
[131] Florida DOT, correspondence from FDOT State Aviation Manager to FAA Director of Office of Airport Compliance and Management Analysis, April 26, 2016, on file with the Senate Appropriations Subcommittee on Finance and Tax.
[132] Section 206.9855, F.S.

reducing the effective tax rate to 2.85 cents per gallon. The refund provided under this section plus the wages-based refund provided under s. 206.9855, F.S., may not exceed 4.27 cent per gallon of aviation fuel purchased by the carrier.

Section 44 provides that the provisions related to multiple parcel buildings first apply to taxes and special assessments levied in 2018.

Section 45 appropriates, for the 2018-2019 fiscal year, the sum of $91,319 in nonrecurring funds from the General Revenue Fund to the Department of Revenue to implement the provisions of the bill.

Section 46 provides an effective date of July 1, 2018, unless another date is expressed in the bill.

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,[133] which for Fiscal Year 2017-2018, is $2.05 million or less.[134]

The bill reduces local government revenues by more than an insignificant amount and it does not appear that any exemption or exception applies. Therefore, the bill may qualify as a mandate requiring a two-thirds vote of the membership.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

[133] 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 Mar. 03, 2018).

[134] 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 Mar. 03, 2018).

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

CS/CS/SB 620 will reduce state revenues by $103.4 million in Fiscal Year 2018-2019, with a $60.4 million recurring reduction. General Revenue Fund receipts will be reduced by $73.8 million in Fiscal Year 2018-2019, with a $39.3 million recurring reduction. State trust fund receipts will be reduced by $4.0 million in Fiscal Year 2018-2019, with a $14.5 million recurring reduction. Local government receipts will be reduced by $25.7 million in Fiscal Year 2018-2019, with a $6.5 million recurring reduction.

Non-recurring General Revenue Fund and local government receipts will be reduced by $6.0 million and $0.5 million in Fiscal Year 2019-2020, respectively.

The total tax reductions proposed by the bill are represented by the sum of the recurring impacts, reflecting the annual value of permanent tax reductions when fully implemented, and the 1-year only tax reductions, reflecting temporary tax reductions. The total of $148.9 million in tax reductions proposed by the bill is the sum of $60.4 million (recurring), $82.0 million (1-year only tax cuts in Fiscal Year 2018-2019), and $6.5 million (1-year only tax reductions after Fiscal Year 2019-2020).

The table on page 32 shows the details of the revenue impacts.

CS/CS/SB 620

Fiscal Year 2018-19 Estimated Fiscal Impacts (millions of $)

	General Reve		State Trust Funds		Local		Total	
Issues	**1st Yr.**	**Recur.**	**1st Yr.**	**Recur.**	**1st Yr.**	**Recur.**	**1st Yr.**	**Recur.**
Sales Tax: Business Rent Tax Rate Cut (0.1 reduction)	(11.4)	(27.4)	(*)	(*)	(1.5)	(3.5)	(12.9)	(31.0)
Sales Tax: Tax Holiday/"Back-to-School" (3-day, $60/$15, No Computers)	(26.0)	-	(*)	-	(6.7)	-	(32.7)	-
Sales Tax: Tax Holidays/Disaster Preparedness (1 week)	(4.6)	-	(*)	-	(1.2)	-	(5.8)	-
Sales Tax: Agriculture Building Materials	(7.0)	-	(*)	-	(1.8)	-	(8.8)	-
Sales Tax: Agriculture Fencing (all farm fences)	(2.2)	-	(*)	-	(0.6)	-	(2.8)	-
Sales Tax: Generators for Nursing Homes/ALFs	(5.3)	-	(*)	-	(1.4)	-	(6.7)	-
Sales Tax: Donations to Charities (Jan. 1, 2019)	(2.2)	(5.2)	(*)	(*)	(0.5)	(1.3)	(2.7)	(6.5)
Sales Tax: Recyclers--exempt roll-off containers and electricity	(0.7)	(0.7)	(0.3)	(0.3)	(0.2)	(0.2)	(1.2)	(1.2)
Corp Income Tax: Brownfields Credit Increase	(11.0)	-	-	-	-	-	(11.0)	-
Ad Valorem: Citrus Processing/Packing Hurr Relief	-	-	-	-	(10.5)	-	(10.5)	-
Ad Valorem: Dis.Vet/Surviving Spouse	-	-	-	-	-	(0.1)	-	(0.1)
Ad Valorem: FGUA Clarification	-	-	-	-	-	(*)	-	(*)
Ad Valorem: Save Our Homes Portability	-	-	-	-	-	(1.2)	-	(1.2)
Ad Valorem: Agriculture Classification - 5-yr assessment, 2017 Hurricane Damage	-	-	-	-	-	-	-	-
Doc Stamp Tax: Housing Authority Obligations	(0.2)	(0.2)	(0.3)	(0.3)	-	-	(0.5)	(0.5)
Doc Stamp Tax: Spousal Transfers	(0.6)	(0.6)	(0.9)	(0.9)	-	-	(1.5)	(1.5)
Doc Stamp: Disaster Loans	(**)	(**)	(**)	(**)	-	-	(**)	(**)
Fuel Tax: Aviation Tax Rate Reduction	-	(1.1)	-	(13.0)	-	-	-	(14.1)
Fuel Tax: Refunds for Agricultural Transportation	-	-	(2.5)	-	(1.2)	-	(3.7)	-
Fuel Tax: Supplier Export Exemption	-	-	(*)	(*)	(*)	(*)	(*)	(*)
Fuel Tax: Natural Gas Fuels Extension	(*)	(0.1)	(0.1)	(0.4)	(0.1)	(0.2)	(0.2)	(0.7)
Highway Safety: Truck License Taxes (ag and forestry trucks)	(*)	(*)	(*)	(*)	-	-	(*)	(*)
Spec. Assessments/Ad Valorem: Multiparcel Buildings	-	-	-	-	(**)	(**)	(**)	(**)
Traffic Fines: 18% Discount (Jan. 1, 2019)	(1.5)	(4.0)	0.2	0.4	-	-	(1.4)	(3.6)
Appropriation: Administration	(0.09)	-	-	-	-	-	(0.09)	-
Appropriation: Back-to-School	(0.24)	-	-	-	-	-	(0.24)	-
Appropriation: Disaster Holiday (FY 17-18)	(0.07)	-	-	-	-	-	(0.1)	-
Appropriation: Fiscally Constrained Counties (citrus processing and greening)	(0.65)	-	-	-	-	-	(0.65)	-
2018-19 Total	**(73.8)**	**(39.3)**	**(4.0)**	**(14.5)**	**(25.7)**	**(6.5)**	**(103.4)**	**(60.4)**
Non-recurring Impacts After FY 2018-19								
Sales Tax/Corp Inc. Tax: Comm Cont Tax Credits	(6.0)	-	-	-	(0.5)	-	(6.5)	-
Bill Total	**(79.8)**	**(39.3)**	**(4.0)**	**(14.5)**	**(26.2)**	**(6.5)**	**(109.9)**	**(60.4)**
						1-year only issues =		**(88.5)**
						Recurring + 1-year only issues (1) =		**(148.9)**

(*) Impact less than $50,000; (**) Impact is indeterminate.

B. Private Sector Impact:

The bill provides tax relief to agricultural producers affected by Hurricane Irma and citrus greening.

The bill removes, either during specific periods of time or on an ongoing basis, the sales tax on various purchases of tangible personal property, and it reduces the sales tax rate on the rental of commercial real property.

The bill provides surviving spouses of disabled military veterans increased homestead property tax exemptions, and reduces the documentary stamp tax burden on spouses that transfer property between one another.

C. Government Sector Impact:

The bill contains the following appropriations totaling $1,000,205:

- $243,814 in Fiscal Year 2017-2018 from the General Revenue Fund to the Department of Revenue to implement the back-to-school sales tax holiday;
- $70,072 in Fiscal Year 2017-2018 from the General Revenue Fund to the Department of Revenue to implement the disaster preparedness sales tax holiday;
- $91,319 in Fiscal Year 2018-2019 from the General Revenue Fund to the Department of Revenue to implement the provisions in the bill; and
- $650,000 in Fiscal Year 2018-2019 from the General Revenue Fund to the Department of Revenue for fiscally constrained counties affected by the reduced property tax assessments for tangible personal property impacted by Hurricane Irma and citrus greening.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill amends the following sections of the Florida Statutes: 28.241, 159.621, 163.01, 193.155, 193.461, 196.173, 196.24, 197.3631, 197.572, 197.573, 201.02, 206.052, 206.9952, 206.9955, 206.996, 212.031, 212.055, 212.08, 212.12, 220.183, 220.1845, 318.14, 318.15, 320.08, 376.30781, 624.5105, and 741.01.

The bill creates the following sections of the Florida Statutes: 193.0237, 193.4516, 201.25, 206.9826, 210.205, 212.205, and 218.135.

The bill creates undesignated sections of Florida law.

IX. Additional Information:

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

CS/CS by Appropriations on March 2, 2018:
The committee substitute:

- Redirects certain fees from the General Revenue Fund to the State Courts Trust Fund.
- Provides a documentary stamp tax exemption related to housing finance authorities.
- Provides for the assessment of multiple parcel buildings.
- Reduces property taxes for agricultural equipment affected by citrus greening and Hurricane Irma.
- Extends agricultural assessments for 5 years for certain lands affected by Hurricane Irma.
- Updates the deployed servicemember property tax exemption.
- Expands homestead exemptions for surviving spouses of disabled veterans.
- Limits the property liens that survive a tax sale.
- Exempts from documentary stamp tax certain deeds between spouses and certain loans related to the Florida Small Business Emergency Bridge Loan Program and the Agricultural Economic Development Program.
- Delays the imposition of Florida's natural gas fuel tax from 2019 to 2024.
- Requires additional reporting on cigarette tax distributions.
- Expands the use of Local Government Infrastructure Surtax revenue.
- Authorizes community contribution tax credits for Fiscal Year 2018-2019.
- Exempts from the sales and use tax property donations to charities.
- Expands the manufacturing sales and use tax exemption for steam or electricity.
- Exempts from sales and use tax recycling roll-off containers.
- Requires reporting on certain sales tax distributions.
- Expands the distance that certain farm trucks can travel with a restricted license plate.
- Increases brownfield tax credits.
- Creates a 3-day back-to-school tax holiday.
- Creates a 7-day disaster preparedness holiday.
- Exempts from sales tax generators for nursing homes or assisted living facilities.
- Exempts from sales tax repair materials for certain agricultural fences.
- Exempts from sales tax repair materials nonresidential farm buildings.
- Provides a refund of certain fuel taxes paid for agricultural shipment.
- Authorizes homestead owners significantly affected by 2017 hurricanes to treat the homestead as abandoned on the date of the tropical storm or hurricane for property tax purposes.
- Extends the property tax exemption for water and wastewater utility equipment.

CS by Commerce and Tourism Committee on November 13, 2017:
The bill is amended to specify the amount of the appropriation to the DOR to administer the sales tax exemption. For the 2017-2018 fiscal year, the bill appropriates $70,072 in nonrecurring funds from the General Revenue Fund to the DOR.

B. Amendments:

None.

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

By the Committee on Commerce and Tourism; and Senators Passidomo and Young

577-01303-18 2018620c1

A bill to be entitled

An act relating to a disaster preparedness tax exemption; providing a sales and use tax exemption for certain tangible personal property related to disaster preparedness during a specified period; providing exceptions to the exemption; authorizing the Department of Revenue to adopt emergency rules; providing an expiration date; providing an appropriation; providing an effective date.

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

Section 1. Disaster preparedness tax exemption.—

(1) The tax levied under chapter 212, Florida Statutes, may not be collected during the period from 12:01 a.m. on June 1, 2018, through 11:59 p.m. on June 10, 2018, on the sale of any of the following:

(a) A portable self-powered light source selling for $20 or less.

(b) A portable self-powered radio, two-way radio, or weather band radio selling for $75 or less.

(c) A tarpaulin or other flexible waterproof sheeting selling for $50 or less.

(d) An item typically sold or advertised as a ground anchor system or tie-down kit selling for $50 or less.

(e) A gas or diesel fuel tank selling for $25 or less.

(f) A package of AAA-cell, AA-cell, C-cell, D-cell, 6-volt, or 9-volt batteries, excluding automobile and boat batteries, selling for $30 or less.

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

577-01303-18 2018620c1

(g) A cellular telephone battery selling for $60 or less.

(h) A cellular telephone charger selling for $40 or less.

(i) A nonelectric food storage cooler selling for $30 or less.

(j) A portable generator that is used to provide light, support communications, or preserve food during a power outage and selling for $1,000 or less.

(k) A storm shutter device selling for $200 or less. As used in this paragraph, the term "storm shutter device" means a material or product manufactured, rated, and marketed specifically for the purpose of preventing window damage from storms.

(l) A carbon monoxide detector selling for $75 or less.

(m) Reusable ice selling for $10 or less.

(n) A single product consisting of two or more of the items listed in paragraphs (a)-(m) and selling for $75 or less.

(o) A personal locator beacon selling for $600 or less.

(p) An emergency position-indicating radio beacon selling for $1,500 or less.

(q) An external portable computer drive for data backup and recovery and selling for $200 or less.

(r) An inverter, inverter/charger, or uninterruptible power supply system selling for $200 or less.

(2) The tax exemption provided in this section does not apply to sales within a public lodging establishment as defined in s. 509.013(4), Florida Statutes, a theme park or entertainment complex as defined in s. 509.013(9), Florida Statutes, or an airport as defined in s. 330.27(2), Florida Statutes.

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

(3) The Department of Revenue may, and all conditions are deemed met to, adopt emergency rules pursuant to ss. 120.536(1) and 120.54, Florida Statutes, to implement this section.

(4) This section expires September 30, 2018.

Section 2. For the 2017-2018 fiscal year, the sum of $70,072 in nonrecurring funds is appropriated from the General Revenue Fund to the Department of Revenue to administer the tax exemption for the purchase of tangible personal property relating to disaster preparedness specified under this act.

Section 3. This act shall take effect upon becoming a law.

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: January 16, 2018

I respectfully request that **Senate Bill #620**, relating to Disaster Preparedness Tax Exemption 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)

3/2/2018
Meeting Date

620
Bill Number (if applicable)

177326
Amendment Barcode (if applicable)

Topic Disaster Preparedness Tax Exemption

Name Danielle Scoggins

Job Title Senior Public Policy Representative

Address 200 S. Monroe 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 Realtors

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/2/18
Meeting Date

620
Bill Number (if applicable)

177326
Amendment Barcode (if applicable)

Topic Disaster Preparedness Tax Exemption

Name Chris Dawson

Job Title

Address 301 E. Pine St. Ste 1900
Street

Orlando FL 32804
City *State* *Zip*

Phone 407 843 8880

Email chris.dawson@gray-robinson.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing NAIOP

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

3/2/18
Meeting Date

620
Bill Number (if applicable)

177326
Amendment Barcode (if applicable)

Topic _____

Name Tim Nungesser

Job Title Legislative Director

Address 110 East Jefferson Street
Street

Tallahassee FL 32301
City *State* *Zip*

Phone 850-445-5367

Email tim.nungesser@nfib.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing National Federation of Independent Business

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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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)

3/2/18
Meeting Date

620
Bill Number (if applicable)

177326 LF DF
Amendment Barcode (if applicable)

Topic Disaster Preparedness

Name Brewster Bevis

Job Title Senior VP

Address 516 N Adams
Street

Phone 224-7173

TLH FL 32301
City *State* *Zip*

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Associated Industries of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

03/02/18 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) 620

Meeting Date — Bill Number (if applicable)

Topic Disaster Tax Preparedness — Amendment Barcode (if applicable) 177326

Name Adam Basford

Job Title Dir. Leg. Affairs

Address 310 W College — Phone 222 2557

Street

Tallahassee FL 32301 — Email adam.basford@fbf.org

City State Zip

Speaking: ☐ For ☐ Against ☐ Information — Waive Speaking: ☑ In Support ☐ Against

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

Representing FL Farm Bureau

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

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

3/2/18
Meeting Date

620
Bill Number (if applicable)

711458
Amendment Barcode (if applicable)

Topic _____

Name Tim Nungesser

Job Title Legislative Director

Address 110 East Jefferson Street
Street

Phone 850-445-5367

Tallahassee FL 32301
City *State* *Zip*

Email tim.nungesser@nfib.org

Speaking: ☐ For ☒ Against ☐ Information

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

Representing National Federation of Independent Business

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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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)

3/2/18
Meeting Date

620
Bill Number (if applicable)

741326
Amendment Barcode (if applicable)

Topic Taxation

Name Carolyn Johnson

Job Title Policy Director

Address 136 S Bronough St
Street

Phone 521-1200

Tallahassee FL 32301
City *State* *Zip*

Email cjohnson@flchamber.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing 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)

3-2-18
Meeting Date

620
Bill Number (if applicable)

Topic Disaster Preparedness Sales Tax Holiday

Amendment Barcode (if applicable)

Name Leah Courtney

Job Title Communications Coordinator

Address 106 N. Bronough
Street

Phone 850-222-5052

Tallahassee FL 32301
City *State* *Zip*

Email lcourtney@floridataxwatch,org

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)

3/1/18
Meeting Date

620
Bill Number (if applicable)

Topic Disaster Preparedness

Amendment Barcode (if applicable)

Name Brewster Bevis

Job Title Senior VP

Address 516 N Adams St
Street

Phone 224-7173

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 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)

3/2/18
Meeting Date

SB620
Bill Number (if applicable)

Topic Disaster preparedness TAX Exemption

Amendment Barcode (if applicable)

Name Melissa Ramba

Job Title Vice President

Address 227 S. Adams St.
Street

Phone 850-570-0269

Tallahassee, FL 32301
City *State* *Zip*

Email melissa@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

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations			
BILL:	SB 672		
INTRODUCER:	Senator Stargel and others		
SUBJECT:	Truck License Taxes		
DATE:	March 2, 2018	REVISED:	

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

I. Summary:

SB 672 revises the eligibility requirement for the agricultural restricted license plate. The bill allows truck tractors or heavy trucks, not operated as for-hire vehicles, engaged exclusively in transporting raw, unprocessed, and nonmanufactured agricultural or horticultural products that operate *within the state*, instead of within a 150-mile radius of the truck's home address, to be eligible for the restricted plate. The annual fee for the plate is:

- $87.75 if such vehicle's declared gross weight is less than 44,000 pounds; or
- $324 if the vehicle's declared gross weight is 44,000 pounds or more and such vehicle only transports from the point of production to the point of primary manufacture; the point of assembly; or to a shipping point.

The Revenue Estimating Conference has estimated that the bill will reduce the General Revenue Fund by $7,233 and the State Transportation Trust Fund by $20,617, beginning in Fiscal Year 2018-2019, with an insignificant reduction in recurring revenues for the next five years.

The bill takes effect July 1, 2018.

II. Present Situation:

Under s. 320.08(4)(n), F.S., a restricted agricultural license plate is available for a truck tractor or heavy truck, not operated as a for-hire vehicle, engaged exclusively in transporting raw, unprocessed, and nonmanufactured agricultural or horticultural products within a 150-mile radius of its home address. The annual fee for the plate is:

- $87.75 if the vehicle's declared gross weight is less than 44,000 pounds; or
- $324 if the vehicle's declared gross weight is 44,000 pounds or more and the vehicle only transports:
  - From the point of production to the point of primary manufacture;
  - From the point of production to the point of assembling the same; or

- From the point of production to a shipping point by rail, water, or motor transportation company.

For these purposes, a truck tractor or heavy truck is considered to be not operated as a for-hire vehicle when the owner of the truck is also the owner of the raw, unprocessed, and nonmanufactured agricultural or horticultural product or the user of the farm implements and fertilizer being delivered. The Department of Highway Safety and Motor Vehicles (DHSMV) may require any documentation deemed necessary to determine eligibility before issuance of this restricted plate.

Generally, a truck tractor or heavy truck, which does not qualify for the restricted plate, is required to pay an annual registration fee that can range from $60.75 to $1,322, depending on the vehicle's overall gross weight.[1] Portions of annual license registration fees are deposited into the General Revenue Fund[2] and the remaining funds are distributed to the State Transportation Trust Fund as provided in s. 320.20, F.S.

According to the DHSMV, in Fiscal Year 2016-2017, 1,608 trucks registered as restricted agricultural trucks. Of those, approximately 60 percent were over 44,000 pounds.[3]

III. Effect of Proposed Changes:

The bill amends s. 320.08(4)(n), F.S., removing the 150-mile radius restriction for trucks to be issued an agricultural restricted license plate. Instead, truck tractors or heavy trucks that operate *within the state* and otherwise meet the criteria for the restricted plate are eligible for the restricted plate. It is likely that the bill will increase the number of vehicles that qualify for the agricultural restricted plate.

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.

[1] *See* s. 320.08(4)(a)-(l), F.S.
[2] As required by s. 320.08, F.S.
[3] Email from Kevin Jacobs, DHSMV, *RE: SB 672* (Jan. 8, 2018) (on file with the Senate Committee on Transportation).

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference (REC) reviewed a similar provision in CS/HB 1231 in the 2017 legislative session.[4] The REC estimated the change in the requirement for the agricultural restricted plate would have a negative, but insignificant, impact on revenues deposited in the General Revenue Fund and the State Transportation Trust Fund.[5]

B. Private Sector Impact:

Expanding the distance that vehicles with an agricultural plate are authorized to travel may reduce the costs associated with shipping agricultural products within the state.

C. Government Sector Impact:

The DHSMV may incur minimal programming costs to implement the bill.

The Revenue Estimating Conference has estimated that the bill will reduce the General Revenue Fund by $7,233 and the State Transportation Trust Fund by $20,617, beginning in Fiscal Year 2018-2019, with an insignificant reduction in recurring revenues for the next five years.[6]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 320.08 of the Florida Statutes.

IX. Additional Information:

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

None.

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[4] REC Impact Conference, *Farm Use Trucks – Revision of Eligibility Requirement for the Agricultural Restricted License Plate, CS/HB 1231* (Mar. 24, 2017), *available at* http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2017/_pdf/page408-410.pdf (last visited Jan. 11, 2018).
[5] *Id.*
[6] Revenue Estimating Conference, *Agriculture Restricted Truck Licenses: SB 672*, January 12, 2018.

B. Amendments:

None.

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

By Senator Stargel

22-00856-18 2018672__

A bill to be entitled

An act relating to truck license taxes; amending s. 320.08, F.S.; revising which truck tractors and heavy trucks transporting certain agricultural or horticultural products are eligible for reduced license taxes; providing an effective date.

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

Section 1. Paragraph (n) of subsection (4) of section 320.08, Florida Statutes, is amended to read:

320.08 License taxes.—Except as otherwise provided herein, there are hereby levied and imposed annual license taxes for the operation of motor vehicles, mopeds, motorized bicycles as defined in s. 316.003(3), tri-vehicles as defined in s. 316.003, and mobile homes as defined in s. 320.01, which shall be paid to and collected by the department or its agent upon the registration or renewal of registration of the following:

(4) HEAVY TRUCKS, TRUCK TRACTORS, FEES ACCORDING TO GROSS VEHICLE WEIGHT.—

(n) A truck tractor or heavy truck~~,~~ not operated as a for-hire vehicle and~~,~~ which is engaged exclusively in transporting raw, unprocessed, and nonmanufactured agricultural or horticultural products within the state ~~a 150-mile radius of its home address,~~ is eligible for a restricted license plate for a fee of:

1. If such vehicle's declared gross vehicle weight is less than 44,000 pounds, $87.75 flat, of which $22.75 shall be deposited into the General Revenue Fund.

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

22-00856-18 2018672__

2. If such vehicle's declared gross vehicle weight is 44,000 pounds or more and such vehicle only transports from the point of production to the point of primary manufacture; to the point of assembling the same; or to a shipping point of a rail, water, or motor transportation company, $324 flat, of which $84 shall be deposited into the General Revenue Fund.

Such not-for-hire truck tractors and heavy trucks used exclusively in transporting raw, unprocessed, and nonmanufactured agricultural or horticultural products may be incidentally used to haul farm implements and fertilizers delivered direct to the growers. The department may require any documentation deemed necessary to determine eligibility before ~~prior to~~ issuance of this license plate. For the purpose of this paragraph, "not-for-hire" means the owner of the motor vehicle must also be the owner of the raw, unprocessed, and nonmanufactured agricultural or horticultural product, or the user of the farm implements and fertilizer being delivered.

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

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on Finance and Tax, *Chair*
Appropriations Subcommittee on Health and Human Services, *Vice Chair*
Appropriations
Appropriations Subcommittee on Transportation, Tourism, and Economic Development
Children, Families, and Elder Affairs
Communications, Energy, and Public Utilities
Governmental Oversight and Accountability
Military and Veterans Affairs, Space, and Domestic Security

SENATOR KELLI STARGEL
Deputy Majority Leader
22nd District

January 19, 2018

The Honorable Rob Bradley
Senate Committee on Appropriations, Chair
20l The Capitol
404 S. Monroe Street
Tallahassee, FL 32399

Dear Chair Bradley:

I respectfully request that SB 672, related to *Truck License Taxes*, be placed on the Appropriations Committee meeting agenda at your earliest convenience.

Thank you for your consideration and please do not hesitate to contact me should you have any questions.

Sincerely,

Kelli Stargel
State Senator, District 22

Cc: Mike Hansen/ Staff Director
Alicia Weiss/ AA

REPLY TO:
❒ 2033 East Edgewood Drive, Suite 1, Lakeland, Florida 33803 (863) 668-3028
❒ 322 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5022

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

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on Finance and Tax, *Chair*
Appropriations Subcommittee on Health and Human Services, *Vice Chair*
Appropriations
Appropriations Subcommittee on Transportation, Tourism, and Economic Development
Children, Families, and Elder Affairs
Communications, Energy, and Public Utilities
Governmental Oversight and Accountability
Military and Veterans Affairs, Space, and Domestic Security

SENATOR KELLI STARGEL
Deputy Majority Leader
22nd District

February 2, 2018

The Honorable Rob Bradley
Senate Committee on Appropriations, Chair
20l The Capitol
404 S. Monroe Street
Tallahassee, FL 32399

Dear Chair Bradley:

I respectfully request that SB 672, related to *Truck License Taxes*, be placed on the Appropriations Committee meeting agenda at your earliest convenience.

Thank you for your consideration and please do not hesitate to contact me should you have any questions.

Sincerely,

Kelli Stargel
State Senator, District 22

Cc: Mike Hansen/ Staff Director
Alicia Weiss/ AA

REPLY TO:
❒ 2033 East Edgewood Drive, Suite 1, Lakeland, Florida 33803 (863) 668-3028
❒ 322 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5022

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

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	PCS/CS/SB 732 (478690)
INTRODUCER:	Appropriations Subcommittee on Pre-K-12 Education; Education Committee; and Senator Baxley
SUBJECT:	K-12 Education
DATE:	March 1, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bouck	Graf	ED	**Fav/CS**
2.	Sikes	Elwell	AED	**Recommend: Fav/CS**
3.	Sikes	Hansen	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 732 modifies requirements related to home education programs, school attendance, and the Florida Partnership for Minority and Underrepresented Student Achievement. Specifically, the bill:

- Modifies the home education program to:
  - Limit the information a parent must provide to establish and maintain a home education program unless the home education program student chooses to participate in a district program or service.
  - Authorize school districts to provide home education program students access to career and technical education courses and programs.
  - Require school districts to make industry certifications and national and statewide assessments available to home education program students.
- Requires a home education program student to register his or her intent to participate in an extracurricular activity prior to participating in the activity.
- Clarifies the academic requirements that home education program students must meet in order to participate in dual enrollment programs by:
  - Exempting a home education program student from maintaining a specific high school grade point average if he or she has meets a minimum score on a common placement test.
  - Requiring a home education program student to maintain a minimum GPA established by the postsecondary institution for continued enrollment in a dual enrollment course.
- Clarifies school attendance procedures to:

  - Prohibit the district school superintendent from requiring evidence of a child's age if the child attends a school or program specified in law.
  - Authorize the district school superintendent to refer instances of nonenrollment to a child study team for intervention.
  - Require school districts to implement interventions for nonenrollment and nonattendance prior to criminal prosecution.
- Modifies the Florida Partnership for Minority and Underrepresented Student Achievement to:
  - Update the name of the preliminary ACT to the PreACT.
  - Add the ACT and the PreACT to specified assessments included in databases containing assessment data, to which the Department of Education must provide access for evaluation purposes.

The bill does not affect state revenues or expenditures.

The bill takes effect July 1, 2018.

II. Present Situation:

The present situation for the relevant portions of the bill is discussed in the Effect of Proposed Changes section of this bill analysis.

III. Effect of Proposed Changes:

Home Education Programs (Section 1)

Florida is a long-time supporter of home education, and the number of families choosing this education option has shown steady growth since the Legislature established it as a school choice option in 1985. For the 2016-2017 school year, 60,547 families and 87,462 students participated in home education programs.

Present Situation

A home education program is defined as the sequentially progressive instruction of a student directed by his or her parent in order to satisfy the attendance requirements established in law.[1] To establish a home education program, a parent must:

- Submit a written and signed notice of intent to establish a home education program to the district school superintendent in the county of residence.[2] The notice must include the names, addresses, and birthdates of all children to be enrolled as students in the home education program.[3]
- Maintain a portfolio of records and materials, the contents of which are specified in law and which must be preserved by the parent for two years and made available for inspection if requested.[4]

[1] Section 1002.01(1), F.S. The attendance requirements are established in ss 1002.41, 1003.01(13), and 1003.21(1), F.S.
[2] Section 1002.41(1)(a), F.S.
[3] *Id.*
[4] Section 1002.41(1)(b), F.S.

- Select and provide for an annual educational evaluation to document the student's educational progress.[5] The parent must file a copy of the evaluation annually with the district school superintendent's office, and the district school superintendent must review and accept the results.[6]

If a parent terminates a home education program, he or she must file a written notice of termination in the district school superintendent's office.[7]

Although not required, some school districts provide opportunities for home education program students to enroll in specified courses in district schools.[8] The public school district may report such home education program students for full-time equivalent funding through the Florida Education Finance Program.[9]

Effect of Proposed Changes

Section 1 amends s. 1002.41, F.S., to specify that a home education program is not a school district program and is registered with the district school superintendent only for the purpose of complying with attendance requirements specified under Florida law.

This section clarifies the definition of a "parent," consistent with Florida law.[10] A parent is defined as either or both parents of a student, any guardian of a student, any person in a parental relationship to a student, or any person exercising supervisory authority over a student in place of the parent. The bill requires the:

- Notice submitted by the parent to include the full legal names of all children who will be enrolled as students in the home education program.
- District school superintendent to accept the notice and immediately register the home education program.
- Parent to file a notice of termination upon completion of a home education program with the district school superintendent, and requires the notice to accompany the required annual educational evaluation.

Additionally, this section specifies that a school district may not require any additional information or verification, assign a grade level to the home education program student, or include a social security number or any other personal information in any database unless the student chooses to participate in a school district program or service.
This section clarifies that the parent determines the content of a portfolio and provides that a parent must make the portfolio available for inspection if requested by the district school superintendent or agent. The bill also removes the requirement for a district school superintendent to review the annual educational evaluation. Accordingly, the bill provides that a

[5] *Id.* at (c).
[6] *Id*. at (2).
[7] *Id.* at (a).
[8] Florida Department of Education, Office of School Choice, *Frequently Asked Questions, available at* http://www.fldoe.org/core/fileparse.php/7709/urlt/Home-Ed-FAQs-2017.pdf, at 3.
[9] Florida Department of Education, *FTE General Instructions, 2017-18, available at* http://www.fldoe.org/core/fileparse.php/7508/urlt/1718FTE-GeneralInstructions.pdf, at 29.
[10] Section 1000.21(5), F.S.

district school superintendent must accept the results of an annual education evaluation without a review of such evaluation.

This section provides to home education program students access to courses, programs, industry certifications and assessments. Specifically, the school district:

- May provide home education program students access to career and technical education courses and may report participating students as full-time equivalent students for funding through the Florida Education Finance Program.
- Must make available to home education program students industry certifications, national assessments, and statewide, standardized assessments offered by the school district. The school district must notify home education program students of available certifications, assessments, administrations, and deadlines for the student to notify the district of the student's intent to participate.

Finally, this section specifies that the school district may not further regulate, exercise control over, or require documentation from parents of home education program students beyond the requirements of the law, unless the regulation, control, or documentation is necessary for participation in a school district program.

The modifications to the home education program are likely to expedite the establishment of home education programs and may provide the student access to additional courses and programs.

Participation in Extracurricular Activities (Section 5)

Present Situation

An extracurricular activity is any school-authorized or education-related activity occurring during or outside the regular instructional school day.[11]

An individual home education program student is eligible to participate[12] in extracurricular activities at the public school to which the student would be assigned according to district school board attendance area policies or which the student could choose to attend under controlled open enrollment.[13] The student may also develop an agreement to participate in interscholastic extracurricular activities at a private school.
A home education program student who intends to participate in a public school's extracurricular activity must register with the school his or her intent to participate in the activity before the beginning date of the season for the activity in which he or she wishes to participate.[14]

[11] Section 1006.15(2), F.S.
[12] "Eligible to participate" includes, but is not limited to, a student participating in tryouts, off-season conditioning, summer workouts, preseason conditioning, in-season practice, or contests; but does not require that a student be placed on any specific team for interscholastic or intrascholastic extracurricular activities.
[13] Section 1006.15(3)(c), F.S. Beginning with the 2017-18 school year, each district school board and charter school must adopt a controlled open enrollment plan that allows a parent from any school district in the state to enroll his or her child in and transport his or her child to any public school that has not reached capacity. Section 1002.31, F.S.
[14] Section 1006.15(3)(c)5., F.S.

Effect of Proposed Changes

Section 5 amends s. 1006.15, F.S., to specify that a student must register his or her intent to participate in an extracurricular activity prior to participating in the activity rather than before the beginning date of the season for the activity. Accordingly, the bill provides flexibility for a home education program student to begin participation in such activity.

Dual Enrollment (Section 6)

Present Situation

The dual enrollment program is the enrollment of an eligible secondary student or home education program student in a postsecondary course creditable toward high school completion and a career certificate or an associate or baccalaureate degree.[15]

Each postsecondary institution eligible to participate in the dual enrollment courses[16] must enter into a home education articulation agreement with each home education program student seeking to enroll a dual enrollment course and the student's parent. The home education articulation agreement includes, but is not limited to:[17]

- A delineation of courses and programs available to dually enrolled home education program students. Courses and programs may be added, revised, or deleted at any time by the postsecondary institution.
- The initial and continued eligibility requirements for home education program student participation, not to exceed those required of other dually enrolled students. Florida College System (FCS) institutions may not establish additional requirements in the articulation agreement that arbitrarily prohibit students who have demonstrated the ability to master advanced courses from participating in dual enrollment courses.

Effect of Proposed Changes

Section 6 amends s. 1007.271, F.S., to modify specified provisions in the home education articulation agreement, which may provide home education program students with greater access to dual enrollment courses. Specifically, this section:

- Specifies that any limitations to courses and programs available to home education program students may not exceed the limitations for other dual enrollment students.
- Exempts a home education program student who meets a minimum score on a common placement test from maintaining a high school grade point average (GPA) in order to participate in dual enrollment.
- Clarifies that a home education program student must meet postsecondary requirements for continued eligibility to participate in dual enrollment, which may include maintenance of a minimum postsecondary GPA.

[15] Section 1007.271(1), F.S.
[16] Eligible institutions include public postsecondary institutions and independent colleges or universities, which are not for profit, accredited by a regional or national accrediting agency recognized by the United States Department of Education, and confer postsecondary degrees. Section 1011.62(1)(i), F.S.
[17] Section 1007.271(13)(b), F.S.

- Prohibits a FCS institution from limiting the number of dual enrollment courses in which a student may enroll based solely upon enrollment by the student at an independent postsecondary institution.

School Attendance

Required School Attendance (Section 2)

Present Situation

Except as otherwise provided, children who are age 6 by February 1 of any school year but are not age 16, are required to attend school regularly during the entire school term.[18] Additionally, children who are age 5 by September 1 of the school year are eligible for public kindergarten.[19] A district school superintendent may require evidence of the age of any child whom he or she believes to be within the limits of compulsory attendance as provided for by law.[20]

Effect of Proposed Changes

Section 2 amends s. 1003.21, F.S., to specify that the district school superintendent may require evidence of the age of any child being enrolled in public school whom he or she believes to be within the limits of compulsory attendance. However, the district school superintendent may not require evidence of age from any child who satisfies attendance requirements by attending a:[21]

- Parochial, religious, or denominational school;
- Private school supported in whole or in part by tuition charges or by endowments or gifts;
- Home education program that meets the requirements specified in law; or
- Private tutoring program that meets the requirements specified in law.

Enforcement of School Attendance (Section 3)

Present Situation

When there is no valid reason for a child not to be enrolled in school, a designated school representative must give written notice to the parent that requires enrollment or attendance within three days after the date of notice.[22] If the parent ignores the notice and requirement, the designated school representative must report the case to the district school superintendent and may refer the case to the case staffing committee.[23] The district school superintendent must then take steps necessary to bring criminal prosecution against the parent.[24]

[18] Section 1003.21(1)(a)1.
[19] *Id.* at (a)2.
[20] *Id.* at (4).
[21] Section 1003.01(13)(b)-(e), F.S.
[22] Section 1003.26(1)(a), F.S.
[23] *Id.* at (2). The case staffing committee reviews the case of any family or child who the Department of Children and Families determines is in need of services or treatment. Section 984.12(1), F.S.
[24] Section 1003.26(2)(a), F.S.

Effect of Proposed Changes

Section 3 amends s. 1003.26, F.S., to authorize an intervention prior to the district school superintendent taking steps to initiate criminal prosecution. If the parent ignores a notice and requirement for enrollment or attendance, the district school superintendent may refer the case to a child study team[25] at the school the student would be assigned to attend according to district school board's attendance policies.

This section requires the child study team to be diligent in facilitating intervention services and to report the case to the district school superintendent only when all reasonable efforts to resolve the nonenrollment behavior are exhausted. If the parent continues to refuse to cooperate or enroll the child in school, the district school superintendent must take the steps necessary to bring criminal prosecution against the parent.

Court Procedures and Penalties Related to School Attendance (Section 4)

Present Situation

Each parent of a child within the compulsory attendance age is responsible for the child's school attendance as required by law.[26] While the absence of a student from school is evidence of a violation of compulsory attendance, criminal prosecution may not be brought against a parent prior to compliance with provisions related to enforcement of school attendance.[27]

When no valid reason for nonenrollment or nonattendance is found for a student who is required to attend a school, the district school superintendent must institute a criminal prosecution against the student's parent.[28]

Effect of Proposed Changes

Section 4 amends s. 1003.27, F.S., to clarify that court procedures and penalties for nonenrollment or nonattendance may not be initiated against the student's parent until the school and school district have complied with the policies and procedures established to enforce school attendance.

In addition, this section updates cross references to home education program portfolio specifications under provisions related to the enforcement of school attendance, and home

[25] A child study team is also used for patterns of nonattendance, defined as five unexcused absences, or absences for which the reasons are unknown, within a calendar month or 10 unexcused absences, or absences for which the reasons are unknown, within a 90-calendar-day period. Section 1003.26(1)(b), F.S. The school principal must refer the case to the school's child study team to determine if early patterns of truancy are developing. *Id.* The child study team must implement specified interventions, and may implement other interventions, including referral to other agencies for family services or recommendation for filing a truancy petition. *Id.* at (b) and (c). The child study team must be diligent in facilitating intervention services and shall report the case to the district school superintendent only when all reasonable efforts to resolve the nonattendance behavior are exhausted. *Id.* at (d). District school boards are also authorized to establish policies that require referral to a school's child study team for students who have fewer absences than the established number. Section 1003.02(1)(b), F.S.

[26] Section 1003.24, F.S.

[27] *Id.*

[28] Section 1003.27(2)(a), F.S.

education program annual evaluations under provisions related to participation in the Gardiner Scholarship Program.

Florida Partnership for Minority and Underrepresented Student Achievement (Section 7)

Present Situation

The Florida Partnership for Minority and Underrepresented Student Achievement (Florida partnership), was created in 2004[29] to prepare, inspire, and connect students to postsecondary success and opportunity, with a particular focus on minority students and students who are underrepresented in postsecondary education.[30]

The Florida partnership provides to students enrolled in grade 10 in public schools access to the preliminary ACT and another specified assessment.[31] Test results will provide each high school with a database of student assessment data that certified school counselors must use to identify students who are prepared or who need additional work to be prepared to enroll and be successful in AP courses or other advanced high school courses.[32]

The Florida partnership is required to provide information to students and other specified recipients regarding the preliminary ACT or PSAT/NMSQT administration and participation by 10th grade students.[33] The Florida partnership must also submit to the Florida Department of Education (DOE) a report that, among other items, evaluates the level of participation in the preliminary ACT.[34]

Additionally, the DOE must contribute to the evaluation of the Florida partnership by providing access to student and teacher information necessary to match against databases containing teacher professional development data and against databases containing assessment data for the PSAT/NMSQT, SAT, AP, and other appropriate measures.[35]

Effect of Proposed Changes

Section 7 amends s. 1007.35, F.S., to retain the requirements of the Florida partnership but updates the name of the preliminary ACT to the PreACT to be consistent with the correct name of the assessment.[36] In addition this section:

- Adds dual enrollment to the types of college credit-bearing courses that certified school counselors must use PSAT/NMSQT or PreACT data to identify students who are prepared to enroll in and be successful in advanced high school courses or college credit-bearing courses.

[29] Section 1, ch. 2004-63, L.O.F.
[30] Section 1007.35(4), F.S.
[31] *Id.* at (5). Public high schools are required to provide for the administration of the Preliminary ACT or the Preliminary SAT/National Merit Scholarship Qualifying Test (PSAT/NMSQT). *Id.*
[32] *Id.* at (5)(a), F.S.
[33] *Id.* at (6)(j), F.S.
[34] *Id.* at (8)(a), F.S.
[35] *Id.*
[36] ACT, *PreACT*, https://www.act.org/content/act/en/products-and-services/preact/preact-classroom.html (last visited Jan. 23, 2018).

- Adds the ACT and the PreACT to specified assessments in databases for which the DOE must provide access for evaluation purposes.

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 fiscal impact on state revenues or expenditures.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 1002.385, 1002.41, 1003.21, 1003.26, 1003.27, 1006.15, 1007.271, and 1007.35.

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 the Appropriations Subcommittee on Pre-K-12 Education on February 8, 2018:
The committee substitute prohibits a Florida College System institution from limiting the number of dual enrollment courses in which a student may enroll based solely upon enrollment by the student at an independent postsecondary institution.

CS by Education on January 22, 2018:
The committee substitute modifies requirements in the bill regarding home education program students' enrollment in extracurricular courses and dual enrollment. The bill also modifies provisions relating to the Florida Partnership for Minority and Underrepresented Student Achievement. Specifically, the committee substitute:

- Removes the bill's provision that deemed home education program students eligible to participate in extracurricular courses, which are exempted from maximum class size requirements, regardless of the school's capacity under controlled open enrollment; and deletes related conforming provisions and exemptions from meeting school district residency requirements and standards for acceptance to extracurricular activities.
- Modifies the provision in the bill related to home education program students' participation in dual enrollment to clarify that such students must maintain the minimum postsecondary grade point average for continued enrollment in dual enrollment courses, not limited to only the college credit dual enrollment courses.
- Updates cross references to home education program portfolio specifications under provisions related to the enforcement of school attendance, and home education program annual evaluations under provisions related to participation in the Gardiner Scholarship Program.
- Modifies the Florida Partnership for Minority and Underrepresented Student Achievement to:
  - Update the name of the preliminary ACT to the PreACT.
  - Add the ACT and the PreACT to specified assessments included in databases containing assessment data, to which the Department of Education must provide access for evaluation purposes.
  - Add dual enrollment to the types of college credit-bearing courses for which certified school counselors will use PSAT/NMSQT or PreACT data to identify students who are prepared to enroll in and be successful in advanced high school courses or college credit-bearing courses.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/02/2018	.	
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	.	
	.	

The Committee on Appropriations (Brandes) recommended the following:

Senate Amendment (with title amendment)

Delete lines 535 - 592
and insert:
Section 8. Paragraph (d) of subsection (2), paragraphs (d), (h), (i), (j), and (l) of subsection (5), subsection (8), and paragraph (a) of subsection (11) of section 1002.385, Florida Statutes, are amended, and paragraphs (p) and (q) are added to subsection (5) of that section, to read:
1002.385 The Gardiner Scholarship.—

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

(d) "Disability" means, for a 3- or 4-year-old child or for a student in kindergarten to grade 12, autism spectrum disorder, as defined in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, published by the American Psychiatric Association; cerebral palsy, as defined in s. 393.063(6); Down syndrome, as defined in s. 393.063(15); an intellectual disability, as defined in s. 393.063(24); Phelan-McDermid syndrome, as defined in s. 393.063(28); Prader-Willi syndrome, as defined in s. 393.063(29); spina bifida, as defined in s. 393.063(40); being a high-risk child, as defined in s. 393.063(23)(a); muscular dystrophy; Williams syndrome; a rare disease, a disorder that affects ~~diseases which affect~~ patient populations of ~~fewer than~~ 200,000 individuals or fewer in the United States, as defined by the Orphan Drug Act of 1983, Pub. L. No. 97-414 ~~National Organization for Rare Disorders~~; anaphylaxis; deaf; visually impaired; traumatic brain injured; hospital or homebound; or identification as dual sensory impaired, as defined by rules of the State Board of Education and evidenced by reports from local school districts. The term "hospital or homebound" includes a student who has a medically diagnosed physical or psychiatric condition or illness, as defined by the state board in rule, and who is confined to the home or hospital for more than 6 months.

(5) AUTHORIZED USES OF PROGRAM FUNDS.—Program funds must be used to meet the individual educational needs of an eligible student and may be spent for the following purposes:

(d) ~~Enrollment in, or~~ Tuition or fees associated with full-time or part-time enrollment in~~,~~ a home education program, an

eligible private school, an eligible postsecondary educational institution or a program offered by the postsecondary institution, ~~a private tutoring program authorized under s. 1002.43,~~ a virtual program offered by a department-approved private online provider that meets the provider qualifications specified in s. 1002.45(2)(a), the Florida Virtual School as a private paying student, or an approved online course offered pursuant to s. 1003.499 or s. 1004.0961.

(h) Tuition and fees for part-time tutoring services provided by a person who holds a valid Florida educator's certificate pursuant to s. 1012.56; a person who holds a valid professional standard teaching certificate issued by another state; a person who holds an adjunct teaching certificate pursuant to s. 1012.57; a person who has a bachelor's degree or a graduate degree in the subject area in which instruction is given; or a person who has demonstrated a mastery of subject area knowledge pursuant to s. 1012.56(5). As used in this paragraph, the term "part-time tutoring services" does not qualify as regular school attendance as defined in s. 1003.01(13) ~~s. 1003.01(13)(c)~~.

(i) Fees for ~~specialized~~ summer education programs.

(j) Fees for ~~specialized~~ after-school education programs.

(l) Fees for an annual evaluation of educational progress by a state-certified teacher under s. 1002.41(1)(f) ~~s. 1002.41(1)(c)~~, if this option is chosen for a home education student.

(p) Fees for art, music, or sports lessons.

(q) Tuition or fees associated with enrollment in a nationally or internationally recognized research-based training

program for a child with a neurological disorder or brain damage.

A provider of any services receiving payments pursuant to this subsection may not share, refund, or rebate any moneys from the Gardiner Scholarship with the parent or participating student in any manner. A parent, student, or provider of any services may not bill an insurance company, Medicaid, or any other agency for the same services that are paid for using Gardiner Scholarship funds.

(8) PRIVATE SCHOOL ELIGIBILITY AND OBLIGATIONS.—An eligible private school may be sectarian or nonsectarian and shall:

(a) Comply with all requirements for private schools participating in state school choice scholarship programs pursuant to s. 1002.421.

(b) Provide to the organization, upon request, all documentation required for the student's participation, including the private school's and student's fee schedules.

(c) Be academically accountable to the parent for meeting the educational needs of the student by:

1. At a minimum, annually providing to the parent a written explanation of the student's progress.

2. Annually administering or making provision for students participating in the program in grades 3 through 10 to take one of the nationally norm-referenced tests identified by the Department of Education or the statewide assessments pursuant to s. 1008.22. Students with disabilities for whom standardized testing is not appropriate are exempt from this requirement. A participating private school shall report a student's scores to

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the parent.

3. Cooperating with the scholarship student whose parent chooses to have the student participate in the statewide assessments pursuant to s. 1008.22 or, if a private school chooses to offer the statewide assessments, administering the assessments at the school.

a. A participating private school may choose to offer and administer the statewide assessments to all students who attend the private school in grades 3 through 10.

b. A participating private school shall submit a request in writing to the Department of Education by March 1 of each year in order to administer the statewide assessments in the subsequent school year.

(d) Employ or contract with teachers who have regular and direct contact with each student receiving a scholarship under this section at the school's physical location.

(e) Provide a report from an independent certified public accountant who performs the agreed-upon procedures developed under s. 1002.395(6)(o) if the private school receives more than $250,000 in funds from scholarships awarded under this chapter ~~section~~ in a state fiscal year. A private school subject to this paragraph must annually submit the report by September 15 to the organization that awarded the majority of the school's scholarship funds. The agreed-upon procedures must be conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants.

If a private school fails or refuses ~~is unable~~ to meet the requirements of this subsection or has consecutive years of

material exceptions listed in the report required under paragraph (e), the commissioner may determine that the private school is ineligible to participate in the program.

(11) PARENT AND STUDENT RESPONSIBILITIES FOR PROGRAM PARTICIPATION.—A parent who applies for program participation under this section is exercising his or her parental option to determine the appropriate placement or the services that best meet the needs of his or her child. The scholarship award for a student is based on a matrix that assigns the student to support Level III services. If a parent receives an IEP and a matrix of services from the school district pursuant to subsection (7), the amount of the payment shall be adjusted as needed, when the school district completes the matrix.

(a) To satisfy or maintain program eligibility, including eligibility to receive and spend program payments, the parent must sign an agreement with the organization and annually submit a notarized, sworn compliance statement to the organization to:

1. Affirm that the student is enrolled in a program that meets regular school attendance requirements as provided in s. 1003.01(13)(b) or (c) ~~s. 1003.01(13)(b)-(d)~~.

2. Affirm that the program funds are used only for authorized purposes serving the student's educational needs, as described in subsection (5).

3. Affirm that the parent is responsible for the education of his or her student by, as applicable:

a. Requiring the student to take an assessment in accordance with paragraph (8)(c);

b. Providing an annual evaluation in accordance with s. 1002.41(1)(f) ~~s. 1002.41(1)(c)~~; or

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c. Requiring the child to take any preassessments and postassessments selected by the provider if the child is 4 years of age and is enrolled in a program provided by an eligible Voluntary Prekindergarten Education Program provider. A student with disabilities for whom a preassessment and postassessment is not appropriate is exempt from this requirement. A participating provider shall report a student's scores to the parent.

4. Affirm that the student remains in good standing with the provider or school if those options are selected by the parent.

A parent who fails to comply with this subsection forfeits the Gardiner Scholarship.

Section 9. Section 1002.411, Florida Statutes, is created to read:

1002.411 Reading scholarship accounts.—

(1) READING SCHOLARSHIP ACCOUNTS.—Reading scholarship accounts are established to provide educational options for students.

(2) ELIGIBILITY.—Contingent upon available funds, and on a first-come, first-served basis, each student in grades 3 through 5 who is enrolled in a Florida public school is eligible for a reading scholarship account if the student scored below a Level 3 on the grade 3 or grade 4 statewide, standardized English Language Arts (ELA) assessment in the prior school year. An eligible student who is classified as an English Learner and is enrolled in a program or receiving services that are specifically designed to meet the instructional needs of English Learner students shall receive priority.

(3) PARENT AND STUDENT RESPONSIBILITIES FOR PARTICIPATION.—

(a) For an eligible student to receive a reading scholarship account, the student's parent must:

1. Submit an application to an eligible nonprofit scholarship-funding organization by the deadline established by such organization; and

2. Submit eligible expenses to the eligible nonprofit scholarship-funding organization for reimbursement of qualifying expenditures, which may include:

a. Instructional materials.

b. Curriculum. As used in this sub-subparagraph, the term "curriculum" means a complete course of study for a particular content area or grade level, including any required supplemental materials and associated online instruction.

c. Tuition and fees for part-time tutoring services provided by a person who holds a valid Florida educator's certificate pursuant to s. 1012.56; a person who holds a baccalaureate or graduate degree in the subject area; a person who holds an adjunct teaching certificate pursuant to s. 1012.57; or a person who has demonstrated a mastery of subject area knowledge pursuant to s. 1012.56(5).

d. Fees for summer education programs.

e. Fees for after-school education programs.

A provider of any services receiving payments pursuant to this subparagraph may not share any moneys from the reading scholarship with, or provide a refund or rebate of any moneys from such scholarship to, the parent or participating student in any manner. A parent, student, or provider of any services may

not bill an insurance company, Medicaid, or any other agency for the same services that are paid for using reading scholarship funds.

(b) The parent is responsible for the payment of all eligible expenses in excess of the amount in the account in accordance with the terms agreed to between the parent and any providers and may not receive any refund or rebate of any expenditures made in accordance with paragraph (a).

(4) ADMINISTRATION.—An eligible nonprofit scholarship-funding organization participating in the Florida Tax Credit Scholarship Program established by s. 1002.395 may establish reading scholarship accounts for eligible students in accordance with the requirements of eligible nonprofit scholarship-funding organizations under this chapter.

(5) DEPARTMENT OBLIGATIONS.—The department shall have the same duties imposed by this chapter upon the department regarding oversight of scholarship programs administered by an eligible nonprofit scholarship-funding organization.

(6) SCHOOL DISTRICT OBLIGATIONS; PARENTAL OPTIONS.—By September 30, the school district shall notify the parent of each student in grades 3 through 5 who scored below a level 3 on the statewide, standardized ELA assessment in the prior school year of the process to request and receive a reading scholarship, subject to available funds.

(7) ACCOUNT FUNDING AND PAYMENT.—

(a) For the 2018-2019 school year, the amount of the scholarship shall be $500 per eligible student. Thereafter, the maximum amount awarded an eligible student shall be provided in the General Appropriations Act.

(b) One hundred percent of the funds appropriated for the reading scholarship accounts shall be released to the department at the beginning of the first quarter of each fiscal year.

(c) Upon notification from the eligible nonprofit scholarship-funding organization that a student has been determined eligible for a reading scholarship, the department shall release the student's scholarship funds to such organization to be deposited into the student's account.

(d) Accrued interest in the student's account is in addition to, and not part of, the awarded funds. Account funds include both the awarded funds and accrued interest.

(e) The eligible nonprofit scholarship-funding organization may develop a system for payment of scholarship funds by funds transfer, including, but not limited to, debit cards, electronic payment cards, or any other means of payment that the department deems to be commercially viable or cost-effective. A student's scholarship award may not be reduced for debit card or electronic payment fees. Commodities or services related to the development of such a system shall be procured by competitive solicitation unless they are purchased from a state term contract pursuant to s. 287.056.

(f) Payment of the scholarship shall be made by the eligible nonprofit scholarship-funding organization no less frequently than on a quarterly basis.

(g) In addition to funds appropriated for scholarships and subject to a separate, specific legislative appropriation, an organization may receive an amount equivalent to not more than 3 percent of the amount of each scholarship from state funds for administrative expenses if the organization has operated as a

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nonprofit entity for at least the preceding 3 fiscal years and did not have any findings of material weakness or material noncompliance in its most recent audit under s. 1002.395. Such administrative expenses must be reasonable and necessary for the organization's management and distribution of scholarships under this section. Funds authorized under this paragraph may not be used for lobbying or political activity or expenses related to lobbying or political activity. An organization may not charge an application fee for a scholarship. Administrative expenses may not be deducted from funds appropriated for scholarships.

(h) Moneys received pursuant to this section do not constitute taxable income to the qualified student or his or her parent.

(i) A student's scholarship account must be closed and any remaining funds shall revert to the state after:

1. Denial or revocation of scholarship eligibility by the commissioner for fraud or abuse, including, but not limited to, the student or student's parent accepting any payment, refund, or rebate, in any manner, from a provider of any services received pursuant to subsection (3); or

2. Three consecutive fiscal years in which an account has been inactive.

(8) LIABILITY.—No liability shall arise on the part of the state based on the award or use of a reading scholarship account.

Section 10. Paragraph (a) of subsection (1) of section 1003.436, Florida Statutes, is amended to read:

1003.436 Definition of "credit."—

(1)(a) For the purposes of requirements for high school

graduation, one full credit means a minimum of 135 hours of bona fide instruction in a designated course of study that contains student performance standards, except as otherwise provided through the Credit Acceleration Program (CAP) under s. 1003.4295(3). One full credit means a minimum of 120 hours of bona fide instruction in a designated course of study that contains student performance standards for purposes of meeting high school graduation requirements in a district school that has been authorized to implement block scheduling by the district school board. In lieu of the 135- and 120-hour instruction requirements, district school boards participating in the Mastery-Based Education Pilot Program under s. 1003.4996, may determine and award credit based on a student's mastery of the core content and skills, consistent with s. 1003.41, as approved by the district school board. The State Board of Education shall determine the number of postsecondary credit hours earned through dual enrollment pursuant to s. 1007.271 that satisfy the requirements of a dual enrollment articulation agreement according to s. 1007.271(21) and that equal one full credit of the equivalent high school course identified pursuant to s. 1007.271(9).

Section 11. Section 1003.437, Florida Statutes, is amended to read:

1003.437 Middle and high school grading system.—

(1) The grading system and interpretation of letter grades used to measure student success in grade 6 through grade 12 courses for students in public schools shall be as follows:

(a) ~~(1)~~ Grade "A" equals 90 percent through 100 percent, has a grade point average value of 4, and is defined as "outstanding

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progress."

(b) ~~(2)~~ Grade "B" equals 80 percent through 89 percent, has a grade point average value of 3, and is defined as "above average progress."

(c) ~~(3)~~ Grade "C" equals 70 percent through 79 percent, has a grade point average value of 2, and is defined as "average progress."

(d) ~~(4)~~ Grade "D" equals 60 percent through 69 percent, has a grade point average value of 1, and is defined as "lowest acceptable progress."

(e) ~~(5)~~ Grade "F" equals zero percent through 59 percent, has a grade point average value of zero, and is defined as "failure."

(f) ~~(6)~~ Grade "I" equals zero percent, has a grade point average value of zero, and is defined as "incomplete."

(2) District school boards participating in the Mastery-Based Education Pilot Program under s. 1003.4996 may use an alternative interpretation of letter grades to measure student success in grades 6 through 12.

For the purposes of class ranking, district school boards may exercise a weighted grading system pursuant to s. 1007.271.

Section 12. Section 1003.4996, Florida Statutes, is amended to read:

1003.4996 Mastery-Based ~~Competency-Based~~ Education Pilot Program. ~~Beginning with the 2016-2017 school year,~~ The Mastery-Based ~~Competency-Based~~ Education Pilot Program is created within the Department of Education to be administered for a period of 5 years. The purpose of the pilot program is to provide an

educational environment that allows students to advance to higher levels of learning upon the mastery of concepts and skills through statutory exemptions relating to student progression and the awarding of credits.

(1) PARTICIPATION.—The P.K. Yonge Developmental Research School and public school districts, including, but not limited to, the Lake, Palm Beach, Pinellas, and Seminole County School Districts, may submit an application in a format prescribed by the department to participate in the pilot program.

(2) APPLICATION.—The application to participate in the pilot program must, at a minimum, include:

(a) The vision and timelines for the implementation of mastery-based ~~competency-based~~ education within the school district, including a list of the schools that will participate in the pilot program during the first school year and the list of schools that will be integrated into the program in subsequent school years.

(b) The annual goals and performance outcomes for participating schools, including, but not limited to:

1. Student performance as defined in s. 1008.34.

2. Promotion and retention rates.

3. Graduation rates.

4. Indicators of college and career readiness.

(c) A communication plan for parents and other stakeholders, including local businesses and community members.

(d) The scope of and timelines for professional development for school instructional and administrative personnel.

(e) A plan for student progression based on the mastery of content, including mechanisms that determine and ensure that a

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student has satisfied the requirements for grade-level promotion and content mastery.

(f) A plan for using technology and digital and blended learning to enhance student achievement and facilitate the mastery-based ~~competency-based~~ education system.

(g) The proposed allocation of resources for the pilot program at the school and district levels.

(h) The recruitment and selection of participating schools.

(i) The rules to be waived for participating schools pursuant to subsection (3) to implement the pilot program.

(3) EXEMPTION FROM RULES.—In addition to the waivers authorized in s. 1001.10(3), the State Board of Education may authorize the commissioner to grant an additional waiver of rules relating to student progression and the awarding of credits.

(4) ALTERNATE CREDIT AND LETTER GRADE SYSTEMS.—

(a) Beginning with the 2018-2019 school year, participating school districts may amend their applications to include alternatives for awarding credit, as authorized under s. 1003.436, and for the interpretation of middle and high school letter grades, as authorized under s. 1003.437.

1. Alternatives to awarding credit must include a verification of the student's mastery of the applicable course content using rigorous scoring rubrics to evaluate the student's work.

2. Alternatives to the interpretation of middle and high school letter grades may substitute the applicable language from the school district's rigorous scoring rubric.

(b) An application that is amended pursuant to this

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subsection must be approved by the district school board.

(5)~~(4)~~ STUDENT FUNDING.—Students enrolled in a participating school shall be reported for and generate funding pursuant to s. 1011.62.

(6)~~(5)~~ DEPARTMENT DUTIES.—The department shall:

(a) Compile the student and staff schedules of participating schools before and after implementation of the pilot program.

(b) Provide participating schools with access to statewide, standardized assessments required under s. 1008.22.

(c) Annually, by June 1, provide to the Governor, the President of the Senate, and the Speaker of the House of Representatives a report summarizing the activities and accomplishments of the pilot program and any recommendations for statutory revisions.

~~(6) RULES.—The State Board of Education shall adopt rules to administer this section.~~

Section 13. Subsection (7) is added to section 1007.23, Florida Statutes, to read:

1007.23 Statewide articulation agreement.—

(7) The articulation agreement must ensure fair and equitable access for high school graduates with mastery-based, nontraditional diplomas and transcripts.

Section 14. For the 2018-2019 fiscal year, the sum of $9.7 million in recurring funds from the General Revenue Fund is appropriated to the Department of Education to fund reading scholarship accounts pursuant to s. 1002.411, Florida Statutes, and $300,000 in recurring funds from the General Revenue Fund shall be provided as an administrative fee pursuant to s.

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1002.411(7)(g), Florida Statutes.

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

And the title is amended as follows:

Delete line 51

and insert:

F.S.; revising the meaning of a rare disease within the definition of the term "disability" for purposes of the Gardiner Scholarship Program; revising eligible expenditures for the program; revising requirements for private schools that participate in the program; specifying that the failure or refusal, rather than the inability of, a private school to meet certain requirements constitutes a basis for program ineligibility; conforming cross-references; creating s. 1002.411, F.S.; establishing reading scholarship accounts for specified purposes; providing for eligibility for scholarships; providing for administration; providing duties of the Department of Education; providing school district obligations; specifying options for parents; providing that maximum funding shall be specified in the General Appropriations Act; providing for payment of funds; specifying that no state liability arises from the award or use of such an account; amending s. 1003.436, F.S.; authorizing a district school board participating in the Mastery-Based Education Pilot Program to award credit based on student mastery of certain content and skills; amending s. 1003.437,

F.S.; authorizing a district school board participating in the Mastery-Based Education Pilot Program to use an alternative interpretation of letter grades for certain students; amending s. 1003.4996, F.S.; renaming the Competency-Based Education Pilot Program as the Mastery-Based Education Pilot Program; authorizing public school districts to submit applications for the program; authorizing participating school districts to amend their applications to include alternatives for the award credits and interpretation of letter grades; providing requirements for such alternatives; deleting a requirement that the State Board of Education adopt rules; amending s. 1007.23, F.S.; requiring the statewide articulation agreement to ensure fair and equitable access for students with mastery-based, nontraditional diplomas and transcripts; providing an

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Proposed Committee Substitute by the Committee on Appropriations
(Appropriations Subcommittee on Pre-K - 12 Education)

A bill to be entitled

An act relating to K-12 education; amending s. 1002.41, F.S.; specifying that a home education program is not a school district program and is registered with the district school superintendent only for the purpose of complying with the state's attendance requirements; revising the content requirements of a notice of enrollment of a student in a home education program; requiring the district school superintendent to immediately register a home education program upon receipt of the notice; prohibiting a school district from requiring additional information or verification of a home education student except in specified circumstances; authorizing a school district to provide home education program students with access to certain courses and programs offered by the school district; requiring reporting and funding through the Florida Education Finance Program; requiring home education program students be provided access to certain certifications and assessments offered by the school district; prohibiting a school district from taking certain actions against a home education program student's parent unless such action is necessary for a school district program; amending s. 1003.21, F.S.; prohibiting a district school superintendent from requiring certain evidence relating to a child's age

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from children enrolled in specified schools and programs; amending s. 1003.26, F.S.; revising reporting requirements for specified issues relating to compulsory school attendance; amending s. 1003.27, F.S.; requiring a school and school district to comply with specified provisions before instituting criminal prosecution against certain parents relating to compulsory school attendance; amending s. 1006.15, F.S.; revising the standards required for a home education student to participate in extracurricular activities; amending s. 1007.271, F.S.; prohibiting the dual enrollment articulation agreement from including course enrollment limitations for certain students; prohibiting dual enrollment course and program limitations for home education students from exceeding limitations for other students; providing an exemption from the grade point average requirement for initial enrollment in a dual enrollment program for certain home education students; amending s. 1007.35, F.S.; updating terminology; requiring the Department of Education to provide certain teacher and student ACT and PreACT information for the evaluation of certain services and activities; amending s. 1002.385, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Subsections (1) and (2) of section 1002.41,

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Florida Statutes, are amended, and subsections (11), (12), and (13) are added to that section, to read:

1002.41 Home education programs.—

(1) As used in this section, the term ~~A~~ "home education program" has the same meaning as ~~is defined~~ in s. 1002.01. A home education program is not a school district program and is registered with the district school superintendent only for the purpose of complying with the state's attendance requirements under s. 1003.21(1). The parent is not required to hold a valid regular Florida teaching certificate.

(a) The parent, as defined in s. 1000.21, who establishes and maintains a home education program shall notify the district school superintendent of the county in which the parent resides of her or his intent to establish and maintain a home education program. The notice must ~~shall~~ be in writing, signed by the parent, and ~~shall~~ include the full legal names, addresses, and birthdates of all children who shall be enrolled as students in the home education program. The notice must ~~shall~~ be filed in the district school superintendent's office within 30 days of the establishment of the home education program.

(b) The district school superintendent shall accept the notice and immediately register the home education program upon receipt of the notice. The district may not require any additional information or verification from the parent unless the student chooses to participate in a school district program or service. The district school superintendent may not assign a grade level to the home education student or include a social security number or any other personal information of the student in any school district or state database unless the student

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chooses to participate in a school district program or service; and

(c) The parent shall file a written notice of termination upon completion of the home education program with ~~shall be filed in~~ the district school superintendent, along with the annual evaluation required in paragraph (f), within ~~superintendent's office within~~ 30 days of ~~after said~~ termination.

(d) ~~(b)~~ The parent shall maintain a portfolio of records and materials. The portfolio must ~~shall~~ consist of the following:

1. A log of educational activities that is made contemporaneously with the instruction and that designates by title any reading materials used.

2. Samples of any writings, worksheets, workbooks, or creative materials used or developed by the student.

(e) The parent shall determine the content of the portfolio, preserve it ~~shall be preserved by the parent~~ for 2 years, and make it ~~shall be made~~ available for inspection, if requested, by the district school superintendent, or the district school superintendent's agent, upon 15 days' written notice. Nothing in this section shall require the district school superintendent to inspect the portfolio.

(f) ~~(c)~~ The parent shall provide for an annual educational evaluation in which is documented the student's demonstration of educational progress at a level commensurate with her or his ability. The parent shall select the method of evaluation and shall file a copy of the evaluation annually with the district school superintendent's office in the county in which the student resides. The annual educational evaluation shall consist

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of one of the following:

1. A teacher selected by the parent shall evaluate the student's educational progress upon review of the portfolio and discussion with the student. Such teacher shall hold a valid regular Florida certificate to teach academic subjects at the elementary or secondary level;

2. The student shall take any nationally normed student achievement test administered by a certified teacher;

3. The student shall take a state student assessment test used by the school district and administered by a certified teacher, at a location and under testing conditions approved by the school district;

4. The student shall be evaluated by an individual holding a valid, active license pursuant to the provisions of s. 490.003(7) or (8); or

5. The student shall be evaluated with any other valid measurement tool as mutually agreed upon by the district school superintendent of the district in which the student resides and the student's parent.

(2) The district school superintendent shall ~~review and~~ accept the results of the annual educational evaluation of the student in a home education program. If the student does not demonstrate educational progress at a level commensurate with her or his ability, the district school superintendent shall notify the parent, in writing, that such progress has not been achieved. The parent shall have 1 year from the date of receipt of the written notification to provide remedial instruction to the student. At the end of the 1-year probationary period, the student shall be reevaluated as specified in paragraph (1)(f)

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~~(1)(c)~~. Continuation in a home education program shall be contingent upon the student demonstrating educational progress commensurate with her or his ability at the end of the probationary period.

(11) A school district may provide access to career and technical courses and programs for a home education program student who enrolls in a public school solely for the career and technical courses or programs. The school district that provides the career and technical courses and programs shall report each student as a full-time equivalent student in the class and in a manner prescribed by the department, and funding shall be provided through the Florida Education Finance Program pursuant to s. 1011.62.

(12) Industry certifications, national assessments, and statewide, standardized assessments offered by the school district shall be available to home education program students. Each school district shall notify home education program students of the available certifications and assessments; the date, time, and locations for the administration of each certification and assessment; and the deadline for notifying the school district of the student's intent to participate and the student's preferred location.

(13) A school district may not further regulate, exercise control over, or require documentation from parents of home education program students beyond the requirements of this section unless the regulation, control, or documentation is necessary for participation in a school district program.

Section 2. Subsection (4) of section 1003.21, Florida Statutes, is amended to read:

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1003.21 School attendance.—

(4) Before admitting a child to kindergarten, the principal shall require evidence that the child has attained the age at which he or she should be admitted in accordance with the provisions of subparagraph (1)(a)2. The district school superintendent may require evidence of the age of any child who is being enrolled in public school who the district school superintendent ~~whom he or she~~ believes to be within the limits of compulsory attendance as provided for by law; however, the district school superintendent may not require evidence from any child who meets regular attendance requirements by attending a school or program listed in s. 1003.01(13)(b)-(e). If the first prescribed evidence is not available, the next evidence obtainable in the order set forth below shall be accepted:

(a) A duly attested transcript of the child's birth record filed according to law with a public officer charged with the duty of recording births;

(b) A duly attested transcript of a certificate of baptism showing the date of birth and place of baptism of the child, accompanied by an affidavit sworn to by the parent;

(c) An insurance policy on the child's life that has been in force for at least 2 years;

(d) A bona fide contemporary religious record of the child's birth accompanied by an affidavit sworn to by the parent;

(e) A passport or certificate of arrival in the United States showing the age of the child;

(f) A transcript of record of age shown in the child's school record of at least 4 years prior to application, stating

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date of birth; or

(g) If none of these evidences can be produced, an affidavit of age sworn to by the parent, accompanied by a certificate of age signed by a public health officer or by a public school physician, or, if these are not available in the county, by a licensed practicing physician designated by the district school board, which states that the health officer or physician has examined the child and believes that the age as stated in the affidavit is substantially correct. Children and youths who are experiencing homelessness and children who are known to the department, as defined in s. 39.0016, shall be given temporary exemption from this section for 30 school days.

Section 3. Paragraph (f) of subsection (1) and paragraph (a) of subsection (2) of section 1003.26, Florida Statutes, are amended to read:

1003.26 Enforcement of school attendance.—The Legislature finds that poor academic performance is associated with nonattendance and that school districts must take an active role in promoting and enforcing attendance as a means of improving student performance. It is the policy of the state that each district school superintendent be responsible for enforcing school attendance of all students subject to the compulsory school age in the school district and supporting enforcement of school attendance by local law enforcement agencies. The responsibility includes recommending policies and procedures to the district school board that require public schools to respond in a timely manner to every unexcused absence, and every absence for which the reason is unknown, of students enrolled in the schools. District school board policies shall require the parent

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of a student to justify each absence of the student, and that justification will be evaluated based on adopted district school board policies that define excused and unexcused absences. The policies must provide that public schools track excused and unexcused absences and contact the home in the case of an unexcused absence from school, or an absence from school for which the reason is unknown, to prevent the development of patterns of nonattendance. The Legislature finds that early intervention in school attendance is the most effective way of producing good attendance habits that will lead to improved student learning and achievement. Each public school shall implement the following steps to promote and enforce regular school attendance:

(1) CONTACT, REFER, AND ENFORCE.—

(f)1. If the parent of a child who has been identified as exhibiting a pattern of nonattendance enrolls the child in a home education program pursuant to chapter 1002, the district school superintendent shall provide the parent a copy of s. 1002.41 and the accountability requirements of this paragraph. The district school superintendent shall also refer the parent to a home education review committee composed of the district contact for home education programs and at least two home educators selected by the parent from a district list of all home educators who have conducted a home education program for at least 3 years and who have indicated a willingness to serve on the committee. The home education review committee shall review the portfolio of the student, as defined by s. 1002.41, every 30 days during the district's regular school terms until the committee is satisfied that the home education program is in

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compliance with s. 1002.41(1)(d) ~~s. 1002.41(1)(b)~~. The first portfolio review must occur within the first 30 calendar days of the establishment of the program. The provisions of subparagraph 2. do not apply once the committee determines the home education program is in compliance with s. 1002.41(1)(d) ~~s. 1002.41(1)(b)~~.

2. If the parent fails to provide a portfolio to the committee, the committee shall notify the district school superintendent. The district school superintendent shall then terminate the home education program and require the parent to enroll the child in an attendance option that meets the definition of "regular school attendance" under s. 1003.01(13)(a), (b), (c), or (e), within 3 days. Upon termination of a home education program pursuant to this subparagraph, the parent shall not be eligible to reenroll the child in a home education program for 180 calendar days. Failure of a parent to enroll the child in an attendance option as required by this subparagraph after termination of the home education program pursuant to this subparagraph shall constitute noncompliance with the compulsory attendance requirements of s. 1003.21 and may result in criminal prosecution under s. 1003.27(2). Nothing contained herein shall restrict the ability of the district school superintendent, or the ability of his or her designee, to review the portfolio pursuant to s. 1002.41(1)(e) ~~s. 1002.41(1)(b)~~.

(2) GIVE WRITTEN NOTICE.—

(a) Under the direction of the district school superintendent, a designated school representative shall give written notice that requires enrollment or attendance within 3 days after the date of notice, in person or by return-receipt

mail, to the parent when no valid reason is found for a student's nonenrollment in school. If the notice and requirement are ignored, the designated school representative shall report the case to the district school superintendent, who ~~and~~ may refer the case to the child study team in paragraph (1)(b) at the school the student would be assigned according to district school board attendance area policies or to the case staffing committee, established pursuant to s. 984.12. The child study team shall diligently facilitate intervention services and shall report the case back to the district school superintendent only when all reasonable efforts to resolve the nonenrollment behavior are exhausted. If the parent still refuses to cooperate or enroll the child in school, the district school superintendent shall take such steps as are necessary to bring criminal prosecution against the parent.

Section 4. Subsection (2) of section 1003.27, Florida Statutes, is amended to read:

1003.27 Court procedure and penalties.—The court procedure and penalties for the enforcement of the provisions of this part, relating to compulsory school attendance, shall be as follows:

(2) NONENROLLMENT AND NONATTENDANCE CASES.—

(a) In each case of nonenrollment or of nonattendance upon the part of a student who is required to attend some school, when no valid reason for such nonenrollment or nonattendance is found, the district school superintendent shall institute a criminal prosecution against the student's parent. However, criminal prosecution may not be instituted against the student's parent until the school and school district have complied with

s. 1003.26.

(b) Each public school principal or the principal's designee shall notify the district school board of each minor student under its jurisdiction who accumulates 15 unexcused absences in a period of 90 calendar days. ~~Each designee of the governing body of each private school, and each parent whose child is enrolled in a home education program, may provide the Department of Highway Safety and Motor Vehicles with the legal name, sex, date of birth, and social security number of each minor student under his or her jurisdiction who fails to satisfy relevant attendance requirements and who fails to otherwise satisfy the requirements of s. 322.091.~~ The district school superintendent must provide the Department of Highway Safety and Motor Vehicles the legal name, sex, date of birth, and social security number of each minor student who has been reported under this paragraph and who fails to otherwise satisfy the requirements of s. 322.091. The Department of Highway Safety and Motor Vehicles may not issue a driver license or learner's driver license to, and shall suspend any previously issued driver license or learner's driver license of, any such minor student, pursuant to the provisions of s. 322.091.

(c) Each designee of the governing body of each private school and each parent whose child is enrolled in a home education program may provide the Department of Highway Safety and Motor Vehicles with the legal name, sex, date of birth, and social security number of each minor student under his or her jurisdiction who fails to satisfy relevant attendance requirements and who fails to otherwise satisfy the requirements of s. 322.091. The Department of Highway Safety and Motor

Vehicles may not issue a driver license or learner's driver license to, and shall suspend any previously issued driver license or learner's driver license of, any such minor student, pursuant to s. 322.091.

Section 5. Paragraph (c) of subsection (3) of section 1006.15, Florida Statutes, is amended to read:

1006.15 Student standards for participation in interscholastic and intrascholastic extracurricular student activities; regulation.—

(3)

(c) An individual home education student is eligible to participate at the public school to which the student would be assigned according to district school board attendance area policies or which the student could choose to attend pursuant to s. 1002.31, or may develop an agreement to participate at a private school, in the interscholastic extracurricular activities of that school, provided the following conditions are met:

1. The home education student must meet the requirements of the home education program pursuant to s. 1002.41.

2. During the period of participation at a school, the home education student must demonstrate educational progress as required in paragraph (b) in all subjects taken in the home education program by a method of evaluation agreed upon by the parent and the school principal which may include: review of the student's work by a certified teacher chosen by the parent; grades earned through correspondence; grades earned in courses taken at a Florida College System institution, university, or trade school; standardized test scores above the 35th

percentile; or any other method designated in s. 1002.41.

3. The home education student must meet the same residency requirements as other students in the school at which he or she participates.

4. The home education student must meet the same standards of acceptance, behavior, and performance as required of other students in extracurricular activities.

5. The student must register with the school his or her intent to participate in interscholastic extracurricular activities as a representative of the school before participation ~~the beginning date of the season for the activity in which he or she wishes to participate~~. A home education student must be able to participate in curricular activities if that is a requirement for an extracurricular activity.

6. A student who transfers from a home education program to a public school before or during the first grading period of the school year is academically eligible to participate in interscholastic extracurricular activities during the first grading period provided the student has a successful evaluation from the previous school year, pursuant to subparagraph 2.

7. Any public school or private school student who has been unable to maintain academic eligibility for participation in interscholastic extracurricular activities is ineligible to participate in such activities as a home education student until the student has successfully completed one grading period in home education pursuant to subparagraph 2. to become eligible to participate as a home education student.

Section 6. Subsection (3) and paragraph (b) of subsection (13) of section 1007.271, Florida Statutes, are amended to read:

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1007.271 Dual enrollment programs.—

(3) Student eligibility requirements for initial enrollment in college credit dual enrollment courses must include a 3.0 unweighted high school grade point average and the minimum score on a common placement test adopted by the State Board of Education which indicates that the student is ready for college-level coursework. Student eligibility requirements for continued enrollment in college credit dual enrollment courses must include the maintenance of a 3.0 unweighted high school grade point average and the minimum postsecondary grade point average established by the postsecondary institution. Regardless of meeting student eligibility requirements for continued enrollment, a student may lose the opportunity to participate in a dual enrollment course if the student is disruptive to the learning process such that the progress of other students or the efficient administration of the course is hindered. Student eligibility requirements for initial and continued enrollment in career certificate dual enrollment courses must include a 2.0 unweighted high school grade point average. Exceptions to the required grade point averages may be granted on an individual student basis if the educational entities agree and the terms of the agreement are contained within the dual enrollment articulation agreement established pursuant to subsection (21). Florida College System institution boards of trustees may establish additional initial student eligibility requirements, which shall be included in the dual enrollment articulation agreement, to ensure student readiness for postsecondary instruction. Additional requirements included in the agreement may not arbitrarily prohibit students who have demonstrated the

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ability to master advanced courses from participating in dual enrollment courses or limit the number of dual enrollment courses in which a student may enroll based solely upon enrollment by the student at an independent postsecondary institution.

(13)

(b) Each postsecondary institution eligible to participate in the dual enrollment program pursuant to s. 1011.62(1)(i) must enter into a home education articulation agreement with each home education student seeking enrollment in a dual enrollment course and the student's parent. By August 1 of each year, the eligible postsecondary institution shall complete and submit the home education articulation agreement to the Department of Education. The home education articulation agreement must include, at a minimum:

1. A delineation of courses and programs available to dually enrolled home education students. Courses and programs may be added, revised, or deleted at any time by the postsecondary institution. Any course or program limitations may not exceed the limitations for other dually enrolled students.

2. The initial and continued eligibility requirements for home education student participation, not to exceed those required of other dually enrolled students. A high school grade point average may not be required for home education students who meet the minimum score on a common placement test adopted by the State Board of Education which indicates that the student is ready for college-level coursework; however, home education student eligibility requirements for continued enrollment in dual enrollment courses must include the maintenance of the

minimum postsecondary grade point average established by the postsecondary institution.

3. The student's responsibilities for providing his or her own instructional materials and transportation.

4. A copy of the statement on transfer guarantees developed by the Department of Education under subsection (15).

Section 7. Subsection (5), paragraph (j) of subsection (6), and subsection (8) of section 1007.35, Florida Statutes, are amended to read:

1007.35 Florida Partnership for Minority and Underrepresented Student Achievement.—

(5) Each public high school, including, but not limited to, schools and alternative sites and centers of the Department of Juvenile Justice, shall provide for the administration of the Preliminary SAT/National Merit Scholarship Qualifying Test (PSAT/NMSQT), or the PreACT ~~preliminary ACT~~ to all enrolled 10th grade students. However, a written notice shall be provided to each parent which must include the opportunity to exempt his or her child from taking the PSAT/NMSQT or the PreACT ~~preliminary ACT~~.

(a) Test results will provide each high school with a database of student assessment data which certified school counselors will use to identify students who are prepared or who need additional work to be prepared to enroll and be successful in AP courses or other advanced high school courses.

(b) Funding for the PSAT/NMSQT or the PreACT ~~preliminary ACT~~ for all 10th grade students shall be contingent upon annual funding in the General Appropriations Act.

(c) Public school districts must choose either the

PSAT/NMSQT or the PreACT ~~preliminary ACT~~ for districtwide administration.

(6) The partnership shall:

(j) Provide information to students, parents, teachers, counselors, administrators, districts, Florida College System institutions, and state universities regarding PSAT/NMSQT or the PreACT ~~preliminary ACT~~ administration, including, but not limited to:

1. Test administration dates and times.

2. That participation in the PSAT/NMSQT or the PreACT ~~preliminary ACT~~ is open to all 10th grade students.

3. The value of such tests in providing diagnostic feedback on student skills.

4. The value of student scores in predicting the probability of success on AP or other advanced course examinations.

(8)(a) By September 30 of each year, the partnership shall submit to the department a report that contains an evaluation of the effectiveness of the delivered services and activities. Activities and services must be evaluated on their effectiveness at raising student achievement and increasing the number of AP or other advanced course examinations in low-performing middle and high schools. Other indicators that must be addressed in the evaluation report include the number of middle and high school teachers trained; the effectiveness of the training; measures of postsecondary readiness of the students affected by the program; levels of participation in 10th grade PSAT/NMSQT or the PreACT ~~preliminary ACT~~ testing; and measures of student, parent, and teacher awareness of and satisfaction with the services of the

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partnership.

(b) The department shall contribute to the evaluation process by providing access, consistent with s. 119.071(5)(a), to student and teacher information necessary to match against databases containing teacher professional development data and databases containing assessment data for the PSAT/NMSQT, SAT, ACT, PreACT, AP, and other appropriate measures. The department shall also provide student-level data on student progress from middle school through high school and into college and the workforce, if available, in order to support longitudinal studies. The partnership shall analyze and report student performance data in a manner that protects the rights of students and parents as required in 20 U.S.C. s. 1232g and s. 1002.22.

Section 8. Paragraph (l) of subsection (5) and paragraph (a) of subsection (11) of section 1002.385, Florida Statutes, are amended to read:

1002.385 The Gardiner Scholarship.—

(5) AUTHORIZED USES OF PROGRAM FUNDS.—Program funds must be used to meet the individual educational needs of an eligible student and may be spent for the following purposes:

(l) Fees for an annual evaluation of educational progress by a state-certified teacher under s. 1002.41(1)(f) ~~s. 1002.41(1)(c)~~, if this option is chosen for a home education student.

A provider of any services receiving payments pursuant to this subsection may not share, refund, or rebate any moneys from the Gardiner Scholarship with the parent or participating student in

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any manner. A parent, student, or provider of any services may not bill an insurance company, Medicaid, or any other agency for the same services that are paid for using Gardiner Scholarship funds.

(11) PARENT AND STUDENT RESPONSIBILITIES FOR PROGRAM PARTICIPATION.—A parent who applies for program participation under this section is exercising his or her parental option to determine the appropriate placement or the services that best meet the needs of his or her child. The scholarship award for a student is based on a matrix that assigns the student to support Level III services. If a parent receives an IEP and a matrix of services from the school district pursuant to subsection (7), the amount of the payment shall be adjusted as needed, when the school district completes the matrix.

(a) To satisfy or maintain program eligibility, including eligibility to receive and spend program payments, the parent must sign an agreement with the organization and annually submit a notarized, sworn compliance statement to the organization to:

1. Affirm that the student is enrolled in a program that meets regular school attendance requirements as provided in s. 1003.01(13)(b)-(d).

2. Affirm that the program funds are used only for authorized purposes serving the student's educational needs, as described in subsection (5).

3. Affirm that the parent is responsible for the education of his or her student by, as applicable:

a. Requiring the student to take an assessment in accordance with paragraph (8)(c);

b. Providing an annual evaluation in accordance with s.

1002.41(1)(f) ~~s. 1002.41(1)(c)~~; or

c. Requiring the child to take any preassessments and postassessments selected by the provider if the child is 4 years of age and is enrolled in a program provided by an eligible Voluntary Prekindergarten Education Program provider. A student with disabilities for whom a preassessment and postassessment is not appropriate is exempt from this requirement. A participating provider shall report a student's scores to the parent.

4. Affirm that the student remains in good standing with the provider or school if those options are selected by the parent.

A parent who fails to comply with this subsection forfeits the Gardiner Scholarship.

Section 9. 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 732
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Pre-K-12 Education); Education Committee; and Senator Baxley
SUBJECT:	K-12 Education
DATE:	March 5, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bouck	Graf	ED	**Fav/CS**
2.	Sikes	Elwell	AED	**Recommend: Fav/CS**
3.	Sikes	Hansen	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 732 modifies requirements related to home education programs, school attendance, competency-based education, the Florida Partnership for Minority and Underrepresented Student Achievement, and the Gardiner Scholarship Program, and establishes reading scholarship accounts. Specifically, the bill:

- Modifies the home education program to:
  - Limit the information a parent must provide to establish and maintain a home education program unless the home education program student chooses to participate in a district program or service.
  - Authorize school districts to provide home education program students access to career and technical education courses and programs.
  - Require school districts to make industry certifications and national and statewide assessments available to home education program students.
- Requires a home education program student to register his or her intent to participate in an extracurricular activity prior to participating in the activity.
- Clarifies the academic requirements that home education program students must meet in order to participate in dual enrollment programs by:
  - Exempting a home education program student from maintaining a specific high school grade point average if he or she has meets a minimum score on a common placement test.
  - Requiring a home education program student to maintain a minimum GPA established by the postsecondary institution for continued enrollment in a dual enrollment course.

- Clarifies school attendance procedures to:
  - Prohibit the district school superintendent from requiring evidence of a child's age if the child attends a school or program specified in law.
  - Authorize the district school superintendent to refer instances of nonenrollment to a child study team for intervention.
  - Require school districts to implement interventions for nonenrollment and nonattendance prior to criminal prosecution.
- Renames the Competency-Based Education Pilot Program as the Mastery-Based Education Pilot Program (mastery-based pilot) and:
  - Expands participation in the mastery-based pilot to all school districts.
  - Authorizes district school boards participating in the mastery-based pilot to determine award of credit based on mastery of content and skills and to use an alternative interpretation of letter grades to measure student success in grades 6 through 12.
- Requires the statewide articulation agreement to ensure fair and equitable access for high school graduates with mastery-based, nontraditional diplomas and transcripts.
- Modifies the Florida Partnership for Minority and Underrepresented Student Achievement to:
  - Update the name of the preliminary ACT to the PreACT.
  - Add the ACT and the PreACT to specified assessments included in databases containing assessment data, to which the Department of Education must provide access for evaluation purposes.
- Modifies the Gardiner Scholarship Program (program) to:
  - Revise, for the purposes of the program, the definition of a rare disease to be as defined by the Orphan Drug Act of 1983, Pub. L. No.97-414.
  - Expand authorized uses of program funds to include tuition or fees associated with full-time or part-time enrollment in home education program; tuition or fees for enrollment in recognized research-based training program; and fees for art, music, and sports lessons.
  - Eliminates private tutoring programs from authorized uses of program funds but expands the qualifying credentials for who may provide part-time tutoring services to include individuals who hold a valid teaching certificate from another state and individuals who have a bachelor's or higher degree in the subject area in which instruction is given.
  - Clarify accountability provisions regarding private schools that participate in the program.
- Establishes reading scholarship accounts for public school students in grades 3 through 5 who scored below a Level 3 on the grade 3 or grade 4 statewide, standardized ELA assessment in the prior school year.

For the 2018-2019 fiscal year, the bill appropriates the sum of $9.7 million in recurring funds from the General Revenue Fund to the Department of Education to fund reading scholarship accounts and $300,000 in recurring funds from the General Revenue Fund toward related administrative fees.

The bill takes effect July 1, 2018.

II. Present Situation:

The present situation for the relevant portions of the bill is discussed in the Effect of Proposed Changes section of this bill analysis.

III. Effect of Proposed Changes:

Gardiner Scholarship Program (Section 1)

Present Situation

The Gardiner Scholarship Program (GSP) provides a parent of an eligible student with a disability the option to better meet the educational needs of his or her child.[1] Funds are distributed to qualified[2] scholarship funding organizations (SFOs) to establish accounts for eligible students.[3] Parents can use funds from the student's account to choose from a variety of approved items or services for their students including, but not limited to: specialized services, curriculum, instructional materials, tuition, and contracted services.[4]

Eligibility

The parent of a student, who is a Florida resident, may request and receive an account if the student:[5]

- Is 3 or 4 years old, or is eligible to enroll in kindergarten through grade 12 in a Florida public school;
- Has one of the specified disabilities, one of which is a rare disease which affect patient populations of fewer than 200,000 individuals in the United States, as defined by the National Organization of Rare Disorders;
- Has an individualized education plan (IEP) written in accordance with the SB or has received a diagnosis of one of the above disabilities from a licensed physician or a licensed psychologist.

Allowable Expenditures

GSP funds must be used to meet the individual education needs of the student.[6] Program funds may be spent for authorized purposes specified in law, which include:[7]

- Enrollment in, or tuition and fees for enrollment in, a home education program, an eligible private school or postsecondary institution or a program offered by the institution, a private tutoring program, or virtual education programs or courses.
- Tuition and fees for part-time tutoring services provided by an individual who has a valid Florida educator's certificate, an adjunct teaching certificate, or has demonstrated mastery of subject area knowledge.
- Fees for specialized summer or after-school education programs.
- Fees for an annual evaluation used by home education students.

[1] Section 1002.385(1), F.S.
[2] *Id.* at (2)(e).
[3] Section 1002.385, F.S.
[4] Section 1002.385(5), F.S.
[5] Section 1002.385(3), F.S.
[6] *Id.* at (11).
[7] *Id.* at (5).

Eligible Service Providers

Entities eligible to provide specialized services or educational programs include:[8]

- A provider approved by the Agency for Persons with Disabilities, a health care practitioner or a provider approved by the Florida Department of Education (DOE) to offer specialized instructional services for children with disabilities.
- A postsecondary educational institution including a Florida College System institution; a state university; a school district technical center; a school district adult general education center; an independent college or university eligible to participate in the William L. Boyd, IV Florida Resident Access Grant Program; or an accredited, independent postsecondary educational institution which is licensed to operate in this state.
- A private school that is located in this state, offers education to students in any grade from kindergarten to grade 12, meets all the requirements of a private school operating in Florida, and meets all the requirements of a private school participating in the John M. McKay Scholarship Program or the Florida Tax Credit Scholarship Program.

An eligible private school may be sectarian or nonsectarian and must:[9]

- Comply with all requirements for private schools participating in state school choice scholarship programs.[10].
- Provide to the organization, upon request, all documentation required for the student's participation, including the private school's and student's fee schedules.
- Be academically accountable to the parent for meeting the educational needs of the student.
- Employ or contract with teachers who have regular and direct contact with each student receiving a scholarship under this section at the school's physical location.
- Provide a report from an independent certified public accountant (CPA) if the private school receives more than $250,000 in funds from GSP in a state fiscal year.

If a private school is unable to meet the requirements for participation or has consecutive years of material exceptions listed in the report from the specified CPA, the Commissioner of Education (commissioner) may determine that the private school is ineligible to participate in the program.[11]

Effect of Proposed Changes

Section 1 revises the definition of a rare disease as a disorder that affects patient populations of 200,000 individuals or fewer in the United States, and conforms the definition of a rare disease to the definition provided by the Orphan Drug Act of 1983, Pub. L. No. 97-414.

The section expands authorized uses of program funds to include:

- Tuition and fees associated with full-time or part-time enrollment in home education program.
- Tuition or fees for enrollment in a nationally or internationally recognized research-based training program for a child with a neurological disorder or brain damage.

[8] Section 1002.285(2), F.S.
[9] Section 1002.385(8), F.S.
[10] Section 1002.421, F.S.
[11] Section 1002.385(8), F.S.

- Fees for art, music, and sports lessons.

This section eliminates private tutoring programs from authorized uses of program funds, but expands the qualifying credentials for who may provide part-time tutoring services to include individuals who hold a valid teaching certificate from another state and individuals who have a bachelor's or a graduate degree in the subject area in which instruction is given.

Finally, this section changes the criteria for the commissioner to determine ineligibility for a private school to participate in the GSP. This section specifies that a private school may be deemed ineligible if the private school fails or refuses to meet requirements for participation.

Home Education Programs (Section 2)

Florida is a long-time supporter of home education, and the number of families choosing this education option has shown steady growth since the Legislature established it as a school choice option in 1985. For the 2016-2017 school year, 60,547 families and 87,462 students participated in home education programs.

Present Situation

A home education program is defined as the sequentially progressive instruction of a student directed by his or her parent in order to satisfy the attendance requirements established in law.[12] To establish a home education program, a parent must:

- Submit a written and signed notice of intent to establish a home education program to the district school superintendent in the county of residence.[13] The notice must include the names, addresses, and birthdates of all children to be enrolled as students in the home education program.[14]
- Maintain a portfolio of records and materials, the contents of which are specified in law and which must be preserved by the parent for two years and made available for inspection if requested.[15]
- Select and provide for an annual educational evaluation to document the student's educational progress.[16] The parent must file a copy of the evaluation annually with the district school superintendent's office, and the district school superintendent must review and accept the results.[17]

If a parent terminates a home education program, he or she must file a written notice of termination in the district school superintendent's office.[18]

[12] Section 1002.01(1), F.S. The attendance requirements are established in ss 1002.41, 1003.01(13), and 1003.21(1), F.S.
[13] Section 1002.41(1)(a), F.S.
[14] *Id.*
[15] Section 1002.41(1)(b), F.S.
[16] *Id.* at (c).
[17] *Id.* at (2).
[18] *Id.* at (a).

Although not required, some school districts provide opportunities for home education program students to enroll in specified courses in district schools.[19] The public school district may report such home education program students for full-time equivalent funding through the Florida Education Finance Program.[20]

Effect of Proposed Changes

Section 2 amends s. 1002.41, F.S., to specify that a home education program is not a school district program and is registered with the district school superintendent only for the purpose of complying with attendance requirements specified under Florida law.

This section clarifies the definition of a "parent," consistent with Florida law.[21] A parent is defined as either or both parents of a student, any guardian of a student, any person in a parental relationship to a student, or any person exercising supervisory authority over a student in place of the parent. The bill requires the:

- Notice submitted by the parent to include the full legal names of all children who will be enrolled as students in the home education program.
- District school superintendent to accept the notice and immediately register the home education program.
- Parent to file a written notice of termination upon completion of a home education program with the district school superintendent, and requires the notice to accompany the required annual educational evaluation.

Additionally, this section specifies that a school district may not require any additional information or verification, assign a grade level to the home education program student, or include a social security number or any other personal information in any database unless the student chooses to participate in a school district program or service.
This section clarifies that the parent determines the content of a portfolio and provides that a parent must make the portfolio available for inspection if requested by the district school superintendent or agent. The bill also removes the requirement for a district school superintendent to review the annual educational evaluation. Accordingly, the bill provides that a district school superintendent must accept the results of an annual education evaluation without a review of such evaluation.

This section provides to home education program students access to courses, programs, industry certifications and assessments. Specifically, the school district:

- May provide home education program students access to career and technical education courses and may report participating students as full-time equivalent students for funding through the Florida Education Finance Program.
- Must make available to home education program students industry certifications, national assessments, and statewide, standardized assessments offered by the school district. The school district must notify home education program students of available certifications,

[19] Florida Department of Education, Office of School Choice, *Frequently Asked Questions, available at* http://www.fldoe.org/core/fileparse.php/7709/urlt/Home-Ed-FAQs-2017.pdf, at 3.
[20] Florida Department of Education, *FTE General Instructions, 2017-18, available at* http://www.fldoe.org/core/fileparse.php/7508/urlt/1718FTE-GeneralInstructions.pdf, at 29.
[21] Section 1000.21(5), F.S.

assessments, administrations, and deadlines for the student to notify the district of the student's intent to participate.

Finally, this section specifies that the school district may not further regulate, exercise control over, or require documentation from parents of home education program students beyond the requirements of the law, unless the regulation, control, or documentation is necessary for participation in a school district program.

The modifications to the home education program are likely to expedite the establishment of home education programs and may provide the student access to additional courses and programs.

Reading Instruction and Scholarship (Section 3)

Present Situation

Any student in kindergarten through grade 3 who exhibits a substantial deficiency in reading based upon screening, diagnostic, progress monitoring, or assessment data; statewide assessments; or teacher observations must be provided intensive, explicit, systematic, and multisensory reading interventions immediately following the identification of the reading deficiency.[22] A school may not wait for a student to receive a failing grade at the end of a grading period to identify the student as having a substantial reading deficiency and initiate intensive reading interventions.[23] The student's reading proficiency must be monitored and the intensive interventions must continue until the student demonstrates grade level proficiency in a manner determined by the district, which may include achieving a Level 3 on the statewide, standardized English Language Arts (ELA) assessment.[24]

To be promoted to grade 4, a student must score a Level 2 or higher on the statewide, standardized ELA assessment required for grade 3.[25] The parent of any student who exhibits a substantial deficiency in reading must be notified in writing of the student's deficiency in reading, current services that are provided to the child, and a description of the proposed intensive interventions and supports that will be provided to the child that are designed to remediate the reading deficiency.[26]

Each school district that has one or more of the 300 lowest-performing elementary schools based on the state reading assessment for the prior year must use supplemental academic instruction funds, along with the funds provided in the district's research-based reading instruction

[22] Section 1008.25(5)(a), F.S.
[23] *Id*.
[24] *Id*. "Achievement level," "student achievement," or "achievement" describes the level of content mastery a student has acquired in a particular subject as measured by a statewide, standardized assessment administered pursuant to s. 1008.22(3)(a) and (b). There are five achievement levels. Level 1 is the lowest achievement level, level 5 is the highest achievement level, and level 3 indicates satisfactory performance. A student passes an assessment if the student achieves a level 3, level 4, or level 5. Section 1008.34(1)(a), F.S.
[25] Section 1008.25(5)(b), F.S.
[26] *Id.* at (5)(c), F.S.

allocation[27] and other available funds, to provide an additional hour of instruction beyond the normal school day for intensive reading instruction.[28,29] The additional hour of instruction must be provided by teachers or reading specialists who have demonstrated effectiveness in teaching reading or by a K-5 mentoring reading program that is supervised by a teacher who is effective at teaching reading.[30]

After this requirement has been met, supplemental instruction strategies may include, but are not limited to: use of a modified curriculum, reading instruction, after-school instruction, tutoring, mentoring, a reduction in class size, extended school year, intensive skills development in summer school, and other methods of improving student achievement.[31] Supplemental instruction may be provided to a student in any manner and at any time during or beyond the regular 180-day term identified by the school as being the most effective and efficient way to best help that student progress from grade to grade and to graduate.[32]

Effect of Proposed Changes

Section 3 establishes reading scholarship accounts to provide educational options for students, and specifies that each student in grades 3 through 5 who is enrolled in a Florida public school is eligible for the reading scholarship if the student scored below a Level 3 on the grade 3 or grade 4 statewide, standardized ELA assessment in the prior school year. The eligibility requirements for students in grade 3 may apply to students who scored Level 1 on the grade 3 ELA assessment in the prior school year and were retained in grade 3.

This section authorizes an eligible nonprofit scholarship-funding organization (SFO) participating in the Florida Tax Credit Scholarship to establish reading scholarship accounts for eligible students. The scholarship is $500 per eligible student for the 2018-2019 school year, and is available on a first-come, first-served basis contingent on available funds. Thereafter, the maximum scholarship amount will be provided in the General Appropriations Act.

The parent of a student receiving a reading scholarship must submit eligible expenses to the SFO for reimbursement of qualifying expenditures, which may include:

- Instructional materials;

[27] The research-based reading instruction allocation is created to provide comprehensive reading instruction to students in kindergarten through grade 12. Section 1011.62(9)(a), F.S.

[28] Section 1011.62(1)(f)2., F.S. The intensive reading instruction delivered in the additional hour and for other students must include: research-based reading instruction that has been proven to accelerate progress of students exhibiting a reading deficiency; differentiated instruction based on screening, diagnostic, progress monitoring, or student assessment data to meet students' specific reading needs; explicit and systematic reading strategies to develop phonemic awareness, phonics, fluency, vocabulary, and comprehension, with more extensive opportunities for guided practice, error correction, and feedback; and the integration of social studies, science, and mathematics-text reading, text discussion, and writing in response to reading. Section 1011.62(9)(a), F.S. Funds for comprehensive, research-based reading instruction must be allocated annually to each school district in the amount provided in the General Appropriations Act (GAA). Each eligible school district must receive the same minimum amount as specified in the GAA, and any remaining funds must be distributed to eligible school districts based on each school district's proportionate share of K-12 base funding. Section 1011.62(9)(b), F.S.

[29] Students enrolled in these schools who have level 5 assessment scores may participate in the additional hour of instruction on an optional basis. Section 1011.62(1)(f), F.S.

[30] Section 1011.62(1)(f)2., F.S.

[31] *Id*.

[32] *Id*.

- Curriculum;
- Tuition and fees for part-time tutoring services provided by a person who holds an authorized credential;
- Fees for summer education programs and after-school education programs.

This section also specifies responsibilities for parents of eligible students, school districts, Department of Education, and eligible SFOs.

Finally, this section provides that no state liability arises from the award or use of the reading scholarship account.

Participation in Extracurricular Activities (Section 10)

Present Situation

An extracurricular activity is any school-authorized or education-related activity occurring during or outside the regular instructional school day.[33]

An individual home education program student is eligible to participate[34] in extracurricular activities at the public school to which the student would be assigned according to district school board attendance area policies or which the student could choose to attend under controlled open enrollment.[35] The student may also develop an agreement to participate in interscholastic extracurricular activities at a private school.
A home education program student who intends to participate in a public school's extracurricular activity must register with the school his or her intent to participate in the activity before the beginning date of the season for the activity in which he or she wishes to participate.[36]

Effect of Proposed Changes

Section 10 amends s. 1006.15, F.S., to specify that a student must register his or her intent to participate in an extracurricular activity prior to participating in the activity rather than before the beginning date of the season for the activity. Accordingly, the bill provides flexibility for a home education program student to begin participation in such activity.

[33] Section 1006.15(2), F.S.
[34] "Eligible to participate" includes, but is not limited to, a student participating in tryouts, off-season conditioning, summer workouts, preseason conditioning, in-season practice, or contests; but does not require that a student be placed on any specific team for interscholastic or intrascholastic extracurricular activities.
[35] Section 1006.15(3)(c), F.S. Beginning with the 2017-18 school year, each district school board and charter school must adopt a controlled open enrollment plan that allows a parent from any school district in the state to enroll his or her child in and transport his or her child to any public school that has not reached capacity. Section 1002.31, F.S.
[36] Section 1006.15(3)(c)5., F.S.

Dual Enrollment (Section 12)

Present Situation

The dual enrollment program is the enrollment of an eligible secondary student or home education program student in a postsecondary course creditable toward high school completion and a career certificate or an associate or baccalaureate degree.[37]

Each postsecondary institution eligible to participate in the dual enrollment courses[38] must enter into a home education articulation agreement with each home education program student seeking to enroll a dual enrollment course and the student's parent. The home education articulation agreement includes, but is not limited to:[39]

- A delineation of courses and programs available to dually enrolled home education program students. Courses and programs may be added, revised, or deleted at any time by the postsecondary institution.
- The initial and continued eligibility requirements for home education program student participation, not to exceed those required of other dually enrolled students. Florida College System (FCS) institutions may not establish additional requirements in the articulation agreement that arbitrarily prohibit students who have demonstrated the ability to master advanced courses from participating in dual enrollment courses.

Effect of Proposed Changes

Section 12 amends s. 1007.271, F.S., to modify specified provisions in the home education articulation agreement, which may provide home education program students with greater access to dual enrollment courses. Specifically, this section:

- Specifies that any limitations to courses and programs available to home education program students may not exceed the limitations for other dual enrollment students.
- Exempts a home education program student who meets a minimum score on a common placement test from maintaining a high school grade point average (GPA) in order to participate in dual enrollment.
- Clarifies that a home education program student must meet postsecondary requirements for continued eligibility to participate in dual enrollment, which may include maintenance of a minimum postsecondary GPA.
- Prohibits a FCS institution from limiting the number of dual enrollment courses in which a student may enroll based solely upon enrollment by the student at an independent postsecondary institution.

[37] Section 1007.271(1), F.S.
[38] Eligible institutions include public postsecondary institutions and independent colleges or universities, which are not for profit, accredited by a regional or national accrediting agency recognized by the United States Department of Education, and confer postsecondary degrees. Section 1011.62(1)(i), F.S.
[39] Section 1007.271(13)(b), F.S.

School Attendance

Required School Attendance (Section 4)

Present Situation

Except as otherwise provided, children who are age 6 by February 1 of any school year but are not age 16, are required to attend school regularly during the entire school term.[40] Additionally, children who are age 5 by September 1 of the school year are eligible for public kindergarten.[41] A district school superintendent may require evidence of the age of any child whom he or she believes to be within the limits of compulsory attendance as provided for by law.[42]

Effect of Proposed Changes

Section 4 amends s. 1003.21, F.S., to specify that the district school superintendent may require evidence of the age of any child being enrolled in public school whom he or she believes to be within the limits of compulsory attendance. However, the district school superintendent may not require evidence of age from any child who satisfies attendance requirements by attending a:[43]

- Parochial, religious, or denominational school;
- Private school supported in whole or in part by tuition charges or by endowments or gifts;
- Home education program that meets the requirements specified in law; or
- Private tutoring program that meets the requirements specified in law.

Enforcement of School Attendance (Section 5)

Present Situation

When there is no valid reason for a child not to be enrolled in school, a designated school representative must give written notice to the parent that requires enrollment or attendance within three days after the date of notice.[44] If the parent ignores the notice and requirement, the designated school representative must report the case to the district school superintendent and may refer the case to the case staffing committee.[45] The district school superintendent must then take steps necessary to bring criminal prosecution against the parent.[46]

Effect of Proposed Changes

Section 5 amends s. 1003.26, F.S., to authorize an intervention prior to the district school superintendent taking steps to initiate criminal prosecution. If the parent ignores a notice and requirement for enrollment or attendance, the district school superintendent may refer the case to

[40] Section 1003.21(1)(a)1, F.S.
[41] *Id.* at (a)2.
[42] *Id.* at (4).
[43] Section 1003.01(13)(b)-(e), F.S.
[44] Section 1003.26(1)(a), F.S.
[45] *Id.* at (2). The case staffing committee reviews the case of any family or child who the Department of Children and Families determines is in need of services or treatment. Section 984.12(1), F.S.
[46] Section 1003.26(2)(a), F.S.

a child study team[47] at the school the student would be assigned to attend according to district school board's attendance policies.

This section requires the child study team to be diligent in facilitating intervention services and to report the case to the district school superintendent only when all reasonable efforts to resolve the nonenrollment behavior are exhausted. If the parent continues to refuse to cooperate or enroll the child in school, the district school superintendent must take the steps necessary to bring criminal prosecution against the parent.

Court Procedures and Penalties Related to School Attendance (Section 6)

Present Situation

Each parent of a child within the compulsory attendance age is responsible for the child's school attendance as required by law.[48] While the absence of a student from school is evidence of a violation of compulsory attendance, criminal prosecution may not be brought against a parent prior to compliance with provisions related to enforcement of school attendance.[49]

When no valid reason for nonenrollment or nonattendance is found for a student who is required to attend a school, the district school superintendent must institute a criminal prosecution against the student's parent.[50]

Effect of Proposed Changes

Section 6 amends s. 1003.27, F.S., to clarify that court procedures and penalties for nonenrollment or nonattendance may not be initiated against the student's parent until the school and school district have complied with the policies and procedures established to enforce school attendance.

Mastery-Based Education (Section 9)

Present Situation

In 2016[51] the Legislature created the Competency-Based Education Pilot Program (pilot program) within the Department of Education (DOE) to be administered for a period of 5 years,

[47] A child study team is also used for patterns of nonattendance, defined as five unexcused absences, or absences for which the reasons are unknown, within a calendar month or 10 unexcused absences, or absences for which the reasons are unknown, within a 90-calendar-day period. Section 1003.26(1)(b), F.S. The school principal must refer the case to the school's child study team to determine if early patterns of truancy are developing. *Id.* The child study team must implement specified interventions, and may implement other interventions, including referral to other agencies for family services or recommendation for filing a truancy petition. *Id.* at (b) and (c). The child study team must be diligent in facilitating intervention services and shall report the case to the district school superintendent only when all reasonable efforts to resolve the nonattendance behavior are exhausted. *Id.* at (d). District school boards are also authorized to establish policies that require referral to a school's child study team for students who have fewer absences than the established number. Section 1003.02(1)(b), F.S.
[48] Section 1003.24, F.S.
[49] *Id.*
[50] Section 1003.27(2)(a), F.S.
[51] Section 1, ch. 2016-149, L.O.F.

beginning with the 2016-2017 school year.[52] The purpose of the pilot program is to provide an educational environment that allows students to advance to higher levels of learning upon the mastery of concepts and skills through statutory exemptions relating to student progression and the awarding of credits.[53]

The Lake, Palm Beach, Pinellas, and Seminole County School Districts and the P.K. Yonge Developmental Research School may submit an application in a format prescribed by the DOE to participate in the pilot program.[54]

The application to participate in the pilot program must, at a minimum, include:[55]

- The vision and timelines for the implementation of competency-based education within the school district, including a list of the schools that will participate in the pilot program during the first school year and the list of schools that will be integrated into the program in subsequent school years.
- The annual goals and performance outcomes, specified in law, for participating schools.
- A communication plan for parents and other stakeholders, including local businesses and community members.
- The scope of and timelines for professional development for school instructional and administrative personnel.
- A plan for student progression based on the mastery of content, including mechanisms that determine and ensure that a student has satisfied the requirements for grade-level promotion and content mastery.
- A plan for using technology and digital and blended learning to enhance student achievement and facilitate the competency-based education system.
- The proposed allocation of resources for the pilot program at the school and district levels.
- The recruitment and selection of participating schools.
- The rules to be waived for participating schools to implement the pilot program.[56]

Four of the five eligible school districts chose to participate in the pilot program during the 2016-2017 school year.[57] The Seminole County School District elected to use 2016-2017 as a planning year only.[58] Additionally, while the Lake County School District participated in the pilot program in 2016-2017, the district school superintendent decided to suspend the district's

[52] Section 1003.4996, F.S.
[53] *Id.*
[54] Section 1003.4996(1), F.S. The P.K. Yonge Developmental Research School is a public school affiliated with the University of Florida. P.K. Yonge Developmental Research School at the University of Florida, https://pkyonge.ufl.edu/ (last visited Feb. 19, 2018).
[55] Section 1003.4996(2), F.S.
[56] To facilitate innovative practices and to allow local selection of educational methods, the State Board of Education (SBE) may authorize the commissioner to waive, upon the request of a district school board, SBE rules that relate to district school instruction and school operations, except those rules pertaining to civil rights, and student health, safety, and welfare. Section 1001.10(3), F.S. The SBE may authorize the commissioner to grant an additional waiver of rules relating to student progression and the awarding of credits. Section 1003.4996(2)(i), F.S.
[57] Florida Department of Education, *Competency-Based Education Pilot Program, 2016-17 Annual Report* (June 9, 2017), at 1. Email, Florida Department of Education (Feb. 15, 2018).
[58] *Id.*

participation in 2017-2018 to assess the pressing needs of the district, but intends for the school district to participate in the pilot program in 2018-2019.[59]

Effect of Proposed Changes

Section 9 amends s. 1003.4996, F.S., to expand participation in the pilot program to all public school districts.[60] In addition, beginning in the 2018-2019 school year, participating school districts may amend their applications to include alternatives to:

- Awarding credit, which must include a verification of the student's mastery of the applicable course content using rigorous scoring rubrics to evaluate the student's work.
- The interpretation of middle school and high school letter grades, which may substitute the applicable language from the school district's rigorous scoring rubric.

An application that is amended to include such provisions must be approved by the district school board.

Definition of Credit (Section 7)

Present Situation

For the purposes of requirements for high school graduation, one full credit means a minimum of 135 hours of bona fide instruction in a designated course of study that contains student performance standards, except as otherwise provided through the Credit Acceleration Program.[61] For a school authorized to implement block scheduling by the district school board, one full credit means a minimum of 120 hours of bona fide instruction in a designated course of study that contains student performance standards for purposes of meeting high school graduation requirements.[62]

The State Board of Education is required to determine the number of postsecondary credit hours earned through dual enrollment[63] that satisfy the requirements of a dual enrollment articulation agreement[64] and that equal one full credit of the equivalent high school course.[65]

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[59] *Id.*

[60] Each county is designated as a school district. Art IX, sec. 4, Fla. Const. and section 1001.30, F.S. For the purposes of funding and educational facilities, developmental research (laboratory) schools are designated as special school districts. Section 1011.24, F.S. It is unclear, however, if developmental research schools affiliated with Florida Agricultural and Mechanical University, Florida Atlantic University, and Florida State University would be eligible to participate in the mastery-based pilot under section 1003.4996, F.S.

[61] Section 1003.436(1), F.S. The Credit Acceleration Program allows a student to earn high school credit in courses required for high school graduation through passage of an end-of-course assessment, an Advanced Placement Examination, or a College Level Examination Program. Section 1003.4295(3), F.S.

[62] Section 1003.436(1), F.S.

[63] The dual enrollment program is the enrollment of an eligible secondary student or home education student in a postsecondary course creditable toward high school completion and a career certificate or an associate or baccalaureate degree. Section 1007.271, F.S.

[64] The dual enrollment articulation agreement between a school district and public postsecondary institution must delineate the high school credit earned for passage of each dual enrollment course. Section 1007.271(21)(f), F.S.

[65] Section 1003.436(1), F.S. The Commissioner of Education must recommend to the State Board of Education postsecondary courses that meet high school graduation requirements and the number of postsecondary semester credit hours of instruction and equivalent high school credits that are necessary to meet high school graduation requirements. Section 1007.271(9), F.S.

Effect of Proposed Changes

Section 7 amends s. 1003.436, F.S., to authorize district school boards[66] participating in the mastery-based pilot to determine and award credit based on a student's mastery of the core content and skills, consistent with the Next Generation Sunshine State Standards,[67] as approved by the district school board. This section may allow a student to progress more rapidly by completing course competencies without the requirement to meet the minimum hours of instruction.

Middle and High School Grading System (Section 8)

Present Situation

The grading system and interpretation of letter grades used to measure student success in grade 6 through grade 12 courses for students in public schools shall be as follows:[68]

- Grade "A" equals 90 percent through 100 percent, has a grade point average value of 4, and is defined as "outstanding progress."
- Grade "B" equals 80 percent through 89 percent, has a grade point average value of 3, and is defined as "above average progress."
- Grade "C" equals 70 percent through 79 percent, has a grade point average value of 2, and is defined as "average progress."
- Grade "D" equals 60 percent through 69 percent, has a grade point average value of 1, and is defined as "lowest acceptable progress."
- Grade "F" equals zero percent through 59 percent, has a grade point average value of zero, and is defined as "failure."
- Grade "I" equals zero percent, has a grade point average value of zero, and is defined as "incomplete."

For the purposes of class ranking, district school boards may exercise a weighted grading system.[69]

[66] *See supra* note 15. It is unclear if the P.K. Yonge Developmental Research School is included in the authorization in the bill to award credit based on a student's mastery of core content and skills. A district school board refers to the president of the university, or the president's designee, only for the purposes of school improvement and accountability. Section 1002.32(10)(b), F.S.

[67] The Next Generation Sunshine State Standards establish the core content of the curricula to be taught in the state and specify the core content knowledge and skills that K-12 public school students are expected to acquire. Standards must be rigorous and relevant and provide for the logical, sequential progression of core curricular content that incrementally increases a student's core content knowledge and skills over time. Section 1003.41(1), F.S.

[68] Section 1003.437, F.S.

[69] *Id.* School districts and Florida College System institutions must weigh dual enrollment courses the same as advanced placement, International Baccalaureate, and Advanced International Certificate of Education courses when grade point averages are calculated. Alternative grade calculation systems, alternative grade weighting systems, and information regarding student education options that discriminate against dual enrollment courses are prohibited. Section 1007.271(18), F.S.

Effect of Proposed Changes

Section 8 amends s. 1003.437, F.S, to authorize district school boards[70] participating in the mastery-based pilot to use an alternative interpretation of letter grades to measure student success in grade 6 through grade 12.

According to the Department of Education and Board of Governors of the State University System (BOG), the use of an alternative interpretation of the letter grade system by school districts that participate in the pilot program may impact the students' ability to meet the specific minimum grade point average (GPA) requirements for the following:[71]

- National Collegiate Athletic Association Division I and II scholarships;
- Interscholastic extracurricular activities;
- Bright Futures and other scholarships; and
- Dual enrollment.

Statewide Articulation Agreement (Section 11)

Present Situation

The State Board of Education (SBE) and the Board of Governors of the State University System (BOG) are required to enter into a statewide articulation agreement, which must preserve Florida's "2+2" system of articulation, facilitate the seamless articulation of student credit across and among Florida's educational entities, and govern, among other provisions, articulation between secondary and postsecondary education.[72]

Effect of Proposed Changes

Section 11 amends s. 1007.23, F.S., to require the statewide articulation agreement to ensure fair and equitable access for high school graduates with mastery-based, nontraditional diplomas and transcripts. Accordingly, the statewide articulation agreement may need to be updated in rule by the SBE and in regulation by the BOG. In addition, postsecondary institutions may need to update first-time-in-college admissions procedures to revise GPA requirements consistent with alternatives to the letter-grade system.[73]

Florida Partnership for Minority and Underrepresented Student Achievement (Section 13)

Present Situation

The Florida Partnership for Minority and Underrepresented Student Achievement (Florida partnership), was created in 2004[74] to prepare, inspire, and connect students to postsecondary success and opportunity, with a particular focus on minority students and students who are underrepresented in postsecondary education.[75]

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[70] *See supra* note 16.
[71] Department of Education, *2018 Agency Analysis for SB 968* (Dec. 1, 2017), at 4 and 7, and Board of Governors, *2018 Bill Analysis of SB 968* (Dec. 13, 2017), at 4.
[72] Section 1007.23(1), F.S.
[73] Board of Governors, *2018 Bill Analysis of SB 968* (Dec. 13, 2017), at 3-4.
[74] Section 1, ch. 2004-63, L.O.F.
[75] Section 1007.35(4), F.S.

The Florida partnership provides to students enrolled in grade 10 in public schools access to the preliminary ACT and another specified assessment.[76] Test results will provide each high school with a database of student assessment data that certified school counselors must use to identify students who are prepared or who need additional work to be prepared to enroll and be successful in AP courses or other advanced high school courses.[77]

The Florida partnership is required to provide information to students and other specified recipients regarding the preliminary ACT or PSAT/NMSQT administration and participation by 10th grade students.[78] The Florida partnership must also submit to the Florida Department of Education (DOE) a report that, among other items, evaluates the level of participation in the preliminary ACT.[79]

Additionally, the DOE must contribute to the evaluation of the Florida partnership by providing access to student and teacher information necessary to match against databases containing teacher professional development data and against databases containing assessment data for the PSAT/NMSQT, SAT, AP, and other appropriate measures.[80]

Effect of Proposed Changes

Section 13 amends s. 1007.35, F.S., to retain the requirements of the Florida partnership but updates the name of the preliminary ACT to the PreACT to be consistent with the correct name of the assessment.[81] In addition this section:

- Adds dual enrollment to the types of college credit-bearing courses that certified school counselors must use PSAT/NMSQT or PreACT data to identify students who are prepared to enroll in and be successful in advanced high school courses or college credit-bearing courses.
- Adds the ACT and the PreACT to specified assessments in databases for which the DOE must provide access for evaluation purposes.

The bill takes effect July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

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[76] *Id.* at (5). Public high schools are required to provide for the administration of the Preliminary ACT or the Preliminary SAT/National Merit Scholarship Qualifying Test (PSAT/NMSQT). *Id.*
[77] *Id.* at (5)(a), F.S.
[78] *Id.* at (6)(j), F.S.
[79] *Id.* at (8)(a), F.S.
[80] *Id.*
[81] ACT, *PreACT*, https://www.act.org/content/act/en/products-and-services/preact/preact-classroom.html (last visited Jan. 23, 2018).

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

For the 2018-2019 fiscal year, the bill appropriates the sum of $9.7 million in recurring funds from the General Revenue Fund to the Department of Education to fund reading scholarship accounts and $300,000 in recurring funds from the General Revenue Fund toward related administrative fees.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 1002.385, 1002.41, 1003.21, 1003.26, 1003.27, 1003.436, 1003.437, 1003.4996, 1006.15, 1007.271, 1007.23, and 1007.35.

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 March 2, 2018:
The committee substitute maintains the substance of the bill with the following modifications:

- Renames the Competency-Based Education Pilot Program as the Mastery-Based Education Pilot Program (mastery-based pilot) and:
  - Expands participation in the mastery-based pilot to all school districts.
  - Authorizes district school boards participating in the mastery-based pilot to determine award of credit based on mastery of content and skills and to use an

alternative interpretation of letter grades to measure student success in grades 6 through 12.
    - Requires the statewide articulation agreement to ensure fair and equitable access for high school graduates with mastery-based, nontraditional diplomas and transcripts.
- Modifies the Gardiner Scholarship Program (program) to:
    - Revise the definition of a rare disease based on the Orphan Drug Act of 1983, for the purposes of the program.
    - Expand authorized uses of program funds to include tuition or fees associated with full-time or part-time enrollment in home education program; tuition or fees for enrollment in recognized research-based training program; and fees for art, music, and sports lessons.
    - Eliminates private tutoring programs from authorized uses of program funds but expand the entities who may provide part-time tutoring services to include individuals who hold a valid teaching certificate from another state and individuals who have a bachelor's or higher degree in the subject area in which instruction is given.
    - Clarify accountability provisions regarding private schools that participate in the program.
- Establishes reading scholarship accounts for public school students in grades 3 through 5 who scored below a Level 3 on the grade 3 or grade 4 statewide, standardized ELA assessment in the prior school year

CS by Education on January 22, 2018:
The committee substitute modifies requirements in the bill regarding home education program students' enrollment in extracurricular courses and dual enrollment. The bill also modifies provisions relating to the Florida Partnership for Minority and Underrepresented Student Achievement. Specifically, the committee substitute:

- Removes the bill's provision that deemed home education program students eligible to participate in extracurricular courses, which are exempted from maximum class size requirements, regardless of the school's capacity under controlled open enrollment; and deletes related conforming provisions and exemptions from meeting school district residency requirements and standards for acceptance to extracurricular activities.
- Modifies the provision in the bill related to home education program students' participation in dual enrollment to clarify that such students must maintain the minimum postsecondary grade point average for continued enrollment in dual enrollment courses, not limited to only the college credit dual enrollment courses.
- Updates cross references to home education program portfolio specifications under provisions related to the enforcement of school attendance, and home education program annual evaluations under provisions related to participation in the Gardiner Scholarship Program.
- Modifies the Florida Partnership for Minority and Underrepresented Student Achievement to:
    - Update the name of the preliminary ACT to the PreACT.

- Add the ACT and the PreACT to specified assessments included in databases containing assessment data, to which the Department of Education must provide access for evaluation purposes.
- Add dual enrollment to the types of college credit-bearing courses for which certified school counselors will use PSAT/NMSQT or PreACT data to identify students who are prepared to enroll in and be successful in advanced high school courses or college credit-bearing courses.

B. Amendments:

None.

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

By the Committee on Education; and Senator Baxley

581-02337-18 2018732c1

A bill to be entitled

An act relating to K-12 education; amending s. 1002.41, F.S.; specifying that a home education program is not a school district program and is registered with the district school superintendent only for the purpose of complying with the state's attendance requirements; revising the content requirements of a notice of enrollment of a student in a home education program; requiring the district school superintendent to immediately register a home education program upon receipt of the notice; prohibiting a school district from requiring additional information or verification of a home education student except in specified circumstances; authorizing a school district to provide home education program students with access to certain courses and programs offered by the school district; requiring reporting and funding through the Florida Education Finance Program; requiring home education program students be provided access to certain certifications and assessments offered by the school district; prohibiting a school district from taking certain actions against a home education program student's parent unless such action is necessary for a school district program; amending s. 1003.21, F.S.; prohibiting a district school superintendent from requiring certain evidence relating to a child's age from children enrolled in specified schools and programs; amending s. 1003.26, F.S.; revising

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reporting requirements for specified issues relating to compulsory school attendance; amending s. 1003.27, F.S.; requiring a school and school district to comply with specified provisions before instituting criminal prosecution against certain parents relating to compulsory school attendance; amending s. 1006.15, F.S.; revising the standards required for a home education student to participate in extracurricular activities; amending s. 1007.271, F.S.; prohibiting dual enrollment course and program limitations for home education students from exceeding limitations for other students; providing an exemption from the grade point average requirement for initial enrollment in a dual enrollment program for certain home education students; amending s. 1007.35, F.S.; updating terminology; requiring the Department of Education to provide certain teacher and student ACT and PreACT information for the evaluation of certain services and activities; amending s. 1002.385, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Subsections (1) and (2) of section 1002.41, Florida Statutes, are amended, and subsections (11), (12), and (13) are added to that section, to read:

1002.41 Home education programs.—

(1) As used in this section, the term ~~A~~ "home education program" has the same meaning as ~~is defined~~ in s. 1002.01. A

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home education program is not a school district program and is registered with the district school superintendent only for the purpose of complying with the state's attendance requirements under s. 1003.21(1). The parent is not required to hold a valid regular Florida teaching certificate.

(a) The parent, as defined in s. 1000.21, who establishes and maintains a home education program shall notify the district school superintendent of the county in which the parent resides of her or his intent to establish and maintain a home education program. The notice must ~~shall~~ be in writing, signed by the parent, and ~~shall~~ include the full legal names, addresses, and birthdates of all children who shall be enrolled as students in the home education program. The notice must ~~shall~~ be filed in the district school superintendent's office within 30 days of the establishment of the home education program.

(b) The district school superintendent shall accept the notice and immediately register the home education program upon receipt of the notice. The district may not require any additional information or verification from the parent unless the student chooses to participate in a school district program or service. The district school superintendent may not assign a grade level to the home education student or include a social security number or any other personal information of the student in any school district or state database unless the student chooses to participate in a school district program or service; and

(c) The parent shall file a written notice of termination upon completion of the home education program with ~~shall be filed in~~ the district school superintendent, along with the

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annual evaluation required in paragraph (f), within ~~superintendent's office within~~ 30 days of ~~after said~~ termination.

(d) ~~(b)~~ The parent shall maintain a portfolio of records and materials. The portfolio must ~~shall~~ consist of the following:

1. A log of educational activities that is made contemporaneously with the instruction and that designates by title any reading materials used.

2. Samples of any writings, worksheets, workbooks, or creative materials used or developed by the student.

(e) The parent shall determine the content of the portfolio, preserve it ~~shall be preserved by the parent~~ for 2 years, and make it ~~shall be made~~ available for inspection, if requested, by the district school superintendent, or the district school superintendent's agent, upon 15 days' written notice. Nothing in this section shall require the district school superintendent to inspect the portfolio.

(f) ~~(c)~~ The parent shall provide for an annual educational evaluation in which is documented the student's demonstration of educational progress at a level commensurate with her or his ability. The parent shall select the method of evaluation and shall file a copy of the evaluation annually with the district school superintendent's office in the county in which the student resides. The annual educational evaluation shall consist of one of the following:

1. A teacher selected by the parent shall evaluate the student's educational progress upon review of the portfolio and discussion with the student. Such teacher shall hold a valid regular Florida certificate to teach academic subjects at the

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elementary or secondary level;

2. The student shall take any nationally normed student achievement test administered by a certified teacher;

3. The student shall take a state student assessment test used by the school district and administered by a certified teacher, at a location and under testing conditions approved by the school district;

4. The student shall be evaluated by an individual holding a valid, active license pursuant to the provisions of s. 490.003(7) or (8); or

5. The student shall be evaluated with any other valid measurement tool as mutually agreed upon by the district school superintendent of the district in which the student resides and the student's parent.

(2) The district school superintendent shall ~~review and~~ accept the results of the annual educational evaluation of the student in a home education program. If the student does not demonstrate educational progress at a level commensurate with her or his ability, the district school superintendent shall notify the parent, in writing, that such progress has not been achieved. The parent shall have 1 year from the date of receipt of the written notification to provide remedial instruction to the student. At the end of the 1-year probationary period, the student shall be reevaluated as specified in paragraph (1)(f) ~~(1)(c)~~. Continuation in a home education program shall be contingent upon the student demonstrating educational progress commensurate with her or his ability at the end of the probationary period.

(11) A school district may provide access to career and

technical courses and programs for a home education program student who enrolls in a public school solely for the career and technical courses or programs. The school district that provides the career and technical courses and programs shall report each student as a full-time equivalent student in the class and in a manner prescribed by the department, and funding shall be provided through the Florida Education Finance Program pursuant to s. 1011.62.

(12) Industry certifications, national assessments, and statewide, standardized assessments offered by the school district shall be available to home education program students. Each school district shall notify home education program students of the available certifications and assessments; the date, time, and locations for the administration of each certification and assessment; and the deadline for notifying the school district of the student's intent to participate and the student's preferred location.

(13) A school district may not further regulate, exercise control over, or require documentation from parents of home education program students beyond the requirements of this section unless the regulation, control, or documentation is necessary for participation in a school district program.

Section 2. Subsection (4) of section 1003.21, Florida Statutes, is amended to read:

1003.21 School attendance.—

(4) Before admitting a child to kindergarten, the principal shall require evidence that the child has attained the age at which he or she should be admitted in accordance with the provisions of subparagraph (1)(a)2. The district school

superintendent may require evidence of the age of any child who is being enrolled in public school who the district school superintendent ~~whom he or she~~ believes to be within the limits of compulsory attendance as provided for by law; however, the district school superintendent may not require evidence from any child who meets regular attendance requirements by attending a school or program listed in s. 1003.01(13)(b)-(e). If the first prescribed evidence is not available, the next evidence obtainable in the order set forth below shall be accepted:

(a) A duly attested transcript of the child's birth record filed according to law with a public officer charged with the duty of recording births;

(b) A duly attested transcript of a certificate of baptism showing the date of birth and place of baptism of the child, accompanied by an affidavit sworn to by the parent;

(c) An insurance policy on the child's life that has been in force for at least 2 years;

(d) A bona fide contemporary religious record of the child's birth accompanied by an affidavit sworn to by the parent;

(e) A passport or certificate of arrival in the United States showing the age of the child;

(f) A transcript of record of age shown in the child's school record of at least 4 years prior to application, stating date of birth; or

(g) If none of these evidences can be produced, an affidavit of age sworn to by the parent, accompanied by a certificate of age signed by a public health officer or by a public school physician, or, if these are not available in the

county, by a licensed practicing physician designated by the district school board, which states that the health officer or physician has examined the child and believes that the age as stated in the affidavit is substantially correct. Children and youths who are experiencing homelessness and children who are known to the department, as defined in s. 39.0016, shall be given temporary exemption from this section for 30 school days.

Section 3. Paragraph (f) of subsection (1) and paragraph (a) of subsection (2) of section 1003.26, Florida Statutes, are amended to read:

1003.26 Enforcement of school attendance.—The Legislature finds that poor academic performance is associated with nonattendance and that school districts must take an active role in promoting and enforcing attendance as a means of improving student performance. It is the policy of the state that each district school superintendent be responsible for enforcing school attendance of all students subject to the compulsory school age in the school district and supporting enforcement of school attendance by local law enforcement agencies. The responsibility includes recommending policies and procedures to the district school board that require public schools to respond in a timely manner to every unexcused absence, and every absence for which the reason is unknown, of students enrolled in the schools. District school board policies shall require the parent of a student to justify each absence of the student, and that justification will be evaluated based on adopted district school board policies that define excused and unexcused absences. The policies must provide that public schools track excused and unexcused absences and contact the home in the case of an

unexcused absence from school, or an absence from school for which the reason is unknown, to prevent the development of patterns of nonattendance. The Legislature finds that early intervention in school attendance is the most effective way of producing good attendance habits that will lead to improved student learning and achievement. Each public school shall implement the following steps to promote and enforce regular school attendance:

(1) CONTACT, REFER, AND ENFORCE.—

(f)1. If the parent of a child who has been identified as exhibiting a pattern of nonattendance enrolls the child in a home education program pursuant to chapter 1002, the district school superintendent shall provide the parent a copy of s. 1002.41 and the accountability requirements of this paragraph. The district school superintendent shall also refer the parent to a home education review committee composed of the district contact for home education programs and at least two home educators selected by the parent from a district list of all home educators who have conducted a home education program for at least 3 years and who have indicated a willingness to serve on the committee. The home education review committee shall review the portfolio of the student, as defined by s. 1002.41, every 30 days during the district's regular school terms until the committee is satisfied that the home education program is in compliance with s. 1002.41(1)(d) ~~s. 1002.41(1)(b)~~. The first portfolio review must occur within the first 30 calendar days of the establishment of the program. The provisions of subparagraph 2. do not apply once the committee determines the home education program is in compliance with s. 1002.41(1)(d) ~~s. 1002.41(1)(b)~~.

2. If the parent fails to provide a portfolio to the committee, the committee shall notify the district school superintendent. The district school superintendent shall then terminate the home education program and require the parent to enroll the child in an attendance option that meets the definition of "regular school attendance" under s. 1003.01(13)(a), (b), (c), or (e), within 3 days. Upon termination of a home education program pursuant to this subparagraph, the parent shall not be eligible to reenroll the child in a home education program for 180 calendar days. Failure of a parent to enroll the child in an attendance option as required by this subparagraph after termination of the home education program pursuant to this subparagraph shall constitute noncompliance with the compulsory attendance requirements of s. 1003.21 and may result in criminal prosecution under s. 1003.27(2). Nothing contained herein shall restrict the ability of the district school superintendent, or the ability of his or her designee, to review the portfolio pursuant to s. 1002.41(1)(e) ~~s. 1002.41(1)(b)~~.

(2) GIVE WRITTEN NOTICE.—

(a) Under the direction of the district school superintendent, a designated school representative shall give written notice that requires enrollment or attendance within 3 days after the date of notice, in person or by return-receipt mail, to the parent when no valid reason is found for a student's nonenrollment in school. If the notice and requirement are ignored, the designated school representative shall report the case to the district school superintendent, who ~~and~~ may refer the case to the child study team in paragraph (1)(b) at

the school the student would be assigned according to district school board attendance area policies or to the case staffing committee, established pursuant to s. 984.12. The child study team shall diligently facilitate intervention services and shall report the case back to the district school superintendent only when all reasonable efforts to resolve the nonenrollment behavior are exhausted. If the parent still refuses to cooperate or enroll the child in school, the district school superintendent shall take such steps as are necessary to bring criminal prosecution against the parent.

Section 4. Subsection (2) of section 1003.27, Florida Statutes, is amended to read:

1003.27 Court procedure and penalties.—The court procedure and penalties for the enforcement of the provisions of this part, relating to compulsory school attendance, shall be as follows:

(2) NONENROLLMENT AND NONATTENDANCE CASES.—

(a) In each case of nonenrollment or of nonattendance upon the part of a student who is required to attend some school, when no valid reason for such nonenrollment or nonattendance is found, the district school superintendent shall institute a criminal prosecution against the student's parent. However, criminal prosecution may not be instituted against the student's parent until the school and school district have complied with s. 1003.26.

(b) Each public school principal or the principal's designee shall notify the district school board of each minor student under its jurisdiction who accumulates 15 unexcused absences in a period of 90 calendar days. ~~Each designee of the~~

~~governing body of each private school, and each parent whose child is enrolled in a home education program, may provide the Department of Highway Safety and Motor Vehicles with the legal name, sex, date of birth, and social security number of each minor student under his or her jurisdiction who fails to satisfy relevant attendance requirements and who fails to otherwise satisfy the requirements of s. 322.091.~~ The district school superintendent must provide the Department of Highway Safety and Motor Vehicles the legal name, sex, date of birth, and social security number of each minor student who has been reported under this paragraph and who fails to otherwise satisfy the requirements of s. 322.091. The Department of Highway Safety and Motor Vehicles may not issue a driver license or learner's driver license to, and shall suspend any previously issued driver license or learner's driver license of, any such minor student, pursuant to the provisions of s. 322.091.

(c) Each designee of the governing body of each private school and each parent whose child is enrolled in a home education program may provide the Department of Highway Safety and Motor Vehicles with the legal name, sex, date of birth, and social security number of each minor student under his or her jurisdiction who fails to satisfy relevant attendance requirements and who fails to otherwise satisfy the requirements of s. 322.091. The Department of Highway Safety and Motor Vehicles may not issue a driver license or learner's driver license to, and shall suspend any previously issued driver license or learner's driver license of, any such minor student, pursuant to s. 322.091.

Section 5. Paragraph (c) of subsection (3) of section

1006.15, Florida Statutes, is amended to read:

1006.15 Student standards for participation in interscholastic and intrascholastic extracurricular student activities; regulation.—

(3)

(c) An individual home education student is eligible to participate at the public school to which the student would be assigned according to district school board attendance area policies or which the student could choose to attend pursuant to s. 1002.31, or may develop an agreement to participate at a private school, in the interscholastic extracurricular activities of that school, provided the following conditions are met:

1. The home education student must meet the requirements of the home education program pursuant to s. 1002.41.

2. During the period of participation at a school, the home education student must demonstrate educational progress as required in paragraph (b) in all subjects taken in the home education program by a method of evaluation agreed upon by the parent and the school principal which may include: review of the student's work by a certified teacher chosen by the parent; grades earned through correspondence; grades earned in courses taken at a Florida College System institution, university, or trade school; standardized test scores above the 35th percentile; or any other method designated in s. 1002.41.

3. The home education student must meet the same residency requirements as other students in the school at which he or she participates.

4. The home education student must meet the same standards

of acceptance, behavior, and performance as required of other students in extracurricular activities.

5. The student must register with the school his or her intent to participate in interscholastic extracurricular activities as a representative of the school before participation ~~the beginning date of the season for the activity in which he or she wishes to participate~~. A home education student must be able to participate in curricular activities if that is a requirement for an extracurricular activity.

6. A student who transfers from a home education program to a public school before or during the first grading period of the school year is academically eligible to participate in interscholastic extracurricular activities during the first grading period provided the student has a successful evaluation from the previous school year, pursuant to subparagraph 2.

7. Any public school or private school student who has been unable to maintain academic eligibility for participation in interscholastic extracurricular activities is ineligible to participate in such activities as a home education student until the student has successfully completed one grading period in home education pursuant to subparagraph 2. to become eligible to participate as a home education student.

Section 6. Paragraph (b) of subsection (13) of section 1007.271, Florida Statutes, is amended to read:

1007.271 Dual enrollment programs.—

(13)

(b) Each postsecondary institution eligible to participate in the dual enrollment program pursuant to s. 1011.62(1)(i) must enter into a home education articulation agreement with each

home education student seeking enrollment in a dual enrollment course and the student's parent. By August 1 of each year, the eligible postsecondary institution shall complete and submit the home education articulation agreement to the Department of Education. The home education articulation agreement must include, at a minimum:

1. A delineation of courses and programs available to dually enrolled home education students. Courses and programs may be added, revised, or deleted at any time by the postsecondary institution. Any course or program limitations may not exceed the limitations for other dually enrolled students.

2. The initial and continued eligibility requirements for home education student participation, not to exceed those required of other dually enrolled students. A high school grade point average may not be required for home education students who meet the minimum score on a common placement test adopted by the State Board of Education which indicates that the student is ready for college-level coursework; however, home education student eligibility requirements for continued enrollment in dual enrollment courses must include the maintenance of the minimum postsecondary grade point average established by the postsecondary institution.

3. The student's responsibilities for providing his or her own instructional materials and transportation.

4. A copy of the statement on transfer guarantees developed by the Department of Education under subsection (15).

Section 7. Subsection (5), paragraph (j) of subsection (6), and subsection (8) of section 1007.35, Florida Statutes, are amended to read:

1007.35 Florida Partnership for Minority and Underrepresented Student Achievement.—

(5) Each public high school, including, but not limited to, schools and alternative sites and centers of the Department of Juvenile Justice, shall provide for the administration of the Preliminary SAT/National Merit Scholarship Qualifying Test (PSAT/NMSQT), or the PreACT ~~preliminary ACT~~ to all enrolled 10th grade students. However, a written notice shall be provided to each parent which must include the opportunity to exempt his or her child from taking the PSAT/NMSQT or the PreACT ~~preliminary ACT~~.

(a) Test results will provide each high school with a database of student assessment data which certified school counselors will use to identify students who are prepared or who need additional work to be prepared to enroll and be successful in credit-bearing college coursework, including dual enrollment programs, AP courses, or other advanced high school courses.

(b) Funding for the PSAT/NMSQT or the PreACT ~~preliminary ACT~~ for all 10th grade students shall be contingent upon annual funding in the General Appropriations Act.

(c) Public school districts must choose either the PSAT/NMSQT or the PreACT ~~preliminary ACT~~ for districtwide administration.

(6) The partnership shall:

(j) Provide information to students, parents, teachers, counselors, administrators, districts, Florida College System institutions, and state universities regarding PSAT/NMSQT or the PreACT ~~preliminary ACT~~ administration, including, but not limited to:

1. Test administration dates and times.

2. That participation in the PSAT/NMSQT or the PreACT ~~preliminary ACT~~ is open to all 10th grade students.

3. The value of such tests in providing diagnostic feedback on student skills.

4. The value of student scores in predicting the probability of success on AP or other advanced course examinations.

(8)(a) By September 30 of each year, the partnership shall submit to the department a report that contains an evaluation of the effectiveness of the delivered services and activities. Activities and services must be evaluated on their effectiveness at raising student achievement and increasing the number of AP or other advanced course examinations in low-performing middle and high schools. Other indicators that must be addressed in the evaluation report include the number of middle and high school teachers trained; the effectiveness of the training; measures of postsecondary readiness of the students affected by the program; levels of participation in 10th grade PSAT/NMSQT or the PreACT ~~preliminary ACT~~ testing; and measures of student, parent, and teacher awareness of and satisfaction with the services of the partnership.

(b) The department shall contribute to the evaluation process by providing access, consistent with s. 119.071(5)(a), to student and teacher information necessary to match against databases containing teacher professional development data and databases containing assessment data for the PSAT/NMSQT, SAT, ACT, PreACT, AP, and other appropriate measures. The department shall also provide student-level data on student progress from

middle school through high school and into college and the workforce, if available, in order to support longitudinal studies. The partnership shall analyze and report student performance data in a manner that protects the rights of students and parents as required in 20 U.S.C. s. 1232g and s. 1002.22.

Section 8. Paragraph (l) of subsection (5) and paragraph (a) of subsection (11) of section 1002.385, Florida Statutes, are amended to read:

1002.385 The Gardiner Scholarship.—

(5) AUTHORIZED USES OF PROGRAM FUNDS.—Program funds must be used to meet the individual educational needs of an eligible student and may be spent for the following purposes:

(l) Fees for an annual evaluation of educational progress by a state-certified teacher under s. 1002.41(1)(f) ~~s. 1002.41(1)(c)~~, if this option is chosen for a home education student.

A provider of any services receiving payments pursuant to this subsection may not share, refund, or rebate any moneys from the Gardiner Scholarship with the parent or participating student in any manner. A parent, student, or provider of any services may not bill an insurance company, Medicaid, or any other agency for the same services that are paid for using Gardiner Scholarship funds.

(11) PARENT AND STUDENT RESPONSIBILITIES FOR PROGRAM PARTICIPATION.—A parent who applies for program participation under this section is exercising his or her parental option to determine the appropriate placement or the services that best

meet the needs of his or her child. The scholarship award for a student is based on a matrix that assigns the student to support Level III services. If a parent receives an IEP and a matrix of services from the school district pursuant to subsection (7), the amount of the payment shall be adjusted as needed, when the school district completes the matrix.

(a) To satisfy or maintain program eligibility, including eligibility to receive and spend program payments, the parent must sign an agreement with the organization and annually submit a notarized, sworn compliance statement to the organization to:

1. Affirm that the student is enrolled in a program that meets regular school attendance requirements as provided in s. 1003.01(13)(b)-(d).

2. Affirm that the program funds are used only for authorized purposes serving the student's educational needs, as described in subsection (5).

3. Affirm that the parent is responsible for the education of his or her student by, as applicable:

a. Requiring the student to take an assessment in accordance with paragraph (8)(c);

b. Providing an annual evaluation in accordance with s. 1002.41(1)(f) ~~s. 1002.41(1)(c)~~; or

c. Requiring the child to take any preassessments and postassessments selected by the provider if the child is 4 years of age and is enrolled in a program provided by an eligible Voluntary Prekindergarten Education Program provider. A student with disabilities for whom a preassessment and postassessment is not appropriate is exempt from this requirement. A participating provider shall report a student's scores to the parent.

4. Affirm that the student remains in good standing with the provider or school if those options are selected by the parent.

A parent who fails to comply with this subsection forfeits the Gardiner Scholarship.

Section 9. 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 8, 2018

The Honorable Senator Rob Bradley
414 Senate Office Building
Tallahassee, Florida 32399

Dear Senator Bradley,

I respectfully request that CS/SB 732 Home Education be placed on your next available agenda.

The bill clarifies the roles of the parent and the superintendent in a home education program consistent with Florida law. It specifies limits on information required by the school district from a parent unless the home education program student chooses to participate in a district program or service.

The bill also authorizes a school district to provide to home education program students access to career and technical education courses and programs. It requires access to extracurricular courses, regardless of the public school's capacity and specifies that a student must register intent to participate in an extracurricular activity before participation, rather than before the beginning date of the season for the activity.

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)

3-2-18
Meeting Date

732
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Home Education

Name BRENDA DICKINSON

Job Title Lobbyist

Address 1427 Pine St. *Street*

Phone 850-264-2184

TALLAHASSEE *City* FL *State* 32303 *Zip*

Email CONSULTINGBRENDA@gmail.com

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

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

Representing The Home Education FOUNDATION

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

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

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/2/18
Meeting Date

~~SB~~ 132
Bill Number (if applicable)

677438
Amendment Barcode (if applicable)

Topic Gardiner Scholarship

Name Alexis Flowees

Job Title Manager, External Affairs

Address 2444 Guenann Dr
Street

Phone (727) 451-9871

Clearwater FL 33764
City *State* *Zip*

Email aflowees@sufs.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Step Up For Students

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons 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 744
INTRODUCER:	Appropriations Committee; Health Policy Committee; and Senator Grimsley
SUBJECT:	Laser Hair Removal or Reduction
DATE:	March 5, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-VanWinkle	Stovall	HP	**Fav/CS**
2.	Davis	Hansen	AP	**Fav/CS**
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 744 revises the framework for the oversight of electrology by eliminating the Electrolysis Council (EC) and its oversight of the practice of electrology. The Board of Medicine (board) is solely responsible for regulating the practice of electrology.

The definition of "electrolysis or electrology" is revised to reflect technological advancements; removing reference to the permanent removal of hair by destroying the hair-producing cells of the skin and vascular system from the definition. The bill defines "electrolysis or electrology" as the permanent removal of hair using equipment and devices that have been cleared by and registered with the United States Food and Drug Administration (FDA) and that are used pursuant to protocols approved by the board.

The bill requires that a licensed electrologist who uses a laser or pulsed-light device in a laser hair removal or reduction procedure must be certified in the use of these devices.

The bill has no fiscal impact on state revenues or expenditures.

The bill takes effect October 1, 2018.

II. Present Situation:

State Regulation of Electrology

The board within the Florida Department of Health (department) licenses, monitors, disciplines, educates, and rehabilitates physicians and other practitioners to assure their fitness and competence in the service of the people of Florida.[1] Electrology is a practice that is regulated by the board, with input by the EC.[2] The EC is a body that is housed within the board. These entities are given authority to investigate complaints, impose discipline on a license, and perform inspections related to electrolysis.[3]

"Electrolysis or electrology" is defined as the permanent removal of hair by destroying the hair-producing cells of the skin and vascular system, using equipment and devices approved by the board which have been cleared by, and registered with, the FDA and that are used pursuant to protocols approved by the board.[4]

The EC consists of five members appointed by the board. The EC meets quarterly and has the following responsibilities:[5]

- Approval and denial of applicants by examination and endorsement;
- Approval and denial of continuing education providers and electrolysis training programs;
- Authority to accept non-disciplinary voluntarily relinquishments;
- Authority to notice rules for development and to propose rules to the board; and
- Initial consideration of rulemaking proposals, petitions to adopt, amend, or repeal rules related to electrology and making recommendations to the board as to the appropriate action to be taken.

A person may not practice electrolysis or hold himself or herself out as an electrologist unless that person has an active valid Florida license.[6] Specifically, an applicant for a license must:

- Be at least 18 years old;
- Be of good moral character;
- Possess a high school diploma or high school equivalency diploma;
- Have not committed in any jurisdiction an act that constitutes grounds for discipline as an electrologist in Florida;
- Have successfully completed the 120-hour electrolysis training program and board approved 200-hour practical application; and
- Have passed a written examination developed by the department or a national examination approved by the board.[7]

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[1] FLORIDA BOARD OF MEDICINE, http://flboardofmedicine.gov/ (last visited Feb. 19, 2018).
[2] *See* ch. 478, F.S., and Fla. Admin. Code R. 64B8-50 through 64B8-56.
[3] ss. 478.43, 478.51, and 478.52, F.S.
[4] Section 478.42(5), F.S.
[5] Section 478.44, F.S., and Fla. Admin. Code R. 64B8-50.003.
[6] Section 478.49(1), F.S.
[7] Section 478.45(1) and (2), F.S., and Florida Department of Health, *Analysis of SB 744* (November 2, 2017)(on file with the Senate Subcommittee on General Government).

The department may issue temporary permits to qualified applicants to practice electrology that are valid until the next board meeting at which licensing decisions occur, or the next exam results are issued.[8]

The board, with the assistance of the EC,[9] establishes minimum standards for the delivery of electrolysis services and adopts rules to implement ch. 478, F.S.[10]

Electrology facilities must be licensed by the department. The board is responsible for rulemaking to govern the licensure, operation, personnel, and safety and sanitary requirements of electrology facilities.[11]

Use of Laser and Light-based Devices for Hair Removal or Reduction

The board has established by rule an allowance for a Florida electrologist to use laser and light-based devices for hair removal or reduction, which are procedures above the initial scope of licensure, if he or she:

- Has completed a 30-hour continuing education course approved by the EC;[12]
- Is certified in the use of laser and light-based devices for the removal or reduction of hair by a national certification organization approved by the EC and the board (i.e. passed the Certified Medical Electrologist Exam (CME) given by the Society for Clinical & Medical Hair Removal, Inc. (SCMHR));
- Is using only the laser and light-based hair removal or reduction devices upon which they have been trained; and
- Is operating under the direct supervision and responsibility of a physician[13] properly trained in laser hair removal and licensed pursuant to chs. 458 or 459, F.S.[14]

The EC and the board have approved the SCMHR,[15] as the national certification organization to certifiy Florida electrologists in the use of laser and pulse-light devices for the removal or reduction of hair.[16] The SCMHR offers certification for use of laser and light-based devices, education programs for hair removal procedures, and membership services.[17] The CME test that is required by the department is $200 for members of the organization and $300 for non-

[8] Section 478.46, F.S.
[9] Section 478.44, F.S., creates the Electrolysis Council, and specifies its membership and meeting requirements.
[10] Section 478.43, F.S. *See* Rules 64B8-50 through 64B8-56, F.A.C., which regulate the licensure, practice, continuing education, and discipline of electrologists.
[11] Section 478.51, F.S.
[12] Fla. Admin. Code R. 64B8-52.004.
[13] A physician cannot supervise more than four electrologists at any one time. Fla. Admin. Code R. 64B8-56.002(6).
[14] Fla. Admin. Code R. 64B8-56.002(2).
[15] The Society for Clinical & Medical Hair Removal, Inc., is an international non-profit organization with members in the United States, Canada, and abroad. The Society for Clinical & Medical Hair Removal offers four certifications through International Commission for Hair Removal Certification (ICHRC) competency-based certification examinations. These certifications enhance the professional growth of members and the Society, and all allied health practitioners, including physicians, electrologists, nurses and others authorized to practice in the jurisdiction in which they practice. *See* The Society of Clinical & Medical Hair Removal, Inc., *Certification* https://www.scmhr.org/certification/ (last visited Feb. 8, 2018).
[16] Department of Health, Licensing and Regulation, Electrolysis, *Laser Information* http://www.floridahealth.gov/licensing-and-regulation/electrolysis/laser/index.html (last visited Feb. 8, 2018).
[17] THE SOCIETY FOR CLINICAL & MEDICAL HAIR REMOVAL, INC., *About Us*, https://www.scmhr.org/ (last visited Feb. 20, 2018).

members.[18] Certification that is obtained by passing the test lasts for five years, at which time either taking continuing education units (7.5 units at $25 per[19]) or a reexamination is required to renew.[20] Membership costs $195 annually.[21] Currently, Florida electrologists using laser or light-based devices do not need to renew or maintain such certification to continue to use such devices.[22]

If a licensee violates the Electrology Practice Act, he or she can be disciplined[23] and be given penalties set forth in s. 456.072, F.S., which include suspension, probation, fines, reprimands, refunds, and remedial education.[24]

There are currently 1,329 active electrologist licenses, and 310 licensed electrolysis facilities, in Florida. The department does not distinguish in its reporting between those electrologists certified and those not certified in the use of lasers or pulse-light devices.[25]

III. Effect of Proposed Changes:

The bill eliminates the EC and its oversight of the practice of electrology. The board is solely responsible for regulating the practice of electrology.

The definition of "electrolysis or electrology" is revised to reflect technological advancements; removing reference to the permanent removal of hair by destroying the hair-producing cells of the skin and vascular system from the definition. The bill defines "electrolysis or electrology" as the permanent removal of hair using equipment and devices that have been cleared by and registered with the FDA and that are used pursuant to protocols approved by the board.

The bill requires a licensed electrologist who uses a laser or pulsed-light device in a laser hair removal or reduction procedure must be certified by a nationally recognized electrology organization in the use of these devices.

The bill conforms changes in assigned responsibilities or authorizations to reflect that the EC is eliminated and the board is solely responsible for regulating the practice of electrology.

The bill takes effect October 1, 2018.

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[18] *Id*. at Certified Medical Electrologist (CME) Examination Application.
[19] *Id*. at Membership (Membership Benefits).
[20] *Id*. at Certified Medical Electrologist (CME) Examination Application.
[21] *Id*. at Membership Application.
[22] Florida Department of Health, *Analysis of SB 744* (November 2, 2017)(on file with the Senate Subcommittee on General Government).
[23] Section 478.52, F.S.
[24] Section 456.072(2), F.S.
[25] The number of active Florida licenses was calculated by adding "In State Active," "Out of State Active," and "Military Active" practitioners. *See* Department of Health, Division of Medical Quality Assurance, Annual Report and Long Range Plan, Fiscal Year 2016-2017, *Summary of Licensed Practitioners*, pp. 11 and 14, http://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/_documents/annual-report-1617.pdf (last visited Feb. 8, 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 will increase costs on individuals to maintain an electrology license for those who use laser and pulsed-light devices because the licensee will have to maintain their SCMHR certification and pay costs associated with doing so every five years. Current policy is that after initial certification, licensees are not required to maintain CME certification to practice or renew licensure.

C. Government Sector Impact:

The department may incur costs related to rulemaking to remove the EC's regulation of the practice of electrology. According to the department, current resources are adequate to absorb these costs.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 478.42, 478.43, 478.45, 478.49, 478.50, 478.52, and 478.53.

The bill repeals section 478.44 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 March 2, 2018:
The committee substitute:

- Restores the board's oversight of electrology but maintains elimination of the Electrolysis Council;
- Revises the definition of electrolysis/electrology;
- Removes language from the medical practice acts which requires electrologists and other licensees to be directly supervised by a physician during laser and light-based hair removal procedures;
- Restores department's authority to issue a temporary permit prior to issuing an electrologist license; and
- Deletes one year phase out provision for valid permits in good standing that exist on the effective date of the bill.

CS by Health Policy February 13, 2018:
The committee substitute:

- Retains the regulation of electrology in the department through the Division of Medical Quality Assurance, rather than transferring it to the Department of Business and Professional Regulation;
- References the direct physician supervision requirements;
- Provides a one year phase out for valid permits in good standing that exist on the effective date of the bill; and
- Preserves the electrology rules in place unless they are changed by the department or superseded by other laws.

B. Amendments:

None.

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

128446

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/02/2018	.	
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	.	
	.	

The Committee on Appropriations (Grimsley) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 478.42, Florida Statutes, is amended to read:

478.42 Definitions.—As used in this chapter, the term:

(1) "Board" means the Board of Medicine.

~~(2) "Council" means the Electrolysis Council.~~

(2)~~(3)~~ "Department" means the Department of Health.

(3) ~~(4)~~ "Electrologist" means a person who engages in the practice of electrolysis.

(4) ~~(5)~~ "Electrolysis or electrology" means the permanent removal of hair ~~by destroying the hair-producing cells of the skin and vascular system,~~ using equipment and devices approved by the board which have been cleared by and registered with the United States Food and Drug Administration and that are used pursuant to protocols approved by the board.

Section 2. Section 478.43, Florida Statutes, is amended to read:

478.43 Board of Medicine; powers and duties.—

(1) The board~~, with the assistance of the Electrolysis Council,~~ is authorized to establish minimum standards for the delivery of electrolysis services and to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter.

(2) The board may administer oaths, summon witnesses, and take testimony in all matters relating to its duties under this chapter.

~~(3) The board may delegate such powers and duties to the council as it may deem proper.~~

(3) ~~(4)~~ The board~~, in consultation with the council, shall recommend proposed rules, and the board~~ shall adopt rules for a code of ethics for electrologists and rules related to the curriculum and approval of electrolysis training programs, sanitary guidelines, the delivery of electrolysis services, continuing education requirements, and any other area related to the practice of electrology.

Section 3. Section 478.44, Florida Statutes, is repealed.

Section 4. Subsections (2), (3), and (6) of section 478.45, Florida Statutes, are amended to read:

478.45 Requirements for licensure.—

(2) Each applicant for licensure must ~~shall~~ successfully pass a written examination developed by the department or a national examination that has been approved by the board. The examinations must ~~shall~~ test the applicant's knowledge relating to the practice of electrology, including the applicant's professional skills and judgment in the use of electrolysis techniques and methods, and any other subjects that ~~which~~ are useful to determine the applicant's fitness to practice.

(3) The department, upon approval of the board, may adopt a national examination in lieu of any part of the examination required by this section. The board~~, with the assistance of the council,~~ shall establish standards for acceptable performance.

(6) The department may not issue a license to any applicant who is under investigation in another jurisdiction for an offense that ~~which~~ would be a violation of this chapter, until such investigation is complete. Upon completion of such investigation, if the applicant is found guilty of such offense, the board shall apply the applicable provisions of s. 478.52.

Section 5. Section 478.49, Florida Statutes, is amended to read:

478.49 License required.—

(1) A person may not ~~No person may~~ practice electrology or hold herself or himself out as an electrologist in this state unless she or he ~~the person~~ has been issued a license by the department and holds an active license pursuant to ~~the requirements of~~ this chapter.

(2) A licensee shall display her or his license in a conspicuous location in her or his place of practice and provide it to the department or the board upon request.

(3) A licensee who uses a laser or pulsed-light device in a laser hair removal or reduction procedure must be certified by a nationally recognized electrology organization in the use of such device.

Section 6. Subsection (4) of section 478.50, Florida Statutes, is amended to read:

478.50 Renewal of license; delinquent status; address notification; continuing education requirements.—

(4)(a) An application for license renewal must be accompanied by proof of the successful completion of 20 hours of continuing education courses or proof of successfully passing a reexamination for licensure within the immediately preceding biennium which meets the criteria established by the board. Both the continuing education and reexamination shall contain education on blood-borne diseases.

(b) The board~~, with the assistance of the council,~~ shall approve criteria for, and content of, electrolysis training programs and continuing education courses required for licensure and renewal as set forth in this chapter.

(c) Continuing education programs shall be approved by the board. Applications for approval shall be submitted to the board not less than 60 days or ~~nor~~ more than 360 days before they are held.

Section 7. Paragraph (t) of subsection (1) and subsection (4) of section 478.52, Florida Statutes, is amended to read:

478.52 Disciplinary proceedings.—

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

(t) Practicing or attempting to practice any permanent hair removal except as described in s. 478.42(4) ~~s. 478.42(5)~~.

(4) The board~~, with the assistance of the council,~~ may, by rule, establish guidelines for the disposition of disciplinary cases involving specific types of violations. The guidelines may include minimum and maximum fines, periods of supervision on probation, or conditions upon probation or reissuance of a license.

Section 8. Subsection (6) of section 478.53, Florida Statutes, is amended to read:

478.53 Penalty for violations.—It is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, to:

(6) Practice or attempt to practice any permanent hair removal except as described in s. 478.42(4) ~~s. 478.42(5)~~.

Section 9. This act shall take effect October 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 laser hair removal or reduction; amending s. 478.42, F.S.; revising definitions; repealing s. 478.44, F.S., relating to the Electrolysis Council; amending s. 478.49, F.S.; providing certification requirements for licensed

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electrologists who perform laser hair removal or reduction; amending ss. 478.43, 478.45, 478.50, 478.52, and 478.53, F.S.; conforming provisions to changes made by the act; providing an effective date.

By the Committee on Health Policy; and Senator Grimsley

588-03141-18 2018744c1

A bill to be entitled

An act relating to laser hair removal or reduction; amending s. 478.42, F.S.; revising definitions; amending s. 478.43, F.S.; providing rulemaking authority to the Department of Health for regulating electrolysis services; repealing ss. 478.44 and 478.46, F.S., relating to the Electrolysis Council and temporary permits, respectively; providing for the validity of temporary permits previously issued by the Board of Medicine; providing for the expiration of such permits by a specified date, upon the issuance of a license to practice electrology, or upon notice that the applicant failed a written examination; amending s. 478.49, F.S.; providing certification requirements for licensed electrologists who perform laser hair removal or reduction; specifying that licensed electrologists must meet certain direct supervision requirements; providing an exception; amending ss. 478.45, 478.47, 478.50, 478.51, 478.52, 478.53, and 478.55, F.S.; conforming provisions to changes made by the act; specifying that current rules relating to the practice of electrology remain in full force and effect unless revised by the department or superseded by other laws; providing an effective date.

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

Section 1. Section 478.42, Florida Statutes, is amended to read:

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

588-03141-18 2018744c1

478.42 Definitions.—As used in this chapter, the term:

~~(1) "Board" means the Board of Medicine.~~

~~(2) "Council" means the Electrolysis Council.~~

(1)~~(3)~~ "Department" means the Department of Health.

(2)~~(4)~~ "Electrologist" means a person who engages in the practice of electrolysis.

(3)~~(5)~~ "Electrolysis or electrology" means the permanent removal of hair ~~by destroying the hair-producing cells of the skin and vascular system,~~ using equipment and devices that ~~approved by the board which~~ have been cleared by and registered with the United States Food and Drug Administration ~~and that are used pursuant to protocols approved by the board~~.

Section 2. Section 478.43, Florida Statutes, is amended to read:

478.43 Department ~~Board of Medicine~~; powers and duties.—

(1) The department ~~board, with the assistance of the Electrolysis Council,~~ is authorized to establish minimum standards for the delivery of electrolysis services and to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter.

(2) The department ~~board~~ may administer oaths, summon witnesses, and take testimony in all matters relating to its duties under this chapter.

~~(3) The board may delegate such powers and duties to the council as it may deem proper.~~

(3)~~(4)~~ The department ~~board, in consultation with the council, shall recommend proposed rules, and the board~~ shall adopt ~~rules for a code of ethics for electrologists and~~ rules related to the curriculum and approval of electrolysis training

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programs, sanitary guidelines, the delivery of electrolysis services, continuing education requirements, and any other area related to the practice of electrology.

Section 3. Section 478.44, Florida Statutes, is repealed.

Section 4. Section 478.46, Florida Statutes, is repealed.

Section 5. A valid temporary permit issued pursuant to s. 478.46, Florida Statutes, before October 1, 2018, remains valid until October 1, 2019, until the applicant receives notice that he or she has failed the written examination required under s. 478.45, Florida Statutes, or until the Department of Health issues the applicant a license to practice electrology, whichever occurs first. If the department has not issued the applicant a license to practice electrology by October 1, 2019, or if the applicant receives notice that he or she has failed the written examination, the applicant's temporary permit is automatically revoked.

Section 6. Section 478.49, Florida Statutes, is amended to read:

478.49 License and certification required.—

(1) A person may not ~~No person may~~ practice electrology or hold herself or himself out as an electrologist in this state unless she or he ~~the person~~ has been issued a license by the department and holds an active license pursuant to ~~the requirements of~~ this chapter.

(2) A licensee shall display her or his license in a conspicuous location in her or his place of practice and provide it to the department ~~or the board~~ upon request.

(3) A licensee who uses a laser or pulsed-light device in a laser hair removal or reduction procedure must be certified by a

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nationally recognized electrology organization in the use of these devices.

(4) A licensee must follow the direct supervision requirements of ss. 458.348(2) and 459.025(2) unless exempt under s. 458.348(3)(e) or s. 459.025(3)(e).

Section 7. Section 478.45, Florida Statutes, is amended to read:

478.45 Requirements for licensure.—

(1) An applicant applying for licensure as an electrologist shall file a written application, accompanied by the application for licensure fee prescribed in s. 478.55, on a form provided by the department ~~board~~, showing to the satisfaction of the department ~~board~~ that the applicant:

(a) Is at least 18 years old.

(b) Is of good moral character.

(c) Possesses a high school diploma or a high school equivalency diploma.

(d) Has not committed an act in any jurisdiction which would constitute grounds for disciplining an electrologist in this state.

(e) Has successfully completed the academic requirements of an electrolysis training program, not to exceed 120 hours, and the practical application thereof as approved by the department ~~board~~.

(2) Each applicant for licensure must ~~shall~~ successfully pass a written examination developed by the department or a national examination that has been approved by the department ~~board~~. The examinations must ~~shall~~ test the applicant's knowledge relating to the practice of electrology, including the

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applicant's professional skills and judgment in the use of electrolysis techniques and methods, and any other subjects that ~~which~~ are useful to determine the applicant's fitness to practice.

(3) The department~~, upon approval of the board,~~ may adopt a national examination in lieu of any part of the examination required by this section. The department ~~board, with the assistance of the council,~~ shall establish standards for acceptable performance.

(4) The department shall issue a license to practice electrology to any applicant who passes the examination, pays the licensure fee as set forth in s. 478.55, and otherwise meets the requirements of this chapter.

(5) The department shall conduct licensure examinations at least two times a year. The department shall give public notice of the time and place of each examination at least 60 days before it is administered and shall mail notice of such examination to each applicant whose application is timely filed, pursuant to department ~~board~~ rule.

(6) The department may not issue a license to any applicant who is under investigation in another jurisdiction for an offense that ~~which~~ would be a violation of this chapter, until such investigation is complete. Upon completion of such investigation, if the applicant is found guilty of such offense, the department ~~board~~ shall apply the applicable provisions of s. 478.52.

Section 8. Section 478.47, Florida Statutes, is amended to read:

478.47 Licensure by endorsement.—The department shall issue

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a license by endorsement to any applicant who submits an application and the required fees as set forth in s. 478.55 and who holds an active license or other authority to practice electrology in a jurisdiction whose licensure requirements are determined by the department ~~board~~ to be equivalent to the requirements for licensure in this state.

Section 9. Subsections (2) and (4) of section 478.50, Florida Statutes, are amended to read:

478.50 Renewal of license; delinquent status; address notification; continuing education requirements.—

(2) A license that is not renewed at the end of the biennium prescribed by the department automatically reverts to delinquent status. The department ~~board~~ shall adopt rules establishing procedures, criteria, and fees as set forth in s. 478.55 for reactivation of an inactive license.

(4)(a) An application for license renewal must be accompanied by proof of the successful completion of 20 hours of continuing education courses or proof of successfully passing a reexamination for licensure within the immediately preceding biennium which meets the criteria established by the department ~~board~~. Both the continuing education and reexamination shall contain education on blood-borne diseases.

(b) The department ~~board, with the assistance of the council,~~ shall approve criteria for, and content of, electrolysis training programs and continuing education courses required for licensure and renewal as set forth in this chapter.

(c) Continuing education programs shall be approved by the department ~~board~~. Applications for approval shall be submitted to the department ~~board~~ not less than 60 days or ~~nor~~ more than

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360 days before they are held.

Section 10. Subsections (2), (3), and (11) of section 478.51, Florida Statutes, are amended to read:

478.51 Electrology facilities; requisites; facility licensure; inspection.—

(2) The facility license shall be displayed in a conspicuous place within the facility and shall be made available upon request of the department ~~or board~~.

(3) The department ~~board~~ shall adopt rules governing the licensure and operations of such facilities, personnel, safety and sanitary requirements, and the licensure application and granting process.

(11) Renewal of license registration for electrology facilities shall be accomplished pursuant to rules adopted by the department ~~board~~.

Section 11. Section 478.52, Florida Statutes, is amended to read:

478.52 Disciplinary proceedings.—

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

(a) Obtaining or attempting to obtain a license by bribery, fraud, or knowing misrepresentation.

(b) Having a license or other authority to deliver electrolysis services revoked, suspended, or otherwise acted against, including denial of licensure, in another jurisdiction.

(c) Being convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication, a crime, in any jurisdiction, which directly relates to the practice of electrology.

(d) Willfully making or filing a false report or record, willfully failing to file a report or record required for electrologists, or willfully impeding or obstructing the filing of a report or record required by this act or inducing another person to do so.

(e) Circulating false, misleading, or deceptive advertising.

(f) Unprofessional conduct, including any departure from, or failure to conform to, acceptable standards related to the delivery of electrolysis services.

(g) Engaging or attempting to engage in the illegal possession, sale, or distribution of any illegal or controlled substance.

(h) Willfully failing to report any known violation of this chapter.

(i) Willfully or repeatedly violating a rule adopted under this chapter, or an order of the ~~board or~~ department previously entered in a disciplinary hearing.

(j) Engaging in the delivery of electrolysis services without an active license.

(k) Employing an unlicensed person to practice electrology.

(l) Failing to perform any statutory or legal obligation placed upon an electrologist.

(m) Accepting and performing professional responsibilities which the licensee knows, or has reason to know, she or he is not competent to perform.

(n) Delegating professional responsibilities to a person the licensee knows, or has reason to know, is unqualified by training, experience, or licensure to perform.

(o) Gross or repeated malpractice or the inability to practice electrology with reasonable skill and safety.

(p) Judicially determined mental incompetency.

(q) Practicing or attempting to practice electrology under a name other than her or his own.

(r) Being unable to practice electrology with reasonable skill and safety because of a mental or physical condition or illness, or the use of alcohol, controlled substances, or any other substance that ~~which~~ impairs one's ability to practice.

1. The department may, upon probable cause, compel a licensee to submit to a mental or physical examination by physicians designated by the department. The cost of an examination shall be borne by the licensee, and her or his failure to submit to such an examination constitutes an admission of the allegations against her or him, consequent upon which a default and a final order may be entered without the taking of testimony or presentation of evidence, unless the failure was due to circumstances beyond her or his control.

2. A licensee who is disciplined under this paragraph shall, at reasonable intervals, be afforded an opportunity to demonstrate that she or he can resume the practice of electrology with reasonable skill and safety.

3. In any proceeding under this paragraph, the record of proceedings or the orders entered by the department ~~board~~ may not be used against a licensee in any other proceeding.

(s) Disclosing the identity of or information about a patient without written permission, except for information which does not identify a patient and which is used for training purposes in an approved electrolysis training program.

(t) Practicing or attempting to practice any permanent hair removal except as described in s. 478.42(3) ~~s. 478.42(5)~~.

(u) Operating any electrolysis facility unless it has been duly licensed as provided in this chapter.

(v) Violating any provision of this chapter or chapter 456, or any rules adopted pursuant thereto.

(2) The department ~~board~~ may enter an order denying licensure, ~~or~~ imposing any of the penalties in s. 456.072(2), or imposing costs as provided in s. 456.072(4) against any applicant for licensure or licensee who is found guilty of violating any provision of subsection (1) of this section or who is found guilty of violating any provision of s. 456.072(1).

(3) The department ~~board~~ may not issue or reinstate a license to a person it has deemed unqualified until it is satisfied that such person has complied with the terms and conditions of the final order and that the licensee can safely practice electrology.

(4) The department ~~board, with the assistance of the council,~~ may, by rule, establish guidelines for the disposition of disciplinary cases involving specific types of violations. The guidelines may include minimum and maximum fines, periods of supervision on probation, or conditions upon probation or reissuance of a license.

Section 12. Subsection (6) of section 478.53, Florida Statutes, is amended to read:

478.53 Penalty for violations.—It is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, to:

(6) Practice or attempt to practice any permanent hair

removal except as described in s. 478.42(3) ~~s. 478.42(5)~~.

Section 13. Subsection (1) of section 478.55, Florida Statutes, is amended to read:

478.55 Fees; facility; disposition.—

(1) The department ~~board~~ shall establish by rule the collection of fees for the following purposes:

(a) License application fee: a fee not to exceed $100.

(b) Examination fee: a fee not to exceed $300.

(c) Initial licensure fee: a fee not to exceed $100.

(d) Renewal fee: a fee not to exceed $100 biennially.

(e) Reactivation fee: a fee not to exceed $100.

(f) Inspection fee for facility: a fee not to exceed $100 biennially.

Section 14. Any current rules adopted by the Department of Health, the Board of Medicine, or the Electrolysis Council which relate to the practice of electrology remain in full force and effect unless revised by the Department of Health pursuant to this act or superseded by other laws.

Section 15. This act shall take effect October 1, 2018.

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THE FLORIDA SENATE

APPEARANCE RECORD

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

3/2/18
Meeting Date

744
Bill Number (if applicable)

1284446 DE
Amendment Barcode (if applicable)

Topic Laser Hair Removal

Name Ellyn Bogdanoff

Job Title

Address 1 E Bnd Blvd
Street

Ft Lauds FL 33301
City *State* *Zip*

Phone

Email

Speaking: ☑ For ☐ Against ☐ Information

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

Representing SCHMR

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

3/2/18
Meeting Date

SB 744
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Laser Hair Removal Regulation

Name Larry Gonzalez

Job Title Attorney/Lobbyist

Address 223 S. Gadsden ST.
Street

Phone 850-222-0465

Tallahassee FL 32301
City State Zip

Email lawgonz@earthlink.net

Speaking: ☐ For ☑ Against ☐ Information

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

Representing Electrologist Society & Electrologist Association of Florida

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 774
INTRODUCER:	Judiciary Committee; Children, Families, and Elder Affairs Committee; and Senator Bean
SUBJECT:	Dependency Proceedings
DATE:	February 26, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Hendon	CF	**Fav/CS**
2.	Tulloch	Cibula	JU	**Fav/CS**
3.	Sneed	Hansen	AP	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 774 provides that, in private adoptions, the adoption entity conducting the preliminary home study is responsible for determining the counseling and educational needs of the adoptive parents.

The bill clarifies that the training mandated by the Department of Children and Families (DCF) for foster families applies only when children are being adopted from the department and does not apply to private adoptions.

The bill also requires that the DCF provide a copy of its record check from the central abuse registry to the adoption entity conducting the preliminary home study of the adoptive parents.

The bill has no fiscal impact on state government.

The bill is effective July 1, 2018.

II. Present Situation:

Section 63.092(3), F.S., requires prospective adoptive parents in private adoption proceedings to undergo a preliminary home study to determine their suitability as adoptive parents.[1] A DCF-licensed child-placing agency or child-caring agency generally conducts the preliminary home study, which includes, among other things, a records check of the prospective parents in DCF's central abuse registry and counseling and education of the intended adoptive parents on adoptive parenting.[2]

Currently, the statute does not require the results of the DCF record check to be given directly to the entity conducting the preliminary home study. This provision also does not specify what the counseling and education requirements are for prospective adoptive parents in private proceedings; however, the DCF imposes the same training requirements it uses for licensing and training prospective foster care parents and emergency shelter parents pursuant to s. 407.175, F.S.[3] This training is designed to prepare prospective foster care parents and emergency shelter parents for the unique difficulties they will have to face when caring for children in dependency proceedings with a history of abuse, neglect, or prior placement disruptions.[4]

III. Effect of Proposed Changes:

Section 1 amends s. 63.092(3), F.S., relating to the requirements of preliminary home studies of intended adoptive parents, to:

- Require the DCF to provide records checks of its central abuse registry directly to the adoption entity conducting the home study, to ensure integrity of the results and protect the best interest of the child being placed for adoption, and
- Allow licensed adoption agencies in private adoptions to use their professional judgement to determine the appropriate counseling and education for the intended adoptive parents. The bill exempts adoptive parents in private adoptions from the training requirements in s. 409.175(14), F.S.

Section 2 provides an effective date of October 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

[1] Section 63.092(3), F.S.
[2] *Id.*
[3] Rules 65C-15.028, 65C-16.005(4), and 65C-13.024, F.A.C; and s. 409.175(14), F.S.
[4] Section 409.175(14), F.S. One of the training requirements for these parents is 21 hours of preservice training to: orient them; explain their role as a treatment team member; prepare them for issues involved in the transition of a child into and out of foster care and emergency shelter care; teach them to manage difficult child behavior intensified by placement, prior abuse or neglect, or prior placement disruptions; prevent placement disruptions; teach them how to care for children at various developmental levels; and educate them on the effects of foster parenting on their families.

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 Department of Children and Families expects no fiscal impact to state government.[5]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill substantially amends s. 63.092 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 Judiciary on February 20, 2018:
The committee substitute no longer includes sections 1 through 7 of the underlying bill. These sections imported the more expeditious procedures of the adoption act, ch. 63, F.S., into the dependency law, ch. 39, F.S., for identifying prospective parents or unmarried biological fathers prior to terminating all parental rights.

CS by Children, Families, and Elder Affairs on January 22, 2018:
The amendment does the following:

[5] Dept. of Children & Families, *2018 Agency Legislative Bill Analysis, Senate Bill 774*, (Jan. 29, 2018) (on filed with Senate Judiciary Committee).

- Makes a number of technical and conforming changes including replacing the term "individually served" with the term "personally served" and replacing the term "alleged parent" with the term "prospective parent."
- Requires certain records check of the Department of Children and Families' Central Abuse Registry be provided directly to the entity conducting the home study to ensure the integrity of the results and protect the best interest of children being placed for adoption; and
- Allows licensed adoption agencies to use their professional judgement to determine the appropriate counseling and education, dependent upon the type of adoption and the child being adopted.
- Removes the provision that allows the community-based lead care agencies to receive credit for specified adoptions.

B. Amendments:

None.

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

By the Committees on Judiciary; and Children, Families, and Elder Affairs; and Senator Bean

590-03466-18 2018774c2

A bill to be entitled

An act relating to dependency proceedings; amending s. 63.092, F.S.; requiring the Department of Children and Families to provide specified records to entities conducting preliminary home studies; limiting certain training requirements to persons who adopt children from the department; providing an effective date.

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

Section 1. Subsection (3) of section 63.092, Florida Statutes, is amended to read:

63.092 Report to the court of intended placement by an adoption entity; at-risk placement; preliminary study.—

(3) PRELIMINARY HOME STUDY.—Before placing the minor in the intended adoptive home, a preliminary home study must be performed by a licensed child-placing agency, a child-caring agency registered under s. 409.176, a licensed professional, or an agency described in s. 61.20(2), unless the adoptee is an adult or the petitioner is a stepparent or a relative. If the adoptee is an adult or the petitioner is a stepparent or a relative, a preliminary home study may be required by the court for good cause shown. The department is required to perform the preliminary home study only if there is no licensed child-placing agency, child-caring agency registered under s. 409.176, licensed professional, or agency described in s. 61.20(2), in the county where the prospective adoptive parents reside. The preliminary home study must be made to determine the suitability of the intended adoptive parents and may be completed prior to

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Florida Senate - 2018 CS for CS for SB 774

590-03466-18 2018774c2

identification of a prospective adoptive minor. A favorable preliminary home study is valid for 1 year after the date of its completion. Upon its completion, a signed copy of the home study must be provided to the intended adoptive parents who were the subject of the home study. A minor may not be placed in an intended adoptive home before a favorable preliminary home study is completed unless the adoptive home is also a licensed foster home under s. 409.175. The preliminary home study must include, at a minimum:

(a) An interview with the intended adoptive parents;

(b) Records checks of the department's central abuse registry, which the department shall provide to the entity conducting the preliminary home study, and criminal records correspondence checks under s. 39.0138 through the Department of Law Enforcement on the intended adoptive parents;

(c) An assessment of the physical environment of the home;

(d) A determination of the financial security of the intended adoptive parents;

(e) Documentation of counseling and education of the intended adoptive parents on adoptive parenting as determined by the entity conducting the preliminary home study. The training specified in s. 409.175(14) shall only be required for persons who adopt children from the department;

(f) Documentation that information on adoption and the adoption process has been provided to the intended adoptive parents;

(g) Documentation that information on support services available in the community has been provided to the intended adoptive parents; and

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

(h) A copy of each signed acknowledgment of receipt of disclosure required by s. 63.085.

If the preliminary home study is favorable, a minor may be placed in the home pending entry of the judgment of adoption. A minor may not be placed in the home if the preliminary home study is unfavorable. If the preliminary home study is unfavorable, the adoption entity may, within 20 days after receipt of a copy of the written recommendation, petition the court to determine the suitability of the intended adoptive home. A determination as to suitability under this subsection does not act as a presumption of suitability at the final hearing. In determining the suitability of the intended adoptive home, the court must consider the totality of the circumstances in the home. A minor may not be placed in a home in which there resides any person determined by the court to be a sexual predator as defined in s. 775.21 or to have been convicted of an offense listed in s. 63.089(4)(b)2.

Section 2. This act shall take effect October 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)

2/27/18
Meeting Date

774
Bill Number (if applicable)

Topic Adoption - homestudy

Amendment Barcode (if applicable)

Name Madonna Finney

Job Title Attorney

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Street

Phone 850 5773077

Talla FL 32302
City *State* *Zip*

Email MMFinney@aol.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Florida Adoption 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)

2.27.18
Meeting Date

774
Bill Number (if applicable)

Topic Dependency Proceedings

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title CEO

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Street

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Tallah assee | FL | 32301
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Email Barney@BarneyBishop.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Florida Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 784
INTRODUCER:	Judiciary Committee; Banking and Insurance Committee; and Senator Brandes
SUBJECT:	Insurance
DATE:	March 1, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Billmeier	Knudson	BI	**Fav/CS**
2.	Stallard	Cibula	JU	**Fav/CS**
3.	Sanders	Hansen	AP	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 784 amends numerous provisions of the Florida Insurance Code. This bill:

- Exempts foreign insurers (insurers domiciled in another state) from certain regulations regarding insurer's investments, including regulations on the valuation of those investments, and sets forth alternative regulations in these areas;
- Adds two categories of persons to the list of individuals who are not required to take the examination to become an all-lines insurance adjuster, namely a person certified as a Claims Adjuster Certified Professional from WebCE, Inc. and a person who has a designation similar to one of those set forth in statute and who meets the other requirements;
- Repeals a requirement that surplus lines insurers request eligibility from the Florida Surplus Lines Service Office;
- Provides a uniform surplus lines tax of 4.936 percent;
- Updates the requirement that the rules of the Department of Financial Services (DFS) and the Financial Services Commission relating to insurers' use of insureds' private information comport with the Gramm-Leach-Bliley Act, specifying that the rules must be consistent with the amended version of the Act;
- Provides that an insurer may issue an insurance policy without it being signed by one of its officers, attorneys in fact, employees, or duly authorized representatives;
- Requires that a notice of policy change sent in advance of a renewal include a summary of the changes;
- Permits a third party, as an assignee of policy benefits, to request mediation, but also permits an insurer to not attend a mediation request by the third party;

- Allows motor vehicle insurers to use the Intelligent Mail barcode, or similar method approved by the United States Postal Service, to document proof of mailing of certain required notices;
- Expands the confidentiality of documents submitted to the OIR under Own-Risk and Solvency Assessment requirements to make them inadmissible as evidence in any private civil action, regardless of from whom they were obtained;
- Revises unearned premium reserve requirements for reciprocal insurers; and
- Allows for electronic posting of certain policy information by health maintenance organizations and motor vehicle service agreement companies.

This bill does not affect state funds or expenditures.

The bill is effective upon becoming law.

II. Present Situation:

This bill addresses a number of issues related to insurance.

Foreign Insurers (Sections 1 and 2)

Chapter 625, F.S., regulates the financial affairs of insurers admitted in Florida. Sections 625.151 and 625.325, F.S., govern the valuation of securities other than bonds and limit an insurer's ability to invest in its subsidiaries and related corporations. If the insurer's surplus including investments in subsidiaries does not exceed $100 million, shall be valued in an amount in which the aggregate does not exceed the lesser of:

- Ten percent of the insurer's admitted assets; or
- Fifty percent of the insurer's surplus in excess of the minimum required surplus.[1]

If the surplus of an insurer, including investments in subsidiaries, is $100 million or more, investments in subsidiaries and related corporations shall be valued in an amount in which the aggregate does not exceed 25 percent of the insurer's admitted assets.[2]

The investment portfolio of a foreign or alien insurer shall be as permitted by the laws of its domicile if of a quality substantially as high as that required for similar funds of like domestic insurers.[3]

Insurance Adjuster Licensure Examination (Section 3)

An adjuster is an individual employed by an insurer to evaluate losses and settle policyholder claims.[4] An adjuster may be licensed as either an "all-lines adjuster" or a "public adjuster."[5] An all-lines adjuster "is a person who, for money, commission, or any other thing of value, directly

[1] Sections 625.151(3)(a) and 625.325(2), F.S.
[2] Section 625.151(3)(b), F.S.
[3] Section 625.340, F.S.
[4] INSURANCE INFORMATION INSTITUTE, GLOSSARY (defining "adjuster"), https://www.iii.org/resource-center/iii-glossary/A (last visited Feb. 14, 2018).
[5] Section 626.864, F.S.

or indirectly undertakes on behalf of a public adjuster or an insurer to ascertain and determine the amount of any claim, loss, or damage payable under an insurance contract or undertakes to effect settlement of such claim, loss, or damage."[6] Subject to certain exceptions, a public adjuster is someone that is paid by an insured to prepare and file a claim against his or her insurer.[7]

Among other requirements, an applicant must pass an examination to obtain an adjuster's license; however, the examination requirement is waived if the applicant has attained certain professional designations that document their successful completion of professional education coursework. An examination is not required for all-lines adjuster applicants with the following professional designations:

- Accredited Claims Adjuster (ACA) from a regionally accredited postsecondary institution in this state;
- Associate in Claims (AIC) from the Insurance Institute of America;
- Professional Claims Adjuster (PCA) from the Professional Career Institute;
- Professional Property Insurance Adjuster (PPIA) from the HurriClaim Training Academy;
- Certified Adjuster (CA) from ALL LINES Training;
- Certified Claims Adjuster (CCA) from AE21 Incorporated; or
- Universal Claims Certification (UCC) from Claims and Litigation Management Alliance (CLM).

The DFS must approve the curriculum, which must include comprehensive analysis of basic property and casualty lines of insurance and testing at least equal to that of standard department testing for the all-lines adjuster license.[8] The curriculum must include 40 hours of instruction covering all of the topics in the all-lines adjuster Examination Content Outline adopted by the DFS.[9] The DFS only approves curriculum related to adjuster licensing for designations listed in s. 626.221(2)(j), F.S.

WebCE, Inc., is a national provider of professional and continuing educational courses.[10] They provide education related to multiple professions, including insurance, financial planning, accounting, and taxation. Participants can obtain the following professional designations from WebCE, Inc.: Certified Financial Planner (CFP), Certified Investment Management Analyst (CIMA), Certified Private Wealth Advisor (CPWA), and Certified Fraud Examiner (CFE). WebCE, Inc., provides continuing education to insurance professionals with courses in subjects of life and health, property and casualty, adjuster, and limited lines.

Surplus Lines Insurance (Sections 4 and 5)

Surplus lines insurance refers to insurance coverage that is not available from insurers licensed in the state, called admitted companies, and must be purchased from a non-admitted carrier. Examples include risks of an unusual nature that require greater flexibility in policy terms and conditions than exist in standard forms or where the highest rates allowed by state regulators are

[6] Sections 626.015(2) and 626.8548, F.S.
[7] Section 626.854, F.S.
[8] Section 626.221(2)(j), F.S.
[9] Rule 69B-227.320, F.A.C.
[10] See WebCE.com for more information about the continuing education and CPE courses that it offers.

considered inadequate by admitted companies.[11] Surplus lines insurance agents sell surplus lines insurance.

Surplus Lines Insurer Registration

In the past, for a surplus lines insurer to become eligible to underwrite insurance risks in this state, the Florida Surplus Lines Service Office (FSLSO)[12] had to file a written request with the Office of Insurance Regulation (OIR) on the underwriter's behalf. However, subsequent to the adoption of this requirement, Congress passed the Nonadmitted and Reinsurance Reform Act of 2010 (NRRA).[13] The NRRA requires the eligibility of surplus lines insurers to be determined in compliance with its criteria, unless the state has adopted nationwide uniform eligibility requirements.[14] The OIR has implemented such eligibility determination standards that may be accessed directly by interested surplus lines insurers. Accordingly, surplus lines insurers apply directly to the OIR rather than having the FSLSO make the written request. The statute requiring such a written request by the FSLSO[15] has become superfluous because it conflicts with the NRRA and is no longer implemented.

Surplus Lines Premium Tax

Surplus lines policies are taxed at five percent of all gross premiums.[16] However, a surplus lines policy written in Florida may cover risks that are only partially located in this state. This is because the insured's business, property, or other risks cross state lines. Because not all states use gross premiums as the taxable base nor use the same tax rate, this can lead to disparities in cost associated with the applicable premium tax law of other states. Florida law provides that, if Florida is the "home" state, as defined in the NRRA, the tax is computed on the gross premium to facilitate uniform application of the tax rate to the gross premiums paid on multi-state risks.[17] The law also provides that the surplus lines premium tax is limited to the tax rate in the state where the risk is located. This can result in an effective tax rate on total taxable premiums that is lower than the statutory five percent.

Privacy Disclosures (Section 6)

The Department of Financial Services (DFS) and the Financial Services Commission (Commission) are required to adopt rules governing the use of a consumer's non-public personal financial and health information by regulated entities. The rules must be consistent with and not more restrictive than the requirements of Title V of the Gramm-Leach-Bliley Act of 1999. However, in December 2015, the Gramm-Leach-Bliley Act was amended by the Fixing America's Surface Transportation (FAST) Act, Public Law No. 114-94.

[11] INSURANCE INFORMATION INSTITUTE, GLOSSARY (defining "surplus lines"), https://www.iii.org/resource-center/iii-glossary/?glossary_search=surplus+lines (last visited Feb. 14, 2018).
[12] Section 626.921, F.S.
[13] 15 U.S.C. ss. 8201 *et seq.*
[14] 15 U.S.C. ss. 8204.
[15] Section 626.918(2)(a), F.S.
[16] Section 626.932(1), F.S.
[17] Section 626.932(3), F.S.

Execution of Policies (Section 7)

Every insurance policy shall be executed in the name of and on behalf of the insurer by its officer, attorney in fact, employee, or representative duly authorized by the insurer. The person executing the policy must sign the policy, with either an original signature or a facsimile signature.[18] However, insurer representatives have suggested it would be more efficient to allow policies to be issued without a signature as long as consumer protections remain in place.

Notice of Change in Policy Terms (Section 8)

An insurer may not change policy terms at renewal unless the insurer issues advance written notice of the change in policy terms.[19] However, the notice may not be used to add optional coverages that increase premium, unless the policyholder affirmatively accepts the optional coverage.[20] The notice is required to be titled a "Notice of Change in Policy Terms." However, there is no explicit requirement for any other specific content of the notice. Therefore, it is arguable that a bare notice with the title "Notice of Change in Policy Terms" and containing no meaningful explanation of the change in policy terms complies with the law.

A change in policy terms includes the modification, addition, or deletion of any term, coverage, duty, or condition from the previous policy, not including typographical or scrivener's errors or the application of mandated legislative changes.[21]

If the insurer fails to issue the advance written notice, coverage under the old terms continues until the earlier of the next renewal with proper service of notice or replacement coverage is obtained by the policyholder.

Mediation through the DFS (Section 9)

The statutes set forth a mediation program for claims under personal lines and commercial residential property insurance policies. Mediation may be requested only by the policyholder, as a first-party claimant, or the insurer. The insurer must pay the costs of the mediation. If a settlement agreement is reached and is not rescinded, it is binding and acts as a release of all specific claims that were presented in that mediation conference.[22]

Issues have arisen over whether an assignee of policy benefits, such as vendor or contractor, is allowed to request mediation through the DFS program.

Proof of Mailing (Section 10)

Current law requires motor vehicle insurers to mail a notice of cancellation or non-renewal to the first named insured on the policy and the applicable insurance agent at least 45 days prior to the effective date of the cancellation or non-renewal. However, in the case of a cancellation or non-

[18] Section 627.416(1)-(2), F.S.
[19] Section 627.43141(2), F.S.
[20] Section 627.43141(3), F.S.
[21] Section 627.43141(1)(a), F.S.
[22] Section 627.7015, F.S.

renewal based on a non-payment of premium, only a 10-day notice is required. For each of these required notices the insurer must use United States postal proof of mailing, certified mail, or registered mail.[23] However, current law does not provide for use of the United States Postal Service tracking system known as "intelligent mail barcode."[24]

Bonds for Construction Contracts (Sections 11 and 12)

Under Florida law, there are generally two ways a contractor, subcontractor, materialman, or laborer may help secure or guarantee payment for work performed on a construction project. The first is by filing a lien against the owner's property.

The second way of helping to secure or guarantee payment for work on a construction project is by filing a claim against a payment bond. A "payment bond" is "[a] bond given by a surety to cover any amounts that, because of the general contractor's default, are not paid to a subcontractor or materials supplier."[25] In Florida, a surety issuing a contract bond, such as a payment bond, is treated as an insurer and regulated by the Insurance Code (Code).[26]

Surety insurers[27] that issue construction bonds are governed by the Code.[28] Under the Code, owners, subcontractors, laborers, or materialmen are deemed insureds or beneficiaries of a construction bond.[29] If an insured or beneficiary must bring a lawsuit against a surety insurer to force payment under the construction bond and prevails, the insured or beneficiary is entitled to attorney's fees under s. 627.428, F.S. However, contractors are not deemed insureds or beneficiaries for purposes of s. 627.756, F.S., and therefore may not recover attorney fees if they file a lawsuit to recover against a payment bond.

Filing Exception for Specialty Insurers (Section 13)

In 2014, the Legislature passed CS/CS/SB 1308,[30] which implemented elements of model legislation developed by the National Association of Insurance Commissioners (NAIC) related to risk-based capital, holding company systems, standard valuation, and actuarial opinions and memoranda. This was primarily in response to the financial crisis of 2008. A contributing factor of the financial crisis was common ownership and control of insurance and financial services companies, such that when one company became financially troubled or insolvent, the value and solvency of related companies also became affected. This led regulators to have an interest in

[23] Section 627.728, F.S.
[24] Information on the "intelligent mail barcode" can be found here: https://postalpro.usps.com/node/217 (last visited Feb. 14, 2018).
[25] BLACK'S LAW DICTIONARY (10th ed. 2014).
[26] *See* Section 624.606(1)(a), F.S. ("'Surety insurance' includes: (a) A contract bond, including a bid, payment, or maintenance bond, or a performance bond, which guarantees the execution of a contract other than a contract of indebtedness or other monetary obligation[.]"). *See also* BLACK'S LAW DICTIONARY (10th ed. 2014) ("Although a surety is similar to an insurer, one important difference is that a surety often receives no compensation for assuming liability. A surety differs from a guarantor, who is liable to the creditor only if the debtor does not meet the duties owed to the creditor; the surety is directly liable.").
[27] Section 624.606(1)(a), F.S.
[28] Section 624.01, F.S. (defining the "Florida Insurance Code" to include ch. 627, F.S.).
[29] Section 627.756(1), F.S.
[30] Ch. 2014-101, Laws of Fla.

knowing and understanding the web of controlling interests among related companies. This legislation created a presumption of control in certain interests and acquisitions among related companies.

The 2014 bill allowed insurers to overcome the presumption of control by either filing a disclaimer of control on a form prescribed by the OIR or by providing a copy of the applicable Schedule 13G on file with the federal Securities and Exchange Commission (SEC).

After a disclaimer is filed, the insurer is relieved of any further duty to register or report under s. 628.461, F.S., unless the OIR disallows the disclaimer. Specialty insurers must meet similar requirements addressing solvency and organizational risk controls as those created for insurers; however, they do not have the option of filing their SEC Schedule 13G to rebut the presumption of control.

Specialty insurers are defined as:[31]
- Motor vehicle service agreement companies;
- Home warranty associations;
- Service warranty associations;
- Prepaid limited health service organizations;
- Authorized health maintenance organizations;
- Authorized prepaid health clinics;
- Legal expense insurance corporations;
- Providers licensed to operate a facility that undertakes to provide continuing care;
- Multiple-employer welfare arrangements;
- Premium finance companies; and
- Corporations authorized to accept donor annuity agreements.

Own-Risk and Solvency Assessment (Section 14)

The Risk Management and Own Risk and Solvency Assessment (ORSA) Model Act by the NAIC requires insurers to conduct their own internal assessment of all reasonably foreseeable and relevant material risks (e.g., underwriting, credit, market) potentially affecting their ability to meet policyholder obligations. This information provides regulators with a more comprehensive view of the ability of an insurer to withstand financial stress. Florida adopted portions of the model act in 2016.[32]

Pursuant to these provisions, insurers or insurance groups must:
- Maintain a risk management framework for identifying, assessing, monitoring, managing, and reporting on its material, relevant risks;
- Conduct an ORSA at least annually (and whenever there have been significant changes to the risk profile of the insurer or the insurance group);
- File an ORSA summary report with the appropriate regulator; and
- File a corporate governance annual disclosure with the OIR.[33]

[31] Section 627.4615(1), F.S.
[32] Ch. 2016-206, Laws of Fla.
[33] Section 628.8015, F.S.

ORSA documents and corporate governance reports are generally exempt from disclosure as public records.[34] In addition, the filings and related documents are privileged such that they may not be produced in response to a subpoena or other discovery directed to the OIR. Also, if any of these filings and related documents are obtained from the OIR, they are nonetheless inadmissible in evidence in any private civil action.[35]

Reciprocal Insurance Reserve Requirements (Section 15)

Reciprocal insurance is an alternative to traditional insurance. The fundamental difference between reciprocal and traditional insurance is that in reciprocal insurance arrangements, the "subscribers" bear the risk instead of an insurance company. Subscribers' premiums are paid into a fund from which claims are drawn. Moreover, each subscriber's liability is limited to its premium.[36] There are currently four companies active in Florida and licensed as reciprocal insurers under s. 629.401, F.S.[37]

The statutes define reciprocal insurance as insurance "resulting from an interexchange among persons, known as 'subscribers,' of reciprocal agreements of indemnity, the interexchange being effectuated through an 'attorney in fact' common to all such persons."[38] The rights and powers of the attorney in fact are as provided in the power of attorney given to it by the subscribers.[39] "In general, the attorney in fact manages the reciprocal's finances and handles underwriting, claims administration and investments."[40]

Twenty-five or more persons domiciled in Florida may organize a domestic reciprocal insurer and apply to the OIR for authority to transact insurance.[41] Reciprocal insurers may transact any kind of insurance other than life insurance or title insurance.[42]

Reciprocal insurers offering property insurance are required to maintain an unearned premium reserve consistent with the requirement generally applicable to property insurers under the Code.[43] An unearned premium reserve is a fund comprised of premium money that has been paid by subscribers but is not yet due, or earned, by the insurer. For example, if a subscriber's policy required him or her to pay $1,000 in premiums for year one of the policy, that sum was paid in full at the beginning of the year, and if he or she was six months into the first year, then there would be $500 in unearned premiums held by the insurer.[44]

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[34] Section 624.4212(3), F.S.
[35] Section 628.8015(4), F.S.
[36] *See* Zacks Investment Research, *What is a Reciprocal Insurance Company?* https://finance.zacks.com/reciprocal-insurance-company-7135.html (last visited Feb. 14, 2018).
[37] See Florida Office of Insurance Regulation, Active Company Search, https://www.floir.com/CompanySearch/ (last visited Feb. 14, 2018) for the identity of these reciprocal insurers.
[38] Section 629.011, F.S.
[39] Sections 629.101, F.S.
[40] *See* Kevin Moriarty, *Twenty Things You'd Always Wanted to Know about Reciprocals (But May Not Have Thought to Ask)*, THE RISK RETENTION REPORTER, July 2003.
[41] Section 629.081(1), F.S.
[42] Section 629.041(1), F.S.
[43] *See* ss. 625.051 and 629.041(6)(b), F.S.
[44] *See* INVESTOPEDIA, *Unearned Premium* https://www.investopedia.com/terms/u/unearned-premium.asp (last visited Feb. 15, 2018)

This reserve requirement ensures the availability of funds for transfer to loss reserves when losses are incurred during the policy period or refunds that become due before the premium is earned, among other things. Premiums ceded to reinsurers for the purchase of reinsurance may be deducted from unearned premiums.

Section 625.051, F.S., requires property insurers to retain unearned premiums on reserve in the following proportions based upon the length of the policy period, as follows:

Policy Term	Proportion Required to be Reserved	
One year or less		1/2
Two years	1st year	3/4
	2nd year	1/4
Three years	1st year	5/6
	2nd year	1/2
	3rd year	1/6
Four years	1st year	7/8
	2nd year	5/8
	3rd year	3/8
	4th year	1/8
Five years	1st year	9/10
	2nd year	7/10
	3rd year	1/2
	4th year	3/10
	5th year	1/10
Over five years		pro rata

In the alternative, insurers are allowed to calculate unearned premium reserves on a monthly or more frequent pro rata basis.[45] Reciprocal insurers must calculate unearned premium reserves on a monthly or more frequent basis.[46]

The NAIC has developed a model act for regulation of reciprocals. Section 7, Reserves, of the NAIC Model Act 356, Model Indemnity Contracts Act,[47] provides for an unearned premium reserve, as follows:

> There shall at all times be maintained as a reserve a sum in cash or convertible securities equal to fifty percent (50%) of the net annual deposits collected and credited to the accounts of the subscribers on policies having one year or less to run and pro rata on those for longer

[45] Section 625.051(3), F.S.
[46] Section 629.401(6)(b)24., F.S.
[47] National Association of Insurance Commissioners, *Model Indemnity Contracts Act*, http://www.naic.org/store/free/MDL-356.pdf (last visited February 7, 2018).

> periods. Net annual deposits shall be construed to mean the advance payments of subscribers after deducting the amounts specifically provided in the subscribers' agreements, for expenses. The sum shall at no time be less than $25,000, and if at any time fifty percent (50%) of the deposits so collected and credited shall not equal that amount, then the subscribers, or their attorney for them, shall make up any deficiency.

Delivery of Policies by Motor Vehicle Service Agreement Companies and Health Maintenance Organizations (Sections 16 and 17)

The law requires most insurance policies[48] to be mailed or delivered to the insured (policyholder) within 60 days after the insurance takes effect.[49] Insurance policies are typically only delivered when the policy is issued and are not delivered each time the policy is renewed.

Insurers are allowed to post property or casualty insurance policies not containing policyholder personal identifiable information on the insurer's website instead of mailing or delivering the policy to the insured. Casualty insurance includes automobile policies, workers' compensation policies, liability policies, and malpractice policies, among others.[50] Property insurance policies include homeowner's, tenant's, condominium unit owner's, mobile home owner's, condominium association, and commercial business property insurance policies.[51]

If an insurer opts to post an insurance policy online instead of mailing it, the policy must be easily accessible on the insurer's website and posted in a format that allows the policy to be printed by the policyholder free of charge. Insurers posting policies on their website must notify each policyholder of his or her right to request and obtain a paper or electronic copy of the policy without charge, but policyholder consent is not required for an insurer to post an insurance policy online. Insurers must also notify policyholders of this right if the insurer changes a policy. Furthermore, insurers posting policies online must archive expired policies for five years on the insurer's website and archived policies must be available to policyholders at their request.

III. Effect of Proposed Changes:

Foreign Insurers (Sections 1 and 2)

Section 1 amends s. 625.151, F.S., to provide that the valuation requirements do not apply to stock of a subsidiary corporation or related entities of a foreign insurer if the stock meets the valuation requirements under the laws of that insurer's state of domicile and if that state is a member of the National Association of Insurance Commissioners (NAIC).

Section 2 amends s. 625.325, F.S., to exempt foreign insurers, under certain circumstances, from the restrictions on insurers' investments in their subsidiaries.

[48] Section 627.402, F.S., defines policy to include endorsements, riders, and clauses.
[49] Section 627.421, F.S.
[50] Section 624.605, F.S.
[51] Sections 624.604 and 627.4025, F.S.

Section 625.325, F.S., in general terms, prohibits insurers from investing too heavily in their subsidiaries. This section exempts a foreign insurer from these restrictions if the insurer is domiciled in a NAIC member state, and the investments are permitted under the laws of the insurer's state of domicile and:

- Are assigned a rating of one, two or three by the NAIC's Securities Valuation Office; or
- Qualify for the NAIC's exemption rule and are assigned a rating by a nationally recognized statistical rating organization that would be equivalent to a rating of one, two or three by the NAIC's Securities Valuation Office.

The Office of Insurance Regulation (OIR) asserts "[l]owering Florida's investment limitation standards to those of the domiciliary state would reduce protection for Florida policyholders and weaken effective solvency regulation."[52]

The Securities Valuation Office (SVO) is responsible for the day-to-day credit quality assessment and valuation of securities owned by state regulated insurance companies. The SVO conducts credit analysis on these securities for the purpose of assigning an NAIC designation. These designations are produced for the benefit of NAIC members who may use them as part of the member's monitoring of the financial condition of its domiciliary insurers.[53] An NAIC rating of one means the obligation should be eligible for the most favorable treatment provided under the NAIC Financial Conditions Framework. An NAIC rating of two means that credit risk is low but may increase in the intermediate future and the issuer's credit profile are reasonably stable. It should be eligible for relatively favorable treatment under the NAIC Financial Conditions Framework. A rating of three is assigned to obligations of medium quality. Credit risk is intermediate. Ratings of four, five and six means the obligations are low quality.[54]

Nationally recognized statistical rating organizations (NRSRO) are credit rating agencies that provide an assessment of the creditworthiness of a company or a financial instrument. In 2006, Congress provided the Securities and Exchange Commission (SEC) with the authority to establish a registration and oversight program for credit rating agencies registered as NRSROs.[55] The NRSROs registered with the SEC are:

- A.M. Best Rating Services, Inc.
- DBRS, Inc.
- Egan-Jones Ratings Co.
- Fitch Ratings, Inc.
- HR Ratings de México, S.A. de C.V.
- Japan Credit Rating Agency, Ltd.
- Kroll Bond Rating Agency, Inc.
- Moody's Investors Service, Inc.
- Morningstar Credit Ratings, LLC

[52] Office of Insurance Regulation, *2018 Agency Legislative Bill Analysis [SB 784]* (on file with the Senate Committee on Judiciary).
[53] National Association of Insurance Commissioners, Securities Valuation Office, http://www.naic.org/svo.htm (last visited Feb. 15, 2018).
[54] National Association of Insurance Commissioners, *NAIC Publicly Traded Securities Listing Definitions* http://www.naic.org/documents/svo_naic_public_listing.pdf?353 (last visited Feb. 15, 2018).
[55] U.S. Securities and Exchange Commission, *Learn More About NCSROs*, https://www.sec.gov/ocr/ocr-learn-nrsros.html (last visited Feb. 15, 2018).

- S&P Global Ratings[56]

Insurance Adjuster Licensure Examination (Section 3)

Section 3 amends s. 626.221, F.S., to exempt a person who receives a Claims Adjuster Certified Professional (CACP) designation from WebCE, Inc., from the all-lines adjuster licensing exam requirement. The bill also authorizes the Department of Financial Services (DFS) to accept similar designations from similar entities to those listed in the statute for purposes for the examination exemption.

Surplus Lines Insurance (Sections 4 and 5)

Section 4 repeals s. 626.918(2)(a), F.S., which currently requires an unauthorized insurer that desires to become eligible as a surplus lines insurer to request eligibility from the Florida Surplus Lines Surplus Officer.

Section 5 amends s. 626.932, F.S., to lower the surplus lines premium tax rate to 4.936 percent instead of the current five percent. It allows the tax to exceed the tax rate where the risk or exposure is located.

Privacy Disclosures (Section 6)

Current law requires the DFS to develop rules governing the use of a consumer's nonpublic personal financial and health information. In addition to other requirements for these rules, they must be consistent with the standards contained in Title V of the Gramm-Leach-Bliley Act of 1999. This act has since been amended, namely in Title LXXV of the Fixing America's Surface Transportation (FAST) Act.

Section 6 amends s. 626.9651, F.S., and specifies that the privacy rules developed by the DFS must be consistent with the amendments made by the FAST Act. Title LXXV of the FAST Act provides that companies that have not made changes to certain privacy policies are not required to send an annual notice of changes. If changes are made, the companies must notify customers.

Execution of Insurance Policies (Section 7)

Section 7 amends s. 627.416, F.S., to provide that an insurer may elect to issue an insurance policy without it being executed by one of its officers, attorneys in fact, employees, or duly authorized representatives. If such a policy is issued, it is not invalid despite not being executed.

Notice of Change in Policy Terms (Section 8)

Under current law, a policy that is being renewed may contain a change in policy terms, in which case the insurer must give the insured advance written "notice" of the change. However, this notice is not explicitly required to contain any summary or explanation of the change. **Section 8**

[56] *Id*. The chart containing ratings equivalent to SVO ratings is found here: http://www.naic.org/documents/svo_naic_aro.pdf (last visited Feb. 15, 2018).

amends s. 627.43141, F.S., to require that this notice contain a summary of the changes and must be entitled "Notice of Change in Policy Terms."

Mediation through the DFS (Section 9)

Under current law, mediation on a claim for insurance benefits may be requested by the policyholder, as a first-party claimant, or the insurer. **Section 9** amends s. 627.7015, F.S., to permit a third party, as assignee of policy benefits, to request mediation. However, when mediation is requested by a third party, as assignee of policy benefits, the insurer is not required to participate in the mediation. The bill also makes stylistic changes by replacing the term "insured" with the term "policyholder" in s. 627.7015, F.S. The terms are used interchangeably in this section.

Proof of Mailing (Section 10)

Section 10 amends s. 627.728, F.S., relating to the sufficient proof that a person has received a notice of cancellation, intention not to renew, or of reasons for cancellation, or of the intention of the insurer to issue a policy by an insurer under the same ownership or management. Under current law, United States postal proof of mailing or certified or registered mailing of these items to the first-named insured at the address shown in the policy is sufficient proof of notice. Under this section, an insurer may also show proof of notice by using the Intelligent Mail barcode or other similar tracking method used approved by the USPS.

Bonds for Construction Contracts (Sections 11 and 12)

Section 11 amends s. 627.756(1), F.S., of the Insurance Code to extend the ability to collect attorney's fees against an insurer under s. 627.428(1), F.S., to contractors by also deeming them an insured or beneficiary. This change will apply when a contractor successfully enforces a claim against the bond of a subcontractor that has breached a contract with the contractor. **Section 12** provides that this provision applies to payment or performance bonds issued on or after October 1, 2018.

Specialty Insurers (Section 13)

Section 13 amends s. 628.4615, F.S., to add viatical settlement providers to the list of specialty insurers and allows any specialty insurer to overcome the presumption of control by filing with the OIR a disclaimer of control on an OIR form or a copy of their SEC Schedule 13G.

Own-Risk and Solvency Assessment (Section 14)

Section 14 amends s. 628.8015, F.S., to expand the confidentiality of documents submitted to the OIR under ORSA requirements. The section provides that such documents may not be admitted as evidence in a private civil action regardless of the source of the documents, rather than only when they are obtained from the OIR.

Reciprocal Insurer Reserve Requirements (Section 15)

Section 15 amends s. 629.401, F.S., to revise the unearned premium reserve requirement that must be met by a reciprocal insurer, regardless of the line of insurance underwritten. The reciprocal insurer must retain 50 percent of "net written premiums" on policies having a policy period of one year or less. "Net written premiums" means premium payments made or due from subscribers after deducting expenses specified in the subscriber's agreement, including reinsurance costs and subscriber fees. To take the deduction from "net written premiums" for subscriber fees, the power of attorney agreement must contain an explicit provision to return subscriber fees on a pro rata basis for cancelled policies. This section requires an unearned premium reserve of $100,000, at all times, and provides a mechanism to return the reserve to that amount if it is not maintained at the required amount.

Delivery of Policies by Motor Vehicle Service Agreement Companies and Health Maintenance Organizations (Sections 16 and 17)

Section 16 amends s. 634.121, F.S., to allow electronic submission of an application form under s. 627.421, F.S. This section also changes the timeline for delivery of a motor vehicle service agreement from 45 days to 60 days. The section adds motor vehicle service agreements and related endorsement forms to the terms "insurance policies and endorsements," "policy and endorsement," "policy," or "policy form and endorsement form" as used in s. 627.421, F.S. The section also defines a motor vehicle service agreement holder as an "insured" and a motor vehicle service agreement company as an "insurer."

Section 17 amends s. 641.3107, F.S., and changes the timeline for delivery for HMO contracts from 10 days from enrollment to 60 days. The section includes health maintenance contract, endorsement and rider, certificate of coverage or member handbook to the terms "insurance policies and endorsements," "policy and endorsement," "policy," or "policy form and endorsement form" as used in s. 627.421, F.S. The term "insured" is amended to include a subscriber, or, in the case of a group health maintenance contract, to the employer or other person who will hold the contract on behalf of the subscriber group. The section also defines a health maintenance organization as an "insurer."

These sections also allow posting of the non-personal portions of agreements and contracts, as applicable, on a website in the manner allowed for policies by insurers. The personal portions of these documents would be delivered by other allowable means, usually mailing, as set forth in s. 627.421, F.S.

Effective Date (Section 18)

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:

Changes to the mailing requirement in Section 10 could result in cost savings to insurers.

C. Government Sector Impact:

The bill does not affect state funds or expenditures. The Revenue Estimating Conference does not anticipate any impact on state revenues as a result of the change to the surplus lines tax in Section 5 of the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 625.151, 625.325, 626.221, 626.932, 626.9651, 627.416, 627.41341, 627.7015, 627.728, 627.756, 628.4615, 628.8015, 629.401, 634.121, and 641.3107.

The bill repeals paragraph 626.918(2)(a) of the Florida Statutes.

IX. Additional Information:

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

CS by Judiciary on February 20, 2018:
The committee substitute removed a provision from the underlying bill that would have lowered from $1 million to $700,000 the threshold for exporting a homeowner's property insurance risk to a surplus lines insurer following a single coverage rejection.

Additionally, the committee substitute clarified a provision in the property insurance mediation statute.

CS by Banking and Insurance on February 6, 2018:
The CS removed provisions that:

- Provides that a third-party vendor, as an assignee of policy benefits, is not a consumer for purposes of consumer complaints received by the DFS Division of Consumer Services;
- Provides that complaints from third-party vendors as assignees of policy benefits will not count as complaints for purposes of the complaint ratio calculations;
- Provides that the reporting of certain information used by the Department of Financial Services to prevent insurance fraud is not mandatory;
- Provides that the insurance nonjoinder statute applies to surplus lines insurers;
- Allows the Office of Insurance Regulation (OIR) to waive the requirement that a surplus lines insurer has operated for the previous 3 years before seeking eligibility to operate in Florida if the insurer provides a product or service not readily available to Florida consumers or has operated successfully for a period of at least 1 year next preceding and has capital and surplus of not less than $30 million;
- Increases the ability of motor vehicle insurers to exclude coverage when drivers are engaged in transportation network company activities; and
- Provides that any person who sells prepaid limited health service contracts that only cover the cost of transportation provided by an air ambulance service is not required to be licensed as a health insurance agent.

The CS adds provisions that:

- Provide if an applicant for licensure as an all-lines adjuster is certified as a Claims Adjuster Certified Professional from WebCE, Inc., the applicant does not have to take the adjuster examination;
- Repeal a requirement that surplus lines insurers request eligibility from the Florida Surplus Lines Service Office;
- Provide a uniform surplus lines tax of 4.936 percent;
- Lower from $1 million to $700,000 the threshold for exporting a homeowner's property insurance risk to a surplus lines insurer following a single coverage rejection;
- Provide that an insurer may issue an insurance policy without certain signatures;
- Require that a notice of policy change summarize the changes made to the policy before renewal;
- Revise unearned premium reserve requirements for reciprocal insurers; and
- Allow for electronic posting of certain policy information by health maintenance organizations and motor vehicle service agreement companies and increases the time for delivering such contracts.

B. Amendments:

None.

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

By the Committees on Judiciary; and Banking and Insurance; and Senator Brandes

590-03473-18 2018784c2

A bill to be entitled

An act relating to insurance; amending s. 625.151, F.S.; providing that certain securities valuation limitations do not apply to certain stock of certain foreign insurers' subsidiary corporations or related entities; amending s. 625.325, F.S.; providing that certain provisions relating to insurer investments in subsidiaries and related corporations do not apply to foreign insurers under certain circumstances; amending s. 626.221, F.S.; revising professional designations that exempt all-lines adjuster license applicants from an examination requirement; repealing s. 626.918(2)(a), F.S., relating to a certain condition before an unauthorized insurer may be or become an eligible surplus lines insurer; amending s. 626.932, F.S.; reducing the tax on surplus lines insurance; deleting a limitation on the tax rate for certain surplus lines policies; amending s. 626.9651, F.S.; revising federal standards applicable to Department of Financial Services and Financial Services Commission rules governing the use of consumer nonpublic personal financial and health information; amending s. 627.416, F.S.; authorizing insurers to issue policies that are not executed by certain authorized persons; amending s. 627.43141, F.S.; specifying that a written notice of a change in policy terms must summarize the change; amending s. 627.7015, F.S.; authorizing a third party, as assignee of the policy benefits, to request mediation for disputed property insurance claims;

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providing that insurers are not required to participate in such mediations; making technical changes; amending s. 627.728, F.S.; adding certain proofs of mailing that an insurer may use to provide certain notices relating to cancellation and nonrenewals of policies to certain insureds; amending s. 627.756, F.S.; providing that certain attorney fee provisions apply to suits brought by contractors against surety insurers under payment or performance bonds for building or construction contracts; providing that contractors are deemed to be insureds or beneficiaries for the purposes of such provisions; providing applicability; amending s. 628.4615, F.S.; revising the definition of the term "specialty insurer" to include viatical settlement providers; providing that a person may rebut a presumption of control by filing a specified disclaimer with the Office of Insurance Regulation; providing an alternative to a form prescribed by the commission; providing construction; conforming cross-references; amending s. 628.8015, F.S.; deleting a condition that certain filings and documents relating to insurer own-risk and solvency assessments and corporate governance annual disclosures must be obtained from the office to be inadmissible in evidence in private civil actions; amending s. 629.401, F.S.; revising unearned premium reserve requirements for insurance exchanges regulated by the office; defining the term "net written premiums"; amending s. 634.121, F.S.; revising

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

requirements and procedures for the delivery of motor vehicle service agreements and certain forms by motor vehicle service agreement companies to agreement holders; defining terms; specifying requirements if a motor vehicle service agreement company elects to post service agreements on its website in lieu of mailing or delivering to agreement holders; amending s. 641.3107, F.S.; revising requirements and procedures for the delivery of health maintenance contracts and certain documents by health maintenance organizations to subscribers; defining terms; specifying requirements if a health maintenance organization elects to post health maintenance contracts on its website in lieu of mailing or delivering to subscribers or certain persons; providing an effective date.

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

Section 1. Paragraph (c) is added to subsection (3) of section 625.151, Florida Statutes, to read:

625.151 Valuation of other securities.—

(3) Stock of a subsidiary corporation of an insurer may ~~shall~~ not be valued at an amount in excess of the net value thereof as based upon those assets only of the subsidiary which would be eligible under part II for investment of the funds of the insurer directly.

(c) This subsection does not apply to stock of a subsidiary corporation or related entities of a foreign insurer which is

permissible under the laws of its state of domicile, if the state of domicile is a member of the National Association of Insurance Commissioners.

Section 2. Subsection (7) is added to section 625.325, Florida Statutes, to read:

625.325 Investments in subsidiaries and related corporations.—

(7) APPLICABILITY.-This section does not apply to a foreign insurer's investments in its subsidiaries or related corporations if:

(a) The foreign insurer is domiciled in a state that is a member of the National Association of Insurance Commissioners (NAIC).

(b) Such investments in the foreign insurer's subsidiaries or related corporations are:

1. Permitted under the laws of the foreign insurer's state of domicile.

2.a. Assigned a rating of 1, 2, or 3 by the NAIC's Securities Valuation Office (SVO); or

b. Qualify for the NAIC's filing exemption rule and assigned a rating by a nationally recognized statistical rating organization which would be equivalent to a rating of 1, 2, or 3 by the SVO.

Section 3. Paragraph (j) of subsection (2) of section 626.221, Florida Statutes, is amended to read:

626.221 Examination requirement; exemptions.—

(2) However, an examination is not necessary for any of the following:

(j) An applicant for license as an all-lines adjuster who

has the designation of Accredited Claims Adjuster (ACA) from a regionally accredited postsecondary institution in this state, Associate in Claims (AIC) from the Insurance Institute of America, Professional Claims Adjuster (PCA) from the Professional Career Institute, Professional Property Insurance Adjuster (PPIA) from the HurriClaim Training Academy, Certified Adjuster (CA) from ALL LINES Training, Certified Claims Adjuster (CCA) from AE21 Incorporated, Claims Adjuster Certified Professional (CACP) from WebCE, Inc., ~~or~~ Universal Claims Certification (UCC) from Claims and Litigation Management Alliance (CLM), or any similar designation from a similar entity whose curriculum has been approved by the department and which includes comprehensive analysis of basic property and casualty lines of insurance and testing at least equal to that of standard department testing for the all-lines adjuster license. The department shall adopt rules establishing standards for the approval of curriculum.

Section 4. Paragraph (a) of subsection (2) of section 626.918, Florida Statutes, is repealed.

Section 5. Subsections (1) and (3) of section 626.932, Florida Statutes, are amended to read:

626.932 Surplus lines tax.—

(1) The premiums charged for surplus lines coverages are subject to a premium receipts tax of 4.936 ~~5~~ percent of all gross premiums charged for such insurance. The surplus lines agent shall collect from the insured the amount of the tax at the time of the delivery of the cover note, certificate of insurance, policy, or other initial confirmation of insurance, in addition to the full amount of the gross premium charged by

the insurer for the insurance. The surplus lines agent is prohibited from absorbing such tax or, as an inducement for insurance or for any other reason, rebating all or any part of such tax or of his or her commission.

(3) If a surplus lines policy covers risks or exposures only partially in this state and the state is the home state as defined in the federal Nonadmitted and Reinsurance Reform Act of 2010 (NRRA), the tax payable must ~~shall~~ be computed on the gross premium. ~~The tax must not exceed the tax rate where the risk or exposure is located.~~

Section 6. Section 626.9651, Florida Statutes, is amended to read:

626.9651 Privacy.—The department and commission shall each adopt rules consistent with other provisions of the Florida Insurance Code to govern the use of a consumer's nonpublic personal financial and health information. These rules must be based on, consistent with, and not more restrictive than the Privacy of Consumer Financial and Health Information Regulation, adopted September 26, 2000, by the National Association of Insurance Commissioners; however, the rules must permit the use and disclosure of nonpublic personal health information for scientific, medical, or public policy research, in accordance with federal law. In addition, these rules must be consistent with, and not more restrictive than, the standards contained in Title V of the Gramm-Leach-Bliley Act of 1999, Pub. L. No. 106-102, as amended in Title LXXV of the Fixing America's Surface Transportation (FAST) Act, Pub. L. No. 114-94. If the office determines that a health insurer or health maintenance organization is in compliance with, or is actively undertaking

compliance with, the consumer privacy protection rules adopted by the United States Department of Health and Human Services, in conformance with the Health Insurance Portability and Affordability Act, that health insurer or health maintenance organization is in compliance with this section.

Section 7. Subsection (1) of section 627.416, Florida Statutes, is amended, and subsection (4) is added to that section, to read:

627.416 Execution of policies.—

(1) Except as set forth in subsection (4), every insurance policy must ~~shall~~ be executed in the name of and on behalf of the insurer by its officer, attorney in fact, employee, or representative duly authorized by the insurer.

(4) An insurer may elect to issue an insurance policy that is not executed by an officer, attorney in fact, employee, or representative, provided that such policy may not be rendered invalid by reason of the lack of execution thereof.

Section 8. Subsection (2) of section 627.43141, Florida Statutes, is amended to read:

627.43141 Notice of change in policy terms.—

(2) A renewal policy may contain a change in policy terms. If such change occurs, the insurer shall give the named insured advance written notice summarizing ~~of~~ the change, which may be enclosed along with the written notice of renewal premium required under ss. 627.4133 and 627.728 or sent separately within the timeframe required under the Florida Insurance Code for the provision of a notice of nonrenewal to the named insured for that line of insurance. The insurer must also provide a sample copy of the notice to the named insured's insurance agent

before or at the same time that notice is provided to the named insured. Such notice must ~~shall~~ be entitled "Notice of Change in Policy Terms."

Section 9. Subsections (1), (3), (6), and (9) of section 627.7015, Florida Statutes, are amended to read:

627.7015 Alternative procedure for resolution of disputed property insurance claims.—

(1) This section sets forth a nonadversarial alternative dispute resolution procedure for a mediated claim resolution conference prompted by the need for effective, fair, and timely handling of property insurance claims. There is a particular need for an informal, nonthreatening forum for helping parties who elect this procedure to resolve their claims disputes because most homeowner and commercial residential insurance policies obligate policyholders to participate in a potentially expensive and time-consuming adversarial appraisal process before litigation. The procedure set forth in this section is designed to bring the parties together for a mediated claims settlement conference without any of the trappings or drawbacks of an adversarial process. Before resorting to these procedures, policyholders and insurers are encouraged to resolve claims as quickly and fairly as possible. This section is available with respect to claims under personal lines and commercial residential policies before commencing the appraisal process, or before commencing litigation. Mediation may be requested only by the policyholder, as a first-party claimant; a third party, as assignee of the policy benefits; ~~,~~ or the insurer. However, an insurer is not required to participate in any mediation requested by a third party assignee of policy benefits. If

requested by the policyholder, participation by legal counsel is permitted. Mediation under this section is also available to litigants referred to the department by a county court or circuit court. This section does not apply to commercial coverages, to private passenger motor vehicle insurance coverages, or to disputes relating to liability coverages in policies of property insurance.

(3) The costs of mediation must ~~shall~~ be reasonable, and the insurer shall bear all of the cost of conducting mediation conferences, except as otherwise provided in this section. If the policyholder ~~an insured~~ fails to appear at the conference, the conference must ~~shall~~ be rescheduled upon the policyholder's ~~insured's~~ payment of the costs of a rescheduled conference. If the insurer fails to appear at the conference, the insurer must ~~shall~~ pay the policyholder's ~~insured's~~ actual cash expenses incurred in attending the conference if the insurer's failure to attend was not due to a good cause acceptable to the department. An insurer will be deemed to have failed to appear if the insurer's representative lacks authority to settle the full value of the claim. The insurer shall incur an additional fee for a rescheduled conference necessitated by the insurer's failure to appear at a scheduled conference. The fees assessed by the administrator must ~~shall~~ include a charge necessary to defray the expenses of the department related to its duties under this section and must ~~shall~~ be deposited in the Insurance Regulatory Trust Fund.

(6) Mediation under this section is nonbinding; however, if a written settlement is reached, the policyholder ~~insured~~ has 3 business days within which the policyholder ~~insured~~ may rescind

the settlement unless the policyholder ~~insured~~ has cashed or deposited any check or draft disbursed to the policyholder ~~insured~~ for the disputed matters as a result of the conference. If a settlement agreement is reached and is not rescinded, it is ~~shall be~~ binding and acts ~~act~~ as a release of all specific claims that were presented in that mediation conference.

(9) For purposes of this section, the term "claim" refers to any dispute between an insurer and a policyholder relating to a material issue of fact other than a dispute:

(a) With respect to which the insurer has a reasonable basis to suspect fraud;

(b) When ~~Where~~, based on agreed-upon facts as to the cause of loss, there is no coverage under the policy;

(c) With respect to which the insurer has a reasonable basis to believe that the policyholder has intentionally made a material misrepresentation of fact which is relevant to the claim, and the entire request for payment of a loss has been denied on the basis of the material misrepresentation;

(d) With respect to which the amount in controversy is less than $500, unless the parties agree to mediate a dispute involving a lesser amount; or

(e) With respect to a windstorm or hurricane loss that does not comply with s. 627.70132.

Section 10. Subsection (5) of section 627.728, Florida Statutes, is amended to read:

627.728 Cancellations; nonrenewals.—

(5) United States postal proof of mailing, ~~or~~ certified or registered mailing, or other mailing using the Intelligent Mail barcode or other similar tracking method used or approved by the

United States Postal Service of notice of cancellation, of intention not to renew, or of reasons for cancellation, or of the intention of the insurer to issue a policy by an insurer under the same ownership or management, to the first-named insured at the address shown in the policy is ~~shall be~~ sufficient proof of notice.

Section 11. Subsection (1) of section 627.756, Florida Statutes, is amended to read:

627.756 Bonds for construction contracts; attorney fees in case of suit.—

(1) Section 627.428 applies to suits brought by owners, contractors, subcontractors, laborers, and materialmen against a surety insurer under payment or performance bonds written by the insurer under the laws of this state to indemnify against pecuniary loss by breach of a building or construction contract. Owners, contractors, subcontractors, laborers, and materialmen are ~~shall be~~ deemed to be insureds or beneficiaries for the purposes of this section.

Section 12. The amendment made by this act to s. 627.756, Florida Statutes, applies only to payment or performance bonds issued on or after October 1, 2018.

Section 13. Subsections (1) and (7) of section 628.4615, Florida Statutes, are amended, present subsections (11) through (14) of that section are redesignated as subsections (12) through (15), respectively, and a new subsection (11) is added to that section, to read:

628.4615 Specialty insurers; acquisition of controlling stock, ownership interest, assets, or control; merger or consolidation.—

(1) For the purposes of this section, the term "specialty insurer" means any person holding a license or certificate of authority as:

(a) A motor vehicle service agreement company authorized to issue motor vehicle service agreements as those terms are defined in s. 634.011;

(b) A home warranty association authorized to issue "home warranties" as those terms are defined in s. 634.301;

(c) A service warranty association authorized to issue "service warranties" as those terms are defined in s. 634.401(13) and (14);

(d) A prepaid limited health service organization authorized to issue prepaid limited health service contracts, as those terms are defined in chapter 636;

(e) An authorized health maintenance organization operating pursuant to s. 641.21;

(f) An authorized prepaid health clinic operating pursuant to s. 641.405;

(g) A legal expense insurance corporation authorized to engage in a legal expense insurance business pursuant to s. 642.021;

(h) A provider that is licensed to operate a facility that undertakes to provide continuing care as those terms are defined in s. 651.011;

(i) A multiple-employer welfare arrangement operating pursuant to ss. 624.436-624.446;

(j) A premium finance company authorized to finance insurance premiums pursuant to s. 627.828; ~~or~~

(k) A corporation authorized to accept donor annuity

agreements pursuant to s. 627.481; or

(l) A viatical settlement provider authorized to do business in this state under part X of chapter 626.

(7) The office may disapprove any acquisition subject to ~~the provisions of~~ this section by any person or any affiliated person of such person who:

(a) Willfully violates this section;

(b) In violation of an order of the office issued pursuant to subsection (12) ~~(11)~~, fails to divest himself or herself of any stock or ownership interest obtained in violation of this section or fails to divest himself or herself of any direct or indirect control of such stock or ownership interest, within 25 days after such order; or

(c) In violation of an order issued by the office pursuant to subsection (12) ~~(11)~~, acquires an additional stock or ownership interest in a specialty insurer or controlling company or direct or indirect control of such stock or ownership interest, without complying with this section.

(11) 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 specialty insurer 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 specialty insurer is relieved of any duty to register or report

under this section which may arise out of the specialty insurer's relationship with the person unless the office disallows the disclaimer.

Section 14. Subsection (4) of section 628.8015, Florida Statutes, is amended to read:

628.8015 Own-risk and solvency assessment; corporate governance annual disclosure.—

(4) CONFIDENTIALITY.—The required filings and related documents submitted pursuant to subsections (2) and (3) are privileged such that they may not be produced in response to a subpoena or other discovery directed to the office, and any such filings and related documents~~, if obtained from the office,~~ are not admissible in evidence in any private civil action. However, the department or office may use these filings and related documents in the furtherance of any regulatory or legal action brought against an insurer as part of the official duties of the department or office. A waiver of any applicable claim of privilege in these filings and related documents may not occur because of a disclosure to the office under this section, because of any other provision of the Insurance Code, or because of sharing under s. 624.4212. The office or a person receiving these filings and related documents, while acting under the authority of the office, or with whom such filings and related documents are shared pursuant to s. 624.4212, is not permitted or required to testify in any private civil action concerning any such filings or related documents.

Section 15. Paragraph (b) of subsection (6) of section 629.401, Florida Statutes, is amended to read:

629.401 Insurance exchange.—

(6)

(b) In addition to the insurance laws specified in paragraph (a), the office shall regulate the exchange pursuant to the following powers, rights, and duties:

1. General examination powers.—The office shall examine the affairs, transactions, accounts, records, and assets of any security fund, exchange, members, and associate brokers as often as it deems advisable. The examination may be conducted by the accredited examiners of the office at the offices of the entity or person being examined. The office shall examine in like manner each prospective member or associate broker applying for membership in an exchange.

2. Office approval and applications of underwriting members.—No underwriting member shall commence operation without the approval of the office. Before commencing operation, an underwriting member shall provide a written application containing:

a. Name, type, and purpose of the underwriting member.

b. Name, residence address, business background, and qualifications of each person associated or to be associated in the formation or financing of the underwriting member.

c. Full disclosure of the terms of all understandings and agreements existing or proposed among persons so associated relative to the underwriting member, or the formation or financing thereof, accompanied by a copy of each such agreement or understanding.

d. Full disclosure of the terms of all understandings and agreements existing or proposed for management or exclusive agency contracts.

3. Investigation of underwriting member applications.—In connection with any proposal to establish an underwriting member, the office shall make an investigation of:

a. The character, reputation, financial standing, and motives of the organizers, incorporators, or subscribers organizing the proposed underwriting member.

b. The character, financial responsibility, insurance experience, and business qualifications of its proposed officers.

c. The character, financial responsibility, business experience, and standing of the proposed stockholders and directors, or owners.

4. Notice of management changes.—An underwriting member shall promptly give the office written notice of any change among the directors or principal officers of the underwriting member within 30 days after such change. The office shall investigate the new directors or principal officers of the underwriting member. The office's investigation shall include an investigation of the character, financial responsibility, insurance experience, and business qualifications of any new directors or principal officers. As a result of the investigation, the office may require the underwriting member to replace any new directors or principal officers.

5. Alternate financial statement.—In lieu of any financial examination, the office may accept an audited financial statement.

6. Correction and reconstruction of records.—If the office finds any accounts or records to be inadequate, or inadequately kept or posted, it may employ experts to reconstruct, rewrite,

post, or balance them at the expense of the person or entity being examined if such person or entity has failed to maintain, complete, or correct such records or accounts after the office has given him or her or it notice and reasonable opportunity to do so.

7. Obstruction of examinations.—Any person or entity who or which willfully obstructs the office or its examiner in an examination is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

8. Filing of annual statement.—Each underwriting member shall file with the office a full and true statement of its financial condition, transactions, and affairs. The statement shall be filed on or before March 1 of each year, or within such extension of time as the office for good cause grants, and shall be for the preceding calendar year. The statement shall contain information generally included in insurer financial statements prepared in accordance with generally accepted insurance accounting principles and practices and in a form generally utilized by insurers for financial statements, sworn to by at least two executive officers of the underwriting member. The form of the financial statements shall be the approved form of the National Association of Insurance Commissioners or its successor organization. The commission may by rule require each insurer to submit any part of the information contained in the financial statement in a computer-readable form compatible with the office's electronic data processing system. In addition to information furnished in connection with its annual statement, an underwriting member must furnish to the office as soon as reasonably possible such information about its transactions or

affairs as the office requests in writing. All information furnished pursuant to the office's request must be verified by the oath of two executive officers of the underwriting member.

9. Record maintenance.—Each underwriting member shall have and maintain its principal place of business in this state and shall keep therein complete records of its assets, transactions, and affairs in accordance with such methods and systems as are customary for or suitable to the kind or kinds of insurance transacted.

10. Examination of agents.—If the department has reason to believe that any agent, as defined in s. 626.015 or s. 626.914, has violated or is violating any provision of the insurance law, or upon receipt of a written complaint signed by any interested person indicating that any such violation may exist, the department shall conduct such examination as it deems necessary of the accounts, records, documents, and transactions pertaining to or affecting the insurance affairs of such agent.

11. Written reports of office.—The office or its examiner shall make a full and true written report of any examination. The report shall contain only information obtained from examination of the records, accounts, files, and documents of or relative to the person or entity examined or from testimony of individuals under oath, together with relevant conclusions and recommendations of the examiner based thereon. The office shall furnish a copy of the report to the person or entity examined not less than 30 days prior to filing the report in its office. If such person or entity so requests in writing within such 30-day period, the office shall grant a hearing with respect to the report and shall not file the report until after the hearing and

after such modifications have been made therein as the office deems proper.

12. Admissibility of reports.—The report of an examination when filed shall be admissible in evidence in any action or proceeding brought by the office against the person or entity examined, or against his or her or its officers, employees, or agents. The office or its examiners may at any time testify and offer other proper evidence as to information secured or matters discovered during the course of an examination, whether or not a written report of the examination has been either made, furnished, or filed in the office.

13. Publication of reports.—After an examination report has been filed, the office may publish the results of any such examination in one or more newspapers published in this state whenever it deems it to be in the public interest.

14. Consideration of examination reports by entity examined.—After the examination report of an underwriting member has been filed, an affidavit shall be filed with the office, not more than 30 days after the report has been filed, on a form furnished by the office and signed by the person or a representative of any entity examined, stating that the report has been read and that the recommendations made in the report will be considered within a reasonable time.

15. Examination costs.—Each person or entity examined by the office shall pay to the office the expenses incurred in such examination.

16. Exchange costs.—An exchange shall reimburse the office for any expenses incurred by it relating to the regulation of the exchange and its members, except as specified in

subparagraph 15.

17. Powers of examiners.—Any examiner appointed by the office, as to the subject of any examination, investigation, or hearing being conducted by him or her, may administer oaths, examine and cross-examine witnesses, and receive oral and documentary evidence, and shall have the power to subpoena witnesses, compel their attendance and testimony, and require by subpoena the production of books, papers, records, files, correspondence, documents, or other evidence which the examiner deems relevant to the inquiry. If any person refuses to comply with any such subpoena or to testify as to any matter concerning which he or she may be lawfully interrogated, the Circuit Court of Leon County or the circuit court of the county wherein such examination, investigation, or hearing is being conducted, or of the county wherein such person resides, on the office's application may issue an order requiring such person to comply with the subpoena and to testify; and any failure to obey such an order of the court may be punished by the court as a contempt thereof. Subpoenas shall be served, and proof of such service made, in the same manner as if issued by a circuit court. Witness fees and mileage, if claimed, shall be allowed the same as for testimony in a circuit court.

18. False testimony.—Any person willfully testifying falsely under oath as to any matter material to any examination, investigation, or hearing shall upon conviction thereof be guilty of perjury and shall be punished accordingly.

19. Self-incrimination.—

a. If any person asks to be excused from attending or testifying or from producing any books, papers, records,

contracts, documents, or other evidence in connection with any examination, hearing, or investigation being conducted by the office or its examiner, on the ground that the testimony or evidence required of the person may tend to incriminate him or her or subject him or her to a penalty or forfeiture, and the person notwithstanding is directed to give such testimony or produce such evidence, he or she shall, if so directed by the office and the Department of Legal Affairs, nonetheless comply with such direction; but the person shall not thereafter be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he or she may have so testified or produced evidence, and no testimony so given or evidence so produced shall be received against him or her upon any criminal action, investigation, or proceeding; except that no such person so testifying shall be exempt from prosecution or punishment for any perjury committed by him or her in such testimony, and the testimony or evidence so given or produced shall be admissible against him or her upon any criminal action, investigation, or proceeding concerning such perjury, nor shall he or she be exempt from the refusal, suspension, or revocation of any license, permission, or authority conferred, or to be conferred, pursuant to the insurance law.

b. Any such individual may execute, acknowledge, and file with the office a statement expressly waiving such immunity or privilege in respect to any transaction, matter, or thing specified in such statement, and thereupon the testimony of such individual or such evidence in relation to such transaction, matter, or thing may be received or produced before any judge or

justice, court, tribunal, grand jury, or otherwise; and if such testimony or evidence is so received or produced, such individual shall not be entitled to any immunity or privileges on account of any testimony so given or evidence so produced.

20. Penalty for failure to testify.—Any person who refuses or fails, without lawful cause, to testify relative to the affairs of any member, associate broker, or other person when subpoenaed and requested by the office to so testify, as provided in subparagraph 17., shall, in addition to the penalty provided in subparagraph 17., be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

21. Name selection.—No underwriting member shall be formed or authorized to transact insurance in this state under a name which is the same as that of any authorized insurer or is so nearly similar thereto as to cause or tend to cause confusion or under a name which would tend to mislead as to the type of organization of the insurer. Before incorporating under or using any name, the underwriting syndicate or proposed underwriting syndicate shall submit its name or proposed name to the office for the approval of the office.

22. Capitalization.—An underwriting member approved on or after July 2, 1987, shall provide an initial paid-in capital and surplus of $3 million and thereafter shall maintain a minimum policyholder surplus of $2 million in order to be permitted to write insurance. Underwriting members approved prior to July 2, 1987, shall maintain a minimum policyholder surplus of $1 million. After June 29, 1988, underwriting members approved prior to July 2, 1987, must maintain a minimum policyholder

surplus of $1.5 million to write insurance. After June 29, 1989, underwriting members approved prior to July 2, 1987, must maintain a minimum policyholder surplus of $1.75 million to write insurance. After December 30, 1989, all underwriting members, regardless of the date they were approved, must maintain a minimum policyholder surplus of $2 million to write insurance. Except for that portion of the paid-in capital and surplus which shall be maintained in a security fund of an exchange, the paid-in capital and surplus shall be invested by an underwriting member in a manner consistent with ss. 625.301-625.340. The portion of the paid-in capital and surplus in any security fund of an exchange shall be invested in a manner limited to investments for life insurance companies under the Florida insurance laws.

23. Limitations on coverage written.—

a. Limit of risk.—No underwriting member shall expose itself to any loss on any one risk in an amount exceeding 10 percent of its surplus to policyholders. Any risk or portion of any risk which shall have been reinsured in an assuming reinsurer authorized or approved to do such business in this state shall be deducted in determining the limitation of risk prescribed in this section.

b. Restrictions on premiums written.—If the office has reason to believe that the underwriting member's ratio of actual or projected annual gross written premiums to policyholder surplus exceeds 8 to 1 or the underwriting member's ratio of actual or projected annual net premiums to policyholder surplus exceeds 4 to 1, the office may establish maximum gross or net annual premiums to be written by the underwriting member

consistent with maintaining the ratios specified in this sub-subparagraph.

(I) Projected annual net or gross premiums shall be based on the actual writings to date for the underwriting member's current calendar year, its writings for the previous calendar year, or both. Ratios shall be computed on an annualized basis.

(II) For purposes of this sub-subparagraph, the term "gross written premiums" means direct premiums written and reinsurance assumed.

c. Surplus as to policyholders.—For the purpose of determining the limitation on coverage written, surplus as to policyholders shall be deemed to include any voluntary reserves, or any part thereof, which are not required by or pursuant to law and shall be determined from the last sworn statement of such underwriting member with the office, or by the last report or examination filed by the office, whichever is more recent at the time of assumption of such risk.

24. Unearned premium reserves.—An underwriting member must at all times maintain an unearned premium reserve equal to 50 percent of the net written premiums of the subscribers on policies having 1 year or less to run, and pro rata on those for longer periods, ~~All unearned premium reserves for business written on the exchange shall be calculated on a monthly or more frequent basis or on such other basis as determined by the office,~~ except that all premiums on any marine or transportation insurance trip risk shall be deemed unearned until the trip is terminated. For the purpose of this subparagraph, the term "net written premiums" means the premium payments made by subscribers plus the premiums due from subscribers, after deducting the

amounts specifically provided in the subscribers' agreements for expenses, including reinsurance costs and fees paid to the attorney in fact, provided that the power of attorney agreement contains an explicit provision requiring the attorney in fact to refund any unearned subscribers fees on a pro-rata basis for cancelled policies. If there is no such provision, the unearned premium reserves must be calculated without any adjustment for fees paid to the attorney in fact. If the unearned premium reserves at any time do not amount to $100,000, there must be maintained on deposit at the exchange at all times additional funds in cash or eligible securities, which, together with the unearned premium reserves, equal $100,000. In calculating the foregoing reserves, the amount of the attorney's bond, as filed with the office and as required by s. 629.121, must be included in such reserves. If at any time the unearned premium reserves are less than the foregoing requirements, the subscribers or the attorney in fact shall advance funds to make up the deficiency. Such advances must be repaid only out of the surplus of the exchange and only after receiving written approval from the office.

25. Loss reserves.—All underwriting members of an exchange shall maintain loss reserves, including a reserve for incurred but not reported claims. The reserves shall be subject to review by the office, and, if loss experience shows that an underwriting member's loss reserves are inadequate, the office shall require the underwriting member to maintain loss reserves in such additional amount as is needed to make them adequate.

26. Distribution of profits.—An underwriting member shall not distribute any profits in the form of cash or other assets

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to owners except out of that part of its available and accumulated surplus funds which is derived from realized net operating profits on its business and realized capital gains. In any one year such payments to owners shall not exceed 30 percent of such surplus as of December 31 of the immediately preceding year, unless otherwise approved by the office. No distribution of profits shall be made that would render an underwriting member either impaired or insolvent.

27. Stock dividends.—A stock dividend may be paid by an underwriting member out of any available surplus funds in excess of the aggregate amount of surplus advanced to the underwriting member under subparagraph 29.

28. Dividends from earned surplus.—A dividend otherwise lawful may be payable out of an underwriting member's earned surplus even though the total surplus of the underwriting member is then less than the aggregate of its past contributed surplus resulting from issuance of its capital stock at a price in excess of the par value thereof.

29. Borrowing of money by underwriting members.—

a. An underwriting member may borrow money to defray the expenses of its organization, provide it with surplus funds, or for any purpose of its business, upon a written agreement that such money is required to be repaid only out of the underwriting member's surplus in excess of that stipulated in such agreement. The agreement may provide for interest not exceeding 15 percent simple interest per annum. The interest shall or shall not constitute a liability of the underwriting member as to its funds other than such excess of surplus, as stipulated in the agreement. No commission or promotion expense shall be paid in

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connection with any such loan. The use of any surplus note and any repayments thereof shall be subject to the approval of the office.

b. Money so borrowed, together with any interest thereon if so stipulated in the agreement, shall not form a part of the underwriting member's legal liabilities except as to its surplus in excess of the amount thereof stipulated in the agreement, nor be the basis of any setoff; but until repayment, financial statements filed or published by an underwriting member shall show as a footnote thereto the amount thereof then unpaid, together with any interest thereon accrued but unpaid.

30. Liquidation, rehabilitation, and restrictions.—The office, upon a showing that a member or associate broker of an exchange has met one or more of the grounds contained in part I of chapter 631, may restrict sales by type of risk, policy or contract limits, premium levels, or policy or contract provisions; increase surplus or capital requirements of underwriting members; issue cease and desist orders; suspend or restrict a member's or associate broker's right to transact business; place an underwriting member under conservatorship or rehabilitation; or seek an order of liquidation as authorized by part I of chapter 631.

31. Prohibited conduct.—The following acts by a member, associate broker, or affiliated person shall constitute prohibited conduct:

a. Fraud.

b. Fraudulent or dishonest acts committed by a member or associate broker prior to admission to an exchange, if the facts and circumstances were not disclosed to the office upon

application to become a member or associate broker.

c. Conduct detrimental to the welfare of an exchange.

d. Unethical or improper practices or conduct, inconsistent with just and equitable principles of trade as set forth in, but not limited to, ss. 626.951-626.9641 and 626.973.

e. Failure to use due diligence to ascertain the insurance needs of a client or a principal.

f. Misstatements made under oath or upon an application for membership on an exchange.

g. Failure to testify or produce documents when requested by the office.

h. Willful violation of any law of this state.

i. Failure of an officer or principal to testify under oath concerning a member, associate broker, or other person's affairs as they relate to the operation of an exchange.

j. Violation of the constitution and bylaws of the exchange.

32. Penalties for participating in prohibited conduct.—

a. The office may order the suspension of further transaction of business on the exchange of any member or associate broker found to have engaged in prohibited conduct. In addition, any member or associate broker found to have engaged in prohibited conduct may be subject to reprimand, censure, and/or a fine not exceeding $25,000 imposed by the office.

b. Any member which has an affiliated person who is found to have engaged in prohibited conduct shall be subject to involuntary withdrawal or in addition thereto may be subject to suspension, reprimand, censure, and/or a fine not exceeding $25,000.

33. Reduction of penalties.—Any suspension, reprimand, censure, or fine may be remitted or reduced by the office on such terms and conditions as are deemed fair and equitable.

34. Other offenses.—Any member or associate broker that is suspended shall be deprived, during the period of suspension, of all rights and privileges of a member or of an associate broker and may be proceeded against by the office for any offense committed either before or after the date of suspension.

35. Reinstatement.—Any member or associate broker that is suspended may be reinstated at any time on such terms and conditions as the office may specify.

36. Remittance of fines.—Fines imposed under this section shall be remitted to the office and shall be paid into the Insurance Regulatory Trust Fund.

37. Failure to pay fines.—When a member or associate broker has failed to pay a fine for 15 days after it becomes payable, such member or associate broker shall be suspended, unless the office has granted an extension of time to pay such fine.

38. Changes in ownership or assets.—In the event of a major change in the ownership or a major change in the assets of an underwriting member, the underwriting member shall report such change in writing to the office within 30 days of the effective date thereof. The report shall set forth the details of the change. Any change in ownership or assets of more than 5 percent shall be considered a major change.

39. Retaliation.—

a. When by or pursuant to the laws of any other state or foreign country any taxes, licenses, or other fees, in the aggregate, and any fines, penalties, deposit requirements, or

other material obligations, prohibitions, or restrictions are or would be imposed upon an exchange or upon the agents or representatives of such exchange which are in excess of such taxes, licenses, and other fees, in the aggregate, or which are in excess of such fines, penalties, deposit requirements, or other obligations, prohibitions, or restrictions directly imposed upon similar exchanges or upon the agents or representatives of such exchanges of such other state or country under the statutes of this state, so long as such laws of such other state or country continue in force or are so applied, the same taxes, licenses, and other fees, in the aggregate, or fines, penalties, deposit requirements, or other material obligations, prohibitions, or restrictions of whatever kind shall be imposed by the office upon the exchanges, or upon the agents or representatives of such exchanges, of such other state or country doing business or seeking to do business in this state.

b. Any tax, license, or other obligation imposed by any city, county, or other political subdivision or agency of a state, jurisdiction, or foreign country on an exchange, or on the agents or representatives on an exchange, shall be deemed to be imposed by such state, jurisdiction, or foreign country within the meaning of sub-subparagraph a.

40. Agents.—

a. Agents as defined in ss. 626.015 and 626.914 who are broker members or associate broker members of an exchange shall be allowed only to place on an exchange the same kind or kinds of business that the agent is licensed to place pursuant to Florida law. Direct Florida business as defined in s. 626.916 or

s. 626.917 shall be written through a broker member who is a surplus lines agent as defined in s. 626.914. The activities of each broker member or associate broker with regard to an exchange shall be subject to all applicable provisions of the insurance laws of this state, and all such activities shall constitute transactions under his or her license as an insurance agent for purposes of the Florida insurance law.

b. Premium payments and other requirements.—If an underwriting member has assumed the risk as to a surplus lines coverage and if the premium therefor has been received by the surplus lines agent who placed such insurance, then in all questions thereafter arising under the coverage as between the underwriting member and the insured, the underwriting member shall be deemed to have received the premium due to it for such coverage; and the underwriting member shall be liable to the insured as to losses covered by such insurance, and for unearned premiums which may become payable to the insured upon cancellation of such insurance, whether or not in fact the surplus lines agent is indebted to the underwriting member with respect to such insurance or for any other cause.

41. Improperly issued contracts, riders, and endorsements.—

a. Any insurance policy, rider, or endorsement issued by an underwriting member and otherwise valid which contains any condition or provision not in compliance with the requirements of this section shall not be thereby rendered invalid, except as provided in s. 627.415, but shall be construed and applied in accordance with such conditions and provisions as would have applied had such policy, rider, or endorsement been in full compliance with this section. In the event an underwriting

member issues or delivers any policy for an amount which exceeds any limitations otherwise provided in this section, the underwriting member shall be liable to the insured or his or her beneficiary for the full amount stated in the policy in addition to any other penalties that may be imposed.

b. Any insurance contract delivered or issued for delivery in this state governing a subject or subjects of insurance resident, located, or to be performed in this state which, pursuant to the provisions of this section, the underwriting member may not lawfully insure under such a contract shall be cancelable at any time by the underwriting member, any provision of the contract to the contrary notwithstanding; and the underwriting member shall promptly cancel the contract in accordance with the request of the office therefor. No such illegality or cancellation shall be deemed to relieve the underwriting syndicate of any liability incurred by it under the contract while in force or to prohibit the underwriting syndicate from retaining the pro rata earned premium thereon. This provision does not relieve the underwriting syndicate from any penalty otherwise incurred by the underwriting syndicate.

42. Satisfaction of judgments.—

a. Every judgment or decree for the recovery of money heretofore or hereafter entered in any court of competent jurisdiction against any underwriting member shall be fully satisfied within 60 days from and after the entry thereof or, in the case of an appeal from such judgment or decree, within 60 days from and after the affirmance of the judgment or decree by the appellate court.

b. If the judgment or decree is not satisfied as required

under sub-subparagraph a., and proof of such failure to satisfy is made by filing with the office a certified transcript of the docket of the judgment or the decree together with a certificate by the clerk of the court wherein the judgment or decree remains unsatisfied, in whole or in part, after the time provided in sub-subparagraph a., the office shall forthwith prohibit the underwriting member from transacting business. The office shall not permit such underwriting member to write any new business until the judgment or decree is wholly paid and satisfied and proof thereof is filed with the office under the official certificate of the clerk of the court wherein the judgment was recovered, showing that the judgment or decree is satisfied of record, and until the expenses and fees incurred in the case are also paid by the underwriting syndicate.

43. Tender and exchange offers.—No person shall conclude a tender offer or an exchange offer or otherwise acquire 5 percent or more of the outstanding voting securities of an underwriting member or controlling company or purchase 5 percent or more of the ownership of an underwriting member or controlling company unless such person has filed with, and obtained the approval of, the office and sent to such underwriting member a statement setting forth:

a. The identity of, and background information on, each person by whom, or on whose behalf, the acquisition is to be made; and, if the acquisition is to be made by or on behalf of a corporation, association, or trust, the identity of and background information on each director, officer, trustee, or other natural person performing duties similar to those of a director, officer, or trustee for the corporation, association,

or trust.

b. The source and amount of the funds or other consideration used, or to be used, in making the acquisition.

c. Any plans or proposals which such person may have to liquidate such member, to sell its assets, or to merge or consolidate it.

d. The percentage of ownership which such person proposes to acquire and the terms of the offer or exchange, as the case may be.

e. Information as to any contracts, arrangements, or understandings with any party with respect to any securities of such member or controlling company, including, but not limited to, information relating to the transfer of any securities, option arrangements, or puts or calls or the giving or withholding of proxies, naming the party with whom such contract, arrangements, or understandings have been entered and giving the details thereof.

f. The office may disapprove any acquisition subject to the provisions of this subparagraph by any person or any affiliated person of such person who:

(I) Willfully violates this subparagraph;

(II) In violation of an order of the office issued pursuant to sub-subparagraph j., fails to divest himself or herself of any stock obtained in violation of this subparagraph, or fails to divest himself or herself of any direct or indirect control of such stock, within 25 days after such order; or

(III) In violation of an order issued by the office pursuant to sub-subparagraph j., acquires additional stock of the underwriting member or controlling company, or direct or

indirect control of such stock, without complying with this subparagraph.

g. The person or persons filing the statement required by this subparagraph have the burden of proof. The office shall approve any such acquisition if it finds, on the basis of the record made during any proceeding or on the basis of the filed statement if no proceeding is conducted, that:

(I) Upon completion of the acquisition, the underwriting member will be able to satisfy the requirements for the approval to write the line or lines of insurance for which it is presently approved;

(II) The financial condition of the acquiring person or persons will not jeopardize the financial stability of the underwriting member or prejudice the interests of its policyholders or the public;

(III) Any plan or proposal which the acquiring person has, or acquiring persons have, made:

(A) To liquidate the insurer, sell its assets, or merge or consolidate it with any person, or to make any other major change in its business or corporate structure or management; or

(B) To liquidate any controlling company, sell its assets, or merge or consolidate it with any person, or to make any major change in its business or corporate structure or management which would have an effect upon the underwriting member

is fair and free of prejudice to the policyholders of the underwriting member or to the public;

(IV) The competence, experience, and integrity of those persons who will control directly or indirectly the operation of

the underwriting member indicate that the acquisition is in the best interest of the policyholders of the underwriting member and in the public interest;

(V) The natural persons for whom background information is required to be furnished pursuant to this subparagraph have such backgrounds as to indicate that it is in the best interests of the policyholders of the underwriting member, and in the public interest, to permit such persons to exercise control over such underwriting member;

(VI) The officers and directors to be employed after the acquisition have sufficient insurance experience and ability to assure reasonable promise of successful operation;

(VII) The management of the underwriting member after the acquisition will be competent and trustworthy and will possess sufficient managerial experience so as to make the proposed operation of the underwriting member not hazardous to the insurance-buying public;

(VIII) The management of the underwriting member after the acquisition will not include any person who has directly or indirectly through ownership, control, reinsurance transactions, or other insurance or business relations unlawfully manipulated the assets, accounts, finances, or books of any insurer or underwriting member or otherwise acted in bad faith with respect thereto;

(IX) The acquisition is not likely to be hazardous or prejudicial to the underwriting member's policyholders or the public; and

(X) The effect of the acquisition of control would not substantially lessen competition in insurance in this state or

would not tend to create a monopoly therein.

h. No vote by the stockholder of record, or by any other person, of any security acquired in contravention of the provisions of this subparagraph is valid. Any acquisition of any security contrary to the provisions of this subparagraph is void. Upon the petition of the underwriting member or controlling company, the circuit court for the county in which the principal office of such underwriting member is located may, without limiting the generality of its authority, order the issuance or entry of an injunction or other order to enforce the provisions of this subparagraph. There shall be a private right of action in favor of the underwriting member or controlling company to enforce the provisions of this subparagraph. No demand upon the office that it perform its functions shall be required as a prerequisite to any suit by the underwriting member or controlling company against any other person, and in no case shall the office be deemed a necessary party to any action by such underwriting member or controlling company to enforce the provisions of this subparagraph. Any person who makes or proposes an acquisition requiring the filing of a statement pursuant to this subparagraph, or who files such a statement, shall be deemed to have thereby designated the Chief Financial Officer as such person's agent for service of process under this subparagraph and shall thereby be deemed to have submitted himself or herself to the administrative jurisdiction of the office and to the jurisdiction of the circuit court.

i. Any approval by the office under this subparagraph does not constitute a recommendation by the office for an acquisition, tender offer, or exchange offer. It is unlawful for

a person to represent that the office's approval constitutes a recommendation. A person who violates the provisions of this sub-subparagraph is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. The statute-of-limitations period for the prosecution of an offense committed under this sub-subparagraph is 5 years.

j. Upon notification to the office by the underwriting member or a controlling company that any person or any affiliated person of such person has acquired 5 percent or more of the outstanding voting securities of the underwriting member or controlling company without complying with the provisions of this subparagraph, the office shall order that the person and any affiliated person of such person cease acquisition of any further securities of the underwriting member or controlling company; however, the person or any affiliated person of such person may request a proceeding, which proceeding shall be convened within 7 days after the rendering of the order for the sole purpose of determining whether the person, individually or in connection with any affiliated person of such person, has acquired 5 percent or more of the outstanding voting securities of an underwriting member or controlling company. Upon the failure of the person or affiliated person to request a hearing within 7 days, or upon a determination at a hearing convened pursuant to this sub-subparagraph that the person or affiliated person has acquired voting securities of an underwriting member or controlling company in violation of this subparagraph, the office may order the person and affiliated person to divest themselves of any voting securities so acquired.

k.(I) The office shall, if necessary to protect the public

interest, suspend or revoke the certificate of authority of any underwriting member or controlling company:

(A) The control of which is acquired in violation of this subparagraph;

(B) That is controlled, directly or indirectly, by any person or any affiliated person of such person who, in violation of this subparagraph, has obtained control of an underwriting member or controlling company; or

(C) That is controlled, directly or indirectly, by any person who, directly or indirectly, controls any other person who, in violation of this subparagraph, acquires control of an underwriting member or controlling company.

(II) If any underwriting member is subject to suspension or revocation pursuant to sub-sub-subparagraph (I), the underwriting member shall be deemed to be in such condition, or to be using or to have been subject to such methods or practices in the conduct of its business, as to render its further transaction of insurance presently or prospectively hazardous to its policyholders, creditors, or stockholders or to the public.

l.(I) For the purpose of this sub-sub-subparagraph, the term "affiliated person" of another person means:

(A) The spouse of such other person;

(B) The parents of such other person and their lineal descendants and the parents of such other person's spouse and their lineal descendants;

(C) Any person who directly or indirectly owns or controls, or holds with power to vote, 5 percent or more of the outstanding voting securities of such other person;

(D) Any person 5 percent or more of the outstanding voting

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securities of which are directly or indirectly owned or controlled, or held with power to vote, by such other person;

(E) Any person or group of persons who directly or indirectly control, are controlled by, or are under common control with such other person; or any officer, director, partner, copartner, or employee of such other person;

(F) If such other person is an investment company, any investment adviser of such company or any member of an advisory board of such company;

(G) If such other person is an unincorporated investment company not having a board of directors, the depositor of such company; or

(H) Any person who has entered into an agreement, written or unwritten, to act in concert with such other person in acquiring or limiting the disposition of securities of an underwriting member or controlling company.

(II) For the purposes of this section, the term "controlling company" means any corporation, trust, or association owning, directly or indirectly, 25 percent or more of the voting securities of one or more underwriting members.

m. The commission may adopt, amend, or repeal rules that are necessary to implement the provisions of this subparagraph, pursuant to chapter 120.

44. Background information.—The information as to the background and identity of each person about whom information is required to be furnished pursuant to sub-subparagraph 43.a. shall include, but shall not be limited to:

a. Such person's occupations, positions of employment, and offices held during the past 10 years.

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b. The principal business and address of any business, corporation, or other organization in which each such office was held or in which such occupation or position of employment was carried on.

c. Whether, at any time during such 10-year period, such person was convicted of any crime other than a traffic violation.

d. Whether, during such 10-year period, such person has been the subject of any proceeding for the revocation of any license and, if so, the nature of such proceeding and the disposition thereof.

e. Whether, during such 10-year period, such person has been the subject of any proceeding under the federal Bankruptcy Act or whether, during such 10-year period, any corporation, partnership, firm, trust, or association in which such person was a director, officer, trustee, partner, or other official has been subject to any such proceeding, either during the time in which such person was a director, officer, trustee, partner, or other official, or within 12 months thereafter.

f. Whether, during such 10-year period, such person has been enjoined, either temporarily or permanently, by a court of competent jurisdiction from violating any federal or state law regulating the business of insurance, securities, or banking, or from carrying out any particular practice or practices in the course of the business of insurance, securities, or banking, together with details of any such event.

45. Security fund.—All underwriting members shall be members of the security fund of any exchange.

46. Underwriting member defined.—Whenever the term

"underwriting member" is used in this subsection, it shall be construed to mean "underwriting syndicate."

47. Offsets.—Any action, requirement, or constraint imposed by the office shall reduce or offset similar actions, requirements, or constraints of any exchange.

48. Restriction on member ownership.—

a. Investments existing prior to July 2, 1987.—The investment in any member by brokers, agents, and intermediaries transacting business on the exchange, and the investment in any such broker, agent, or intermediary by any member, directly or indirectly, shall in each case be limited in the aggregate to less than 20 percent of the total investment in such member, broker, agent, or intermediary, as the case may be. After December 31, 1987, the aggregate percent of the total investment in such member by any broker, agent, or intermediary and the aggregate percent of the total investment in any such broker, agent, or intermediary by any member, directly or indirectly, shall not exceed 15 percent. After June 30, 1988, such aggregate percent shall not exceed 10 percent and after December 31, 1988, such aggregate percent shall not exceed 5 percent.

b. Investments arising on or after July 2, 1987.—The investment in any underwriting member by brokers, agents, or intermediaries transacting business on the exchange, and the investment in any such broker, agent, or intermediary by any underwriting member, directly or indirectly, shall in each case be limited in the aggregate to less than 5 percent of the total investment in such underwriting member, broker, agent, or intermediary.

49. "Underwriting manager" defined.—"Underwriting manager"

as used in this subparagraph includes any person, partnership, corporation, or organization providing any of the following services to underwriting members of the exchange:

a. Office management and allied services, including correspondence and secretarial services.

b. Accounting services, including bookkeeping and financial report preparation.

c. Investment and banking consultations and services.

d. Underwriting functions and services including the acceptance, rejection, placement, and marketing of risk.

50. Prohibition of underwriting manager investment.—Any direct or indirect investment in any underwriting manager by a broker member or any affiliated person of a broker member or any direct or indirect investment in a broker member by an underwriting manager or any affiliated person of an underwriting manager is prohibited. "Affiliated person" for purposes of this subparagraph is defined in subparagraph 43.

51. An underwriting member may not accept reinsurance on an assumed basis from an affiliate or a controlling company, nor may a broker member or management company place reinsurance from an affiliate or controlling company of theirs with an underwriting member. "Affiliate and controlling company" for purposes of this subparagraph is defined in subparagraph 43.

52. Premium defined.—"Premium" is the consideration for insurance, by whatever name called. Any "assessment" or any "membership," "policy," "survey," "inspection," "service" fee or charge or similar fee or charge in consideration for an insurance contract is deemed part of the premium.

53. Rules.—The commission shall adopt rules necessary for

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or as an aid to the effectuation of any provision of this section.

Section 16. Subsection (6) of section 634.121, Florida Statutes, is amended to read:

634.121 Forms, required procedures, provisions; delivery and definitions.—

(6)(a) Each service agreement, which includes a copy of the application form, must be mailed, delivered, or otherwise provided electronically ~~transmitted~~ to the agreement holder as provided in s. 627.421. As used in s. 627.421, the term:

1. "Insurance policies and endorsements," "policy and endorsement," "policy," or "policy form and endorsement form" includes a motor vehicle service agreement and related endorsement forms.

2. "Insured" includes a motor vehicle service agreement holder.

3. "Insurer" includes a motor vehicle service agreement company.

(b) Section 627.421(4) applies if the motor vehicle service agreement company elects to post motor vehicle service agreements on its Internet website in lieu of mailing or delivery to agreement holders ~~within 45 days after the date of purchase~~. ~~Electronic transmission of a service agreement constitutes delivery to the agreement holder~~. ~~The electronic transmission must notify the agreement holder of his or her right to receive the service agreement via United States mail rather than electronic transmission. If the agreement holder communicates to the service agreement company electronically or in writing that he or she does not agree to receipt by~~

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~~electronic transmission, a paper copy of the service agreement shall be provided to the agreement holder.~~

Section 17. Section 641.3107, Florida Statutes, is amended to read:

641.3107 Delivery of contract and certain documents; definitions.—

(1) ~~Unless delivered upon execution or issuance,~~ A health maintenance contract, certificate of coverage, endorsements and riders, or member handbook must ~~shall~~ be mailed, ~~or~~ delivered, or otherwise provided to the subscriber or, in the case of a group health maintenance contract, to the employer or other person who will hold the contract on behalf of the subscriber group, as provided in s. 627.421.

(2) As used in s. 627.421, the term:

(a) "Insurance policies and endorsements," "policy and endorsement," "policy," or "policy form and endorsement form" includes the health maintenance contract, endorsement and riders, certificate of coverage, or member handbook.

(b) "Insured" includes a subscriber or, in the case of a group health maintenance contract, to the employer or other person who will hold the contract on behalf of the subscriber group.

(c) "Insurer" includes a health maintenance organization.

(3) Section 627.421(4) applies if the health maintenance organization elects to post health maintenance contracts on its Internet website in lieu of mailing or delivery to subscribers or the person who will hold the contract on behalf of a subscriber group ~~within 10 working days from approval of the enrollment form by the health maintenance organization or by the~~

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~~effective date of coverage, whichever occurs first~~. ~~However, if the employer or other person who will hold the contract on behalf of the subscriber group requires retroactive enrollment of a subscriber, the organization shall deliver the contract, certificate, or member handbook to the subscriber within 10 days after receiving notice from the employer of the retroactive enrollment.~~ This section does not apply to the delivery of those contracts specified in s. 641.31(13).

Section 18. This act shall take effect upon becoming a law.

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The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	PCS/SB 840 (514374)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Finance and Tax) and Senator Hutson
SUBJECT:	Gaming
DATE:	March 1, 2018
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kraemer	McSwain	RI	**Favorable**
2.	Fournier	Diez-Arguelles	AFT	**Recommend: Fav/CS**
3.	Fournier	Hansen	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 840 revises Florida law concerning gaming. The bill:

- Authorizes the execution of a new gaming compact between the State of Florida (state) and the Seminole Tribe of Florida (Seminole Tribe), which:
  - Authorizes the Seminole Tribe to continue to conduct slot machine gaming at its seven gaming facilities;
  - Permits the Seminole Tribe to offer live table games, such as craps and roulette, at its seven gaming facilities;
  - Authorizes banked card games, including blackjack, chemin de fer, and baccarat, at all seven facilities ;
  - Is for a term of 20 years, through June 30, 2038; and
  - Includes a $3 billion guarantee of revenue sharing payments to the State for the first seven-years (Guarantee Period), with specific payment amounts (Guaranteed Payments) during each year of the Guarantee Period. After the Guarantee Period, payments will be based on varying percentage rates that depend on the amount of the Seminole Tribe's net win (Revenue Share Payments);
  - Provides exceptions to the Tribe's exclusive rights to allow:
    1. The authorization of fantasy contests;
    2. The play of Designated Player Games in cardrooms in the state; and
    3. Certain pari-mutuel permitholders to end live racing.

- Authorizes certain fantasy contests in which participants pay an entry fee, fantasy contest operators and their employees and agents may not be participants in a fantasy contest, prizes and awards must be established and disclosed before a contest, winning outcomes must reflect knowledge and skill of participants and be determined predominantly by statistical results of performances of individuals, including athletes in sporting events, and winning outcomes may not be based on performances in collegiate, high school, or youth sporting events.
- Provides that the Department of Business and Professional Regulation (DBPR) may not regulate fantasy contests and certain gambling laws set forth in Ch. 849, F.S., do not apply to a fantasy contest conducted by a fantasy contest operator or a commissioner who participates in fewer than ten contests each calendar year and distributes all contest entry fees as prizes.
- Allows, subject to eligibility requirements, greyhound racing permitholders, harness horse racing permitholders, and quarter horse racing permitholders to stop conducting live performances but continue operating slot machine facilities or cardrooms (decoupling).
- Requires permitholders licensed to conduct slot machine gaming or cardrooms that choose to discontinue live racing or games, (i.e., decouple), to make annual payments for the benefit of live thoroughbred horse racing purses.
- Eliminates dormant pari-mutuel permits and repeals authorization for the issuance of summer jai alai permits.
- Reduces the tax rate on slot machines from 35 percent to 30 percent effective January 1, 2019, and to 25 percent effective July 1, 2020.
- Provides that if, in any state fiscal year, the aggregate amount of tax paid to the state by all the slot machine licensees in Broward and Miami-Dade counties is less than the aggregate amount paid in the 2017-2018 state fiscal year, each of those licensees must pay a surcharge to alleviate the shortfall.
- Provides that a Designated Player Game is not a banking game and sets certain requirements and limitations for a Designated Player Game.
- Limits the number of Designated Player Game tables in a cardroom to not more than 50 percent of the cardroom's total licensed tables.
- Grants additional rulemaking authority to the DBPR's Division of Pari-Mutuel Wagering (division) relating to requests from licensed cardrooms and imposes deadlines for response by the division to submissions by cardroom licensees relating to rules for new authorized games, revisions to internal controls, and revisions to rules for games.
- Amends the definition of "slot machine or device" to include machines or devices that provide a preview of the outcome of the game (i.e., pre-reveal games).

If the new compact is agreed to by the Seminole Tribe and approved by the United States Secretary of the Interior, the payments made by the Seminole Tribe to the state will increase both during the Guarantee Period (Fiscal Years 2018-2019 through 2024-2025) and thereafter, compared to the payments the Seminole Tribe would be required to pay the state under the 2010 Gaming Compact.

If the new gaming compact does not become effective, and any provisions of PCS/SB 840 are determined to violate the 2010 Gaming Compact, the Seminole Tribe could stop making payments to the State. The payments are estimated to be $391.1 million in Fiscal Year 2018-2019, and from $328.2 to $361.4 million annually in the following seven years. The bill will also

result in the loss of $4.1 million on a recurring basis in slot machine revenue. See Section V., Fiscal Impact Statement.

This bill takes effect upon becoming a law.

II. Present Situation:

Background

In general, gambling is illegal in Florida.[1] Chapter 849, F.S., prohibits keeping a gambling house,[2] running a lottery,[3] or the manufacture, sale, lease, play, or possession of slot machines.[4] However, the following gaming activities are authorized by law and regulated by the state:

- Pari-mutuel[5] wagering at licensed greyhound and horse tracks and jai alai frontons;[6]
- Slot machine gaming at certain licensed pari-mutuel locations in Miami-Dade County and Broward County;[7] and
- Cardrooms[8] at certain pari-mutuel facilities.[9]

A license to offer pari-mutuel wagering, slot machine gambling, or a cardroom at a pari-mutuel facility is a privilege granted by the state.[10]

The 1968 State Constitution states that "[l]otteries, other than the types of pari-mutuel pools authorized by law as of the effective date of this constitution . . ." are prohibited.[11] A constitutional amendment approved by the voters in 1986 authorized state-operated lotteries. Net proceeds of the lottery are deposited to the Educational Enhancement Trust Fund (EETF) and

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[1] *See* s. 849.08, F.S.
[2] *See* s. 849.01, F.S.
[3] *See* s. 849.09, F.S.
[4] Section 849.16, F.S., defines slot machines for purposes of ch. 849, F.S. Section 849.15(2), F.S., provides an exemption to the transportation of slot machines for the facilities that are authorized to conduct slot machine gaming under ch. 551, F.S.
[5] Pari-mutuel" is defined in Florida law as "a system of betting on races or games in which the winners divide the total amount bet, after deducting management expenses and taxes, in proportion to the sums they have wagered individually and with regard to the odds assigned to particular outcomes. *See* s. 550.002(22), F.S.
[6] *See* ch. 550, F.S., relating to the regulation of pari-mutuel activities.
[7] *See* ch. 551, F.S., relating to the regulation of slot machine gaming at pari-mutuel locations.
[8] Section 849.086, F.S., and *see* s. 849.086(2)(c), F.S., which defines "cardroom" to mean "a facility where authorized card games are played for money or anything of value and to which the public is invited to participate in such games and charged a fee for participation by the operator of such facility."
[9] The Department of Business and Professional Regulation (DBPR) has issued licenses to permitholders with 2017-2018 Operating Licenses to operate 25 cardrooms. *See* http://www.myfloridalicense.com/dbpr/pmw/PMW-PermitholderOperatingLicenses--2017-2018.html (last visited Jan. 11, 2018).
[10] *See* s. 550.1625(1), F.S., "…legalized pari-mutuel betting at dog tracks is a privilege and is an operation that requires strict supervision and regulation in the best interests of the state." *See also Solimena v. State*, 402 So.2d 1240, 1247 (Fla. 3d DCA 1981), *review denied*, 412 So.2d 470, which states "Florida courts have consistently emphasized the special nature of legalized racing, describing it as a privilege rather than as a vested right," citing *State ex rel. Mason v. Rose*, 122 Fla. 413, 165 So. 347 (1936).
[11] The pari-mutuel pools that were authorized by law on the effective date of the Florida Constitution, as revised in 1968, include horseracing, greyhound racing, and jai alai games. The revision was ratified by the electorate on November 5, 1968.

appropriated by the Legislature. Lottery operations are self-supporting and function as an entrepreneurial business enterprise.[12]

Chapter 849, F.S., also authorizes, under specific and limited conditions, the conduct of penny-ante games,[13] bingo,[14] charitable drawings, game promotions (sweepstakes),[15] and bowling tournaments.[16] The Family Amusement Games Act was enacted in 2015 and authorizes skill-based amusement games and machines at specified locations.[17]

III. Effect of Proposed Changes:

For ease of reference to each of the topics addressed in the bill, the Present Situation for each topic will be described, followed immediately by an associated section detailing the Effect of Proposed Changes.

Gaming Compacts with Seminole Tribe of Florida

Present Situation:

In 2010, a gaming compact (2010 Gaming Compact) between the Seminole Tribe of Florida (Seminole Tribe) and the State of Florida (state) was ratified by the Legislature.[18] The 2010 Gaming Compact authorizes the Seminole Tribe to conduct certain Class III gaming for a 20-year period, and to offer banked card games for five years, through July 31, 2015. The 2010 Gaming Compact provides that any expanded gaming (beyond what is specifically acknowledged) allowed in the state relieves the Seminole Tribe of its obligations to make substantial revenue sharing payments.[19]

Pursuant to Chapter 285, F.S., it is not a crime for a person to participate in raffles, drawings, slot machine gaming, or banked card games (e.g., blackjack or baccarat) at a tribal facility operating under the 2010 Gaming Compact.[20]

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[12] The Department of the Lottery is authorized by s. 15, Art. X, Florida Constitution. Chapter 24, F.S., was enacted by ch. 87-65, Laws of Fla., to establish the state lottery. Section 24.102, F.S., states the legislative purpose and intent for the operations of the state lottery.
[13] *See* s. 849.085, F.S.
[14] *See* s. 849.0931, F.S.
[15] *See* s. 849.094, F.S., authorizes game promotions in connection with the sale of consumer products or services.
[16] *See* s. 849.141, F.S.
[17] *See* s. 546.10, F.S.
[18] The 2010 Gaming Compact was executed by the Governor and the Seminole Tribe on April 7, 2010, ratified by the Legislature, effective April 28, 2010, and approved by U.S. Secretary of the Interior, pursuant to the Indian Gaming Regulatory Act of 1988, on June 24, 2010. It took effect when published in the Federal Register on July 6, 2010. The 20-year term of the 2010 Gaming Compact expires July 31, 2030, unless renewed. Section 285.710(1)(f), F.S., designates the Division of Pari-mutuel Wagering of the Department of Business and Professional Regulation as the "state compliance agency" having authority to carry out the state's oversight responsibilities under the 2010 Gaming Compact. *See* http://www.myfloridalicense.com/dbpr/pmw/documents/2010_Compact-Signed1.pdf (last visited Jan. 11, 2018).
[19] *See* last sentence in paragraph B of Part XII of 2010 Gaming Compact at page 43.
[20] *See* s. 285.710, F.S., especially subsections (3), (13), and (14). The seven tribal locations where gaming is authorized by the 2010 Gaming Compact are: (1) Seminole Hard Rock Hotel & Casino—Hollywood (Broward); (2) Seminole Indian Casino—Coconut Creek (Broward); (3) Seminole Indian Casino—Hollywood (Broward); (4) Seminole Hard Rock Hotel & Casino—Tampa (Hillsborough); (5) Seminole Indian Casino—Immokalee (Collier); (6) Seminole Indian Casino—Brighton (Glades); and (7) Seminole Indian Casino—Big Cypress (Hendry).

Section 285.710, F.S., provides that money received by the state from the compact is to be deposited into the General Revenue Fund and provides for the distribution of 3 percent of the amount paid by the Seminole Tribe to the specified local governments. The percentage of the local share distributed to the specified counties and municipalities is based on the net win per facility in each county and municipality.

The 2010 Gaming Compact provides for revenue sharing in consideration for the exclusive authority granted to the Seminole Tribe to offer banked card games on tribal lands and to offer slot machine gaming outside Miami-Dade and Broward counties.

The Division of Pari-mutuel Wagering of the Department of Business and Professional Regulation (DBPR) carries out the state's oversight responsibilities under the 2010 Gaming Compact.[21]

Federal Litigation Concerning the 2010 Gaming Compact

The state and the Seminole Tribe were parties to litigation in federal court relating to the offering of table games by the Seminole Tribe after July 31, 2015, in which the state alleged that the Seminole Tribe's conduct of banked card games violated the 2010 Gaming Compact. The Seminole Tribe alleged it had authority to conduct banked card games under the 2010 Gaming Compact after 2015 because the state had allowed pari-mutuel cardrooms to conduct banked games (i.e., Designated Player Games).

On November 9, 2016, U.S. District Court Judge Robert L. Hinkle issued an Opinion on the Merits, which held the Seminole Tribe may operate banked card games at all seven of its facilities (rather than the five facilities at which banked card games had been allowed since 2010) through the entire 20-year term of the 2010 Gaming Compact (i.e., until 2030) because the state permitted others to offer banked card games (i.e., pari-mutuel cardrooms).[22]

Because of the finding that others had been allowed to conduct banked card games, the court found that the 2010 Gaming Compact allows the Seminole Tribe to conduct banked card games at all seven of its gaming facilities, for the Compact's full 20-year term (through July 31, 2030).[23] The DBPR appealed Judge Hinkle's decision.[24]

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[21] *See* s. 285.710(1)(f), F.S.

[22] *See Seminole Tribe of Florida v. State of Florida,* 219 F.Supp. 3d 1177 (N.D. Fla. Nov. 9, 2016), Case No.: 4:15-cv-516-RH/CAS, Document 103. In addition to the holding as to banked card games, Judge Hinkle held that sovereign immunity barred the court from considering whether the State had failed to negotiate in good faith as to authorizing roulette and craps, and that a ruling on whether electronic forms of blackjack are also a banked card game was unnecessary as that issue was too close to resolve and was not essential to the outcome of the case.

[23] *Id.* at p. 19, and s*ee* Judgment issued in *Seminole Tribe of Florida v. State of Florida*, Case No.: 4:15-cv-516-RH/CAS (U.S.D.C. N.D. Fla.), Document 104, filed Nov. 16, 2016, at p. 1. *See Federal Litigation Concerning the 2010 Gaming Compact and Banked Card Games (including Player Banked Card Games with a Designated Player)*, below, for a discussion of Judge Hinkle's decision relating to banked card games.

[24] *See Seminole Tribe of Florida v. State of Florida*, 219 F.Supp. 3d 1177 (N.D. Fla. Jan. 19, 2017), Case No.: 4:15-cv-516-RH/CAS, Document 120.

Settlement of the Federal Litigation and Establishment of Forbearance Period

After the appeal of Judge Hinkle's decision was filed, the Seminole Tribe and the DBPR entered into a Settlement Agreement and Stipulation (2017 Settlement) on July 5, 2017.[25] The parties agreed to undertake certain actions.

The state agreed to dismiss the pending appeal, and, upon issuance of the final order of dismissal of the appeal, the Seminole Tribe agreed to release the state from all claims by the Tribe for past Revenue Share Payments,[26] based on the operation of player-banked games which use a designated player (Designated Player Games) or electronic forms of blackjack (Electronic Table Games) in Florida. The state and the Seminole Tribe also agreed that the findings of fact and conclusions of law in Judge Hinkle's decision are binding on the parties.[27]

The Seminole Tribe also agreed it would not seek the return of funds associated with tribal gaming paid to and segregated by the state during the pendency of the federal litigation, granting the state unencumbered use of the segregated funds.[28]

As to the continued operation of banked card games (i.e., Designated Player Games operated as described in Judge Hinkle's decision), the Seminole Tribe agreed to delay taking certain actions until after the last day of the month that the Legislature adjourns[29] its 2018 legislative session (the Forbearance Period). The Seminole Tribe agreed not to:

- Suspend Revenue Share Payments; or
- Deposit Revenue Share Payments into an escrow account in accordance with Part XII of the 2010 Gaming Compact, provided that the State takes aggressive enforcement action against the continued operation of banked card games and no other violations of the Tribe's exclusivity occur during the Forbearance Period.[30]

Effect of Proposed Changes:

Section 1 ratifies and approves in advance a new gaming compact between the Seminole Tribe and the state (the 2018 Gaming Compact) and authorizes the Governor to execute such a compact in the identical form set forth in the legislation. If ratified, the 2018 Gaming Compact will supersede the 2010 Gaming Compact; otherwise, the 2010 Gaming Compact remains in effect. The bill requires the Governor to cooperate with the Seminole Tribe in seeking approval of the 2018 Compact from the United States Secretary of the Interior. The state's ratification expires January 1, 2019, unless the 2018 Gaming Compact becomes effective.

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[25] *See* Settlement Agreement and Stipulation (2017 Settlement) (July 5, 2017) (on file with the Senate Committee on Regulated Industries).

[26] Revenue Share Payments are the periodic payments to the State by the Seminole Tribe, based on the Tribe's Net Win. Net Win is defined as total receipts from the play of authorized tribal gaming in Florida, less all prizes, free play, or promotional credits. *See* paragraphs U and X of Part III of the 2010 Gaming Compact at page 11 at http://www.myfloridalicense.com/dbpr/pmw/documents/2010_Compact-Signed1.pdf (last visited Jan. 11, 2018).

[27] *See* 2017 Settlement at page 8.

[28] *See* the 2017 Settlement at page 6.

[29] Should the 2018 legislative session be adjourned as anticipated on March 9, 2018, the Forbearance Period will end on March 31, 2018.

[30] *See* 2017 Settlement at page 7.

The 2018 Gaming Compact:

- Authorizes the Seminole Tribe to conduct slot machine gaming at its seven gaming facilities;
- Permits the Seminole Tribe to offer live table games, such as craps and roulette, at its seven gaming facilities;
- Authorizes banked card games, including blackjack, chemin de fer, and baccarat, at its seven facilities;
- Is for a term of 20 years, through June 30, 2038; and
- Includes a $3 billion guarantee of revenue sharing payments to the state for the first seven-years (Guarantee Period), with specific payment amounts (Guaranteed Payments) during each year of the Guarantee Period. After the Guarantee Period, payments will be based on varying percentage rates that depend on the amount of the Seminole Tribe's net win (Revenue Share Payments).[31]

After ratification by the Legislature, the 2018 Gaming Compact is subject to approval by the United States Department of the Interior, as required under the Indian Gaming Regulatory Act of 1988. Notice of the approval by the Department of the Interior is published in the Federal Register.[32]

The following table compares the terms of the 2010 Gaming Compact to the 2018 Gaming Compact:

	2018 COMPACT	**2010 COMPACT**
Guarantee Money to State	7-year Guarantee worth $3 billion (Starts 7/1/2018) 1- $325 million 2- $350 million 3- $375 million 4- $425 million 5- $475 million 6- $500 million 7- $550 million Total: $3 Billion guaranteed (true-up at end of year 7)	5-year Guarantee worth $1 billion 1- $150 million 2- $150 million 3- $233 million 4- $233 million 5- $234 million Total: $1 Billion guaranteed
Term	20 years; 7-year minimum guarantee.	20 years; 5-year minimum guarantee; Banked Card Games exclusivity expired after 5 years.
Revenue Share to State	Revenue Share to State from Tribe's Gaming Revenue $0-2B: 13% (1% increase) $2-3B: 17.5% (2.5% increase) $3-3.5B: 17.5% $3.5-4B: 20%	Revenue Share to State from Tribe's Gaming Revenue $0-2B: 12% $2-3B: 15% $3-3.5B: 17.5% $3.5-4B: 20%

[31] *Id*.
[32] 25 U.S.C. s. 2710(d)(8). *See* **Section 2** of the bill.

	2018 COMPACT	2010 COMPACT
	\$4-4.5B: 22.5% \$4.5B+: 25%	\$4-4.5B: 22.5% \$4.5B+: 25%
Games	1. Slot Machines 2. Banked Card Games 3. Raffles and Drawings 4. Any new game authorized for any person except Banked Card Games authorized for another Indian Tribe 5. Live Table Games	1. Slot Machines (all Facilities) 2. Banked Card Games (all Facilities except Big Cypress & Brighton) 3. Raffles and Drawings 4. Any new game authorized for any person except Banked Card Games authorized for another Indian Tribe
Facilities	1. Seminole Indian Casino-Brighton 2. Seminole Indian Casino-Coconut Creek 3. Seminole Indian Casino-Hollywood 4. Seminole Indian Casino-Immokalee 5. Seminole Indian Casino-Big Cypress 6. Seminole Hard Rock Hotel & Casino-Hollywood 7. Seminole Hard Rock Hotel & Casino-Tampa	1. Seminole Indian Casino-Brighton 2. Seminole Indian Casino-Coconut Creek 3. Seminole Indian Casino-Hollywood 4. Seminole Indian Casino-Immokalee 5. Seminole Indian Casino-Big Cypress 6. Seminole Hard Rock Hotel & Casino Hollywood 7. Seminole Hard Rock Hotel & Casino-Tampa
State Oversight	State Compliance Agency allowed 10 hours of inspection over course of two days per facility, per month, capped at 1,200 hours annually. Tribe pays annual oversight payment of \$250,000, increased for inflation.	State Compliance Agency allowed 10 hours of inspection over course of two days per facility, per month, capped at 1,200 hours annually. Tribe pays annual oversight payment of \$250,000, increased for inflation.
Pari-Mutuel Policy Choices for Legislature	Explicitly states that the following do not violate exclusivity: • Lower taxes for pari-mutuels on the operation of slot machines provided the effective tax rate is not less than 25% of slot machine revenues • Decoupling for pari-mutuels • Fantasy contests, as authorized in the bill • Designated player games	N/A
Internet Gaming	Tribe recognizes that internet gaming, with the exception of fantasy contests as authorized in the bill, is illegal in Florida. If State authorizes internet gaming, other than fantasy contests, as authorized in the bill, THEN→ • Guaranteed Minimum Payments cease; but • Revenue Share Payments continue. If Tribe offers internet gaming to players in Florida then Guaranteed Minimum Payments continue. Affirmative	If State authorizes internet gaming and Tribe's Net Win from all Facilities drops more than 5% below Net Win from previous year THEN → • Guaranteed Minimum Payments cease; but • Revenue Share Payments continue If Tribe offers internet gaming then Guaranteed Minimum Payments continue.

	2018 COMPACT	2010 COMPACT
	recognition by Tribe that internet gaming is illegal in Florida.	
Smoking	Tribe will make efforts to promote smoke-free environment at Facilities	Tribe will make efforts to promote smoke-free environment at Facilities
Compulsive Gambling	Tribe will make annual $1,750,000 donation to the Florida Council on Compulsive Gambling and maintain a voluntary exclusion list.	Tribe will make annual $250,000 donation per Facility to the Florida Council on Compulsive Gambling and maintain a voluntary exclusion list.
Compact with another federally-recognized Indian Tribe in Florida	Florida may enter into a Compact with another federally-recognized Tribe that has land in trust in the State as of January 1, 2018.	Florida may enter into a Compact with another federally-recognized Tribe that has land in trust in the State as of February 1, 2010.

Fantasy Contests (Section 3)

Present Situation:

The operation of fantasy sports activities in Florida has received significant publicity, much like the operation of internet cafes in recent years. Many states are now evaluating the status of fantasy gaming activities in their jurisdictions,[33] as there are millions of participants.[34]

A fantasy game typically has multiple players who select and manage imaginary teams whose players are actual professional sports players. Fantasy game players compete against one another in various formats, including weekly leagues among friends and colleagues, season-long leagues, and on-line contests (daily and weekly) entered by using the Internet through personal computers or mobile telephones and other communications devices. There are various financial arrangements among players and game operators. The term "commissioner" has been used in the context of fantasy baseball leagues to denote a person who manages a fantasy baseball league, establishes league rules, resolves disputes over rule interpretations, publishes league standings, or selects the Internet service for publication of league standings.[35]

Florida law does not specifically address fantasy contests. Section 849.14, F.S.,[36] provides that a person who wagers any "thing of value" upon the result of a contest of skill or endurance of

[33] *See* Marc Edelman, *A Short Treatise on Fantasy Sports and the Law: How America Regulates its New National Pastime*, Journal of Sports & Entertainment Law, Harvard Law School Vol. 3 (Jan. 2012) (Edelman Treatise), at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1907272 (last visited Jan. 11, 2018), and Jonathan Griffin, *The Legality of Fantasy Sports*, National Conference of State Legislatures Legisbrief (Sep. 2015) (on file with the Committee on Regulated Industries).

[34] According to the Fantasy Sports Trade Association, which states it represents the interests of 57 million fantasy sports players, fantasy sports leagues were originally referred to as "rotisserie leagues" with the development of Rotisserie League Baseball in 1980, by magazine writer/editor Daniel Okrent, who met and played it with friends at a New York City restaurant La Rotisserie Francaise. *See* http://fsta.org/about/history-of-fsta/ (last visited Jan. 11, 2018).

[35] *See* Bernhard & Eade, *Gambling in a Fantasy World: An Exploratory Study of Rotisserie Baseball Games*, 9 UNLV Gaming Research & Review Journal Issue 1, at 30, at http://digitalscholarship.unlv.edu/grrj/vol9/iss1/3/, (last visited Jan. 11, 2018).

[36] *See* Fla. AGO 91-03 (Jan. 8, 1991), at http://myfloridalegal.com/. . . 91-03 (last visited Jan. 11, 2018).

human or beast, or who receives any money wagered, or who knowingly becomes the custodian of money or other thing of value that is wagered, is guilty of a second degree misdemeanor.[37]

In 2013, Spectrum Gaming Group, as part of a Gambling Impact Study prepared for the Florida Legislature, analyzed data related to participation by adults in selected activities.[38] Based on 2012 U.S. Census data, participation in fantasy sports leagues in the prior 12 months (nearly nine million adults), and those who participate two or more times weekly (nearly three million adults), was greater than attendance at horse races in the prior 12 months (6,654,000 adults) with 159,000 attending two or more times weekly.[39]

Florida Attorney General Opinions on Fantasy Sports Leagues and Contests Involving Skill

In 1991, Florida Attorney General Robert A. Butterworth issued a formal opinion[40] evaluating the legality of groups of football fans (contestants) paying for the right to manage a team under certain specified conditions. The Attorney General stated:

> You ask whether the formation of a fantasy football league by a group of football fans in which contestants pay $100 for the right to "manage" one of eight teams violates the state's gambling laws. You state that these teams are created by contestants by "drafting" players from all current eligible National Football League (NFL) members. Thus, these fantasy teams consist of members of various NFL teams.
>
> According to your letter, each week the performance statistics of the players in actual NFL games are evaluated and combined with the statistics of the other players on the fantasy team to determine the winner of the fantasy game and their ranking or standing in the fantasy league. No games are actually played by the fantasy teams; however, all results depend upon performance in actual NFL games. Following completion of the season, the proceeds are distributed according to the performance of the fantasy team.

In the contest described in the opinion, each contestant paid $100 to participate in the fantasy football league and manage one of eight teams. The resulting $800 in proceeds were used for prizes. The prizes were based upon the performance of the individual professional football players in actual games. Attorney General Butterworth determined that the proceeds qualified as a "stake, bet or wager" on the result of a contest of skill and, as a result, the operation of the fantasy sports leagues violated s. 849.14, F.S., relating to unlawful betting on the result of a trial or contest of skill.[41]

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[37] A conviction for a second degree misdemeanor may subject the violator to a definite term of imprisonment not exceeding 60 days, and a fine not exceeding $500. *See* ss. 775.082 and 775.083, F.S.
[38] *See* Spectrum Gaming Group Gambling Impact Study (Gambling Impact Study), at http://www.leg.state.fl.us/gamingstudy/docs/FGIS_Spectrum_28Oct2013.pdf (Oct. 28, 2013) (last visited Jan. 11, 2018).
[39] *Id.*, Figure 22 at page 119 (equivalent to page 67 of Part 1A of the printed Gambling Impact Study).
[40] *See* Fla. AGO 91-03 (Jan. 8, 1991), at http://myfloridalegal.com/. . . 91-03 (last visited Jan. 11, 2018).
[41] *Id*.

The 1991 opinion cited *Creash v. State*, 179 So. 149, 152 (Fla. 1938). In *Creash*, the Florida Supreme Court held:

> In gamblers' lingo, 'stake, bet or wager' are synonymous and refer to the money or other thing or value put up by the parties thereto with the understanding that one or the other gets the whole for nothing but on the turn of a card, the result of a race, or some trick of magic. A 'purse, prize, or premium' has a broader significance. *If offered by one (who in no way competes for it) to the successful contestant in a [feat] of mental or physical skill, it is not generally condemned as gambling*, while if contested for in a game of cards or other games of chance, it is so considered. [Citation omitted.] *It is also banned as gambling if created as in this case by paying admissions to the game, purchasing certificates, or otherwise contributing to a fund from which the 'purse, prize, or premium' contested for is paid*, and wherein the winner gains, and the other contestants lose all.[42] [Emphasis added.]

However, in a 1990 opinion, Attorney General Butterworth, again citing *Creash v. State*, determined that a contest of skill (such as a hole-in-one golf contest) "where the contestant pays an entry fee, which *does not make up* (i.e., create) *the prize*, for the opportunity to win a valuable prize by the exercise of skill, *did not violate the gambling laws of [Florida]*."[43] (Emphasis in original.) That 1990 opinion reasoned, "[t]hus, the payment of an entry fee to participate in a contest of skill when the sponsor of the contest does not participate in the contest of skill and where the prize money does not consist of entry fees would *not* appear to be a 'stake, bet or wager'" in violation of s. 849.14, F.S., relating to gambling. (Emphasis added.)[44]

Class III Gaming under the Indian Gaming Regulatory Act

Fantasy contests, if classified as Class III gaming, also could affect the revenue sharing provisions of the 2010 Gaming Compact.[45] Under the compact if fantasy contests are a form of new Class III gaming in Florida, payments due to the state under the compact would cease.[46]

Gambling on Indian lands is regulated by the Indian Gaming Regulatory Act of 1988 (IGRA).[47] The 2010 Gaming Compact authorizes the Seminole Tribe to conduct specified Class III gaming activities at its seven tribal facilities in Florida.[48]

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[42] *See Creash v. State*, 179 So. 149, 152 (Fla. 1938).
[43] *See* Fla. AGO 90-58 (Jul. 27 1990) at http://www.myfloridalegal.com/ago.nsf/Opinions/DEF7C36F0D75C323852563D2007AA34C (last visited Jan. 11, 2018).
[44] *Id.*
[45] *See* paragraph A of Part XII of the 2010 Gaming Compact at http://www.myfloridalicense.com/dbpr/pmw/documents/2010_Compact-Signed1.pdf (last visited Jan. 11, 2018).
[46] *See* paragraph A of Part XII of the 2010 Gaming Compact at pages 39-40 at http://www.myfloridalicense.com/dbpr/pmw/documents/2010_Compact-Signed1.pdf (last visited Jan. 11, 2018).
[47] *See* Pub. L. 100-497, 102 Stat. 2467, codified at 18 U.S.C. ss. 1166-1168 and 25 U.S.C. s. 2701 *et seq.*
[48] *See* paragraph F of Part III of the 2010 Gaming Compact at http://www.flsenate.gov/PublishedContent/Committees/2016-2018/RI/Links/2015_Gaming_Compact,_Chart,_and_Letter_from_Governor_Scott.pdf (last visited Jan. 11, 2018). The Tribe has three gaming facilities in Broward County (The Seminole Indian Casinos at Coconut Creek and Hollywood, and the Seminole Hard Rock Hotel & Casino-Hollywood), and gaming facilities in Collier County (Seminole Indian Casino-

Under IGRA, gaming is categorized in three classes:

- **Class I** gaming means social games for minimal value or traditional forms of Indian gaming engaged in by individuals for tribal ceremonies or celebrations;
- **Class II** gaming includes bingo and pull-tabs, lotto, punch boards, tip jars, instant bingo, other games similar to bingo, and certain non-banked card games if not explicitly prohibited by the laws of the state and if played in conformity with state law; and
- **Class III** gaming includes all forms of gaming that are not Class I or Class II gaming, such as banked card games (such as baccarat, chemin de fer, and blackjack(21), casino games such as craps and roulette, electronic or electromechanical facsimiles of games of chance, slot machines, and pari-mutuel wagering.[49]

If fantasy contests are gaming, constitute Class III gaming under federal law, and constitute *new* Class III gaming in Florida (i.e., gaming not in operation as of February 1, 2010, or July 1, 2015, respectively), then authorizing fantasy contests in Florida (i.e., additional Class III gaming) violates the exclusivity provisions in the 2010 Gaming Compact and the Proposed 2015 Gaming Compact. As a result, certain revenue sharing requirements would not apply, and the Seminole Tribe would be authorized to offer similar internet/on-line gaming.

In a letter to Senator Travis Hutson and Representative Mike La Rosa dated December 5, 2017,[50] Jim Shore, General Counsel for the Seminole Tribe, indicated:

> The Tribe believes the games permitted by these bills [HB 223 and SB 374 (Fantasy Contests), and SB 840 (Gaming)] would violate the Tribe's exclusivity, as set forth in Part XII of the 2010 Gaming Compact between the State and Tribe. By providing this notice, the Tribe hopes to avoid a situation where the State enacts legislation that inadvertently violates the Tribe's exclusivity. That said, the Tribe and the State have discussed the issue of fantasy sports contests in previous compact negotiations and the Tribe remains willing to do so now. However, federal law requires that any reduction in the Tribe's exclusivity must be balanced by some additional consideration from the State. Without such an agreement, the 2010 Gaming Compact would allow the Tribe to cease all revenue sharing payments to the State based on the expanded gaming contemplated by these bills.

Immokalee), Glades County (Seminole Indian Casino-Brighton), Hendry County (Seminole Indian Casino-Big Cypress), and Hillsborough County (Seminole Hard Rock Hotel & Casino-Tampa). The 2010 Gaming Compact was approved by the U.S. Department of the Interior effective July 6, 2010. *See* 75 Fed. Reg. 38833-38834 at https://www.gpo.gov/fdsys/pkg/FR-2010-07-06/pdf/2010-16213.pdf (last visited Jan. 11, 2018). *See* http://www.flsenate.gov/PublishedContent/Committees/2016-2018/RI/Links/2015_Gaming_Compact,_Chart,_and_Letter_from_Governor_Scott.pdf (last visited Jan. 11, 2018).

[49] *See* Pub. L. 100-497, 102 Stat. 2467, codified at 18 U.S.C. ss. 1166-1168 and 25 U.S.C. s. 2701 *et seq*.

[50] *See* Letter from Jim Shore, General Counsel for the Seminole Tribe, to Senator Travis Hutson and Representative La Rosa (Dec. 5, 2017) (on file with the Senate Committee on Regulated Industries).

The National Indian Gaming Commission (commission) issued an opinion dated March 13, 2001,[51] relating to a sports betting game proposed for future play in Arizona and California via the Internet. In that sports betting game, players could wager upon various sporting *events*, including NFL football, baseball, golf, and the Olympics. The commission determined that game to be Class III gaming because it was not included within the definitions of Class I or Class II gaming under IGRA.

The Professional and Amateur Sports Protection Act of 1992 (PASPA)

In 1992, the U.S. Congress enacted the Professional and Amateur Sports Protection Act (PASPA),[52] which provides that it is unlawful for a governmental entity or any person to sponsor, operate, advertise, or promote:

> a lottery, sweepstakes, or other betting, gambling, or wagering scheme based . . . on one or more competitive games in which amateur or professional athletes participate, or are intended to participate, or on one or more performances of such athletes in such games.[53]

The prohibited activity is known generally as "sports betting." Governmental entities are also prohibited from licensing such activities or authorizing them by law or compact.[54] However, PASPA does not apply to pari-mutuel animal racing or jai alai games.[55] It does not apply to a lottery, sweepstakes, or other betting, gambling, or wagering conducted by a governmental entity between January 1, 1976, and August 31, 1990.[56]

The prohibition against sports betting also does not apply to a lottery, sweepstakes, or other betting, gambling, or wagering lawfully conducted, where such activity was authorized by law on October 2, 1991, and was conducted in a state or other governmental entity at any time between September 1, 1989, and October 2, 1991.[57]

In a case pending before the United States Supreme Court, the State of New Jersey has challenged the constitutionality of PASPA, on the basis that PASPA "commandeers" or impermissibly controls the regulatory power of states relating to the legalization of sports betting, thereby violating the Tenth Amendment to the U.S. Constitution.[58] The respondents (the

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[51] *See* https://www.nigc.gov/images/uploads/game-opinions/WIN%20Sports%20Betting%20Game-Class%20III.pdf (last visited Jan. 11, 2018).
[52] *See* 28 U.S.C. ss. 3701-3704 (2015), at https://www.govinfo.gov/content/pkg/USCODE-2015-title28/html/USCODE-2015-title28.htm (last visited Jan. 11, 2018).
[53] *See* 28 U.S.C. s. 3702 (2015), at https://www.govinfo.gov/content/pkg/USCODE-2015-title28/html/USCODE-2015-title28.htm (last visited Jan. 11, 2018).
[54] *Id*.
[55] *See* 28 U.S.C. s. 3704(a)(4) (2015), at https://www.govinfo.gov/content/pkg/USCODE-2015-title28/html/USCODE-2015-title28.htm (last visited Jan. 11, 20187).
[56] *See* 28 U.S.C. s. 3704(a)(1) (2015), at https://www.govinfo.gov/content/pkg/USCODE-2015-title28/html/USCODE-2015-title28.htm (last visited Jan. 11, 2018).
[57] *See* 28 U.S.C. s. 3704(a)(2) (2015), at https://www.govinfo.gov/content/pkg/USCODE-2015-title28/html/USCODE-2015-title28.htm (last visited Jan. 11, 2018).
[58] *See Christie v. National Collegiate Athletic Association,* Docket No. 16-476, (*Christie*) at http://www.scotusblog.com/case-files/cases/christie-v-national-collegiate-athletic-association-2/ (last visited Jan. 11, 2018). Oral argument in the case was held on December 4, 2017.

National Collegiate Athletic Association, the National Basketball Association, the National Football League, the National Hockey League, and the Office of the Commissioner of Baseball) defend PASPA's pre-emption of state laws that authorize sports gambling as a valid exercise of congressional power to regulate commerce.[59] The Court's decision in the case is anticipated no later than June 29, 2018.

The Unlawful Internet Gambling Enforcement Act of 2006 (UIGEA)

The Unlawful Internet Gambling Enforcement Act of 2006 (UIGEA)[60] was signed into law by President George W. Bush on October 13, 2006.[61] Internet gambling is not determined to be legal in a state, nor illegal. Instead, UIGEA targets financial institutions in an attempt to prevent the flow of money from an individual to an internet gaming company. Congress found that enforcement of gambling laws through new mechanisms "are necessary because traditional law enforcement mechanisms are often inadequate for enforcing gambling prohibitions or regulations on the Internet, especially where such gambling crosses State or national borders."[62] UIGEA expressly states that none of its provisions "shall be construed as altering, limiting, or extending any Federal or State law or Tribal-State compact prohibiting, permitting, or regulating gambling within the United States."[63]

"Unlawful internet gambling" prohibited by UIGEA includes the placement, receipt, or transmission of certain bets or wagers.[64] However, the definition of the term "bet or wager" specifically excludes any fantasy game or contest in which a fantasy team is not based on the current membership of a professional or amateur sports team, and:

- All prizes and awards are established and made known to the participants in advance of the game or contest;
- Prize amounts are not based on the number of participants or the amount of entry fees;
- Winning outcomes reflect the relative knowledge and skill of the participants and are determined predominantly by accumulated statistical results of the performance of individuals or athletes in multiple "real-world sporting or other events;" and
- No winning outcome is based:
  - On the score, point-spread, or any performance or performances of any single "real-world" team or combination of teams; or
  - Solely on any single performance of an individual athlete in any single "real-world sporting or other event."[65]

While UIGEA excludes bets or wagers of participants in certain fantasy sports games and contests,[66] it does not, however, authorize fantasy contests and activities in Florida.

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[59] *See* the respondents' Brief in Opposition at http://www.scotusblog.com/wp-content/uploads/2016/12/16-476-16-477-BIO.pdf at page 17 (last visited Jan. 11, 2018).
[60] *See* https://www.gpo.gov/fdsys/pkg/USCODE-2011-title31/pdf/USCODE-2011-title31-subtitleIV-chap53.pdf, (UIGEA online) at page 46 (last visited Jan. 11, 2018).
[61] The provisions of UIGEA were adopted in Conference Committee as an amendment to H.R. 4954 by Representative Daniel E. Lungren (CA-3), "The SAFE Ports Act of 2006."
[62] *See* 31 U.S.C. s. 5361(a)(4), UIGEA online, at page 46.
[63] *See* 31 U.S.C. s. 5361(b).
[64] *See* 31 U.S.C. s. 5362(10), UIGEA online, at page 48.
[65] *See* 31 U.S.C. s. 5362(E)(ix), UIGEA online, at page 47.
[66] *Id*.

Effect of Proposed Changes:

Section 3 creates s. 546.13, F.S., to authorize certain fantasy contests in which participants must pay an entry fee. Section 546.13(1), F.S., provides requirements for fantasy contests and associated definitions.

"Entry fee" means cash or a cash equivalent required to be paid by a person for the ability to participate in a fantasy contest offered by a fantasy contest operator.

"Fantasy contest operator" means a person or entity, including any employee or agent, that offers fantasy contests with an entry fee for a cash prize but is not a participant in the fantasy contest. The term does not include an individual who serves as the commissioner of no more than 10 fantasy contests in a calendar year. The term "commissioner" is not defined in the bill, but has been used in the context of fantasy baseball leagues to denote a person who manages a fantasy baseball league, establishes league rules, resolves disputes over rule interpretations, and publishes league standings or selects the Internet service for publication of league standings.[67]

A "fantasy contest" is a fantasy or simulated game in which:

- The value of all prizes and awards offered to winning participants must be established and disclosed to the participants in advance of the contest;
- All winning outcomes reflect the relative knowledge and skill of contest participants and are determined predominantly by accumulated statistical results of the performance of individuals, including athletes in the case of sporting events; and
- No winning outcome is based:
  - On the score, point spread, or any performance or performances of any single actual team or combination of teams;
  - Solely on any single performance of an individual athlete or player in any single actual event; or
  - On the performances of participants in collegiate, high schools, or youth sporting events.

The bill provides that the Department of Business and Professional Regulation (DBPR) may not regulate fantasy contests and the offenses in ss. 849.01, 849.08, 849.09, 849.11, 849.14, or 849.25, F.S., relating to gambling, lotteries, games of chance, contests of skill, or bookmaking do not apply to a fantasy contest operated or conducted by:

- A fantasy contest operator; or
- A natural person, who is a participant in the fantasy contest, serves as the commissioner of not more than ten contests in a calendar year, and distributes all contest entry fees as prizes or awards to the participants in that fantasy contest.

If the 2018 Gaming Compact between the Seminole Tribe and the state. which is ratified in Section 1 of this bill, becomes effective, the provisions in this bill relating to fantasy contests will not cause any impact to the revenues to be paid to the state by the Seminole Tribe because fantasy contests, as authorized under this bill, are excluded from the consequences associated

[67] *See* Bernhard & Eade, *Gambling in a Fantasy World: An Exploratory Study of Rotisserie Baseball Games*, 9 UNLV Gaming Research & Review Journal Issue 1, at 30, at http://digitalscholarship.unlv.edu/grrj/vol9/iss1/3/, (last visited Jan. 11, 2018).

with any future authorization of internet gaming and are an exception to the exclusivity granted to the Seminole Tribe under that compact.

Regulation of Pari-Mutuel Wagering (Section 4)

Present Situation:

The Division of Pari-mutuel Wagering (division) in the Department of Business and Professional Regulation (DBPR) regulates pari-mutuel wagering. The division has regulatory oversight of permitted and licensed pari-mutuel wagering facilities, cardrooms located at pari-mutuel facilities, and slot machines at pari-mutuel facilities located in Miami-Dade and Broward counties. According to the division, there were 10 license suspensions, and $107,655 in fines assessed for violations of all pari-mutuel statutes and administrative rules in Fiscal Year 2015-2016.[68]

According to the latest information available from the DBPR, as of February 2017, there were 39 pari-mutuel permitholders with operating licenses[69] in Florida, operating at 12 greyhound tracks, six jai alai frontons, five quarter horse tracks, three thoroughbred tracks, and one harness track.[70] One jai alai permitholder voluntarily relinquished its permit in 2016.[71] Jai alai games were conducted pursuant to a new permitholder license beginning in June 2017 at a new jai alai fronton in Florida City (Miami-Dade County).[72]

Of the 19 greyhound racing permitholders with operating licenses during Fiscal Year 2016-2017, six permitholders conducted races at leased facilities.[73] Five pari-mutuel facilities have two

[68] *See* the 85th Annual Report for Fiscal Year 2015-2016 (the most current report) issued by the division *available at* http://www.myfloridalicense.com/dbpr/pmw/documents/AnnualReports/AnnualReport-2015-2016--85th--20170125.pdf (last visited Jan. 11, 2018) at page 5 (equivalent to page 3 of the printed Annual Report).
[69] *See* Pari-Mutuel Wagering Permitholders With 2016-2017 Operating Licenses map dated Feb. 10, 2017, (on file with Senate Committee on Regulated Industries).
[70] *Id.*
[71] Id. at page 8 (equivalent to page 6 of the printed Annual Report), and *see* the Stipulation and Consent Order, *available at* http://www.floridagamingwatch.com/wp-content/uploads/Hamilton-Jai-Alai-Consent-Order.pdf (last visited Jan. 11, 2018).
[72] *See* http://www.myfloridalicense.com/dbpr/pmw/documents/Licenses/2017-2018-j/284--License--KingsCourtKey--2017-2018--2017-03-15.pdf (last visited Jan. 11, 2018).
[73] According to information in the 2015-2016 Annual Report from the Division of Pari-Mutuel Wagering, *available at* http://www.myfloridalicense.com/dbpr/pmw/documents/AnnualReports/AnnualReport-2015-2016--85th--20170125.pdf, at pp. 29 - 33 of the online Annual Report (equivalent to pp. 25- - 29 the printed Annual Report),(last visited Jan. 11, 2018), both Jacksonville Kennel Club and Bayard Raceways (St. Johns Greyhound Park) conduct races at Orange Park Kennel Club; H&T Gaming conducts racing at Mardi Gras; Palm Beach Greyhound Racing conducts racing at Palm Beach Kennel Club; Tampa Greyhound conducts races at St. Petersburg Kennel Club (Derby Lane); West Volusia Racing conducts races at Daytona Beach Kennel Club; Dania Summer Ja Alai conducts games at Dania Jai Alai; Tropical Park conducts races at Gulfstream Park.

permits operating at those locations.[74] One greyhound racing permitholder's operating license was suspended late in 2014.[75]

There are 11 permitholders that do not have operating licenses for Fiscal Year 2017-2018: two greyhound,[76] three jai alai,[77] one limited thoroughbred,[78] and five quarter horse.[79]

Issuance of Pari-Mutuel Permits and Annual Licenses

Section 550.054, F.S., provides that any person meeting the qualification requirements of ch. 550, F.S., may apply to the division for a permit to conduct pari-mutuel wagering. Upon approval, a permit must be issued to the applicant that indicates:

- The name of the permitholder;
- The location of the pari-mutuel facility;
- The type of pari-mutuel activity to be conducted; and
- A statement showing qualifications of the applicant to conduct pari-mutuel performances under ch. 550, F.S.

A permit does not authorize any pari-mutuel performances until approved by a majority of voters in a ratification election in the county in which the applicant proposes to conduct pari-mutuel wagering activities. An application may not be considered, nor may a permit be issued by the division or be voted upon in any county, for the conduct of:

- Harness horse racing, quarter horse racing, thoroughbred horse racing, or greyhound racing at a location within 100 miles of an existing pari-mutuel facility; or
- Jai alai games within 50 miles of an existing pari-mutuel facility.

Distances are measured on a straight line from the nearest property line of one pari-mutuel facility to the nearest property line of the other facility.[80]

After issuance of the permit and a ratification election, the division may issue an annual operating license for wagering at the specified location in a county, indicating the time, place,

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[74] The division indicated that H & T Gaming @ Mardi Gras and Mardi Gras operate at a facility in Hallandale Beach, Daytona Beach Kennel Club and West Volusia Racing-Daytona operate at a facility in Daytona Beach, Palm Beach Kennel Club and License Acquisitions-Palm Beach operate at a facility in West Palm Beach, Miami Jai Alai and Summer Jai Alai operate at a facility in Miami, and Sanford-Orlando Kennel Club and Penn Sanford at SOKC operate at a facility in Longwood.

[75] *See* http://www.myfloridalicense.com/dbpr/pmw/documents/CurrentPermitholdersList.pdf (last visited Jan. 11, 2018) for a list of current permitholders and their licensing status. For information about permitholders for Fiscal Years 2013-2014, 2014-2015, and 2015-2016, *see* http://www.myfloridalicense.com/dbpr/pmw/track.html (last visited Jan. 11, 2018).

[76] Jefferson County Kennel Club (Monticello) and North American Racing Association (Key West).

[77] Gadsden Jai-alai (Chattahoochee), Tampa Jai Alai, and West Flagler Associates (Miami).

[78] Under s. 550.3345, F.S., during Fiscal Year 2010-2011 only, holders of quarter horse racing permits were allowed to convert their permits to a thoroughbred racing permit, conditioned upon specific use of racing revenues for enhancement of thoroughbred purses and awards, promotion of the thoroughbred horse industry, and the care of retired thoroughbred horses. Two conversions occurred, Gulfstream Park Thoroughbred After Racing Program (GPTARP) (Hallandale, Broward County), and Ocala Thoroughbred Racing (Marion County).

[79] ELH Jefferson (Jefferson County), DeBary Real Estate Holdings (Volusia County), North Florida Racing (Jacksonville), Pompano Park Racing (Pompano Beach), and St. Johns Racing (St. Johns County).

[80] *See* s. 550.054(2), F.S.

and number of days during which pari-mutuel operations may be conducted at the specified location.[81]

The Definition of a "Full Schedule of Live Racing or Games"

Current law provides complex requirements for what constitutes a "full schedule of live racing or games:"

- For a greyhound or jai alai permitholder, at least 100 live evening or matinee performances during the preceding year;
- For a permitholder who has a converted permit . . . at least 100 live evening and matinee wagering performances during either of the two preceding years;
- For a jai alai permitholder who does not operate slot machines . . ., who has conducted at least 100 live performances per year for at least 10 years after December 31, 1992, and whose handle on live jai alai games . . . has been less than $4 million per state fiscal year for at least two consecutive years after June 30, 1992, . . . at least 40 live evening or matinee performances during the preceding year;
- For a jai alai permitholder who operates slot machines . . ., at least 150 performances during the preceding year;
- For a harness permitholder, the conduct of at least 100 live regular wagering performances during the preceding year;
- For a quarter horse permitholder at its facility unless an alternative schedule of at least 20 live regular wagering performances is agreed upon by the permitholder and either the Florida Quarter Horse Racing Association or the horsemen's association representing the majority of the quarter horse owners and trainers at the facility and filed with the division along with its annual date application, in the Fiscal Year 2010-2011, . . . at least 20 regular wagering performances, in Fiscal Year 2011-2012 and Fiscal Year 2012-2013, . . . at least 30 live regular wagering performances, and for every fiscal year after Fiscal Year 2012-2013, . . . at least 40 live regular wagering performances;
- For a quarter horse permitholder leasing another licensed racetrack, the conduct of 160 events at the leased facility;
- For a thoroughbred permitholder, the conduct of at least 40 live regular wagering performances during the preceding year; and
- For a permitholder restricted by statute to certain operating periods within the year when other similar permitholders are authorized to operate throughout the year, the specified number of live performances which constitute a full schedule of live racing or games is calculated pro rata based on the authorized operating period and the full calendar year, and the resulting number of live performances is the full schedule of live games for such permitholder and all other permitholders of the same class within 100 air miles of such permitholder.[82]

A "performance" is a minimum of eight consecutive live races.[83] At least three live performances must be held at a track each week.[84] When a permitholder conducts at least three live

[81] *See* s. 550.054(9)(a), F.S.
[82] *See* s. 550.002(11), F.S.
[83] Section 550.002(25), F.S.
[84] Section 550.002(11), F.S.

performances in a week,[85] it must pay purses (cash prizes to participants) on wagers accepted at the track on certain greyhound races run at other tracks (in Florida or elsewhere).[86] In order to receive an operating license, permitholders must have conducted a full schedule of live racing during the preceding year.[87]

If a permitholder does not conduct all of the performances specified in its operating license, the division may determine whether to fine the permitholder or suspend[88] the license, unless the failure is due to certain events beyond the permitholder's control. Financial hardship itself is not an acceptable basis to avoid a fine or suspension.[89]

The conduct of a full schedule of live racing or games is a condition of licensure for a slot machine licensee,[90] and the conduct of a minimum number of live races is a condition of renewal for a cardroom license.[91]

Effect of Proposed Changes:

License Applications by Permitholders and Decoupling

Section 4 amends s. 550.01215, F.S., relating to operating license applications filed annually with the division by pari-mutuel permitholders for licenses for the next fiscal year (July 1 through June 30).

In general, permitholders, including those that do not conduct live performances, are required to file an application for a license to conduct pari-mutuel wagering, including intertrack wagering and simulcast wagering. Permitholders accepting wagers on intertrack and simulcast events are required to disclose the dates of all those events in their license application. For the 2018-2019 Fiscal Year only, the division may approve changes in racing dates for permitholders, if the requests are received before May 31, 2018.

Greyhound Racing Permitholders

Certain greyhound racing permitholders[92] are authorized to specify in their operating license applications that they will not conduct live racing or will conduct less than a full schedule of live racing or games (i.e., decouple), while they continue to operate their licensed slot machine

[85] The performances may be during the day or in the evenings, as set forth in the schedule that is part of the operating license issued by the division.
[86] Section 550.09514(2)(c), F.S.
[87] Section 550.002(11), F.S. In accordance with s. 550.002(38), F.S., a full schedule of live racing is calculated from July 1 to June 30, the state fiscal year.
[88] After Jefferson County Kennel Club failed to conduct scheduled performances, its operating license was suspended September 22, 2014 under a consent order a*vailable at* http://www.myfloridalicense.com/dbpr/pmw/documents/Licenses/PMW--Consent Order--JEFFERSON_COUNTY_KENNEL_CLUB_INC--146--2014-09-23--20141023.pdf (last visited Jan. 11, 2018).
[89] Section 550.01215(4), F.S.
[90] Section 551.104(4)(c), F.S.
[91] Section. 849.086(5)(b), F.S.
[92] Those that conducted a full schedule of live racing for a period of at least 10 consecutive state fiscal years after the state Fiscal Year 1996-1997, or that converted a permit to a permit to conduct greyhound racing after that state fiscal year.

facilities and/or cardrooms, if any, pursuant to ch. 551, F.S., and s. 849.086, F.S., as amended by the bill.

Decoupled greyhound permitholders retain their pari-mutuel permits, are pari-mutuel facilities as defined in s. 550.002(23), and remain eligible, but not required, to be a guest track for purposes of intertrack wagering and simulcasting.

Harness Horse Racing and Quarter Horse Racing Permitholders

Section 4 provides that harness horse racing permitholders and quarter horse racing permitholders that have conducted live racing for at least five years may discontinue live racing (i.e., decouple), if the irrevocable election to discontinue live racing is made during the 30-day period after the effective date of the bill.

A harness horse racing permitholder or quarter horse racing permitholder that makes the irrevocable election to decouple may retain its permit and is a pari-mutuel facility as defined in s. 550.002(23), F.S.

A decoupled harness horse racing permitholder is eligible, but not required, to be a *host* track for purposes of intertrack wagering and simulcasting; a decoupled quarter horse racing permitholder is eligible, but not required, to be a *guest* track for purposes of intertrack wagering and simulcasting.

Section 4 provides that a decoupled harness horse racing permitholder or a decoupled quarter horse racing permitholder may continue to operate its slot machine facility, if any, and cardroom, if any, pursuant to ch. 551, F.S., and s. 849.086, F.S., as amended by the bill.

If the 2018 Gaming Compact between the Seminole Tribe and the state, which is ratified in Section 1 of this bill, becomes effective, the provisions in this bill relating to decoupling will not cause any impact to the revenues to be paid to the state by the Seminole Tribe because the decoupling of greyhound racing permitholders, quarter horse racing permitholders and harness horse racing permitholders is permitted under that compact and is not a violation of the exclusivity granted to the Seminole Tribe under that compact.

Prohibition on Issuance of Additional Pari-Mutuel Permits, Revocation of Dormant Permits, and Repeal of the Authority to Issue New Summer Jai Alai Permits

Present Situation:

The permit of a harness horse permitholder or thoroughbred horse permitholder that does not pay tax on handle for live performances for a full schedule of live races during any two consecutive state fiscal years is void and escheats to and becomes property of the state, unless the failure to operate and pay tax on handle is the direct result of fire, strike, war, or other disaster or event beyond the ability of the permitholder to control.[93] Financial hardship of the permitholder does not constitute just cause for either failure.[94]

[93] *See* s. 550.09512(3), F.S. and s. 550.09515(3), F.S.
[94] *Id.*

An escheated harness horse permit or thoroughbred horse permit must be reissued by the division to a qualified applicant, using the procedures mandated for issuance of an initial permit. The requirements for a referendum before issuance of a pari-mutuel permit do not apply to reissuance of an escheated harness horse or thoroughbred horse permit.[95]

Pursuant to s. 550.054(9)(b), F.S., the division may revoke or suspend any permit or license upon the willful violation by the permitholder or licensee of any provision of ch. 550, F.S., or any administrative rule adopted by the division.

Section 550.0745 authorizes, under certain circumstances, the conversion of a pari-mutuel permit to a summer jai alai permit, for the conduct of jai alai games only during the summer season. Provisions of law prohibiting the location and operation of jai alai frontons within a specified distance from the location of another jai alai fronton or other permitholder, which prohibit the division from granting any permit at a location within a certain designated area, are inapplicable to summer jai alai permits issued pursuant to s. 550.0745, F.S.

The issuance of limited thoroughbred racing permits (through conversion from a quarter horse permit) is authorized in s. 550.3345, F.S. A limited thoroughbred racing permit authorizes the conduct of live thoroughbred horseracing, with net revenues dedicated to the enhancement of thoroughbred purses and breeders', stallion, and special racing awards under ch. 550, F.S., promotion of the thoroughbred horse breeding industry, and the care of retired thoroughbred horses in Florida.

Effect of Proposed Changes:

Section 5 amends s. 550.054, F.S., relating to applications for pari-mutuel wagering permits, to:

- Require the division to revoke a permit if the permitholder: (a) has not obtained an operating license for a period of more than 24 consecutive months after June 30, 2012, or (b) fails to make payments for taxes due on handle for more than 24 months, unless the failure to obtain an operating license was the direct result of fire, strike, war, or other disaster or event beyond the permitholder's control. Financial hardship of the permitholder does not constitute just cause for either failure. A revoked permit may not be reissued.
- Provide that a new pari-mutuel permit may not be approved or issued after January 1, 2018.
- Provide that a pari-mutuel license may not be transferred or reissued so as to change the location of a pari-mutuel facility, cardroom, or slot machine facility.
- Delete authority for the transfer of a thoroughbred permit to another racetrack and for conversion of a jai alai permit to a greyhound racing permit, except through the relocation of the pari-mutuel permit pursuant to s. 550.0555, F.S.
- Repeal provisions authorizing conversion and relocation of pari-mutuel permits, cardrooms, or slot machine facilities.

Section 6 repeals s. 550.0745, F.S., relating to summer jai alai permits.

[95] *See* ss. 550.09512(3)(b) and 550.09515(3)(b), F.S.

Sections 7 and **8** amend s. 550.09512, F.S., relating to harness horse racing, and s. 550.09515, F.S., relating to thoroughbred racing, respectively, to:

- Require the division to revoke a harness or thoroughbred horse racing permit that has not paid the tax due on the handle for a full live schedule of harness or thoroughbred racing for more than 24 consecutive months, unless the failure to operate and pay tax was the direct result of fire, strike, war, or other disaster or event beyond the permitholder's control. A revoked permit is void and may not be reissued.
- Repeal a provision allowing reissuance of a revoked harness or thoroughbred horse permit that has been revoked for nonpayment of taxes.

Section 9 amends s. 550.3345, F.S., to delete provisions authorizing conversion of quarter horse racing permits to limited thoroughbred racing permits.

Slot Machine Gaming and Decoupling (Sections 10 and 11)

Present Situation:

Chapter 551, F.S., authorizes slot machine gaming at the location of certain licensed pari-mutuel locations in Miami-Dade County or Broward County and provides for state regulation.[96] Currently eight facilities in Miami-Dade and Broward counties are authorized to operate slot machines. Voters in each county approved slot machine facilities after an amendment to the state Constitution was approved in 2004.[97]

Section 550.475, F.S., allows a pari-mutuel permitholder with a valid permit for the conduct of any jai alai games, greyhound racing, or thoroughbred and harness (Standardbred) horse racing in this state to lease any and all of its facilities to any other permitholder of a same class with a valid permit, when located within a 35-mile radius of each other, and the lessee is entitled to a permit and license to operate its race meet or jai alai games at the leased premises.

Effect of Proposed Changes:

Section 10 revises conditions for licensure and for maintaining continued authority for conducting slot machine gaming to reflect that certain pari-mutuel permitholders are authorized to discontinue conducting live racing or games (i.e., decouple). Section 10 authorizes a permitholder with a slot machine license to receive an operating license to conduct pari-mutuel wagering activities at another pari-mutuel facility, if the permitholder has operated its live races or games by lease for at least five consecutive years immediately prior to the permitholder's application for a slot machine license; however, the permitholders must be located within 35 miles of each other.[98]

Section 10 requires a slot machine licensee that chooses not to run a full schedule of live racing or games, (i.e., decouple), to make payments for the benefit of live thoroughbred horse racing purses. If a slot machine licensee is not running a full schedule of live racing or games under its pari-mutuel permit, then the decoupled licensee must remit each month to each qualified

[96] *See* ch. 551, F.S., relating to the regulation of slot machine gaming at pari-mutuel locations.
[97] *See* FLA. CONST., art. IX, s. 23 (1968).
[98] *See* s. 550.475, F.S., and lines 267 to 285 of the bill.

thoroughbred permitholder, by the fifth day of each calendar month[99] via electronic funds transfer instructions provided by the permitholder, an amount equal to one-twelfth of the lesser of $1.5 million or 2.75 percent of the permitholder's prior fiscal year slots revenue, divided by the total number of qualified thoroughbred permitholders for that fiscal year. A qualified thoroughbred permitholder must use such payments exclusively for purses and awards for live thoroughbred horse races held at that permitholder's racing facility.

The term "qualified thoroughbred permitholder":

- Does not include limited thoroughbred permitholders or thoroughbred permitholders leasing a racetrack facility from another thoroughbred permitholder.
- Includes thoroughbred permitholders conducting no less than a full schedule of live racing, and no fewer than the number of performances conducted in Fiscal Year 2017-2018.

The division must, within 15 days of issuing a slot machine license to a decoupled permitholder, notify the licensee of the qualified thoroughbred permitholders to which payments must be paid. A qualified thoroughbred permitholder that receives those funds must remit, within 10 days of receipt, ten percent of the funds to the Florida Thoroughbred Breeders' Association, Inc., for payment of breeders', stallion, and special racing awards, subject to the fee authorized in s. 550.2625(3), F.S.[100]

Slot Machines Tax Rate Reduction (Section 11)

Present Situation:

The tax rate on slot machine revenues is 35 percent under s. 550.106(2), F.S. If, during any state fiscal year, the aggregate amount of tax paid to the state by all slot machine licensees in Broward and Miami-Dade counties is less than the aggregate amount of tax paid to the state by all slot machine licensees in the 2008-2009 fiscal year, each slot machine licensee must pay to the state, within 45 days after the end of the state fiscal year, a surcharge equal to its pro rata share of an amount equal to the difference between the aggregate amount of tax paid to the state by all slot machine licensees in the 2008-2009 fiscal year and the amount of tax paid during the fiscal year that resulted in the revenue shortfall. All revenue from slot machine gaming is deposited into the Educational Enhancement Trust Fund of the Department of Education.

Effect of Proposed Changes:

Section 11 amends s. 551.106, F.S., to:

- Reduce the tax rate for slot machine revenues to 30 percent, effective January 1, 2018, and to 25 percent effective July 1, 2019.
- Require that if, in any state fiscal year, the aggregate amount of tax paid to the state by all the slot machine licensees in Broward and Miami-Dade counties is less than the aggregate amount paid in the 2017-2018 state fiscal year, each of those licensees must pay a surcharge calculated by dividing the aggregate amount of slot machine taxes paid to the state by all

[99] The bill provides if the fifth day of the calendar month falls on a weekend, the payment must be remitted on the first Monday following the weekend.

[100] Section 550.2625(3), F.S, states the Florida Thoroughbred Breeders' Association has the right to withhold up to 10 percent of a permitholder's payments under that section as a fee for administering the payments of awards and for general promotion of the horse racing industry.

such slot machine licensees in the 2017-18 fiscal year by the aggregate amount of slot machine taxes paid by all such licensees during the applicable fiscal year, multiplying the result by the amount of slot machine taxes paid by the licensee during the applicable state fiscal year, and then subtracting from that product the amount of slot machine taxes paid by the licensee during the applicable state fiscal year. However, the sum of taxes paid by a licensee at the reduced tax rates and any surcharge may not exceed 35 percent of the licensee's slot machine revenue in the applicable state fiscal year.

- Remove obsolete language relative to the slot machine license fee for Fiscal Year 2010-2011.

If the 2018 Gaming Compact between the Seminole Tribe and the state, which is ratified in Section 1 of this bill becomes effective, the provisions in this bill relating to the taxation of slot machine revenues will not cause any impact to the revenues to be paid to the state **by the Seminole Tribe** because the reduction of the tax on slot machine revenues is permitted under that compact and is not a violation of the exclusivity granted to the Seminole Tribe under that compact. Slot machine tax revenues are likely to be reduced by this provision.

Cardrooms and Designated Player Games (Section 12)

Present Situation:

Chapter 849, F.S., authorizes cardrooms at certain pari-mutuel facilities.[101] In Fiscal Year 2017-2018, 25 cardrooms are authorized to operate.[102] Cardrooms are operated by 14 greyhound permitholders, five jai alai permitholders, one harness horse racing permitholder, three quarter horse racing permitholders, and two thoroughbred racing permitholders.[103] A license to offer pari-mutuel wagering, slot machine gaming, or a cardroom at a pari-mutuel facility is a privilege granted by the state.[104]

Section 849.086, F.S., provides that a licensed pari-mutuel permitholder that holds a valid pari-mutuel permit and license to conduct a full schedule of live racing or games may hold a cardroom license authorizing the operation of a cardroom and the conduct of authorized games at the cardroom. An authorized game is a game or series of games of poker or dominoes.[105] Such games must be played in a non-banking manner,[106] where the participants play against each

[101] Section 849.086, F.S. Section 849.086(2)(c), F.S., defines "cardroom" to mean a facility where authorized games are played for money or anything of value and to which the public is invited to participate in such games and charges a fee for participation by the operator of such facility.
[102] *See* http://www.myfloridalicense.com/dbpr/pmw/PMW-PermitholderOperatingLicenses--2017-2018.html (last visited Jan. 11, 2018).
[103] Cardroom locations, by class of permit held are: (1) greyhound racing: Bonita Springs (Lee Co.), Daytona Beach (Volusia Co.), Ebro (Washington Co.), Hallandale Beach (Broward Co.), Melbourne (Brevard Co.), Miami (Miami-Dade Co.) Orange Park (Clay Co.), Pensacola (Escambia Co.), St. Petersburg (Pinellas Co.), and West Palm Beach (Palm Beach. Co.); (2) jai alai: Dania Beach (Broward Co.), Ft. Pierce (St. Lucie Co.), Florida City and Miami (Miami-Dade Co.), and Reddick (Marion Co.); (3) quarter horse: Gretna (Gadsden), Hialeah (Miami-Dade Co.) and Summerfield (Marion Co.); and (4) thoroughbred racing: Hallandale Beach (Broward Co.), and Tampa (Hillsborough Co.).
[104] *See* s. 550.1625(1), F.S., "…legalized pari-mutuel betting at dog tracks is a privilege and is an operation that requires strict supervision and regulation in the best interests of the state." *See also Solimena v. State,* 402 So.2d 1240, 1247 (Fla. 3d DCA 1981), review denied, 412 So.2d 470, which states "Florida courts have consistently emphasized the special nature of legalized racing, describing it as a privilege rather than as a vested right," citing *State ex rel. Mason v. Rose,* 122 Fla. 413, 165 So. 347 (1936).
[105] *See* s. 849.086(2)(a), F.S.
[106] *Id.*

other, instead of against the house (cardroom). At least four percent of the gross cardroom receipts of greyhound racing permitholders and jai alai permitholders must supplement greyhound purses, and quarter horse permitholders must have a contract with a horsemen's association governing the payment of purses on live quarter horse races conducted by the permitholder.[107]

Renewal of a cardroom license requires that a permitholder must, in its annual pari-mutuel license application, request to conduct at least 90 percent of the performances conducted either (1) in the year in which its first cardroom license was issued, or (2) in the state fiscal year immediately prior to the application if a full schedule of live racing was conducted ("90 percent rule").[108] If more than one permitholder is operating at a facility, each permitholder must have applied for a license to conduct a full schedule of live racing.[109]

Eleven of the 12 greyhound racing locations have cardrooms. As a result of the "90 percent rule," the required minimum of live performances varies among greyhound racing permitholders, from 93 to 394 performances.[110]

There is only one harness horse racing permitholder, and it has a cardroom. The permitholder must request authorization to conduct a minimum of 140 live performances during the state fiscal year immediately prior to its application for an operating license.[111] As a result of the "90 percent rule," the required minimum of live performances for the harness horse racing permitholder is 126 performances.[112]

Five of the six jai alai permitholders have cardrooms. As a result of the "90 percent rule," the required minimum of live performances varies among jai alai permitholders, from 36 to 150 performances.[113]

Three of the five quarter horse permitholders have cardrooms. As a result of the "90 percent rule," the required minimum of live performances varies among quarter horse permitholders, from 18 to 40 performances.[114]

Two of the three thoroughbred permitholders have cardrooms. As a result of the "90 percent rule," the required minimum of live performances varies among thoroughbred racing permitholders, from 40 to 81 performances.[115]

If more than one permitholder is operating at a facility, each permitholder must have applied for a license to conduct a full schedule of live racing.[116]

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[107] See s. 849.086(13)(d), F.S.
[108] *See* s. 849.086(5)(b), F.S.
[109] *Id.*
[110] Telephone interview with division staff (Jan. 23, 2017).
[111] *See* s. 849.086(5)(b), F.S.
[112] *Id*.
[113] *Id*.
[114] *Id*.
[115] *Id*.
[116] *See* s. 849.086(5)(b), F.S.

State Litigation Challenging DBPR's Administrative Rules Relating to Designated Player Games

In July 2014, the Division of Pari-Mutuel Wagering (division) of the Department of Business and Professional Regulation (DBPR) adopted two administrative rules relating to the play of Designated Player Games.[117] Under the rules, a designated player game is not authorized if it is not played in compliance with house rules required to be available for review by players or the division, which must:

- Establish uniform requirements to be a designated player;
- Ensure that the dealer button rotates clockwise around the card table for each hand, so that all players desiring to be a designated player have the opportunity to do so; and
- Not require the designated player to cover all potential wagers.[118]

Banking games are defined in current law as those in which the house is a participant.[119] Designated player[120] games, if conducted as defined in Rule 61D-11.002(5), Florida Administrative Code, were not considered by the DBPR to be banking games.

The division pursued additional rulemaking concerning Designated Player Games in September 2014, to "address issues discovered in the implementation and practical application of [the July 2014] cardroom rules."[121] In October 2015, the division proposed to repeal the rule defining the term "designated player" as "the player identified by the button in the dealer position" and the rule establishing the standards for Designated Player Games.[122]

Various cardroom operators challenged the repeal of the rules in December 2015. In August 2016, Administrative Law Judge Gary Early of the Division of Administrative Hearings found:

> The evidence is conclusive that, by its repeal of rule 61D-11.002(5), Respondent simply changed its mind as to whether playing with a designated player constituted the establishment of a prohibited banking game. [Footnote omitted.] It previously determined that such games were lawful under the terms of section 849.086 [F.S.]; it has now determined they are not.[123]

Judge Early determined the division:

> Has taken divergent views of the statute in a manner that has substantially affected the interests of [cardroom operators]. For [the division] to suggest

[117] *See* Fla. Admin. Code R. 61D-11.001(17) and R. 61D-002(5) (2018) at https://www.flrules.org/gateway/ChapterHome.asp?Chapter=61D-11 (last visited Jan. 11, 2018).
[118] *Id*. and *see* Fla. Admin. Code R. 61D-11.002(3) and (5) (2017).
[119] Section 849.086(2)(b), F.S.
[120] Fla. Admin. Code R. 61D-11.001(17) (2018) defines "designated player" as the "player identified by the button as the dealer in the player position."
[121] *See Dania Entertainment Center, LLC. v. Dep't of Bus. and Prof. Reg., Div. of Pari-mutuel Wagering, (Dania Entertainment)* Case No. 15-7010RP (Fla DOAH 2016) at page 17.at https://www.doah.state.fl.us/ROS/2015/15007010.pdf (last visited Jan. 11, 2018).
[122] *Id*. at p. 18.
[123] *See Dania Entertainment* at pp. 24-25.

> that its repeal of the rules is a clarification, a simplification, or reflection of the unambiguous terms of the statute, and that [the cardrooms] should just tailor their actions to the statute without any interpretive guidance from [the division], works contrary to the role of government to provide meaningful and understandable standards for the regulation of business in Florida. [The division] cannot, with little more than a wave and well-wishes, expect regulated businesses to expose themselves to liability through their actions under a statute that is open to more than more one interpretation, when the agency itself has found it problematic to decipher the statute under which it exercises its regulatory authority.[124]

In November 2017, the Florida First District Court of Appeal (DCA) affirmed Judge Early's ruling that the proposed repeal of the Designated Player Games rules was invalid.[125] The DCA stated the ruling correctly found that repeal of the rules was a rule itself because it was a change of the DBPR's policy on Designated Player Games[126] However, the DCA declined to adopt Judge Early's finding that the division "lacked the authority to either promulgate or to repeal rules" on Designated Player Games, noting that the role of the division "is to provide meaningful and understandable standards for cardrooms, particularly where a statute is ambiguous."[127]

Federal Litigation Concerning the 2010 Gaming Compact and Banked Card Games (including Player Banked Card Games with a Designated Player) and Settlement

As discussed above in connection with the 2018 Gaming Compact authorized in this bill, the state and the Seminole Tribe were parties to litigation in federal court relating to the offering of table games by the Seminole Tribe after July 31, 2015.
As to the banked card games issue, Judge Hinkle found:

- The 2010 Gaming Compact defines 'Covered Games' to include 'banking or banked card games, including baccarat, chemin de fer, and blackjack (21);[128]
- Under s. 849.086, F.S., licensed pari-mutuel facilities may operate cardrooms, but the statute explicitly forbids "banking" card games;[129]
- Baccarat, chemin de fer, and blackjack are all games in which there is no common pot, and the players do not compete against one another;

[124] *Id*. at page 25.
[125] *See Dep't of Bus. and Prof. Reg., Div. of Pari-Mutuel Wagering v. Dania Entertainment Center, et al.* 229 So.3d 1259 (Fla. 1st DCA 2017) at https://edca.1dca.org/DCADocs/2016/4275/164275_1284_11082017_08460223_i.pdf (last visited Jan. 11, 2018).
[126] *Id*. The DCA also affirmed the finding that the Division of Pari-Mutuel Wagering (division) of the DBPR failed to follow required rulemaking procedures by not preparing a statement of estimated regulatory costs (SERC). *Id*. at pp. 11-12.
[127] *Id*. at page 14.
[128] *See Seminole Tribe of Florida v. State of Florida, 219 F.Supp. 3d 1177 (N.D. Fla. Nov. 9, 2016), Case No.: 4:15-cv-516-RH/CAS, Document 103*, at pp. 4-5.
[129] *Id*. at p. 5, and *see* s. 849.086(12)(a), F.S. The court further held "[b]ecause of this statute, the Tribe's authority under the Compact to conduct banked card games afforded the Tribe the right to conduct bank card games without competition from cardrooms. This was perhaps the most important benefit the Tribe obtained under the Compact. **The most important benefit to the State was more than a billion dollars.** Because IGRA prohibits a state from receiving a share of a tribe's gaming revenue except to defray expenses or in exchange for a benefit conferred on the tribe, **the Tribe's billion-dollars-plus payments to the State under the Compact were justified in large part as compensation for the exclusive right to conduct banked card games** – exclusive, that is, except for any competition from other tribes or other types of games." *Id*. at pp. 5-6. (Emphasis added.)

- A bank pays the winners and collects from the losers;
- In baccarat and blackjack, the bank is most often a dealer employed by the facility – in effect, the facility itself, commonly denominated the 'house;'
- In chemin de fer, the bank is always one of the players; and
- Under the 2010 Gaming Compact and [Indian Game Regulatory Act], banked games include both house banked games and player-banked games.[130]

Section 849.086(2)(b), F.S., defines a 'banking game' as a game in which:
- The house is a participant in the game, taking on players, paying winners, and collecting from losers; or
- The cardroom establishes a bank against which participants play.

The court found that:
- The first part of the definition in [1] describes a house banked game, one played in the manner that is typical for blackjack and baccarat;
- The second part of the definition in [2] describes a game banked by anyone else, including a player; that is, a game played in the manner of chemin de fer;[131]
- When the cardroom devises and runs the game and sets the rules, including the requirement that a player act as the bank, the cardroom 'establishes' a bank;
- Florida law does not state that a game is not 'banked' when the bank is a player rather than the house;
- There were no player-banked card games at pari-mutuel cardrooms when the parties entered into the 2010 Gaming Compact;
- The parties did not expect the Seminole Tribe to have to compete against such games; and
- The DBPR permitted cardrooms to conduct banked games as early as 2011, formally approved the practice by adopting a rule in 2014, continues to permit the games, and asserts the rule is currently valid.

After the DBPR's appeal of Judge Hinkle's decision,[132] the Seminole Tribe and the DBPR entered into a Settlement Agreement and Stipulation (2017 Settlement) on July 5, 2017.[133]

Authorization of Designated Player Games in Florida (i.e., player banked card games with a designated player) could affect the revenue sharing provisions of the 2010 Gaming Compact[134] Judge Hinkle found Designated Player Games to be banked card games, a form of Class III gaming. The Settlement Agreement that the state entered with the Seminole Tribe provides that

[130] *See Seminole Tribe of Florida v. State of Florida*, Case No.: 4:15-cv-516-RH/CAS (U.S.D.C. N.D. Fla.), Document 103, filed Nov. 9, 2016, at p. 9.
[131] *Id*. at p. 10.
[132] *See Seminole Tribe of Florida v. State of Florida*, 219 F.Supp. 3d 1177 (N.D. Fla. Jan. 19, 2017), Case No.: 4:15-cv-516-RH/CAS, Document 120.
[133] *See* Settlement Agreement and Stipulation (2017 Settlement) (July 5, 2017) (on file with the Senate Committee on Regulated Industries).
[134] *See* paragraph A of Part XII of the 2010 Gaming Compact at http://www.flsenate.gov/. . .RI/Links/Gaming Compact between The Seminole Tribe of Florida and the State of Florida.pdf (last visited Jan. 11, 2018).

Judge Hinkle's findings of fact and conclusions of law are binding on the State and the Seminole Tribe. Accordingly, payments due to the state under the 2010 Compact could cease.[135]

Additionally, the Tribe would also be authorized to offer Designated Player Games, because each compact provides the Tribe is authorized to offer "any new game authorized by Florida law for any person for any purpose.[136]

If the 2018 Gaming Compact between the Seminole Tribe and the state, which is ratified in Section 1 of this bill, becomes effective, the provisions in this bill relating to Designated Player Games will not cause any impact to the revenues to be paid to the state by the Seminole Tribe because the games are permitted under that compact and are not a violation of the exclusivity granted to the Seminole Tribe under that compact.

Effect of Proposed Changes:

Section 12 amends s. 849.086, F.S., to:

- Provide that a Designated Player Game is not a banking game, and that a designated player is the player in the dealer position seated at a traditional player position who pays winning players and collects from losing players.
- Define "Designated Player Game" as "a game in which the players compare their cards only to the cards of the designated player or to a combination of cards held by the designated player and cards common and available for play by all players."
- Repeal the "90 percent rule" in existing law mandating the minimum number of races that must be conducted by a permitholder to renew a cardroom license.
- Require that a permitholder conducting less than a full schedule of live racing or games make payments for the benefit of live thoroughbred horse racing purses. If a cardroom licensee is not running a full schedule of live racing or games under its pari-mutuel permit, then the decoupled licensee must remit each month to each qualified thoroughbred permitholder, an amount equal to four percent of the permitholder's monthly cardroom gross receipts divided by the total number of qualified thoroughbred permitholders for that fiscal year.
  The required uses of those payments, the requirements for making those payments, and the definition of the term "qualified thoroughbred permitholder" are the same as those applicable to the payments decoupled pari-mutuel permitholders that have a slot machine license must pay for thoroughbred horse racing purses under this bill.
- Require the division to respond to requests from a licensed cardroom within 45 days for approval of a cardroom's internal controls or the rules for a new authorized game, or provide a list of deficiencies. The division has ten days after receipt of revised internal controls or rules for a new game addressing the deficiencies identified by the division to approve or reject the revised internal controls or rules.[137]

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[135] *See* paragraph A of Part XII of the 2010 Gaming Compact at pages 39-40 at http://www.myfloridalicense.com/dbpr/pmw/documents/2010_Compact-Signed1.pdf (last visited Jan. 11, 2018).
[136] *See* subparagraph 4 of paragraph F of Part III of the 2010 Gaming Compact at page 4 at http://www.myfloridalicense.com/dbpr/pmw/documents/2010_Compact-Signed1.pdf (last visited Jan. 11, 2018) and *see* subparagraph 5 of paragraph G of Part XII of the 2015 Gaming Compact at http://www.flsenate.gov/. . .Proposed 2015 Gaming Compact, Comparison Chart, and Letter from Governor Scott.pdf (last visited Jan. 1, 2018).
[137] According to the DBPR's Office of General Counsel, the terms "requests from a licensed cardroom" and "submission" in the bill "may create ambiguity in their application." *See 2018 Agency Legislative Bill Analysis (AGENCY: Department of*

- Authorize cardroom operators to offer Designated Player Games, at not more than 50 percent of the total licensed tables in a cardroom.
- Provide a cardroom operator may not serve as a designated player but may collect a table rake as posted at the table.
- Provide, if there are multiple designated players at a table, the dealer button must be rotated clockwise after each hand.
- Provide that a cardroom operator may not allow a designated player to pay an opposing player who holds a lower ranked hand.
- Provide that any designated player may not be required by the rules of a game or by the rules of a cardroom to cover more than 10 times the maximum wager for opposing players.
- Prohibit a cardroom, or any cardroom licensee, from contracting for or receiving compensation other than a posted table rake from any player to participate in any game to serve as a designated player.
- Require employees of a designated player be licensed, and a designated player pay, in addition to the cardroom business occupational fee, an employee occupational fee which may not exceed $500.00 per employee annually.

If the 2018 Gaming Compact between the Seminole Tribe and the state, which is ratified in Section 1 of this bill, becomes effective, the provisions in this bill relating to Designated Player Games at cardrooms will not cause any impact to the revenues to be paid to the state by the Seminole Tribe because the authorization for Designated Player Games is permitted under that compact and is not a violation of the exclusivity granted to the Seminole Tribe under that compact.

Definition of Slot Machines or Devices

Present Situation:

Slot machine gaming is lawful only in licensed slot machine facilities at pari-mutuel facilities located in Broward and Miami-Dade counties.[138] At issue in recent litigation is whether certain games, popularly known as pre-reveal games, are illegal slot machines.[139] The machines involve a "multiple game system with a preview feature" requiring a player to press a preview button that displays the outcome of the game before play may begin. The preview button shows the outcome of the next game but not the game after that. The circuit court concluded that pre-reveal machines are illegal slot machines, and an appeal of the case is now pending.[140]

Effect of Proposed Changes:

Section 13 amends the definition of "slot machine or device" in ch. 849, F.S., relating to gambling, to prohibit pre-reveal games.

Business and Professional Regulation) for SB 840, dated Jan. 9, 2018 (on file with Senate Committee on Regulated Industries) at page 8.

[138] Section 551.101, F.S.

[139] *See Gator Coin II, Inc. v. Florida Dep't of Bus. & Prof. Reg.*, No. 2015-CA-2629 (Fla. Cir. Ct. Jul. 10, 2017).

[140] *See Gator Coin II, Inc. v. Florida Dep't of Bus. & Prof. Reg.*, Case No. 1D 17-2966 (Fla. 1st DCA), at http://jweb.flcourts.org/pls/ds/ds_docket_search?pscourt=1 (last visited Feb. 13, 2018).

Effective Date

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:

Fantasy Contests

None.

Pari-Mutuel Decoupling

The ending of live racing will reduce required daily license fees and taxes on wagering paid by pari-mutuel permitholders that decouple. According to the Department of Business and Professional Regulation (DBPR), the bill's fiscal impact to state government revenues is indeterminate.[141] The Revenue Estimating Conference (REC) has not analyzed this provision of the bill.

Purse Supplements by Decoupled Slot Machine Licensees

None.

Slot Machine Tax Rate Reduction

The REC has not analyzed this bill, but staff expects the impact of this provision of the bill to be loss of $4.1 million on a recurring basis in slot machine revenue. Under current law and current administration, the REC forecasts[142] slot machine revenues to increase by 2.1 percent in Fiscal Year 2018-2019, and by 1.2 percent annually thereafter, growing from $191.9 million in Fiscal Year 2017-2018 to $205.0 million in Fiscal Year 2022-

[141] *See 2018 Agency Legislative Bill Analysis (AGENCY: Department of Business and Professional Regulation)* for SB 840, dated Jan. 9, 2018 (on file with Senate Committee on Regulated Industries) at page 6.
[142] *See Revenue Estimating Conference Slot Machine Tax January 2018* at http://edr.state.fl.us/Content/conferences/slotmachines/SlotsResults.pdf (last visited Feb. 7, 2018).

2023. The bill will result in a loss of the growth in slot machine revenue deposited in the Educational Enhancement Trust Fund.

Authorization of Designated Player Games

None.

B. Private Sector Impact:

The bill authorizes certain fantasy contests to be offered by fantasy contest operators, who will retain amounts participants pay as entry fees to participate in fantasy contests. Persons who pay entry fees to participate in fantasy contests have the opportunity to win prizes and awards.

The ending of live racing will reduce required daily license fees and taxes on wagering paid by pari-mutuel permitholders that decouple.

The bill reduces the tax rate on slot machine gaming revenue effective January 1, 2019, but also requires that the existing Broward and Miami-Dade slot machine facilities pay, in each year, at least as much as they paid in Fiscal Year 2017-2018.

As to Designated Player Games, the bill:

- Provides a Designated Player Game is not a banking game.
- Sets requirements and limitations for a Designated Player Game.
- Limits the number of Designated Player Game tables in a cardroom to not more than 50 percent of the cardroom's total licensed tables.
- Grants additional rulemaking authority to the DBPR's Division of Pari-Mutuel Wagering (division) relating to requests from licensed cardrooms and imposes deadlines for response by the division to submissions by cardroom licensees relating to rules for new authorized games, revisions to internal controls, and revisions to rules for games.

C. Government Sector Impact:

The REC has not adopted an official estimate of the impact of this bill, but based on preliminary analysis, if the 2018 Gaming Compact between the Seminole Tribe of Florida and the state, which is ratified in Section 1 of this bill, becomes effective, the state would cease to receive payments under the 2010 Gaming Compact and would receive the following revenue from the Seminole Tribe in the fiscal years indicated:

Fiscal Year	Revenue Share (in millions)
2018-2019	$325
2019-2020	350
2020-2021	375
2021-2022	425
2022-2023	475
2023-2024	500
2024-2025	550

In total, during the seven years of the Guarantee Payment Period, the state would receive $619.4 million more in payments from the Seminole Tribe under the 2018 Gaming Compact than the Revenue Estimating Conference (REC) projects will be received under the 2010 Gaming Compact for the same period.

During Fiscal Year 2018-2019, the amount the state would receive under the 2018 Gaming Compact would be an increase of $2.2 million above the amount the REC projects will be received under the 2010 Gaming Compact. In Fiscal Year 2019-2020, the state would receive $21.3 million more under the 2018 Gaming Compact than the amount the state is projected to receive under the 2010 Gaming Compact.

If the 2018 Gaming Compact authorized in Section 1 of this bill does not become effective, the bill may significantly impact the Revenue Share Payments[143] required to be paid by the Seminole Tribe of Florida under the 2010 Gaming Compact.

Under current law and current administration, and assuming the state does not violate the "exclusivity" requirements in the current Compact, the REC estimates that during Fiscal Year 2017-2018 $280.4 million revenue will be received from the Seminole Tribe associated with the 2010 Gaming Compact, of which $276.9 million will accrue to the General Revenue Fund and $3.5 million will be distributed to local governments as required by s. 285.710(10), F.S. During Fiscal Year 2018-2019, the REC estimates revenue associated with the 2010 Gaming Compact will be $391.1 million, of which $382.4 million will accrue to the General Revenue Fund and $8.7 million will be distributed to local governments. The REC estimates the revenue associated with the 2010 Gaming Compact will increase to $361.4 million for Fiscal Year 2025-2026.[144]

The REC currently classifies all future Revenue Share Payments to be paid by the Seminole Tribe to the state under the 2010 Gaming Compact as nonrecurring revenue because the continuation of these payments depends on actions by the state and the Seminole Tribe "that cannot be anticipated with sufficient certainty."[145]

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[143] Revenue Share Payments are the periodic payments to the State by the Seminole Tribe, based on the Tribe's Net Win. Net Win is defined as total receipts from the play of authorized tribal gaming in Florida, less all prizes, free play, or promotional credits. *See* paragraphs U and X of Part III of the 2010 Gaming Compact at page 11 at http://www.myfloridalicense.com/dbpr/pmw/documents/2010_Compact-Signed1.pdf (last visited Jan. 11, 2018).
[144] *See* the estimates for multiple fiscal years in the *Conference Results, Indian Gaming Revenues* at http://edr.state.fl.us/Content/conferences/Indian-gaming/IndianGamingResults.pdf (last visited Feb. 8, 2018).
[145] *Id.*

Fantasy Contests

If the 2018 Gaming Compact between the Seminole Tribe and the state does not become effective, and if fantasy contests permitted under the bill constitute gaming, are considered Class III gaming under federal law, and constitute, under the 2010 Gaming Compact, *new* Class III gaming in Florida, then the payments due to the state under the 2010 Gaming Compact could end when fantasy contests begin to be offered for public or private use.[146]

In a letter to Senator Travis Hutson and Representative Mike La Rosa dated December 5, 2017,[147] Jim Shore, General Counsel for the Seminole Tribe, indicated the Tribe believes the games permitted by HB 223 and SB 374 (Fantasy Contests), and SB 840 (Gaming) would violate the Tribe's exclusivity, as set forth in Part XII of the 2010 Gaming Compact between the State and Tribe. The stated purpose of the letter was to avoid enactment of legislation "that inadvertently violates the Tribe's exclusivity." Mr. Shore noted "federal law requires that any reduction in the Tribe's exclusivity must be balanced by some additional consideration from the State[, and] without such an agreement, the 2010 Gaming Compact would allow the Tribe to cease all revenue sharing payments to the State based on the expanded gaming contemplated by the referenced bills."

Pari-Mutuel Decoupling

The bill authorizes greyhound racing, harness horse racing, and quarter horse racing permitholders to stop conducting live racing while retaining intertrack and simulcast wagering, cardrooms, and, where relevant, slot machine facilities. The ending of live racing will reduce daily license fees and taxes on wagering payable by pari-mutuel permitholders that decouple. The Revenue Estimating Conference has not analyzed this bill, nor the impacts of ending live racing by greyhound racing permitholders and the various horse racing permitholders in the manner provided in the bill.

According to the Department of Business and Professional Regulation (DBPR), expenditures for licensing and sample collection may be reduced at permitholder facilities that choose to end live racing.[148] The DBPR's Office of General Counsel notes that rulemaking will be necessary to address revisions to permit and license application forms, as well as additional forms relating to the ending of live racing.[149]

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[146] *See* paragraph A of Part XII of the 2010 Gaming Compact at pages 39-40 at http://www.myfloridalicense.com/dbpr/pmw/documents/2010_Compact-Signed1.pdf (last visited Jan. 11, 2018); the Revenue Share Payments and the required annual donation of $750,000 to the Florida Council on Compulsive Gaming must resume when the new Class III gaming is no longer operated.

[147] *See* Letter from Jim Shore, General Counsel for the Seminole Tribe, to Senator Travis Hutson and Representative La Rosa (Dec. 5, 2017) (on file with the Senate Committee on Regulated Industries).

[148] *See 2018 Agency Legislative Bill Analysis (AGENCY: Department of Business and Professional Regulation)* for SB 840, dated Jan. 9, 2018 (on file with Senate Committee on Regulated Industries) at page 6.

[149] *Id*. at page 8.

Slot Machine Tax Rate Reduction

The bill provides for a slot machine tax rate reduction, which takes effect on January 1, 2019, combined with a requirement that the existing Broward and Miami-Dade slot machine facilities pay, in each year, at least as much as they paid in Fiscal Year 2017-2018, but not to exceed 35 percent of any facility's slot machine revenue. The Revenue Estimating Conference (REC) forecasts[150] that under current law slot machine revenues will increase by 2.1 percent in Fiscal Year 2018-2019, and by 1.2 percent annually thereafter, growing from $191.9 million in Fiscal Year 2017-2018 to $205.0 million in Fiscal Year 2022-2023. The REC has not analyzed this bill, but staff expects the impact of the reduction in the slot machine tax rate to be a loss to the Educational Enhancement Trust Fund of the **growth** in slot machine revenue.

Authorization of Designated Player Games

If the 2018 Gaming Compact authorized in Section 1 of the bill does not become effective, authorization of player banked card games with a designated player, which were determined to be Class III gaming in federal litigation between the state of Florida and the Seminole Tribe of Florida, could impact the revenue sharing provisions of the 2010 Gaming Compact, as payments due to the state under the compact could cease.[151]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 285.710, 285.712, 550.01215, 550.054, 550.0745, 550.09512, 550.09515, 550.3345, 551.104, 551.106, 849.086, and 849.16.

This bill creates section 546.13 of the Florida Statutes.

[150] *See Revenue Estimating Conference Slot Machine Tax January 2018* at http://edr.state.fl.us/Content/conferences/slotmachines/SlotsResults.pdf (last visited Feb. 7, 2018).
[151] *See* paragraph A of Part XII of the 2010 Gaming Compact at pages 39-40 at http://www.myfloridalicense.com/dbpr/pmw/documents/2010_Compact-Signed1.pdf (last visited Jan. 11, 2018).

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 Finance and Tax on February 12, 2018:
The committee substitute:

- Deletes decoupling of thoroughbred horse racing.
- Reduces the amount of slot machine revenue that a decoupled permitholder with a slot machine license must pay for thoroughbred horse purses to the *lesser* of 2.75 percent (reduced from 3 percent in the bill) of the licensee's slots revenue from the prior fiscal year or $1.5 million annually (reduced from $2 million in the bill).
- Revises provisions relating to the amount of slot machine revenue and cardroom revenue which decoupled permitholders must pay, so that qualified thoroughbred permitholders (conducting minimum live racing requirements) each receive the same amount.
- Provides that limited thoroughbred permitholders and thoroughbred permitholders leasing at another permitholder's racing facility are not qualified thoroughbred permitholders for purposes of receiving a share of revenues from decoupled permitholders.
- Eliminates dormant pari-mutuel permits and repeals authorization for issuance of summer jai alai permits.
- Amends the definition of "slot machine or device" to prohibit pre-reveal games.
- Authorizes the execution of a gaming compact between the state and the Seminole Tribe of Florida (Seminole Tribe), which:
  - Authorizes the Seminole Tribe to conduct slot machine gaming at its seven gaming facilities;
  - Permits the Seminole Tribe to offer live table games, such as craps and roulette, at its seven gaming facilities;
  - Authorizes banked card games, including blackjack, chemin de fer, and baccarat, at its seven facilities;
  - Is for a term of 20 years, through June 30, 2038; and
  - Includes a $3 billion guarantee of revenue sharing payments to the state for the first seven-years (Guarantee Period), with specific payment amounts (Guaranteed Payments) during each year of the Guarantee Period. After the Guarantee Period, payments will be based on varying percentage rates that depend on the amount of the Seminole Tribe's net win (Revenue Share Payments);
  - Provides exceptions to the Tribe's exclusive rights to allow the authorization of fantasy contests, the play of Designated Player Games in the state, and the ending of live racing by certain pari-mutuel permitholders.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/02/2018	.	
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The Committee on Appropriations (Hutson) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Paragraph (a) of subsection (1) and subsection (3) of section 285.710, Florida Statutes, are amended to read:

285.710 Compact authorization.—

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

(a) "Compact" means the Gaming Compact between the Seminole Tribe of Florida and the State of Florida~~, executed on April 7,~~

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~~2010~~.

(3)(a) The Gaming Compact between the Seminole Tribe of Florida and the State of Florida, executed by the Governor and the Tribe on April 7, 2010, was ~~is~~ ratified and approved by chapter 2010-29, Laws of Florida. ~~The Governor shall cooperate with the Tribe in seeking approval of the compact from the United States Secretary of the Interior.~~

(b) The Governor, on behalf of this state, is hereby authorized and directed to execute a new compact with the Tribe as set forth in paragraph (c), and the Legislature hereby signifies in advance its approval and ratification of such compact, provided that it is identical to the compact set forth in paragraph (c) and becomes effective on or before January 1, 2019. The Governor shall cooperate with the Tribe in seeking approval of such compact ratified and approved under this paragraph from the Secretary of the Department of the Interior. Upon becoming effective, such compact supersedes the Gaming Compact ratified and approved under paragraph (a), which shall then become null and void.

(c) The Legislature hereby approves and ratifies the following Gaming Compact between the State of Florida and the Seminole Tribe of Florida, provided that such compact becomes effective on or before January 1, 2019:

Gaming Compact Between the Seminole Tribe of Florida and the State of Florida

This compact is made and entered into by and between the Seminole Tribe of Florida and the State of Florida, with respect

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to the operation of covered games, as defined herein, on the Tribe's Indian lands, as defined by the Indian Gaming Regulatory Act, 25 U.S.C. ss. 2701 et seq.

PART I

TITLE.—This document shall be referred to as the "Gaming Compact between the Seminole Tribe of Florida and the State of Florida."

PART II

LEGISLATIVE FINDINGS.—

(1) The Seminole Tribe of Florida is a federally recognized tribal government that possesses sovereign powers and rights of self-government.

(2) The State of Florida is a state of the United States of America that possesses the sovereign powers and rights of a state.

(3) The State of Florida and the Seminole Tribe of Florida maintain a government-to-government relationship.

(4) The United States Supreme Court has long recognized the right of an Indian Tribe to regulate activity on lands within its jurisdiction, but the United States Congress, through the Indian Gaming Regulatory Act, has given states a role in the conduct of tribal gaming in accordance with negotiated tribal-state compacts.

(5) Pursuant to the Seminole Tribe Amended Gaming Ordinance, adopted by Resolution No. C-195-06, and approved by

the Chairman of the National Indian Gaming Commission on July 10, 2006, hereafter referred to as the "Seminole Tribal Gaming Code," the Seminole Tribe of Florida desires to offer the play of covered games, as defined in Part III, as a means of generating revenues for purposes authorized by the Indian Gaming Regulatory Act, including, without limitation, the support of tribal governmental programs, such as health care, housing, sewer and water projects, police, fire suppression, general assistance for tribal elders, day care for children, economic development, educational opportunities, per capita payments to tribal members, and other typical and valuable governmental services and programs for tribal members.

(6) This compact is the only gaming compact between the Tribe and the state. This compact supersedes the Gaming Compact between the Tribe and the state executed on or about April 7, 2010, which was subsequently ratified by the Legislature and went into effect on or about July 6, 2010.

(7) It is in the best interests of the Seminole Tribe of Florida and the State of Florida for the state to enter into a compact with the Tribe that recognizes the Tribe's right to offer certain Class III gaming and provides substantial exclusivity of such activities in conjunction with a reasonable revenue sharing arrangement between the Tribe and the state that will entitle the state to significant revenue participation.

PART III

DEFINITIONS.—As used in this compact, the term:

(1) "Annual oversight assessment" means the amount owed by

the Tribe to the state for reimbursement for the actual and reasonable costs incurred by the state compliance agency to perform the monitoring functions set forth under the compact.

(2) "Class II video bingo terminals" means any electronic aid to a Class II bingo game that includes a video spinning reel or mechanical spinning reel display.

(3) "Class III gaming" means the forms of Class III gaming defined in 25 U.S.C. s. 2703(8) and by the regulations of the National Indian Gaming Commission, as of January 1, 2018.

(4) "Commission" means the Seminole Tribal Gaming Commission, which is the tribal governmental agency that has the authority to carry out the Tribe's regulatory and oversight responsibilities under this compact.

(5) "Compact" means this Gaming Compact between the Seminole Tribe of Florida and the State of Florida.

(6) "Covered game" or "covered gaming activity" means the following Class III gaming activities:

(a) Slot machines, which may use spinning reels, video displays, or both, and which machines must meet all of the following requirements:

1. Any mechanical or electrical contrivance, terminal that may or may not be capable of downloading slot games from a central server system, machine, or other device.

2. Require, for play or operation, the insertion of a coin, bill, ticket, token, or similar object, or payment of any consideration whatsoever, including the use of any electronic payment system, except a credit card or debit card, unless state law authorizes the use of an electronic payment system that uses a credit or debit card payment, in which case the Tribe is

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authorized to use such payment system.

3. Are available to play or operate, the play or operation of which, whether by reason of skill or application of the element of chance or both, may deliver or entitle the person or persons playing or operating the contrivance, terminal, machine, or other device to receive cash, billets, tickets, tokens, or electronic credits to be exchanged for cash or to receive merchandise or anything of value whatsoever, whether the payoff is made automatically from the machine or manually.

4. Include associated equipment necessary to conduct the operation of the contrivance, terminal, machine, or other device.

(b) Banking or banked card games, such as baccarat, chemin de fer, and blackjack or 21.

(c) Raffles and drawings.

(d) Live table games.

(e) Any new game, if expressly authorized by the Legislature pursuant to legislation enacted subsequent to the effective date of this compact and lawfully conducted by any person for any purpose pursuant to such authorization.

(7) "Covered game employee" or "covered employee" means an individual employed and licensed by the Tribe whose responsibilities include the rendering of services with respect to the operation, maintenance, or management of covered games, including, but not limited to, managers and assistant managers; accounting personnel; commission officers; surveillance and security personnel; cashiers, supervisors, and floor personnel; cage personnel; and any other employee whose employment duties require or authorize access to areas of the facility related to

the conduct of covered games or the technical support or storage of covered game components. The term does not include the Tribe's elected officials, provided that such individuals are not directly involved in the operation, maintenance, or management of covered games or covered games components.

(8) "Documents" means books, records, electronic, magnetic, and computer media documents, and other writings and materials, copies of such documents and writings, and information contained in such documents and writings.

(9) "Effective date" means the date on which the compact becomes effective pursuant to subsection (1) of Part XVI.

(10) "Electronic bingo machine" means a card minding device, which may only be used in connection with a bingo game as defined in s. 849.0931(1)(a), Florida Statutes, which is certified in advance by an independent testing laboratory approved by the Division of Pari-Mutuel Wagering as a bingo aid device that meets all of the following requirements:

(a) Aids a bingo game player by:

1. Storing in the memory of the device not more than three bingo faces of tangible bingo cards as defined by s. 849.0931(1)(b), Florida Statutes, purchased by a player.

2. Comparing the numbers drawn and individually entered into the device by the player to the bingo faces previously stored in the memory of the device.

3. Identifying preannounced winning bingo patterns marked or covered on the stored bingo faces.

(b) Is not capable of accepting or dispensing any coins, currency, or tokens.

(c) Is not capable of monitoring any bingo card face other

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than the faces of the tangible bingo card or cards purchased by the player for that game.

(d) Is not capable of displaying or representing the game result through any means other than highlighting the winning numbers marked or covered on the bingo card face or giving an audio alert that the player's card has a prize-winning pattern. No casino game graphics, themes, or titles, including, but not limited to, depictions of slot machine-style symbols, cards, craps, roulette, or lottery may be used.

(e) Is not capable of determining the outcome of any game.

(f) Does not award progressive prizes of more than $2,500.

(g) Does not award prizes exceeding $1,000, other than progressive prizes not exceeding $2,500.

(h) Does not contain more than one player position for playing bingo.

(i) Does not contain or does not link to more than one video display.

(j) Awards prizes based solely on the results of the bingo game, with no additional element of chance.

(11) "Facility" means a building or buildings of the Tribe in which the covered games authorized by this compact are conducted.

(12) "Guaranteed minimum compact term payment" means a minimum total payment for the guarantee payment period of $3 billion, which shall include all revenue share payments during the guarantee payment period.

(13) "Guarantee payment period" means the seven-year period beginning July 1, 2018, and ending June 30, 2025.

(14) "Guaranteed revenue sharing cycle payment" means the

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payments as provided in Part XI.

(15) "Historic racing machine" means an individual historic race terminal linked to a central server as part of a network-based video game, where the terminals allow pari-mutuel wagering by players on the results of previously conducted horse or greyhound races, but only if the game is certified in advance by an independent testing laboratory approved by the Division of Pari-Mutuel Wagering as complying with all of the following requirements:

(a) Stores all data on previously conducted horse or greyhound races in a secure format on the central server, which is located at the pari-mutuel facility.

(b) Uses only horse or greyhound races that were recorded at licensed pari-mutuel facilities in the United States after January 1, 2000.

(c) Offers one or more of the following three bet types on all historic racing machines: win-place-show, quinella, or tri-fecta.

(d) Offers one or more of the following racing types: thoroughbreds, harness, or greyhounds.

(e) Does not award progressive prizes of more than $2,500.

(f) Does not award prizes exceeding $1,000, other than progressive prizes not exceeding $2,500.

(g) After each wager is placed, displays a video of at least the final eight seconds of the horse or greyhound race before any prize is awarded or indicated on the historic racing machine.

(h) The display of the video of the horse or greyhound race occupies at least 70 percent of the historic racing machine's

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video screen and does not contain and is not linked to more than one video display.

(i) Does not use casino game graphics, themes, or titles, including but not limited to, depictions of slot machine-style symbols, cards, craps, roulette, lottery, or bingo.

(j) Does not use video or mechanical reel displays.

(k) Does not contain more than one player position for placing wagers.

(l) Does not dispense coins, currency, or tokens.

(m) Awards prizes solely on the results of a previously conducted horse or greyhound race with no additional element of chance.

(n) Uses a random number generator to select the race from the central server to be displayed to the player and the numbers or other designations of race entrants that will be used in the various bet types for any "Quick Pick" bets. To prevent an astute player from recognizing the race based on the entrants and thus knowing the results before placing a wager, the entrants of the race may not be identified until after all wagers for that race have been placed.

(16) "Indian Gaming Regulatory Act" means the Indian Gaming Regulatory Act, Pub. L. 100-497, Oct. 17, 1988, 102 Stat. 2467, codified at 25 U.S.C. ss. 2701 et seq. and 18 U.S.C. ss. 1166 to 1168.

(17) "Indian lands" means the lands defined in 25 U.S.C. s. 2703(4).

(18) "Initial payment period" means the period beginning on the effective date of the compact and ending on June 30, 2018.

(19) "Live table games" means dice games, such as craps,

sic-bo and any similar variations thereof, and wheel games, such as roulette, big six, and any similar variations thereof, but not including any game that is authorized as a slot machine, banking or banked card game, raffle, or drawing.

(20) "Lottery vending machine" means any of the following four types of machines:

(a) A machine that dispenses pre-printed paper instant lottery tickets, but that does not read or reveal the results of the ticket or allow a player to redeem any ticket. The machine, or any machine or device linked to the machine, does not include or make use of video reels or mechanical reels or other video depictions of slot machine or casino game themes or titles for game play, but does not preclude the use of casino game themes or titles on such tickets or signage or advertising displays on the machines.

(b) A machine that dispenses pre-determined electronic instant lottery tickets and displays an image of the ticket on a video screen on the machine, where the player touches the image of the ticket on the video screen to reveal the outcome of the ticket, provided the machine does not permit a player to redeem winnings, does not make use of video reels or mechanical reels, and does not simulate the play of any casino game, and the lottery retailer is paid the same amount as would be paid for the sale of paper instant lottery tickets.

(c) A machine that dispenses a paper lottery ticket with numbers selected by the player or randomly by the machine, but does not reveal the winning numbers. Such winning numbers are selected at a subsequent time and different location through a drawing conducted by the state lottery. The machine, or any

machine or device linked to the machine, does not include or make use of video reels or mechanical reels or other video depictions of slot machine or casino game themes or titles for game play. The machine is not used to redeem a winning ticket. This does not preclude the use of casino game themes, titles for signage, or advertising displays on the machine.

(d) A point-of-sale system to sell tickets for draw lottery games at gasoline pumps at retail fuel stations, provided the system dispenses a paper lottery receipt after the purchaser uses a credit card or debit card to purchase the ticket; processes transactions through a platform that is certified or otherwise approved by the Florida Lottery; does not directly dispense money or permit payment of winnings at the point-of-sale terminal; and does not include or make use of video reels or mechanical reels or other slot machine or casino game themes or titles.

(21) "Monthly payment" means the monthly revenue share payment which the Tribe remits to the state on the 15th day of the month following each month of the revenue sharing cycle.

(22) "Net revenue base" means the net win for the 12 month period immediately preceding the offering of, for public or private use, Class III or other casino-style gaming at any of the licensed pari-mutuel facilities in Broward and Miami-Dade Counties, except that if the commencement of such new gaming is made during the initial payment period, "net revenue base" means net win for the 12-month period immediately preceding this compact.

(23) "Net win" means the total receipts from the play of all covered games less all prize payouts and free play or

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promotional credits issued by the Tribe.

(24) "Pari-mutuel wagering activities" means those activities authorized on January 1, 2018, by chapter 550, which do not include any casino-style game or device that include video reels or mechanical reels or other slot machine or casino game themes or titles.

(25) "Patron" means any person who is on the premises of a facility, or who enters the Tribe's Indian lands for the purpose of playing covered games authorized by this compact.

(26) "Regular payment period" means the period beginning on July 1, 2025, and terminating at the end of the term of this compact.

(27) "Revenue share payment" means the periodic payment by the Tribe to the state provided for in Part XI.

(28) "Revenue sharing cycle" means the annual 12-month period of the Tribe's operation of covered games in its facilities beginning on July 1 of each fiscal year, except for during the initial payment period, when the first revenue sharing cycle begins on July 1 of the previous year, and the Tribe receives a credit for any amount paid to the state under the 2010 Compact for that revenue sharing cycle.

(29) "Rules and regulations" means the rules and regulations promulgated by the commission for implementation of this compact.

(30) "State" means the State of Florida.

(31) "State compliance agency" means the state agency designated by the Florida Legislature that has the authority to carry out the state's oversight responsibilities under this compact.

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(32) "Tribe" means the Seminole Tribe of Florida or any affiliate thereof conducting activities pursuant to this compact under the authority of the Seminole Tribe of Florida.

PART IV

AUTHORIZATION AND LOCATION OF COVERED GAMES.—

(1) The Tribe and state agree that the Tribe is authorized to operate covered games on its Indian lands, as defined in the Indian Gaming Regulatory Act, in accordance with the provisions of this compact. Nothing in the compact is intended to prohibit the Tribe from operating slot machines that employ video or mechanical displays of roulette, wheels, or other table game themes. Except for the provisions in subsection (1) of Part XI, nothing in this compact shall limit the Tribe's right to operate any Class II gaming under the Indian Gaming Regulatory Act.

(2) The Tribe is authorized to conduct covered games under this compact only at the following seven existing facilities, which may be expanded or replaced as provided in subsection (3) on Indian lands:

(a) Seminole Indian Casino-Brighton in Okeechobee, FL.

(b) Seminole Indian Casino-Coconut Creek in Coconut Creek, FL.

(c) Seminole Indian Casino-Hollywood in Hollywood, FL.

(d) Seminole Indian Casino-Immokalee in Immokalee, FL.

(e) Seminole Indian Casino-Big Cypress in Clewiston, FL.

(f) Seminole Hard Rock Hotel & Casino-Hollywood in Hollywood, FL.

(g) Seminole Hard Rock Hotel & Casino-Tampa in Tampa, FL.

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(3) Any of the facilities existing on Indian lands identified in subsection (2) may be expanded or replaced by another facility on the same Indian lands with at least 60 days' advance notice to the state.

PART V

RULES AND REGULATIONS; MINIMUM REQUIREMENTS FOR OPERATIONS.—

(1) At all times during the term of this compact, the Tribe shall be responsible for all duties that are assigned to it and the commission under this compact. The Tribe shall promulgate any rules necessary to implement this compact, which, at a minimum, shall expressly include or incorporate by reference all provisions of Parts V, VI, VII, and VIII. Nothing in this compact shall be construed to affect the Tribe's right to amend its rules, provided that any such amendment is in conformity with this compact. The state compliance agency may propose additional rules consistent with and related to the implementation of this compact to the commission at any time, and the commission shall give good faith consideration to such proposed rules and shall notify the state compliance agency of its response or action with respect to such rules.

(2) All facilities shall comply with, and all covered games approved under this compact shall be operated in accordance with, the requirements set forth in this compact, including, but not limited to, the requirements set forth in subsections (3) and (4) and the Tribe's Internal Control Policies and Procedures. In addition, all facilities and all covered games

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shall be operated in strict compliance with tribal internal control standards that provide a level of control that equals or exceeds those set forth in the National Indian Gaming Commission's Minimum Internal Control Standards, 25 C.F.R. part 542 (2015), even if the 2015 regulations are determined to be invalid or are subsequently withdrawn by the National Indian Gaming Commission. The Tribe may amend or supplement its internal control standards from time to time, provided that such changes continue to provide a level of control that equals or exceeds those set forth in 25 C.F.R. part 542 (2015).

(3) The Tribe and the commission shall retain all documents in compliance with the requirements set forth in the Tribe's Record Retention Policies and Procedures.

(4) The Tribe shall continue and maintain its program to combat problem gambling and curtail compulsive gambling and work with the Florida Council on Compulsive Gambling or other organizations dedicated to assisting problem gamblers. The Tribe shall continue to maintain the following safeguards against problem gambling:

(a) The Tribe shall provide to every new gaming employee a comprehensive training and education program designed in cooperation with the Florida Council on Compulsive Gambling or other organization dedicated to assisting problem gamblers.

(b) The Tribe shall make printed materials available to patrons, which include contact information for the Florida Council on Compulsive Gambling 24-hour helpline or other hotline dedicated to assisting problem gamblers, and will work with the Florida Council on Compulsive Gambling or other organization dedicated to assisting problem gamblers to provide contact

information for the Florida Council on Compulsive Gambling or other organization dedicated to assisting problem gamblers, and to provide such information on the facility's website. The Tribe shall continue to display within the facilities all literature from the Florida Council on Compulsive Gambling or other organization dedicated to assisting problem gamblers.

(c)1. The commission shall establish a list of patrons voluntarily excluded from the Tribe's facilities, pursuant to subparagraph 3.

2. The Tribe shall employ its best efforts to exclude patrons on such list from entry into its facilities; provided that nothing in this compact shall create for patrons who are excluded but gain access to the facilities, or any other person, a cause of action or claim against the state, the Tribe or the commission, or any other person, entity, or agency for failing to enforce such exclusion.

3. Patrons who believe they may be compulsively playing covered games may request that their names be placed on the list of patrons voluntarily excluded from the Tribe's facilities.

(d) All covered game employees shall receive training on identifying compulsive gamblers and shall be instructed to ask such persons to leave. The facility shall make available signs bearing a toll-free help-line number and educational and informational materials at conspicuous locations and automated teller machines in each facility, which materials aim at the prevention of problem gaming and which specify where patrons may receive counseling or assistance for gambling problems. All covered games employees shall also be screened by the Tribe for compulsive gambling habits. Nothing in this subsection shall

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create for patrons, or any other person, a cause of action or claim against the state, the Tribe or the commission, or any other person, entity, or agency for failing to identify a patron or person who is a compulsive gambler or ask that person to leave.

(e) The Tribe shall follow the rules for exclusion of patrons set forth in the Seminole Tribal Gaming Code.

(f) The Tribe shall make diligent efforts to prevent underage individuals from loitering in the area of each facility where the covered games take place.

(g) The Tribe shall ensure that any advertising and marketing of covered games at the facilities contains a responsible gambling message and a toll-free help-line number for problem gamblers, where practical, and that such advertising and marketing make no false or misleading claims.

(5) The state may secure an annual independent audit of the conduct of covered games subject to this compact, as set forth in Part VIII.

(6) The facility shall visibly display summaries of the rules for playing covered games and promotional contests and shall make available complete sets of rules upon request. The Tribe shall provide copies of all such rules to the state compliance agency within 30 calendar days after issuance or amendment.

(7) The Tribe shall provide the commission and state compliance agency with a chart of the supervisory lines of authority with respect to those directly responsible for the conduct of covered games, and shall promptly notify those agencies of any material changes to the chart.

(8) The Tribe shall continue to maintain proactive approaches to prevent improper alcohol sales, drunk driving, underage drinking, and underage gambling. These approaches shall involve intensive staff training, screening and certification, patron education, and the use of security personnel and surveillance equipment in order to enhance patrons' enjoyment of the facilities and provide for patron safety.

(a) Staff training includes specialized employee training in nonviolent crisis intervention, driver license verification, and detection of intoxication.

(b) Patron education shall be carried out through notices transmitted on valet parking stubs, posted signs in the facilities, and in brochures.

(c) Roving and fixed security officers, along with surveillance cameras, shall assist in the detection of intoxicated patrons, investigate problems, and engage with patrons to deescalate volatile situations.

(d) To help prevent alcohol-related crashes, the Tribe will continue to operate the "Safe Ride Home Program," a free taxi service.

(e) The Tribe shall maintain these programs and policies in its Alcohol Beverage Control Act for the duration of the compact but may replace such programs and policies with stricter or more extensive programs and policies. The Tribe shall provide the state with written notice of any changes to the Tribe's Alcohol Beverage Control Act, which notice shall include a copy of such changes and shall be sent on or before the effective date of the change. Nothing in this subsection shall create for patrons, or any other person, a cause of action or claim against the state,

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the Tribe or the commission, or any other person, entity, or agency for failing to fulfill the requirements of this subsection.

(9) A person under 21 years of age may not play covered games, unless otherwise permitted by state law.

(10) The Tribe may establish and operate facilities that operate covered games only on its Indian lands as defined by the Indian Gaming Regulatory Act and as specified in Part IV.

(11) The commission shall keep a record of, and shall report at least quarterly to the state compliance agency, the number of covered games in each facility, by the name or type of each game and its identifying number.

(12) The Tribe and the commission shall make available, to any member of the public upon request, within 10 business days, a copy of the National Indian Gaming Commission's Minimum Internal Control Standards, 25 C.F.R. part 542 (2015), the Seminole Tribal Gaming Code, this compact, the rules of each covered game operated by the Tribe, and the administrative procedures for addressing patron tort claims under Part VI.

PART VI

PATRON DISPUTES, WORKERS' COMPENSATION, TORT CLAIMS; PRIZE CLAIMS; LIMITED CONSENT TO SUIT.—

(1) All patron disputes involving gaming shall be resolved in accordance with the procedures established in the Seminole Tribal Gaming Code.

(2) Tort claims by employees of the Tribe's facilities will be handled pursuant to the provisions of the Tribe's Workers'

Compensation Ordinance, which shall provide workers the same or better protections as provided in state workers' compensation laws.

(3) Disputes involving employees of the Tribe's facilities will be handled pursuant to the provisions of the Tribe's policy for gaming employees, as set forth in the Employee Fair Treatment and Dispute Resolution Policy.

(4) A patron who claims to have been injured after the effective date of the compact at one of the Tribe's facilities in which covered games are played is required to provide written notice to the Tribe's Risk Management Department or the facility, in a reasonable and timely manner, but no longer than three years after the date of the incident giving rise to the claimed injury, or the claim shall be forever barred.

(5) The Tribe shall have 30 days to respond to a claim made by a patron. If the Tribe fails to respond within 30 days, the patron may file suit against the Tribe. When the Tribe responds to an incident alleged to have caused a patron's injury or illness, the Tribe shall provide a claim form to the patron. The form must include the address for the Tribe's Risk Management Department and provide notice of the Tribe's administrative procedures for addressing patron tort claims, including notice of the relevant deadlines that may bar such claims if the Tribe's administrative procedures are not followed. It is the patron's responsibility to complete the form and forward the form to the Tribe's Risk Management Department within a reasonable period of time, and in a reasonable and timely manner. Nothing herein shall interfere with any claim a patron might have arising under the Federal Tort Claim Act.

(6) Upon receiving written notification of the claim, the Tribe's Risk Management Department shall forward the notification to the Tribe's insurance carrier. The Tribe shall use its best efforts to ensure that the insurance carrier contacts the patron within a reasonable period of time after receipt of the claim.

(7) The insurance carrier shall handle the claim to conclusion. If the patron, Tribe, and insurance carrier are not able to resolve the claim in good faith within one year after the patron provided written notice to the Tribe's Risk Management Department or the facility, the patron may bring a tort claim against the Tribe in any court of competent jurisdiction in the county in which the incident alleged to have caused injury occurred, as provided in this compact, and subject to a four-year statute of limitations, which shall begin to run from the date of the incident of the injury alleged in the claim. A patron's notice of injury to the Tribe pursuant to subsection (4) and the fulfillment of the good faith attempt at resolution pursuant to this part are conditions precedent to filing suit.

(8) For tort claims of patrons made pursuant to subsection (4), the Tribe agrees to waive its tribal sovereign immunity to the same extent as the state waives its sovereign immunity, as specified in s. 768.28(1) and (5), Florida Statutes, as such provision may be amended from time to time by the Legislature. In no event shall the Tribe be deemed to have waived its tribal immunity from suit beyond the limits set forth in s. 768.28(5), Florida Statutes. These limitations are intended to include liability for compensatory damages, costs, pre-judgment

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interest, and attorney fees if otherwise allowable under state law arising out of any claim brought or asserted against the Tribe, its subordinate governmental and economic units, any Tribal officials, employees, servants, or agents in their official capacities and any entity which is owned, directly or indirectly, by the Tribe. All patron tort claims brought pursuant to this provision shall be brought solely against the Tribe, as the sole party in interest.

(9) Notices explaining the procedures and time limitations with respect to making a tort claim shall be prominently displayed in the facilities, posted on the Tribe's website, and provided to any patron for whom the Tribe has notice of the injury or property damage giving rise to the tort claim. Such notices shall explain:

(a) The method and places for making a tort claim, including where the patron must submit the claim.

(b) That the process is the exclusive method for asserting a tort claim arising under this section against the Tribe.

(c) That the Tribe and its insurance carrier have one year from the date the patron gives notice of the claim to resolve the matter, and that after that time, the patron may file suit in a court of competent jurisdiction.

(d) That the exhaustion of the process is a prerequisite to filing a claim in state court.

(e) That claims that fail to follow this process shall be forever barred.

(10) The Tribe shall maintain an insurance policy that shall:

(a) Prohibit the insurer or the Tribe from invoking tribal

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sovereign immunity for claims up to the limits to which the state has waived sovereign immunity as set forth in s. 768.28(5), Florida Statutes, or its successor statute.

(b) Include covered claims made by a patron or invitee for personal injury or property damage.

(c) Permit the insurer or the Tribe to assert any statutory or common law defense other than sovereign immunity.

(d) Provide that any award or judgment rendered in favor of a patron or invitee shall be satisfied solely from insurance proceeds.

(11) The Tribal Council of the Seminole Tribe of Florida may, in its discretion, consider claims for compensation in excess of the limits of the Tribe's waiver of its sovereign immunity.

PART VII

ENFORCEMENT OF COMPACT PROVISIONS.—

(1) The Tribe, the commission, and the state compliance agency, to the extent authorized by this compact, shall be responsible for regulating activities pursuant to this compact. As part of its responsibilities, the Tribe shall adopt or issue standards designed to ensure that the facilities are constructed, operated, and maintained in a manner that adequately protects the environment and public health and safety. Additionally, the Tribe and the commission shall ensure that:

(a) Operation of the conduct of covered games is in strict compliance with:

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1. The Seminole Tribal Gaming Code.

2. All rules, regulations, procedures, specifications, and standards lawfully adopted by the National Indian Gaming Commission and the commission.

3. The provisions of this compact, including, but not limited to, the Tribe's standards and rules.

(b) Reasonable measures are taken to:

1. Ensure the physical safety of facility patrons, employees, and any other person while in the facility.

2. Prevent illegal activity at the facilities or with regard to the operation of covered games, including, but not limited to, the maintenance of employee procedures and a surveillance system.

3. Ensure prompt notification is given, in accordance with applicable law, to appropriate law enforcement authorities of persons who may be involved in illegal acts.

4. Ensure that the construction and maintenance of the facilities complies with the standards of the Florida Building Code, the provisions of which the Tribe has adopted as the Seminole Tribal Building Code.

5. Ensure adequate emergency access plans have been prepared to ensure the health and safety of all covered game patrons.

(2) All licenses for members and employees of the commission shall be issued according to the same standards and terms applicable to facility employees. The commission's officers shall be independent of the Tribal gaming operations, and shall be supervised by and accountable only to the commission. A commission officer shall be available to the

facility during all hours of operation upon reasonable notice, and shall have immediate access to any and all areas of the facility for the purpose of ensuring compliance with the provisions of this compact. The commission shall investigate any suspected or reported violation of this part and shall officially enter into its files timely written reports of investigations and any action taken thereon, and shall forward copies of such investigative reports to the state compliance agency within 30 calendar days after such filing. The scope of such reporting shall be determined by the commission and the state compliance agency as soon as practicable after the effective date of this compact. Any such violations shall be reported immediately to the commission, and the commission shall immediately forward such reports to the state compliance agency. In addition, the commission shall promptly report to the state compliance agency any such violations which it independently discovers.

(3) In order to develop and foster a positive and effective relationship in the enforcement of the provisions of this compact, representatives of the commission and the state compliance agency shall meet at least annually to review past practices and examine methods to improve the regulatory scheme created by this compact. The meetings shall take place at a location mutually agreed upon by the commission and the state compliance agency. The state compliance agency, before or during such meetings, shall disclose to the commission any concerns, suspected activities, or pending matters reasonably believed to constitute violations of the compact by any person, organization, or entity, if such disclosure will not compromise

the interest sought to be protected.

PART VIII

STATE MONITORING OF COMPACT.—

(1) It is the express intent of the Tribe and the state for the Tribe to regulate its own gaming activities. Notwithstanding, the state shall conduct random inspections as provided for in this part to ensure that the Tribe is operating in accordance with the terms of the compact. The state may secure an annual independent audit of the conduct of covered games subject to this compact and the Tribe shall cooperate with such audit. The audit shall:

(a) Examine the covered games operated by the Tribe to ensure compliance with the Tribe's Internal Control Policies and Procedures and any other standards, policies, or procedures adopted by the Tribe, the commission, or the National Indian Gaming Commission which govern the play of covered games.

(b) Examine revenues in connection with the conduct of covered games and include only those matters necessary to verify the determination of net win and the basis and amount of the payments the Tribe is required to make to the state pursuant to Part XI and as defined by this compact.

(2) A copy of the audit report for the conduct of covered games shall be submitted to the commission and the state compliance agency within 30 calendar days after completion. Representatives of the state compliance agency may, upon request, meet with the Tribe and its auditors to discuss the audit or any matters in connection therewith; provided that such

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765 discussions are limited to covered games information. The annual
766 independent audit shall be performed by an independent firm
767 selected by the state which has experience in auditing casino
768 operations, subject to the consent of the Tribe, which shall not
769 be unreasonably withheld. The Tribe shall pay for the cost of
770 the annual independent audit.
771 (3) As provided herein, the state compliance agency may
772 monitor the conduct of covered games to ensure that the covered
773 games are conducted in compliance with the provisions of this
774 compact. In order to properly monitor the conduct of covered
775 games, agents of the state compliance agency shall have
776 reasonable access, without prior notice, to all public areas of
777 the facilities related to the conduct of covered games.
778 (a) The state compliance agency may review whether the
779 Tribe's facilities are in compliance with the provisions of this
780 compact and the Tribe's rules and regulations applicable to
781 covered games and may advise on such issues as it deems
782 appropriate. In the event of a dispute or disagreement between
783 Tribal and state compliance agency regulators, the dispute or
784 disagreement shall be resolved in accordance with the dispute
785 resolution provisions of Part XIII.
786 (b) In order to fulfill its oversight responsibilities, the
787 state compliance agency may perform on a routine basis specific
788 oversight testing procedures as set forth in paragraph (c).
789 (c)1. The state compliance agency may inspect any covered
790 games in operation at the facilities on a random basis, provided
791 that such inspections may not exceed one inspection per facility
792 per calendar month and the inspection may not exceed 16 hours
793 spread over those two consecutive days, unless the state

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compliance agency determines that additional inspection hours are needed to address the issues of substantial noncompliance, provided that the state compliance agency provides the Tribe with written notification of the need for additional inspection hours and a written summary of the substantial noncompliance issues that need to be addressed during the additional inspection hours. The total number of hours of random inspections and audit reviews per year may not exceed 1,600 hours. Inspection hours shall be calculated on the basis of the actual amount of time spent by the state compliance agency conducting the inspections at a facility, without accounting for a multiple for the number of state compliance agency inspectors or agents engaged in the inspection activities. The purpose of the random inspections is to confirm that the covered games function properly pursuant to the manufacturer's technical standards and are conducted in compliance with the Tribe's Internal Control Policies and Procedures and any other standards, policies, or procedures adopted by the Tribe, the commission, or the National Indian Gaming Commission which govern the play of covered games. The state compliance agency shall provide notice to the commission of such inspection at or before the commencement of a random inspection and a commission agent may accompany the inspection.

2. For each facility, the state compliance agency may perform one annual review of the Tribe's slot machine compliance audit.

3. At least annually, the state compliance agency may meet with the Tribe's Internal Audit Department for Gaming to review internal controls and the record of violations for each

facility.

(d) The state compliance agency shall cooperate with and obtain the assistance of the commission in the resolution of any conflicts in the management of the facilities, and the state and the Tribe shall make their best efforts to resolve disputes through negotiation whenever possible. Therefore, to foster a spirit of cooperation and efficiency, the state compliance agency and Tribe shall resolve disputes between the state compliance agency staff and commission regulators about the day-to-day regulation of the facilities through meeting and conferring in good faith. Notwithstanding, the parties may seek other relief that may be available when circumstances require such relief. In the event of a dispute or disagreement between tribal and state compliance agency regulators, the dispute or disagreement shall be resolved in accordance with the dispute resolution provisions of Part XIII.

(e) The state compliance agency shall have access to each facility during the facility's operating hours only. No advance notice is required when the state compliance agency inspection is limited to public areas of the facility; however, representatives of the state compliance agency shall provide notice and photographic identification to the commission of their presence before beginning any such inspections.

(f) The state compliance agency agents, to ensure that a commission officer is available to accompany the state compliance agency agents at all times, shall provide one hour notice and photographic identification to the commission before entering any nonpublic area of a facility. Agents of the state compliance agency shall be accompanied in nonpublic areas of the

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facility by a commission officer.

(g) Any suspected or claimed violations of this compact or law shall be directed in writing to the commission. The state compliance agency, in conducting the functions assigned them under this compact, shall not unreasonably interfere with the functioning of any facility.

(4) Subject to the provisions herein, the state compliance agency may review and request copies of documents of the facility related to its conduct of covered games during normal business hours unless otherwise allowed by the Tribe. The Tribe may not refuse said inspection and copying of such documents, provided that the inspectors do not require copies of documents in such volume that it unreasonably interferes with the normal functioning of the facilities or covered games. To the extent that the Tribe provides the state with information that the Tribe claims to be confidential and proprietary, or a trade secret, the Tribe shall clearly mark such information with the following designation: "Trade Secret, Confidential, and Proprietary." If the state receives a request under chapter 119 that would include such designated information, the state shall promptly notify the Tribe of such a request and the Tribe shall promptly notify the state about its intent to seek judicial protection from disclosure. Upon such notice from the Tribe, the state may not release the requested information until a judicial determination is made. This designation and notification procedure does not excuse the state from complying with the requirements of the state's public records law, but is intended to provide the Tribe the opportunity to seek whatever judicial remedy it deems appropriate. Notwithstanding the foregoing

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procedure, the state compliance agency may provide copies of tribal documents to federal law enforcement and other state agencies or state consultants that the state deems reasonably necessary in order to conduct or complete any investigation of suspected criminal activity in connection with the Tribe's covered games or the operation of the facilities or in order to assure the Tribe's compliance with this compact.

(5) At the completion of any state compliance agency inspection or investigation, the state compliance agency shall forward any written report thereof to the commission, containing all pertinent, nonconfidential, nonproprietary information regarding any violation of applicable laws or this compact which was discovered during the inspection or investigation unless disclosure thereof would adversely impact an investigation of suspected criminal activity. Nothing herein prevents the state compliance agency from contacting tribal or federal law enforcement authorities for suspected criminal wrongdoing involving the commission.

(6) Except as expressly provided in this compact, nothing in this compact shall be deemed to authorize the state to regulate the Tribe's government, including the commission, or to interfere in any way with the Tribe's selection of its governmental officers, including members of the commission.

PART IX

JURISDICTION.—The obligations and rights of the state and the Tribe under this compact are contractual in nature and are to be construed in accordance with the laws of the state. This

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compact does not alter tribal, federal, or state civil adjudicatory or criminal jurisdiction in any way.

PART X

LICENSING.—The Tribe and the commission shall comply with the licensing and hearing requirements set forth in 25 C.F.R. parts 556 and 558, as well as the applicable licensing and hearing requirements set forth in Articles IV, V, and VI of the Seminole Tribal Gaming Code. The commission shall notify the state compliance agency of any disciplinary hearings or revocation or suspension of licenses.

PART XI

PAYMENTS TO THE STATE OF FLORIDA.—

(1) The parties acknowledge and recognize that this compact provides the Tribe with partial but substantial exclusivity and other valuable consideration consistent with the goals of the Indian Gaming Regulatory Act, including special opportunities for tribal economic development through gaming within the external boundaries of the state with respect to the play of covered games. In consideration thereof, the Tribe covenants and agrees, subject to the conditions agreed upon in Part XII, to make payments to the state derived from net win as set forth in subsections (2) and (7). The Tribe further agrees that it will not purchase or lease any new Class II video bingo terminals or their equivalents for use at its facilities after the effective date of this compact.

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(2) The Tribe shall make periodic revenue share payments to the state derived from net win as set forth in this subsection, and any such payments shall be made to the state via electronic funds transfer. Of the amounts paid by the Tribe to the state, three percent shall be distributed to local governments, including both counties and municipalities, in the state affected by the Tribe's operation of covered games. Revenue share payments by the Tribe to the state shall be calculated as follows:

(a) During the initial payment period, the Tribe agrees to pay the state a revenue share payment in accordance with this subparagraph.

1. 13 percent of all amounts up to $2 billion of net win received by the Tribe from the operation and play of covered games during each revenue sharing cycle;

2. 17.5 percent of all amounts greater than $2 billion up to and including $3.5 billion of net win received by the Tribe from the operation and play of covered games during each revenue sharing cycle;

3. 20 percent of all amounts greater than $3.5 billion up to and including $4 billion of net win received by the Tribe from the operation and play of covered games during each revenue sharing cycle;

4. 22.5 percent of all amounts greater than $4 billion up to and including $4.5 billion of net win received by the Tribe from the operation and play of covered games during each revenue sharing cycle; or

5. 25 percent of all amounts greater than $4.5 billion of net win received by the Tribe from the operation and play of

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covered games during each revenue sharing cycle.

(b) During the guarantee payment period, the Tribe agrees to make fixed payments in accordance with this paragraph. In addition, within 90 days after the end of the guarantee payment period, the Tribe shall make an additional payment to the state equal to the amount above $3 billion, if any, that would have been owed by the Tribe to the state had the percentages set forth in paragraph (c) been applicable during the guarantee payment period.

1. A payment of $325 million during the first revenue sharing cycle;

2. A payment of $350 million during the second revenue sharing cycle;

3. A payment of $375 million during the third revenue sharing cycle;

4. A payment of $425 million during the fourth revenue sharing cycle;

5. A payment of $475 million during the fifth revenue sharing cycle;

6. A payment of $500 million during the sixth revenue sharing cycle; and

7. A payment of $550 million during the seventh revenue sharing cycle.

(c) During the regular payment period, the Tribe agrees to pay a revenue share payment, for each revenue sharing cycle, to the state equal to the amount calculated in accordance with this paragraph.

1. 13 percent of all amounts up to $2 billion of net win received by the Tribe from the operation and play of covered

games during each revenue sharing cycle;

2. 17.5 percent of all amounts greater than $2 billion up to and including $3.5 billion of net win received by the Tribe from the operation and play of covered games during each revenue sharing cycle;

3. 20 percent of all amounts greater than $3.5 billion up to and including $4 billion of net win received by the Tribe from the operation and play of covered games during each revenue sharing cycle;

4. 22.5 percent of all amounts greater than $4 billion up to and including $4.5 billion of net win received by the Tribe from the operation and play of covered games during each revenue sharing cycle; or

5. 25 percent of all amounts greater than $4.5 billion of net win received by the Tribe from the operation and play of covered games during each revenue sharing cycle.

(3) The Tribe shall remit monthly payments as follows:

(a) On or before the 15th day of the month following each month of the revenue sharing cycle, the Tribe will remit to the state or its assignee the monthly payment. For purposes of this section, the monthly payment shall be 8.3333 percent of the estimated revenue share payment to be paid by the Tribe during such revenue sharing cycle.

(b) The Tribe shall make available to the state at the time of the monthly payment the basis for the calculation of the payment.

(c) The Tribe shall, on a monthly basis, reconcile the calculation of the estimated revenue share payment based on the Tribe’s unaudited financial statements related to covered games.

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(4) The Tribe shall have an audit conducted as follows:

(a) On or before the 45th day after the third month, sixth month, ninth month, and twelfth month of each revenue sharing cycle, provided that the 12-month period does not coincide with the Tribe's fiscal year end date as indicated in paragraph (c), the Tribe shall provide the state with an audit report by its independent auditors as to the annual revenue share calculation.

(b) For each quarter within revenue sharing cycle, the Tribe shall engage its independent auditors to conduct a review of the unaudited net revenue from covered games. On or before the 120th day after the end of the Tribe's fiscal year, the Tribe shall require its independent auditors to provide an audit report with respect to net win for covered games and the related payment of the annual revenue share.

(c) If the twelfth month of the revenue sharing cycle does not coincide with the Tribe's fiscal year, the Tribe shall deduct net win from covered games for any of the months outside of the revenue sharing cycle and include net win from covered games for those months outside of the Tribe's audit period but within the revenue sharing cycle, before issuing the audit report.

(d) No later than 30 calendar days after the day the audit report is issued, the Tribe shall remit to the state any underpayment of the annual revenue share, and the state shall either reimburse to the Tribe any overpayment of the annual revenue share or authorize the overpayment to be deducted from the next successive monthly payment or payments.

(5) If, after any change in state law to affirmatively allow internet or online gaming, or any functionally equivalent

remote gaming system that permits a person to play from home or any other location that is remote from a casino or other commercial gaming facility, but excluding any fantasy contest conducted pursuant to s. 546.13, the Tribe's net win from the operation of covered games at all of its facilities combined drops more than five percent below its net win from the previous 12-month period, the Tribe shall no longer be required to make payments to the state based on the guaranteed minimum compact term payment and shall not be required to make the guaranteed minimum compact term payment. However, the Tribe shall continue to make payments based on the percentage revenue share amount. The Tribe shall resume making the guaranteed minimum compact term payment for any subsequent revenue sharing cycle in which its net win rises above the level described in this subsection. This subsection does not apply if:

(a) The decline in net win is due to acts of God, war, terrorism, fires, floods, or accidents causing damage to or destruction of one or more of its facilities or property necessary to operate the facility of facilities; or

(b) The Tribe offers internet or online gaming or any functionally equivalent remote gaming system that permits a person to game from home or any other location that is remote from any of the Tribe's facilities, as authorized by law.

(6) The annual oversight assessment, which shall not exceed $250,000 per year, indexed for inflation as determined by the Consumer Price Index, shall be determined and paid in quarterly installments within 30 calendar days after receipt by the Tribe of an invoice from the state compliance agency. The Tribe reserves the right to audit the invoices on an annual basis, a

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copy of which will be provided to the state compliance agency, and any discrepancies found therein shall be reconciled within 45 calendar days after receipt of the audit by the state compliance agency.

(7) The Tribe shall make an annual donation to the Florida Council on Compulsive Gaming as an assignee of the state in an amount not less than $250,000 per facility.

(8) Except as expressly provided in this part, nothing in this compact shall be deemed to require the Tribe to make payments of any kind to the state or any of its agencies.

PART XII

REDUCTION OF TRIBAL PAYMENTS BECAUSE OF LOSS OF EXCLUSIVITY OR OTHER CHANGES IN STATE LAW.—The intent of this compact is to provide the Tribe with the right to operate covered games on an exclusive basis throughout the state, subject to the exceptions and provisions in this part.

(1) For purposes of this part, the terms "Class III gaming" or "other casino-style gaming" include, but are not limited to, slot machines, electronically assisted bingo, electronically assisted pull-tab games, noncard table games, video lottery terminals, or any similar games, whether or not such games are determined through the use of a random number generator. For the purposes of this part, the terms "Class III gaming" and "other casino-style gaming" do not include fantasy contests conducted pursuant to s. 546.13 or designated player games of poker authorized pursuant to s. 849.086, as those statutes are in effect on January 1, 2019.

(a) If, after January 1, 2019, state law is amended, implemented, or interpreted to allow the operation of Class III gaming or other casino-style gaming at any location under the jurisdiction of the state that was not in operation as of January 1, 2019, or a new form of Class III gaming or other casino-style gaming that was not in operation as of January 1, 2019, and such gaming is offered to the public as a result of the amendment, implementation, or interpretation, the Tribe, no fewer than 30 days after the commencement of such new gaming or 90 days after the state's receipt of written notice from the Tribe pursuant to paragraph (b), whichever occurs later, may elect to begin making the affected portion of its payments due to the state pursuant to subsections (2) and (7) of Part XI, into an escrow account.

(b) In order to exercise the provisions of paragraph (a), the Tribe must first notify the state, within 90 days after such amendment, implementation, or interpretation of state law, of the Tribe's objections to such action or interpretation and further specify the basis for the Tribe's contention that such action or interpretation infringes upon the substantial exclusivity afforded under this compact. As part of its written notice, the Tribe must also indicate, if applicable, its intention to begin making the affected portion of its payments due to the state into an escrow account.

(c) Upon receipt of written notice from the Tribe, the state may elect to:

1. Invoke the dispute resolution provisions of Part XIII to determine whether the Tribe's contention is well-founded. In such proceeding, the Tribe carries the burden of proof and

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persuasion. The pendency of such proceeding tolls the time periods set forth in paragraph (1)(a) of Part XII for the duration of the dispute or litigation; or

2. Seek through enforcement action, legislation, or other means to stop the conduct of such new games.

(d)1. If, within 15 months following the state's receipt of written notice from the Tribe, the Tribe's contention is deemed not to be well-founded at the conclusion of dispute resolution or new gaming is made illegal and is halted, then all funds being held in the escrow account shall be released to the state and all further payments due to the state pursuant to subsections (2) and (7) of Part XI shall promptly resume.

2. If, after 15 months following the state's receipt of written notice from the Tribe, the Tribe's contention is deemed to be well-founded at the conclusion of dispute resolution and such gaming is not made illegal and halted, then all funds being held in escrow shall be returned to the Tribe and all further payments due to the state pursuant to subsections (2) and (7) of Part XI shall cease or be reduced as provided in subsection (2) until such gaming is no longer operated, in which event the payments shall promptly resume.

(2) The following are exceptions to the exclusivity provisions of subsection (1):

(a) Any Class III gaming authorized by a compact between the state and any other federally recognized tribe pursuant to Indian Gaming Regulatory Act, provided that the tribe has land in federal trust in the state as of January 1, 2018.

(b) The operation of slot machines, which does not include any game played with tangible playing cards, at:

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1171 1. Each of the four currently operating licensed pari-
1172 mutuel facilities in Broward County and the four currently
1173 operating licensed pari-mutuel facilities in Miami-Dade County,
1174 whether or not currently operating slot machines, provided that
1175 such licenses are not transferred or otherwise used to move or
1176 operate such slot machines at any other location; or
1177 2. Licensed pari-mutuel facilities in counties, other than
1178 Broward County or Miami-Dade County, which have been authorized
1179 by referendum in each of those counties after January 1, 2012,
1180 and on or before September 1, 2018, pursuant to state law as of
1181 January 1, 2019.
1182 (c)1. If state law is amended to allow for the play of any
1183 additional type of Class III or other casino-style gaming at any
1184 of the presently operating licensed pari-mutuel facilities in
1185 Broward and Miami-Dade Counties, the Tribe may be entitled to a
1186 reduction in the revenue sharing payment as described in
1187 subparagraph 2.
1188 2. If the Tribe’s annual net win from its facilities
1189 located in Broward County for the 12 month period after the
1190 gaming specified in subparagraph 1. begins to be offered for
1191 public or private use is less than the net revenue base, the
1192 revenue share payments due to the state, pursuant to paragraph
1193 (2)(b) of Part XI, for the next revenue sharing cycle and future
1194 revenue sharing cycles shall be calculated by reducing the
1195 Tribe’s payment on revenue generated from its facilities in
1196 Broward County by 50 percent of that reduction in annual net win
1197 from its facilities in Broward County. This paragraph does not
1198 apply if the decline in net win is due to acts of God, war,
1199 terrorism, fires, floods, or accidents causing damage to or

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destruction of one or more of its facilities or property necessary to operate the facility or facilities.

3. If the Tribe's annual net win from its facilities located in Broward County subsequently equals or exceeds the net revenue base, then the Tribe's payments due to the state pursuant to paragraph (2)(b) of Part XI shall again be calculated without any reduction, but may be reduced again under the provisions set forth in subparagraph 2.

(d) If state law is amended to allow the play of Class III gaming or other casino-style gaming, as defined in this part, at any location in Miami-Dade County or Broward County under the jurisdiction of the state that is not presently licensed for the play of such games at such locations, other than those facilities set forth in paragraph (c) and this paragraph, and such games were not in play as of January 1, 2018, and such gaming begins to be offered for public or private use, the payments due the state pursuant to subparagraph (c)2., shall be calculated by excluding the net win from the Tribe's facilities in Broward County.

(e) The operation of a combined total of not more than 350 historic racing machines, connected to a central server at that facility, and electronic bingo machines at each pari-mutuel facility licensed as of January 1, 2018, and not located in either Broward County or Miami-Dade County.

(f) The operation of pari-mutuel wagering activities at pari-mutuel facilities licensed by the state.

(g) The operation by the Department of the Lottery of those types of lottery games authorized under chapter 24 as of January 1, 2018, but not including any player-activated or operated

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machine or device other than a lottery vending machine or any banked or banking card or table game. However, not more than ten lottery vending machines may be installed at any facility or location and no lottery vending machine that dispenses electronic instant tickets may be installed at any licensed pari-mutuel facility.

(h) The operation of games of poker, including designated player games of poker, as authorized by chapter 849 as of January 1, 2019.

(i) The operation of games permitted by chapters 546 and 849, Florida Statutes, as of January 1, 2019.

(j) The following events shall not trigger any remedy under this compact and do not affect the exclusivity provisions of this compact:

1. Any change to the tax rate paid to the state by the licensed pari-mutuel permitholders for the operation of slot machines, provided the effective tax rate is not less than 25 percent. If the effective tax rate is less than 25 percent, then the Tribe shall be relieved of its obligations to make the guaranteed minimum compact term payment and any further guaranteed revenue sharing cycle payment, but instead shall make payments to the state for all future revenue sharing cycles based on the percentage payments set forth in paragraph (2)(c) of Part XI, but shall be permitted to exclude all revenue generated by slot machines at its facilities in Broward County; and

2. Any change in state law that removes the requirement for pari-mutuel permitholders to conduct performances of live races or games in order to operate other authorized gaming activities.

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(3) To the extent that the exclusivity provisions of this part are breached or otherwise violated and the Tribe's ongoing payment obligations to the state pursuant to subsections (2) and (7) of Part XI cease, any outstanding payments that would have been due the state from the Tribe's facilities before the breach or violation shall be made within 30 business days after the breach or violation.

(4) The breach of this part's exclusivity provisions and the cessation of payments pursuant to subsections (2) and (7) of Part XI shall not excuse the Tribe from continuing to comply with all other provisions of this compact, including continuing to pay the state the annual oversight assessment as set forth in subsection (6) of Part XI.

PART XIII

DISPUTE RESOLUTION.—In the event that the Tribe or State believes that the other party has failed to comply with any requirements of this compact, or in the event of any dispute hereunder, including, but not limited to, a dispute over the proper interpretation of the terms and conditions of this compact, the goal of the parties is to resolve all disputes amicably and voluntarily whenever possible. In pursuit of this goal, the following procedures may be invoked:

(1) A party asserting noncompliance or seeking an interpretation of this compact first shall serve written notice on the other party. The notice shall identify the specific compact provision alleged to have been violated or in dispute and shall specify in detail the asserting party's contention and

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any factual basis for the claim. Representatives of the Tribe and state shall meet within 30 calendar days after receipt of notice in an effort to resolve the dispute, unless they mutually agree to extend this period.

(2) A party asserting noncompliance or seeking an interpretation of this compact under this part shall be deemed to have certified that to the best of the party's knowledge, information, and belief formed after reasonable inquiry, the claim of noncompliance or the request for interpretation of this compact is warranted and made in good faith and not for any improper purpose, such as to harass or to cause unnecessary delay or the needless incurring of the cost of resolving the dispute.

(3) If the parties are unable to resolve a dispute through the process specified in subsections (1) and (2), either party may call for mediation under the Commercial Mediation Procedures of the American Arbitration Association or any successor procedures, provided that such mediation does not last more than 60 calendar days, unless an extension to this time limit is negotiated by the parties. Only matters arising under the terms of this compact may be available for resolution through mediation. If the parties are unable to resolve a dispute through the process specified in this part, notwithstanding any other provision of law, either party may bring an action in a United States District Court having venue regarding a dispute arising under this compact. If the court declines to exercise jurisdiction, or federal precedent exists that holds that the court would not have jurisdiction over such a dispute, either party may bring the action in the appropriate court of the

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Seventeenth Judicial Circuit in Broward County, Florida. The parties are entitled to all rights of appeal permitted by law in the court system in which the action is brought.

(4) For purposes of actions based on disputes between the state and the Tribe that arise under this compact and the enforcement of any judgment resulting from such action, the Tribe and the state each expressly waive the right to assert sovereign immunity from suit and from enforcement of any ensuing judgment, and further consent to be sued in federal or state court, including the right of appeal specified above, as the case may be, provided that:

(a) The dispute is limited solely to issues arising under this compact.

(b) There is no claim for monetary damages, except that payment of any money required by the terms of this compact, as well as injunctive relief or specific performance enforcing a provision of this compact requiring the payment of money to the state may be sought.

(c) Nothing herein shall be construed to constitute a waiver of the sovereign immunity of the Tribe with respect to any third party that is made a party or intervenes as a party to the action. In the event that intervention, joinder, or other participation by any additional party in any action between the state and the Tribe would result in the waiver of the Tribe's sovereign immunity as to that additional party, the waiver of the Tribe may be revoked.

(5) The state may not be precluded from pursuing any mediation or judicial remedy against the Tribe on the grounds that the state has failed to exhaust its Tribal administrative

remedies.

(6) Notwithstanding any other provision of this part, any failure of the Tribe to remit the payments pursuant to the terms of Part XI entitles the state to seek injunctive relief in federal or state court, at the state's election, to compel the payments after the dispute resolution process in subsections (1) and (2) is exhausted.

PART XIV

CONSTRUCTION OF COMPACT; SEVERANCE; FEDERAL APPROVAL.—

(1) Each provision of this compact shall stand separate and independent of every other provision. In the event that a federal district court in Florida or other court of competent jurisdiction shall find any provision of this compact to be invalid, the remaining provisions shall remain in full force and effect, provided that severing the invalidated provision does not undermine the overall intent of the parties in entering into this compact. However, if subsection (6) of Part III, Part XI, or Part XII are held by a court of competent jurisdiction to be invalid, this compact will become null and void.

(2) It is understood that Part XII, which provides for a cessation of the payments to the state under Part XI, does not create any duty on the state but only a remedy for the Tribe if gaming under state jurisdiction is expanded.

(3) This compact is intended to meet the requirements of the Indian Gaming Regulatory Act as it reads on the effective date of this compact, and where reference is made to the Indian Gaming Regulatory Act, or to an implementing regulation thereof,

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the reference is deemed to have been incorporated into this document. Subsequent changes to the Indian Gaming Regulatory Act that diminish the rights of the state or Tribe may not be applied retroactively to alter the terms of this compact, except to the extent that federal law validly mandates that retroactive application without the respective consent of the state or the Tribe. In the event that a subsequent change in the Indian Gaming Regulatory Act, or to an implementing regulation thereof, mandates retroactive application without the respective consent of the state or the Tribe, the parties agree that this compact is voidable by either party if the subsequent change materially alters the provisions in the compact relating to the play of covered games, revenue sharing payments, suspension or reduction of payments, or exclusivity.

(4) Neither the presence of language that is not included in this compact, nor the absence in this compact of language that is present in another state-tribal compact shall be a factor in construing the terms of this compact.

(5) The Tribe and the state shall defend the validity of this compact.

(6) The parties shall cooperate in seeking approval of this compact from the Secretary of the Department of the Interior.

PART XV

NOTICES.—All notices required under this compact shall be given by certified mail, return receipt requested, commercial overnight courier service, or personal delivery, to the Governor, the President of the Senate, the Speaker of the House

of Representatives, and the Chairman and General Counsel of the Seminole Tribe of Florida.

PART XVI

EFFECTIVE DATE AND TERM.—

(1) This compact, if identical to the version ratified by the Legislature in s. 285.710(3)(c), Florida Statutes, in 2018, shall become effective upon its approval as a tribal-state compact within the meaning of the Indian Gaming Regulatory Act either by action of the Secretary of the Department of the Interior or by operation of law under 25 U.S.C. s. 2710(d)(8) upon publication of a notice of approval in the Federal Register under 25 U.S.C. s. 2710(d)(8)(D).

(2) This compact shall have a term of twenty-two years beginning on the first day of the month following the month in which the compact becomes effective under subsection (1).

(3) The Tribe's authorization to offer covered games under this compact shall automatically terminate twenty-two years after the effective date unless renewed by an affirmative act of the Legislature.

PART XVII

AMENDMENT OF COMPACT AND REFERENCES.—

(1) Amendment of this compact may only be made by written agreement of the parties, subject to approval by the Secretary of the Department of the Interior, either by publication of the notice of approval in the Federal Register or by operation of

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law under 25 U.S.C. s. 2710(d)(8).

(2) Legislative ratification is required for any amendment to the compact that alters the provisions relating to covered games, the amount of revenue sharing payments, suspension or reduction in payments, or exclusivity.

(3) Changes in the provisions of tribal ordinances, regulations, and procedures referenced in this compact may be made by the Tribe with 30 days' advance notice to the state. If the state has an objection to any change to the tribal ordinance, regulation, or procedure which is the subject of the notice on the ground that its adoption would be a violation of the Tribe's obligations under this compact, the state may invoke the dispute resolution provisions provided in Part XIII.

PART XVIII

MISCELLANEOUS.—

(1) Except to the extent expressly provided in this compact, this compact is not intended to, and shall not be construed to, create any right on the part of a third party to bring an action to enforce any of its terms.

(2) If, after the effective date of this compact, the state enters into a compact with any other Tribe that contains more favorable terms with respect to the provisions of this Compact and the Secretary of the Department of the Interior approves such compact, either by publication of the notice of approval in the Federal Register or by operation of law under 25 U.S.C. s. 2710(d)(8), upon tribal notice to the state and the Secretary, this compact shall be deemed amended to contain the more

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favorable terms, unless the state objects to the change and can demonstrate, in a proceeding commenced under Part XIII, that the terms in question are not more favorable.

(3) Upon the occurrence of certain events beyond the Tribe's control, including acts of God, war, terrorism, fires, floods, or accidents causing damage to or destruction of one or more of its facilities or property necessary to operate the facility or facilities, the Tribe's obligation to pay the guaranteed minimum compact term payment described in Part XI shall be reduced pro rata to reflect the percentage of the total net win lost to the Tribe from the impacted facility or facilities and the net win specified under subsection (2) of Part XII for purposes of determining whether the Tribe's payments described in Part XI shall cease, shall be reduced pro rata to reflect the percentage of the total net win lost to the Tribe from the impacted facility or facilities. The foregoing shall not excuse any obligations of the Tribe to make payments to the state as and when required hereunder or in any related document or agreement.

(4) The Tribe and the state recognize that opportunities to engage in gaming in smoke-free or reduced-smoke environments provides both health and other benefits to patrons, and the Tribe has instituted a nonsmoking section at its Seminole Hard Rock Hotel & Casino-Hollywood Facility. As part of its continuing commitment to this issue, the Tribe shall:

(a) Install and utilize a ventilation system at all new construction at its facilities, which system exhausts tobacco smoke to the extent reasonably feasible under existing state-of-the-art technology.

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(b) Designate a smoke-free area for slot machines at all new construction at its facilities.

(c) Install nonsmoking, vented tables for table games installed in its facilities sufficient to reasonably respond to demand for such tables.

(d) Designate a nonsmoking area for gaming within all of its facilities within five years after the effective date of the compact.

(5) The annual average minimum pay-out of all slot machines in each facility may not be less than 85 percent.

(6) Nothing in this compact shall alter any of the existing memoranda of understanding, contracts, or other agreements entered into between the Tribe and any other federal, state, or local governmental entity.

(7) The Tribe currently has, as set forth in its Employee Fair Treatment and Dispute Resolution Policy, and agrees to maintain, standards that are comparable to the standards provided in federal laws and state laws forbidding employers from discrimination in connection with the employment of persons working at the facilities on the basis of race, color, religion, national origin, gender, age, disability, or marital status. Nothing herein shall preclude the Tribe from giving preference in employment, promotion, seniority, lay-offs, or retention to members of the Tribe and other federally recognized tribes.

(8) The Tribe shall, with respect to any facility where covered games are played, adopt and comply with tribal requirements that meet the same minimum state requirements applicable to businesses in the state with respect to environmental and building standards.

PART XIX

EXECUTION.—The Governor of the State of Florida affirms that he has authority to act for the state in this matter and that, provided that this compact is identical to the compact ratified by the Legislature pursuant to s. 285.710(3)(c), Florida Statutes, no further action by the state or any state official is necessary for this compact to take effect upon federal approval by action of the Secretary of the Department of the Interior or by operation of law under 25 U.S.C. s. 2710(d)(8) by publication of the notice of approval in the Federal Register. The Governor affirms that he will proceed with obtaining such federal approval and take all other appropriate action to effectuate the purposes and intent of this Compact. The undersigned Chairman of the Tribal Council of the Seminole Tribe of Florida affirms that he is duly authorized and has the authority to execute this Compact on behalf of the Tribe. The Chairman also affirms that he will assist in obtaining federal approval and take all other appropriate action to effectuate the purposes and intent of this Compact.

Section 2. Subsection (4) of section 285.712, Florida Statutes, is amended to read:

285.712 Tribal-state gaming compacts.—

(4) Upon execution ~~receipt~~ of ~~an act ratifying~~ a tribal-state compact entered pursuant to s. 285.710(3)(b), the Governor shall provide a copy to the Secretary of State who shall forward a copy of the executed compact and the ratifying act to the United States Secretary of the Interior for his or her review

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and approval, in accordance with 25 U.S.C. s. 2710(d)(8) ~~2710(8)(d)~~.

Section 3. Section 546.13, Florida Statutes, is created to read:

546.13 Fantasy contests and fantasy contest operators.—

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

(a) "Entry fee" means cash or a cash equivalent that is required to be paid by a participant in order to participate in a fantasy contest.

(b) "Fantasy contest" means a fantasy or simulated game or contest in which:

1. The value of all prizes and awards offered to winning participants is established and made known to the participants in advance of the contest and is unrelated to the number of participants in the contest;

2. All winning outcomes reflect the relative knowledge and skill of the participants and are determined predominantly by accumulated statistical results of the performance of individuals, including athletes in the case of sporting events;

3. No winning outcome is based on the score, point spread, or any performance or performances of any single actual team or combination of such teams, solely on any single performance of an individual athlete or player in any single actual event, or on the performances of participants in collegiate, high school, or youth sporting events.

4. No casino graphics, themes, or titles, including, but not limited to, depictions of slot machine-style symbols, cards, craps, roulette, or lotto, are displayed or depicted.

(c) "Fantasy contest operator" means a person or an entity,

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including any employee or agent, that offers or conducts a fantasy contest with an entry fee for a cash prize or award and that is not a participant in the fantasy contest.

(2) EXEMPTIONS.—The Department of Business and Professional Regulation may not regulate and the offenses established in s. 849.01, s. 849.08, s. 849.09, s. 849.11, s. 849.14, and s. 849.25 do not include or apply to a fantasy contest operated or conducted by a:

(a) Fantasy contest operator.

(b) Natural person who is a participant in the fantasy contest, serves as the commissioner of not more than 10 fantasy contests in a calendar year, and distributes all entry fees for the fantasy contest as prizes or awards to the participants in that fantasy contest.

Section 4. Subsections (1) and (3) of section 550.01215, Florida Statutes, are amended to read:

550.01215 License application; periods of operation; bond, conversion of permit.—

(1) Each permitholder shall annually, during the period between December 15 and January 4, file in writing with the division its application for an operating ~~a~~ license to conduct pari-mutuel wagering during the next state fiscal year, including intertrack and simulcast race wagering for greyhound racing permitholders, jai alai permitholders, harness horse racing permitholders, and quarter horse racing permitholders that do not ~~to~~ conduct live performances ~~during the next state fiscal year~~. Each application for live performances must ~~shall~~ specify the number, dates, and starting times of all live performances that ~~which~~ the permitholder intends to conduct. It

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must ~~shall~~ also specify which performances will be conducted as charity or scholarship performances.

(a) ~~In addition,~~ Each application for an operating ~~a~~ license also must ~~shall~~ include:~~,~~

1. For each permitholder, whether the permitholder intends to accept wagers on intertrack or simulcast events.

2. For each permitholder that elects ~~which elects~~ to operate a cardroom, the dates and periods of operation the permitholder intends to operate the cardroom. ~~or,~~

3. For each thoroughbred racing permitholder that ~~which~~ elects to receive or rebroadcast out-of-state races after 7 p.m., the dates for all performances which the permitholder intends to conduct.

(b) A greyhound racing permitholder that conducted a full schedule of live racing for a period of at least 10 consecutive state fiscal years after the 1996-1997 state fiscal year, or that converted its permit to a permit to conduct greyhound racing after the 1996-1997 state fiscal year, irrevocably may elect not to conduct live racing if the election is made within 36 months after the effective date of this act. A greyhound racing permitholder that makes such election retains its permit; is a pari-mutuel facility as defined in s. 550.002(23); if such permitholder has been issued a slot machine license, the facility where such permit is located remains an eligible facility as defined in s. 551.102(4), continues to be eligible for a slot machine license, and is exempt from ss. 551.104(3) and (4)(c)1. and 551.114(2) and (4); is eligible, but not required, to be a guest track for purposes of intertrack wagering and simulcasting pursuant to ss. 550.3551, 550.615, and

550.6305; and remains eligible for a cardroom license notwithstanding any requirement in s. 849.086 for the conduct of live performances. A greyhound racing permitholder may receive an operating license to conduct pari-mutuel wagering activities at another permitholder's greyhound racing facility pursuant to s. 550.475.

(c) A jai alai permitholder, harness horse racing permitholder or a quarter horse racing permitholder that has conducted live racing or games for at least 5 years irrevocably may elect not to conduct live racing or games if the election is made within 36 months after the effective date of this act. A permitholder that makes such election retains its permit; is a pari-mutuel facility as defined in s. 550.002(23); if such permitholder has been issued a slot machine license, the facility where such permit is located remains an eligible facility as defined in s. 551.102(4), continues to be eligible for a slot machine license, and is exempt from ss. 551.104(3) and (4)(c)1. and 551.114(2) and (4); is eligible, but not required, to be a guest track and, if the permitholder is a harness horse racing permitholder, to be a host track for purposes of intertrack wagering and simulcasting pursuant to ss. 550.3551, 550.615, 550.625, and 550.6305; and remains eligible for a cardroom license notwithstanding any requirement in s. 849.086 to conduct live performances.

(d) Permitholders may ~~shall be entitled to~~ amend their applications through February 28.

(3) The division shall issue each license no later than March 15. Each permitholder shall operate all performances at the date and time specified on its license. The division shall

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have the authority to approve minor changes in racing dates after a license has been issued. The division may approve changes in racing dates after a license has been issued when there is no objection from any operating permitholder located within 50 miles of the permitholder requesting the changes in operating dates. In the event of an objection, the division shall approve or disapprove the change in operating dates based upon the impact on operating permitholders located within 50 miles of the permitholder requesting the change in operating dates. In making the determination to change racing dates, the division shall take into consideration the impact of such changes on state revenues. Notwithstanding any other provision of law, and for the 2018-2019 fiscal year only, the division may approve changes in racing dates for permitholders if the request for such changes is received before May 31, 2018.

Section 5. Subsections (9), (13), (14), and paragraph (a) of subsection (11) of section 550.054, Florida Statutes, are amended to read:

550.054 Application for permit to conduct pari-mutuel wagering.—

(9)(a) After a permit has been granted by the division and has been ratified and approved by the majority of the electors participating in the election in the county designated in the permit, the division shall grant to the lawful permitholder, subject to the conditions of this chapter, a license to conduct pari-mutuel operations under this chapter, and, except as provided in s. 550.5251, the division shall fix annually the time, place, and number of days during which pari-mutuel operations may be conducted by the permitholder at the location

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fixed in the permit and ratified in the election. After the first license has been issued to the holder of a ratified permit for racing in any county, all subsequent annual applications for a license by that permitholder must be accompanied by proof, in such form as the division requires, that the ratified permitholder still possesses all the qualifications prescribed by this chapter and that the permit has not been recalled at a later election held in the county.

(b) The division may revoke or suspend any permit or license issued under this chapter upon a ~~the~~ willful violation by the permitholder or licensee ~~of any provision~~ of chapter 551, chapter 849, or this chapter or rules ~~of any rule~~ adopted pursuant to those chapters. With the exception of the revocation of permits required in paragraphs (c) and (e) ~~under this chapter. In lieu of suspending or revoking a permit or license~~, the division, in lieu of suspending or revoking a permit or license, may impose a civil penalty against the permitholder or licensee for a violation of this chapter or rules adopted pursuant thereto ~~any rule adopted by the division~~. The penalty so imposed may not exceed $1,000 for each count or separate offense. All penalties imposed and collected must be deposited with the Chief Financial Officer to the credit of the General Revenue Fund.

(c)1. The division shall revoke the permit of any permitholder that fails to make payments due pursuant to chapter 550, chapter 551, or s. 849.086 for more than 24 consecutive months unless such failure was the direct result of fire, strike, war, or other disaster or event beyond the permitholder’s control. Financial hardship to the permitholder

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does not, in and of itself, constitute just cause for failure to make payments.

2. The division shall revoke the permit of any permitholder that has not obtained an operating license in accordance with s. 550.01215 for a period of more than 24 consecutive months after June 30, 2012. The division shall revoke the permit upon adequate notice to the permitholder. Financial hardship to the permitholder does not, in and of itself, constitute just cause for failure to operate.

(d) A new permit to conduct pari-mutuel wagering may not be approved or issued after January 1, 2018.

(e) A permit revoked under this subsection is void and may not be reissued.

(11)(a) A permit granted under this chapter may not be transferred or assigned except upon written approval by the division pursuant to s. 550.1815~~, except that the holder of any permit that has been converted to a jai alai permit may lease or build anywhere within the county in which its permit is located~~.

(13)~~(a)~~ Notwithstanding any provisions of this chapter or chapter 551, a pari-mutuel ~~no thoroughbred horse racing~~ permit or license issued under this chapter may not ~~shall~~ be transferred, or reissued when such reissuance is in the nature of a transfer so as to permit or authorize a licensee to change the location of a pari-mutuel facility, or a cardroom or slot machine facility, except through the relocation of the pari-mutuel permit pursuant to s. 550.0555 ~~thoroughbred horse racetrack except upon proof in such form as the division may prescribe that a referendum election has been held:~~

~~1. If the proposed new location is within the same county~~

~~as the already licensed location, in the county where the licensee desires to conduct the race meeting and that a majority of the electors voting on that question in such election voted in favor of the transfer of such license~~.

~~2. If the proposed new location is not within the same county as the already licensed location, in the county where the licensee desires to conduct the race meeting and in the county where the licensee is already licensed to conduct the race meeting and that a majority of the electors voting on that question in each such election voted in favor of the transfer of such license.~~

~~(b) Each referendum held under the provisions of this subsection shall be held in accordance with the electoral procedures for ratification of permits, as provided in s. 550.0651. The expense of each such referendum shall be borne by the licensee requesting the transfer.~~

(14)~~(a)~~ Notwithstanding any other provision of law, a pari-mutuel permit, cardroom, or slot machine facility may not be relocated, and a pari-mutuel permit may not be converted to another class of permit. ~~Any holder of a permit to conduct jai alai may apply to the division to convert such permit to a permit to conduct greyhound racing in lieu of jai alai if:~~

~~1. Such permit is located in a county in which the division has issued only two pari-mutuel permits pursuant to this section;~~

~~2. Such permit was not previously converted from any other class of permit; and~~

~~3. The holder of the permit has not conducted jai alai games during a period of 10 years immediately preceding his or~~

~~her application for conversion under this subsection.~~

~~(b) The division, upon application from the holder of a jai alai permit meeting all conditions of this section, shall convert the permit and shall issue to the permitholder a permit to conduct greyhound racing. A permitholder of a permit converted under this section shall be required to apply for and conduct a full schedule of live racing each fiscal year to be eligible for any tax credit provided by this chapter. The holder of a permit converted pursuant to this subsection or any holder of a permit to conduct greyhound racing located in a county in which it is the only permit issued pursuant to this section who operates at a leased facility pursuant to s. 550.475 may move the location for which the permit has been issued to another location within a 30-mile radius of the location fixed in the permit issued in that county, provided the move does not cross the county boundary and such location is approved under the zoning regulations of the county or municipality in which the permit is located, and upon such relocation may use the permit for the conduct of pari-mutuel wagering and the operation of a cardroom. The provisions of s. 550.6305(9)(d) and (f) shall apply to any permit converted under this subsection and shall continue to apply to any permit which was previously included under and subject to such provisions before a conversion pursuant to this section occurred.~~

Section 6. Section 550.0745, Florida Statutes, is repealed.

Section 7. Subsection (3) of section 550.09512, Florida Statutes, is amended to read:

550.09512 Harness horse taxes; abandoned interest in a permit for nonpayment of taxes.—

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(3)~~(a)~~ The division shall revoke the permit of a harness horse racing permitholder who does not pay tax on handle for live harness horse performances for a full schedule of live races for more than 24 consecutive months ~~during any 2 consecutive state fiscal years shall be void and shall escheat to and become the property of the state~~ unless such failure to operate and pay tax on handle was the direct result of fire, strike, war, or other disaster or event beyond the ability of the permitholder to control. Financial hardship to the permitholder does ~~shall~~ not, in and of itself, constitute just cause for failure to operate and pay tax on handle. A permit revoked under this subsection is void and may not be reissued.

~~(b) In order to maximize the tax revenues to the state, the division shall reissue an escheated harness horse permit to a qualified applicant pursuant to the provisions of this chapter as for the issuance of an initial permit. However, the provisions of this chapter relating to referendum requirements for a pari-mutuel permit shall not apply to the reissuance of an escheated harness horse permit. As specified in the application and upon approval by the division of an application for the permit, the new permitholder shall be authorized to operate a harness horse facility anywhere in the same county in which the escheated permit was authorized to be operated, notwithstanding the provisions of s. 550.054(2) relating to mileage limitations.~~

Section 8. Subsections (3) and (7) of section 550.09515, Florida Statutes, are amended to read:

550.09515 Thoroughbred horse taxes; abandoned interest in a permit for nonpayment of taxes.—

(3)~~(a)~~ The division shall revoke the permit of a

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thoroughbred racing ~~horse~~ permitholder that ~~who~~ does not pay tax on handle for live thoroughbred horse performances for a full schedule of live races for more than 24 consecutive months ~~during any 2 consecutive state fiscal years shall be void and shall escheat to and become the property of the state~~ unless such failure to operate and pay tax on handle was the direct result of fire, strike, war, or other disaster or event beyond the ability of the permitholder to control. Financial hardship to the permitholder does ~~shall~~ not, in and of itself, constitute just cause for failure to operate and pay tax on handle. A permit revoked under this subsection is void and may not be reissued.

~~(b) In order to maximize the tax revenues to the state, the division shall reissue an escheated thoroughbred horse permit to a qualified applicant pursuant to the provisions of this chapter as for the issuance of an initial permit. However, the provisions of this chapter relating to referendum requirements for a pari-mutuel permit shall not apply to the reissuance of an escheated thoroughbred horse permit. As specified in the application and upon approval by the division of an application for the permit, the new permitholder shall be authorized to operate a thoroughbred horse facility anywhere in the same county in which the escheated permit was authorized to be operated, notwithstanding the provisions of s. 550.054(2) relating to mileage limitations.~~

~~(7) If a thoroughbred permitholder fails to operate all performances on its 2001-2002 license, failure to pay tax on handle for a full schedule of live races for those performances in the 2001-2002 fiscal year does not constitute failure to pay~~

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~~taxes on handle for a full schedule of live races in a fiscal year for the purposes of subsection (3). This subsection may not be construed as forgiving a thoroughbred permitholder from paying taxes on performances conducted at its facility pursuant to its 2001-2002 license other than for failure to operate all performances on its 2001-2002 license. This subsection expires July 1, 2003.~~

Section 9. Section 550.3345, Florida Statutes, is amended to read:

550.3345 ~~Conversion of quarter horse permit to a~~ Limited thoroughbred racing permit.—

(1) In recognition of the important and long-standing economic contribution of the thoroughbred horse breeding industry to this state and the state's vested interest in promoting the continued viability of this agricultural activity, the state intends to provide a limited opportunity for the conduct of live thoroughbred horse racing with the net revenues from such racing dedicated to the enhancement of thoroughbred purses and breeders', stallion, and special racing awards under this chapter; the general promotion of the thoroughbred horse breeding industry; and the care in this state of thoroughbred horses retired from racing.

(2) A limited thoroughbred racing permit previously converted from ~~Notwithstanding any other provision of law, the holder of~~ a quarter horse racing permit pursuant to chapter 2010-29, Laws of Florida, ~~issued under s. 550.334~~ may only be held by~~, within 1 year after the effective date of this section, apply to the division for a transfer of the quarter horse racing permit to~~ a not-for-profit corporation formed under state law to

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serve the purposes of the state as provided in subsection (1). The board of directors of the not-for-profit corporation must be composed ~~comprised~~ of 11 members, 4 of whom shall be designated by the applicant, 4 of whom shall be designated by the Florida Thoroughbred Breeders' Association, and 3 of whom shall be designated by the other 8 directors, with at least 1 of these 3 members being an authorized representative of another thoroughbred racing permitholder in this state. A limited thoroughbred racing ~~The not-for-profit corporation shall submit an application to the division for review and approval of the transfer in accordance with s. 550.054. Upon approval of the transfer by the division, and notwithstanding any other provision of law to the contrary, the not-for-profit corporation may, within 1 year after its receipt of the permit, request that the division convert the quarter horse racing permit to a permit authorizing the holder to conduct pari-mutuel wagering meets of thoroughbred racing. Neither the transfer of the quarter horse racing permit nor its conversion to a limited thoroughbred permit shall be subject to the mileage limitation or the ratification election as set forth under s. 550.054(2) or s. 550.0651. Upon receipt of the request for such conversion, the division shall timely issue a converted permit. The converted~~ permit and the not-for-profit corporation are ~~shall be~~ subject to the following requirements:

(a) All net revenues derived by the not-for-profit corporation under the thoroughbred ~~horse~~ racing permit, after the funding of operating expenses and capital improvements, shall be dedicated to the enhancement of thoroughbred purses and breeders', stallion, and special racing awards under this

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chapter; the general promotion of the thoroughbred horse breeding industry; and the care in this state of thoroughbred horses retired from racing.

(b) From December 1 through April 30, ~~no~~ live thoroughbred racing may not be conducted under the permit on any day during which another thoroughbred racing permitholder is conducting live thoroughbred racing within 125 air miles of the not-for-profit corporation's pari-mutuel facility unless the other thoroughbred racing permitholder gives its written consent.

(c) After ~~the conversion of the quarter horse racing permit and the~~ issuance of its initial license to conduct pari-mutuel wagering meets of thoroughbred racing, the not-for-profit corporation shall annually apply to the division for a license pursuant to s. 550.5251.

(d) Racing under the permit may take place only at the location for which the original quarter horse racing permit was issued, which may be leased by the not-for-profit corporation for that purpose~~; however, the not-for-profit corporation may, without the conduct of any ratification election pursuant to s. 550.054(13) or s. 550.0651, move the location of the permit to another location in the same county provided that such relocation is approved under the zoning and land use regulations of the applicable county or municipality~~.

(e) A limited thoroughbred racing ~~No~~ permit may not be transferred ~~converted under this section is eligible for transfer~~ to another person or entity.

(3) Unless otherwise provided in this section, ~~after conversion,~~ the permit and the not-for-profit corporation shall be treated under the laws of this state as a thoroughbred racing

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permit and as a thoroughbred racing permitholder, respectively, with the exception of ss. 550.054(9)(c) and 550.09515(3) ~~s. 550.09515(3)~~.

Section 10. Subsections (1), (4), and (5) of section 550.6308, Florida Statutes, are amended to read:

550.6308 Limited intertrack wagering license.—In recognition of the economic importance of the thoroughbred breeding industry to this state, its positive impact on tourism, and of the importance of a permanent thoroughbred sales facility as a key focal point for the activities of the industry, a limited license to conduct intertrack wagering is established to ensure the continued viability and public interest in thoroughbred breeding in Florida.

(1) Upon application to the division on or before January 31 of each year, any person that is licensed to conduct public sales of thoroughbred horses pursuant to s. 535.01 and~~,~~ that has conducted at least 8 ~~15~~ days of thoroughbred horse sales at a permanent sales facility in this state for at least 3 consecutive years~~, and that has conducted at least 1 day of nonwagering thoroughbred racing in this state, with a purse structure of at least $250,000 per year for 2 consecutive years~~ before such application~~,~~ shall be issued a license, subject to the conditions set forth in this section, to conduct intertrack wagering at such a permanent sales facility ~~during the following periods:~~

~~(a) Up to 21 days in connection with thoroughbred sales;~~

~~(b) Between November 1 and May 8;~~

~~(c) Between May 9 and October 31 at such times and on such days as any thoroughbred, jai alai, or a greyhound permitholder~~

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~~in the same county is not conducting live performances; provided that any such permitholder may waive this requirement, in whole or in part, and allow the licensee under this section to conduct intertrack wagering during one or more of the permitholder's live performances; and~~

~~(d) During the weekend of the Kentucky Derby, the Preakness, the Belmont, and a Breeders' Cup Meet that is conducted before November 1 and after May 8~~.

Only ~~No more than~~ one such license may be issued, and no such license may be issued for a facility located within 50 miles of any for-profit thoroughbred permitholder's track.

~~(4) Intertrack wagering under this section may be conducted only on thoroughbred horse racing, except that intertrack wagering may be conducted on any class of pari-mutuel race or game conducted by any class of permitholders licensed under this chapter if all thoroughbred, jai alai, and greyhound permitholders in the same county as the licensee under this section give their consent.~~

(4)~~(5)~~ The licensee shall be considered a guest track under this chapter. ~~The licensee shall pay 2.5 percent of the total contributions to the daily pari-mutuel pool on wagers accepted at the licensee's facility on greyhound races or jai alai games to the thoroughbred permitholder that is conducting live races for purses to be paid during its current racing meet. If more than one thoroughbred permitholder is conducting live races on a day during which the licensee is conducting intertrack wagering on greyhound races or jai alai games, the licensee shall allocate these funds between the operating thoroughbred~~

~~permitholders on a pro rata basis based on the total live handle at the operating permitholders' facilities.~~

Section 11. Subsections (4), (10), and (11) of section 551.102, Florida Statutes, are amended to read:

551.102 Definitions.—As used in this chapter, the term:

(4) "Eligible facility" means any licensed pari-mutuel facility~~ located in Miami-Dade County or Broward County existing at the time of adoption of s. 23, Art. X of the State Constitution that has conducted live racing or games during calendar years 2002 and 2003 and has been approved by a majority of voters in a countywide referendum to have slot machines at such facility in the respective county; any licensed pari-mutuel facility located within a county as defined in s. 125.011, provided such facility has conducted live racing for 2 consecutive calendar years immediately preceding its application for a slot machine license, pays the required license fee, and meets the other requirements of this chapter; or any licensed pari-mutuel facility in any other county in which a majority of voters have approved slot machines at such facilities in a countywide referendum held pursuant to a statutory or constitutional authorization after the effective date of this section in the respective county, provided such facility has conducted a full schedule of live racing for 2 consecutive calendar years immediately preceding its application for a slot machine license, pays the required licensed fee, and meets the other requirements of this chapter~~.

(10) "Slot machine license" means a license issued by the division authorizing a pari-mutuel permitholder to place and operate slot machines as provided in ~~by s. 23, Art. X of the~~

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~~State Constitution, the provisions of~~ this chapter~~,~~ and by division rule ~~rules~~.

(11) "Slot machine licensee" means a pari-mutuel permitholder which ~~who~~ holds a license issued by the division pursuant to this chapter which ~~that~~ authorizes such person to possess a slot machine ~~within facilities specified in s. 23, Art. X of the State Constitution~~ and allows slot machine gaming.

Section 12. Subsections (1) and (2) and paragraph (c) of subsection (4) of section 551.104, Florida Statutes, are amended to read:

551.104 License to conduct slot machine gaming.—

(1) Upon application, ~~and~~ a finding by the division after investigation that the application is complete and that the applicant is qualified, and payment of the initial license fee, the division may issue a license to conduct slot machine gaming in the designated slot machine gaming area of the eligible facility. Once licensed, slot machine gaming may be conducted subject to ~~the requirements of~~ this chapter and rules adopted pursuant thereto. The division may not issue a slot machine license to any pari-mutuel permitholder that includes, or previously included within its ownership group, an ultimate equitable owner that was also an ultimate equitable owner of a pari-mutuel permitholder whose permit was voluntarily or involuntarily surrendered, suspended, or revoked by the division within 10 years before the date of the permitholder's filing of an application for a slot machine license.

(2) An application may be approved by the division only after:

(a) The voters of the county where the applicant's facility

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is located have authorized by referendum slot machines within pari-mutuel facilities located in: ~~that county as specified in s. 23, Art. X of the State Constitution~~

1. Miami-Dade County or Broward County existing at the time of adoption of s. 23, Art. X of the State Constitution which conducted live racing or games during calendar years 2002 and 2003, if such permitholder pays the required license fee and meets the other requirements of this chapter.

2. A county as defined in s. 125.011, provided such facility has conducted live racing for 2 consecutive calendar years immediately preceding its application for a slot machine license, pays the required license fee, and meets the other requirements of this chapter.

3. Any other county, provided:

a. Such facility has conducted a full schedule of live racing or games, as defined in s. 550.002(11), for 2 consecutive calendar years immediately preceding its application for a slot machine license, pays the required license fee, and meets the other requirements of this chapter, and such referendum was conducted after January 1, 2012, and on or before September 1, 2018; or

b. Such facility is located on or contiguous with property of the qualified project of a public-private partnership between the permitholder and a responsible public entity in accordance with s. 255.065 and for which a comprehensive agreement has been executed pursuant to s. 255.065 (7), has conducted a full schedule of live racing or games, as defined in s. 550.002(11), for 2 consecutive calendar years immediately preceding its application, pays the required license fee and meets the other

requirements of this chapter, and such referendum is conducted after the effective date of this act and on or before September 1, 2018.

(b) The applicant, for a facility described in subparagraph (a)3., irrevocably surrenders to the division one greyhound racing permit or one jai alai permit issued pursuant to chapter 550 and, after surrendering such permit, continues to hold the permit authorizing pari-mutuel wagering activities at the location at which the applicant intends to operate slot machine gaming. For a permit to be qualified for surrender by an applicant under this paragraph, the holder of such greyhound racing permit or jai alai permit, including any previous owner of such permit, must have conducted a full schedule of live racing or games, as defined in s. 550.002(11), under such permit for not less than the 5 state fiscal years immediately prior to state fiscal year 2018-2019. Upon the surrender of such greyhound racing permit or jai alai permit, the surrendered permit is void and may not be reissued.

(4) As a condition of licensure and to maintain continued authority for the conduct of slot machine gaming, a ~~the~~ slot machine licensee shall:

(c)1. Conduct no less ~~fewer~~ than a full schedule of live racing or games as defined in s. 550.002(11), unless conducting less than a full schedule of live racing or games pursuant to s. 550.01215(1)(b) or (c). A permitholder's responsibility to conduct a full schedule ~~such number~~ of live races or games, as defined in s. 550.002(11), shall be reduced by the number of races or games that could not be conducted due to the direct result of fire, war, hurricane, or other disaster or event

beyond the control of the permitholder. A permitholder may conduct live races or games at another pari-mutuel facility pursuant to s. 550.475 if such permitholder has operated its live races or games by lease for at least 5 consecutive years immediately prior to the permitholder's application for a slot machine license.

2.a. If not licensed to conduct a full schedule of live racing or games, as defined in s. 550.002(11), pursuant to s. 550.01215(1)(b) or (c), remit each month to each qualified thoroughbred permitholder, by electronic funds transfer, an amount equal to one-twelfth of the lesser of $1.5 million or 2.75 percent of its slot machine revenues from the previous state fiscal year, divided by the total number of qualified thoroughbred permitholders for the applicable state fiscal year. Qualified thoroughbred permitholders shall use such payments exclusively for purses and awards for live thoroughbred horse races held at the qualified thoroughbred permitholder's racing facility. For the purposes of this subparagraph, the term "qualified thoroughbred permitholder" means a thoroughbred permitholder conducting, in the applicable state fiscal year, no less than a full schedule of live racing or games, as defined in s. 550.002(11), and no fewer live thoroughbred horse racing performances than such permitholder conducted in state fiscal year 2017-2018. The term does not include a permitholder whose permit was issued pursuant to s. 550.3345 or a permitholder leasing at another thoroughbred permitholder's facility pursuant to s. 550.475.

b. The division shall notify each slot machine licensee required to remit such payments, not later than 15 days after

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issuing the slot machine license, of the qualified thoroughbred permitholders to which such payments must be paid. Each qualified thoroughbred permitholder shall provide each slot machine licensee required to remit payments pursuant to this subparagraph with written instructions for transmitting such electronic payments. Such payments shall be remitted to each qualified thoroughbred permitholder on the fifth day of each calendar month. If the fifth day of the calendar month falls on a weekend, such payment shall be remitted on the first Monday following the weekend.

c. A qualified thoroughbred permitholder receiving funds under this subparagraph shall remit, within 10 days after receipt, 10 percent of those funds to the Florida Thoroughbred Breeders' Association, Inc., for the payment of breeders', stallion, and special racing awards, subject to the fee authorized in s. 550.2625(3).

Section 13. Subsections (3) and (5) of section 551.106, Florida Statutes, are redesignated as subsections (4) and (6), respectively, a new subsection (3) is added to that section, and subsections (1), (2), and present subsection (4) of that section are amended, to read:

551.106 License fee; tax rate; penalties.—

(1) LICENSE FEE.—

~~(a)~~ Upon submission of the initial application for a slot machine license, and annually thereafter~~,~~ on the anniversary date of the issuance of the initial license, the licensee must pay to the division a nonrefundable license fee of ~~$3 million for the succeeding 12 months of licensure. In the 2010-2011 fiscal year, the licensee must pay the division a nonrefundable~~

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~~license fee of $2.5 million for the succeeding 12 months of licensure. In the 2011-2012 fiscal year and for every fiscal year thereafter, the licensee must pay the division a nonrefundable license fee of~~ $2 million for the succeeding 12 months of licensure. The license fee must ~~shall~~ be deposited into the Pari-mutuel Wagering Trust Fund of the Department of Business and Professional Regulation to be used by the division and the Department of Law Enforcement for investigations, regulation of slot machine gaming, and enforcement of slot machine gaming provisions under this chapter. These payments must ~~shall~~ be accounted for separately from taxes or fees paid pursuant to ~~the provisions of~~ chapter 550.

~~(b) Prior to January 1, 2007, the division shall evaluate the license fee and shall make recommendations to the President of the Senate and the Speaker of the House of Representatives regarding the optimum level of slot machine license fees in order to adequately support the slot machine regulatory program.~~

(2) TAX ON SLOT MACHINE REVENUES.—

(a)1. The tax rate on slot machine revenues at each facility is ~~shall be~~ 35 percent. Effective January 1, 2019, the tax rate on slot machine revenues at each facility is 30 percent. Effective July 1, 2020, the tax rate on slot machine revenues at each facility is 25 percent.

2.a. If, during any state fiscal year, the aggregate amount of tax paid to the state by ~~all~~ slot machine licensees in Broward and Miami-Dade Counties is less than the aggregate amount of tax paid to the state by ~~all slot machine~~ licensees in those counties in the 2017-2018 ~~2008-2009~~ fiscal year, each slot machine licensee shall pay to the state within 45 days after the

end of the state fiscal year a surcharge ~~equal to its pro rata share of an amount equal to the difference between the aggregate amount of tax paid to the state by all slot machine licensees in the 2008-2009 fiscal year and the amount of tax paid during the fiscal year~~.

b. The amount of the surcharge to be paid by each such licensee must be calculated by dividing the aggregate amount of slot machine taxes paid to the state by all such slot machine licensees in the 2017-2018 fiscal year by the aggregate amount of slot machine taxes paid by all such licensees during the applicable state fiscal year, multiplying the result by the amount of slot machine taxes paid by the licensee during the applicable state fiscal year, and then subtracting from that product the amount of slot machine taxes paid by the licensee during the applicable state fiscal year. However, the sum of the taxes paid by a licensee pursuant to subparagraph 1. and any surcharge due from the licensee may not exceed 35 percent of the slot machine revenue of that licensee in the applicable state fiscal year ~~Each licensee's pro rata share shall be an amount determined by dividing the number 1 by the number of facilities licensed to operate slot machines during the applicable fiscal year, regardless of whether the facility is operating such machines~~.

(b) The slot machine revenue tax imposed by this section on facilities licensed pursuant to s. 551.104(2)(a)1., 2., or 3.a. must ~~shall~~ be paid to the division for deposit into the Pari-mutuel Wagering Trust Fund for immediate transfer by the Chief Financial Officer for deposit into the Educational Enhancement Trust Fund of the Department of Education. Any interest earnings

on the tax revenues must ~~shall~~ also be transferred to the Educational Enhancement Trust Fund. The slot machine revenue tax imposed by this section on facilities licensed pursuant to s. 551.104(2)(a)3.b. must be paid to the division for deposit into the Pari-mutuel Wagering Trust Fund. The division must transfer 90 percent of such funds to be deposited by the Chief Financial Officer into the Educational Enhancement Trust Fund of the Department of Education and must transfer 10 percent of such funds to the responsible public entity for the public-private partnership of the slot machine licensee pursuant to ss. 551.104(2)(a)3.b. and 255.065.

(c)1. Funds transferred to the Educational Enhancement Trust Fund under paragraph (b) must ~~shall~~ be used to supplement public education funding statewide. Funds transferred to a responsible public entity pursuant to paragraph (b) must be used in accordance with s. 255.065 to finance the qualifying project of such entity and the slot machine licensee, which established the licensee's eligibility for initial licensure pursuant to s. 551.104(2)(a)3.b.

2. If necessary to comply with any covenant established pursuant to s. 1013.68(4), s. 1013.70(1), or s. 1013.737(3), funds transferred to the Educational Enhancement Trust Fund under paragraph (b) must ~~shall~~ first be available to pay debt service on lottery bonds issued to fund school construction in the event lottery revenues are insufficient for such purpose or to satisfy debt service reserve requirements established in connection with lottery bonds. Moneys available pursuant to this subparagraph are subject to annual appropriation by the Legislature.

(3) SLOT MACHINE GUARANTEE FEE; SURCHARGE.—

(a) If a permitholder located within a county that has conducted a successful slot machine referendum after January 1, 2012, does not pay at least $10 million in total slot machine taxes and license fees to the state in state fiscal year 2018-2019, the permitholder shall pay to the state within 45 days after the end of the state fiscal year a surcharge equal to the difference between the aggregate amount of slot machine taxes and license fees paid to the state in the fiscal year and $10 million, regardless of whether the permitholder or licensee operated slot machines during the fiscal year.

(b) If a permitholder located within a county that has conducted a successful slot machine referendum after January 1, 2012, does not pay at least $20 million in total slot machine taxes and license fees to the state in state fiscal year 2019-2020 and any subsequent state fiscal year, the permitholder shall pay to the state within 45 days after the end of the state fiscal year a surcharge equal to the difference between the aggregate amount of slot machine taxes and license fees paid to the state in the fiscal year and $20 million, regardless of whether the permitholder or licensee operated slot machines during the fiscal year.

(5)~~(4)~~ TO PAY TAX; PENALTIES.—A slot machine licensee who fails to make tax and any applicable surcharge payments as required under this section is subject to an administrative penalty of up to $10,000 for each day the tax payment is not remitted. All administrative penalties imposed and collected must ~~shall~~ be deposited into the Pari-mutuel Wagering Trust Fund of the Department of Business and Professional Regulation. If

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any slot machine licensee fails to pay penalties imposed by order of the division under this subsection, the division may deny, suspend, revoke, or refuse to renew the license of the permitholder or slot machine licensee.

Section 14. Subsections (1), (2), and (4) of section 551.114, Florida Statutes, are amended to read:

551.114 Slot machine gaming areas.—

(1)(a) A slot machine licensee whose initial license was issued before January 1, 2018, may make available for play up to:

1. 1,600 ~~2,000~~ slot machines within the property of the facilities of the slot machine licensee, if the licensee made available for play 1,250 or more slot machines during state fiscal year 2016-2017.

2. 1,200 slot machines within the property of the facilities of the slot machine licensee, if the licensee made available for play 1,000 or more slot machines, but less than 1,250 slot machines, during state fiscal year 2016-2017.

3. 1,000 slot machines within the property of the facilities of the slot machine licensee, if the licensee made available for play less than 1,000 slot machines during state fiscal year 2016-2017.

(b)1. A slot machine licensee whose initial license was issued on or after January 1, 2018, may make available for play up to 750 slot machines within the property of the facilities of the slot machine licensee; provided however, the total number of slot machines which may be made available for play by all slot machine licensees whose initial license was issued after January 1, 2018, may not exceed 6,000 slot machines.

2. If the total number of slot machines which all licensees whose initial license was issued on or after January 1, 2018, would exceed 6,000 slot machines if each such licensee were to operate 750 slot machines, the maximum number of slot machines each such licensee may make available for play may not exceed 6,000 divided by the number of licensees whose initial license was issued after January 1, 2018.

(2) If such races or games are available to the slot machine licensee, the slot machine licensee shall display pari-mutuel races or games within the designated slot machine gaming areas and offer patrons within the designated slot machine gaming areas the ability to engage in pari-mutuel wagering on any live, intertrack, and simulcast races conducted or offered to patrons of the licensed facility.

(4) Designated slot machine gaming areas shall ~~may~~ be located anywhere within the property described in a slot machine licensee's pari-mutuel permit ~~within the current live gaming facility or in an existing building that must be contiguous and connected to the live gaming facility~~. ~~If a designated slot machine gaming area is to be located in a building that is to be constructed, that new building must be contiguous and connected to the live gaming facility.~~

Section 15. Section 551.116, Florida Statutes, is amended to read:

551.116 Days and hours of operation.—Slot machine gaming areas may be open 24 hours per day, 7 days a week ~~daily~~ throughout the year. ~~The slot machine gaming areas may be open a cumulative amount of 18 hours per day on Monday through Friday and 24 hours per day on Saturday and Sunday and on those~~

~~holidays specified in s. 110.117(1).~~

Section 16. Present subsections (9) through (17) of section 849.086, Florida Statutes, are redesignated as subsections (10) through (18), respectively, a new subsection (9) is added to that section, subsections (1) and (2) of that section are amended, paragraph (g) is added to subsection (4) of that section, and paragraph (b) of subsection (5), paragraphs (a), (b), and (c) of subsection (7), paragraph (a) of subsection (8), present subsection (12), and paragraphs (d) and (h) of present subsection (13) are amended, to read:

849.086 Cardrooms authorized.—

(1) LEGISLATIVE INTENT.—It is the intent of the Legislature to provide additional entertainment choices for the residents of and visitors to the state, promote tourism in the state, provide revenues to support the continuation of live pari-mutuel activity, and provide additional state revenues through the authorization of the playing of certain games in the state at facilities known as cardrooms which are to be located at licensed pari-mutuel facilities. To ensure the public confidence in the integrity of authorized cardroom operations, this act is designed to strictly regulate the facilities, persons, and procedures related to cardroom operations. Furthermore, the Legislature finds that authorized games of poker and dominoes ~~as herein defined~~ are considered to be pari-mutuel style games and not casino gaming because the participants play against each other instead of against the house.

(2) DEFINITIONS.—As used in this section:

(a) "Authorized game" means a game or series of games of poker, including designated player games, played in conformance

with this section and in a manner consistent with the rules and requirements specified in the 1974 edition of Hoyle's Modern Encyclopedia of Card Games: Rules of All the Basic Games and Popular Variations and including three card poker, or dominoes played in conformance with this section ~~or dominoes which are played in a nonbanking manner~~.

(b) "Banking game" means a game in which the house is a participant in the game, taking on players, paying winners, and collecting from losers ~~or in which the cardroom establishes a bank against which participants play~~. A designated player game is not a banking game.

(c) "Cardroom" means a facility where authorized games are played for money or anything of value and to which the public is invited to participate in such games and charged a fee for participation by the operator of such facility. Authorized games and cardrooms do not constitute casino gaming operations if conducted at an eligible facility.

(d) "Cardroom management company" means any individual not an employee of the cardroom operator, any proprietorship, partnership, corporation, or other entity that enters into an agreement with a cardroom operator to manage, operate, or otherwise control the daily operation of a cardroom.

(e) "Cardroom distributor" means any business that distributes cardroom paraphernalia such as card tables, betting chips, chip holders, dominoes, dominoes tables, drop boxes, banking supplies, playing cards, card shufflers, and other associated equipment to authorized cardrooms.

(f) "Cardroom operator" means a licensed pari-mutuel permitholder that ~~which~~ holds a valid permit and license issued

by the division pursuant to chapter 550 and which also holds a valid cardroom license issued by the division pursuant to this section which authorizes such person to operate a cardroom and to conduct authorized games in such cardroom.

(g) "Designated player" means the player identified for each game by a button that rotates clockwise before each hand begins as the player in the dealer position and seated at a traditional player position in a designated player game who pays winning players and collects from losing players.

(h) "Designated player game" means a game in which the players compare their cards only to the cards of the designated player or to a combination of cards held by the designated player and cards common and available for play by all players.

(i) ~~(g)~~ "Division" means the Division of Pari-mutuel Wagering of the Department of Business and Professional Regulation.

(j) ~~(h)~~ "Dominoes" means a game of dominoes typically played with a set of 28 flat rectangular blocks, called "bones," which are marked on one side and divided into two equal parts, with zero to six dots, called "pips," in each part. The term also includes larger sets of blocks that contain a correspondingly higher number of pips. The term also means the set of blocks used to play the game.

(k) ~~(i)~~ "Gross receipts" means the total amount of money received by a cardroom from any person for participation in authorized games.

(l) ~~(j)~~ "House" means the cardroom operator and all employees of the cardroom operator.

(m) ~~(k)~~ "Net proceeds" means the total amount of gross

receipts received by a cardroom operator from cardroom operations less direct operating expenses related to cardroom operations, including labor costs, admission taxes only if a separate admission fee is charged for entry to the cardroom facility, gross receipts taxes imposed on cardroom operators by this section, the annual cardroom license fees imposed by this section on each table operated at a cardroom, and reasonable promotional costs excluding officer and director compensation, interest on capital debt, legal fees, real estate taxes, bad debts, contributions or donations, or overhead and depreciation expenses not directly related to the operation of the cardrooms.

(n) ~~(l)~~ "Rake" means a set fee or percentage of the pot assessed by a cardroom operator for providing the services of a dealer, table, or location for playing the authorized game.

(o) ~~(m)~~ "Tournament" means a series of games that have more than one betting round involving one or more tables and where the winners or others receive a prize or cash award.

(4) AUTHORITY OF DIVISION.—The Division of Pari-mutuel Wagering of the Department of Business and Professional Regulation shall administer this section and regulate the operation of cardrooms under this section and the rules adopted pursuant thereto, and is hereby authorized to:

(g) Establish a reasonable period to respond to requests from a licensed cardroom; provided however, the division has a maximum of 45 days to approve:

1. A cardroom's internal controls or provide the cardroom with a list of deficiencies as to the internal controls.

2. Rules for a new authorized game submitted by a licensed cardroom or provide the cardroom with a list of deficiencies as

to those rules.

No later than 10 days after the submission of revised internal controls or revised rules addressing the deficiencies identified by the division, the division must review and approve or reject the revised internal controls or revised rules.

(5) LICENSE REQUIRED; APPLICATION; FEES.—No person may operate a cardroom in this state unless such person holds a valid cardroom license issued pursuant to this section.

(b) After the initial cardroom license is granted, the application for the annual license renewal shall be made in conjunction with the applicant's annual application for its pari-mutuel license. If a permitholder has operated a cardroom during any of the 3 previous fiscal years and fails to include a renewal request for the operation of the cardroom in its annual application for license renewal, the permitholder may amend its annual application to include operation of the cardroom. ~~In order for a cardroom license to be renewed the applicant must have requested, as part of its pari-mutuel annual license application, to conduct at least 90 percent of the total number of live performances conducted by such permitholder during either the state fiscal year in which its initial cardroom license was issued or the state fiscal year immediately prior thereto if the permitholder ran at least a full schedule of live racing or games in the prior year. If the application is for a harness permitholder cardroom, the applicant must have requested authorization to conduct a minimum of 140 live performances during the state fiscal year immediately prior thereto.~~ If more than one permitholder is operating at a facility, each

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permitholder must have applied for a license to conduct a full schedule of live racing.

(7) CONDITIONS FOR OPERATING A CARDROOM.—

(a) A cardroom may be operated only at the location specified on the cardroom license issued by the division, and such location may only be the location at which the pari-mutuel permitholder is authorized to conduct pari-mutuel wagering activities pursuant to such permitholder's valid pari-mutuel permit or as otherwise authorized by law. ~~Cardroom operations may not be allowed beyond the hours provided in paragraph (b) regardless of the number of cardroom licenses issued for permitholders operating at the pari-mutuel facility.~~

(b) Any cardroom operator may operate a cardroom at the pari-mutuel facility daily throughout the year, if the permitholder meets the requirements under paragraph (5)(b). The cardroom may be open ~~a cumulative amount of 18 hours per day on Monday through Friday and~~ 24 hours per day ~~on Saturday and Sunday and on the holidays specified in s. 110.117(1)~~.

(c) A cardroom operator must at all times employ and provide a nonplaying live dealer at ~~for~~ each table on which authorized ~~card~~ games ~~which traditionally use a dealer~~ are conducted ~~at the cardroom~~. Such dealers may not have a participatory interest in any game other than the dealing of cards and may not have an interest in the outcome of the game. The providing of such dealers by a licensee does not constitute the conducting of a banking game by the cardroom operator.

(8) METHOD OF WAGERS; LIMITATION.—

(a) ~~No~~ Wagering may not be conducted using money or other negotiable currency. Games may only be played utilizing a

wagering system whereby all players' money is first converted by the house to tokens or chips that may ~~which shall~~ be used for wagering only at that specific cardroom.

(9) DESIGNATED PLAYER GAMES AUTHORIZED.—

(a) A cardroom operator may offer designated player games consisting of players making wagers against the designated player. However, not more than 50 percent of the total licensed tables in a cardroom may offer designated player games. The designated player must be licensed pursuant to paragraph (6)(b). Employees of a designated player also must be licensed, and the designated player shall pay, in addition to the business occupational fee established pursuant to paragraph (6)(i), an employee occupational license fee that may not exceed $500 per employee for any 12-month period.

(b) A cardroom operator may not serve as a designated player in any game. The cardroom operator may not have a financial interest in a designated player in any game. A cardroom operator may collect a rake in accordance with the rake structure posted at the table.

(c) If there are multiple designated players at a table, the dealer button shall be rotated in a clockwise rotation after each hand.

(d) A cardroom operator may not allow a designated player to pay an opposing player who holds a lower-ranked hand.

(e) A designated player may not be required by the rules of a game or by the rules of a cardroom to cover more than 10 times the maximum wager for players participating in any one game.

(f) The cardroom, or any cardroom licensee, may not contract with, or receive compensation other than a posted table

rake from, any player to participate in any game to serve as a designated player.

(13)~~(12)~~ PROHIBITED ACTIVITIES.—

(a) A ~~No~~ person licensed to operate a cardroom may not conduct any banking game or any game not specifically authorized by this section.

(b) A ~~No~~ person who is younger than ~~under~~ 18 years of age may not be permitted to hold a cardroom or employee license~~,~~ or to engage in any game conducted therein.

(c) With the exception of mechanical card shufflers, ~~No~~ electronic or mechanical devices~~, except mechanical card shufflers,~~ may not be used to conduct any authorized game in a cardroom.

(d) ~~No~~ Cards, game components, or game implements may not be used in playing an authorized game unless they have ~~such has~~ been furnished or provided to the players by the cardroom operator.

(14)~~(13)~~ TAXES AND OTHER PAYMENTS.—

(d)1. Each ~~greyhound and jai alai~~ permitholder that operates a cardroom facility shall use at least 4 percent of such permitholder's cardroom monthly gross receipts to supplement ~~greyhound~~ purses and awards or jai alai prize money, respectively, during the permitholder's next ensuing pari-mutuel meet.

2.a. Any permitholder with a cardroom license and conducting less than a full schedule of live racing or games, as defined in s. 550.002(11), pursuant to s. 550.01215(1)(b) or (c) shall remit each month to each qualified thoroughbred permitholder, by electronic funds transfer, an amount equal to 4

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percent of its monthly cardroom gross receipts divided by the total number of qualified thoroughbred permitholders for a license year. Qualified thoroughbred permitholders shall use such payments exclusively for purses and awards for live thoroughbred horse races held at the qualified thoroughbred permitholder's racing facility. For the purposes of this subparagraph, the term "qualified thoroughbred permitholder" means a thoroughbred permitholder conducting, in the applicable state fiscal year, no less than a full schedule of live racing or games, as defined in s. 550.002(11), and no fewer live thoroughbred horse racing performances than such permitholder conducted in state fiscal year 2017-2018. The term does not include a permitholder whose permit was issued pursuant to s. 550.3345 or a permitholder leasing at another thoroughbred permitholder's facility pursuant to s. 550.475.

b. The division shall notify each cardroom licensee required to remit such payments, not later than 15 days after issuing the cardroom license, of the qualified thoroughbred permitholders to which such payments must be paid. Each qualified thoroughbred permitholder shall provide each cardroom licensee required to remit payments pursuant to this subparagraph with written instructions for transmitting such electronic payments. Such payments shall be remitted to each qualified thoroughbred permitholder on the fifth day of each calendar month and shall be based upon the preceding month's cardroom activities. If the fifth day of the calendar month falls on a weekend, such payment shall be remitted on the first Monday following the weekend.

c. A qualified thoroughbred permitholder receiving funds

under this subparagraph shall remit, within 10 days after receipt, 10 percent of those funds to the Florida Thoroughbred Breeders' Association, Inc., for the payment of breeders', stallion, and special racing awards, subject to the fee authorized in s. 550.2625(3).

3. Each thoroughbred and harness horse racing permitholder that operates a cardroom facility shall use at least 50 percent of such permitholder's cardroom monthly net proceeds as follows: 47 percent to supplement purses and 3 percent to supplement breeders' awards during the permitholder's next ensuing racing meet.

~~3. No cardroom license or renewal thereof shall be issued to an applicant holding a permit under chapter 550 to conduct pari-mutuel wagering meets of quarter horse racing unless the applicant has on file with the division a binding written agreement between the applicant and the Florida Quarter Horse Racing Association or the association representing a majority of the horse owners and trainers at the applicant's eligible facility, governing the payment of purses on live quarter horse races conducted at the licensee's pari-mutuel facility. The agreement governing purses may direct the payment of such purses from revenues generated by any wagering or gaming the applicant is authorized to conduct under Florida law. All purses shall be subject to the terms of chapter 550.~~

(h) One-quarter of the moneys deposited into the Pari-mutuel Wagering Trust Fund pursuant to paragraph (g) shall, by October 1 of each year, be distributed to the local government that approved the cardroom under subsection (17) ~~(16)~~; however, if two or more pari-mutuel racetracks are located within the

same incorporated municipality, the cardroom funds shall be distributed to the municipality. If a pari-mutuel facility is situated in such a manner that it is located in more than one county, the site of the cardroom facility shall determine the location for purposes of disbursement of tax revenues under this paragraph. The division shall, by September 1 of each year, determine: the amount of taxes deposited into the Pari-mutuel Wagering Trust Fund pursuant to this section from each cardroom licensee; the location by county of each cardroom; whether the cardroom is located in the unincorporated area of the county or within an incorporated municipality; and, the total amount to be distributed to each eligible county and municipality.

Section 17. Subsection (1) of section 849.16, Florida Statutes, is amended to read:

849.16 Machines or devices which come within provisions of law defined.—

(1) As used in this chapter, the term "slot machine or device" means any machine or device or system or network of devices that is adapted for use in such a way that, upon activation, which may be achieved by, but is not limited to, the insertion of any piece of money, coin, account number, code, or other object or information, such device or system is directly or indirectly caused to operate or may be operated and if the user, whether by application of skill or by reason of any element of chance or any other outcome unpredictable by the user, <u>regardless of whether the machine or device or system or networks of devices includes a preview of the outcome or whether the outcome is known, displayed, or capable of being known or displayed to the user,</u> may:

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(a) Receive or become entitled to receive any piece of money, credit, allowance, or thing of value; ~~, or~~ any check, slug, token, or memorandum, whether of value or otherwise, which may be exchanged for any money, credit, allowance, or thing of value or which may be given in trade; or the opportunity to purchase a subsequently displayed outcome that may have a monetary value, regardless of whether such value is equal to, greater than, or less than the cost of purchasing such outcome; or

(b) Secure additional chances or rights to use such machine, apparatus, or device, even though the device or system may be available for free play or, in addition to any element of chance or unpredictable outcome of such operation, may also sell, deliver, or present some merchandise, indication of weight, entertainment, or other thing of value. The term "slot machine or device" includes, but is not limited to, devices regulated as slot machines pursuant to chapter 551.

Section 18. The Division of Law Revision and Information is directed to replace the phrase "the effective date of this act" wherever it appears in this act with the date this act becomes a law.

Section 19. 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 gaming; amending s. 285.710, F.S.;

authorizing and directing the Governor, in cooperation with the Seminole Tribe of Florida, to execute a new compact in the form provided; signifying the Legislature's approval and ratification of such compact that does not materially alter from the approved form; providing terms and conditions for the gaming compact; defining terms; authorizing the Tribe to operate covered games on its lands in accordance with the compact and at specified facilities; prohibiting specified games; providing requirements for resolution of patron disputes involving gaming, tort claims, and employee disputes; providing requirements for regulation and enforcement of the compact; requiring the state to conduct random inspections of tribal facilities; authorizing the state to conduct an independent audit; requiring the Tribe and commission to comply with specified licensing and hearing requirements; requiring the Tribe to make specified revenue share payments to the state, with reductions authorized under certain circumstances; requiring the Tribe to pay an annual oversight assessment and annual donation to the Florida Council on Compulsive Gaming; specifying that certain events do not trigger any remedy under the compact or affect the exclusivity provisions of the compact; providing for dispute resolution between the Tribe and the state; providing construction; providing requirements for notice under the compact; providing an effective date and termination of the compact;

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providing for execution of the compact; amending s. 285.712, F.S.; requiring the Governor to provide a copy of the executed compact to specified parties and direct the Secretary of State to forward a copy to the Secretary of the Interior; creating s. 546.13, F.S.; defining terms; exempting a fantasy contest from certain regulations; amending s. 550.01215, F.S.; revising application requirements for a pari-mutuel operating license; authorizing certain greyhound racing permitholders elect not to conduct live racing if such election is made within a specified period of time; providing that a greyhound racing permitholder that has been issued a slot machine license remains an eligible facility, continues to be eligible for a slot machine license, is exempt from certain provisions of ch. 551, F.S., is eligible to be a guest track for certain purposes, and remains eligible for a cardroom license; authorizing a greyhound racing permitholder to receive an operating license to conduct pari-mutuel wagering activities at another permitholder's greyhound racing facility; authorizing certain jai alai permitholders, harness horse racing permitholders, and quarter horse racing permitholders to elect not to conduct live racing or games if the election is made by a specified date; specifying that such permitholder may retain its permit and remains a pari-mutuel facility; specifying that, if such permitholder has been issued a slot machine license, the permitholder's facility remains an eligible

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facility, continues to be eligible for a slot machine license, is exempt from certain provisions of chs. 550 and 551, F.S., is eligible to be a guest track, and if the permitholder is a harness horse racing permitholder, a host track for intertrack wagering and simulcasting, and remains eligible for a cardroom license; authorizing a harness horse racing permitholder to be a host track for purposes of intertrack wagering and simulcasting; authorizing the division to approve a change in racing dates for a permitholder if the request for a change is received before a specified date and under certain circumstances; amending s. 550.054, F.S.; requiring the Division of Pari-Mutuel Wagering to revoke a permit to conduct pari-mutuel wagering for a permitholder that fails to make specified payments or obtain an operating license; prohibiting the issuance of new permits; deleting provisions related to the conversion of permits; repealing s. 550.0745, F.S., relating to conversion of a pari-mutuel permit to a summer jai alai permit; amending ss. 550.09512 and 550.09515, F.S.; requiring the division to revoke the permit of a harness horse or thoroughbred racing permitholder, respectively, who does not pay tax on handle for a specified period of time; deleting provisions relating to the reissuance of escheated permits; amending s. 550.3345, F.S.; revising provisions relating to a limited thoroughbred racing permit previously converted from a quarter horse

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racing permit; amending s. 550.6308, F.S.; revising the number of days of thoroughbred horse sales required for an applicant to obtain a limited intertrack wagering license; revising eligibility requirements for such licenses; revising requirements for such wagering; deleting provisions requiring a licensee to make certain payments to the daily pari-mutuel pool; amending s. 551.102, F.S.; revising definitions; amending s. 551.104, F.S.; revising conditions of licensure and conditions for maintaining authority to conduct slot machine gaming; requiring certain permitholders to remit certain revenues to qualified thoroughbred permitholders; requiring qualified thoroughbred permitholders to use such payments for certain purposes; defining the term "qualified thoroughbred permitholder"; providing a process for remitting such payments; requiring qualified thoroughbred permitholders receiving such funds to remit a specified percentage of the funds to a specified association; amending s. 551.106, F.S.; deleting obsolete provisions; revising the tax rate on slot machine revenue effective on specified dates; providing a formula to calculate a surcharge amount; prohibiting the surcharge from exceeding a certain amount; revising where slot machine revenue tax payments must be deposited; requiring that certain funds be used for specific purposes; requiring certain permitholders and licensees to pay a slot machine guarantee fee if certain taxes and fees paid to the

state during certain periods fall below a specified amount; amending s. 551.114, F.S.; revising the maximum number of slot machines slot machine licensees may make available for play; revising the areas where a designated slot machine gaming area may be located; amending s. 551.116, F.S.; deleting a restriction on the number of hours per day that slot machine gaming areas may be open; amending s. 849.086, F.S.; revising legislative intent; revising definitions; authorizing the division to establish a reasonable period to respond to certain requests from a licensed cardroom; providing that the division must approve certain requests within 45 days; requiring the division to review and approve or reject certain revised internal controls or revised rules within 10 days after submission; deleting provisions relating to the renewal of a cardroom license; deleting provisions relating to restrictions on hours of operation; making technical changes; authorizing certain cardroom operators to offer a certain number of certain designated player games; requiring the designated player and employees of the designated player to be licensed; requiring the designated player to pay certain fees; prohibiting a cardroom operator from serving as the designated player in a game and from having a financial interest in a designated player; authorizing a cardroom operator to collect a rake, subject to certain requirements; requiring the dealer button to be rotated under certain circumstances;

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prohibiting a cardroom operator from allowing a designated player to pay an opposing player under certain circumstances; prohibiting the rules of the game or of the cardroom to require a designated player to cover more than 10 times the maximum wager for players participating in any one game; prohibiting a cardroom or cardroom licensee from contracting with or receiving certain compensation from a player to allow that player to participate in any game as a designated player; requiring certain permitholders with a cardroom license to remit a certain amount of its monthly gross receipts to qualified thoroughbred permitholders; requiring qualified thoroughbred holders to use such payments for certain purposes; defining the term "qualified thoroughbred permitholder"; providing a process for remitting such payments; requiring qualified thoroughbred permitholders receiving such funds to remit a specified percentage of the funds to a specified association; deleting a provision relating to the renewal or issuance of a cardroom license to a quarter horse racing permitholder; conforming a cross-reference; amending s. 849.16, F.S.; revising the definition of the term "slot machine or device"; providing a directive to the Division of Law Revision and Information; providing an effective date.

578866

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/02/2018	.	
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The Committee on Appropriations (Braynon) recommended the following:

Senate Amendment to Amendment (184406) (with title amendment)

Delete lines 2662 - 2695.

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

And the title is amended as follows:

Delete lines 2875 - 2876

and insert:

reference;

514374

576-03102-18

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

A bill to be entitled

An act relating to gaming; amending s. 285.710, F.S.; authorizing and directing the Governor, in cooperation with the Seminole Tribe of Florida, to execute a new compact in the form provided; signifying the Legislature's approval and ratification of such compact that does not materially alter from the approved form; providing terms and conditions for the gaming compact; defining terms; authorizing the Tribe to operate covered games on its lands in accordance with the compact and at specified facilities; prohibiting specified games; providing requirements for resolution of patron disputes involving gaming, tort claims, and employee disputes; providing requirements for regulation and enforcement of the compact; requiring the state to conduct random inspections of tribal facilities; authorizing the state to conduct an independent audit; requiring the Tribe and commission to comply with specified licensing and hearing requirements; requiring the Tribe to make specified revenue share payments to the state, with reductions authorized under certain circumstances; requiring the Tribe to pay an annual oversight assessment and annual donation to the Florida Council on Compulsive Gaming; specifying that certain events do not trigger any remedy under the compact or affect the exclusivity provisions of the

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compact; providing for dispute resolution between the Tribe and the state; providing construction; providing requirements for notice under the compact; providing an effective date and termination of the compact; providing for execution of the compact; amending s. 285.712, F.S.; requiring the Governor to provide a copy of the executed compact to specified parties and direct the Secretary of State to forward a copy to the Secretary of the Interior; creating s. 546.13, F.S.; defining terms; exempting a fantasy contest from certain regulations; amending s. 550.01215, F.S.; revising application requirements for a pari-mutuel operating license; authorizing a greyhound racing permitholder to specify certain intentions on its application; providing that a greyhound racing permitholder that has been issued a slot machine license remains an eligible facility, continues to be eligible for a slot machine license, is exempt from certain provisions of ch. 551, F.S., is eligible to be a guest track for certain purposes, and remains eligible for a cardroom license; authorizing a greyhound racing permitholder to receive an operating license to conduct pari-mutuel wagering activities at another permitholder's greyhound racing facility; authorizing certain harness horse racing permitholders or quarter horse racing permitholders to elect not to conduct live racing if the election is made by a specified date; specifying that such permitholder may retain its permit and remains a pari-mutuel facility;

specifying that, if such permitholder has been issued a slot machine license, the permitholder's facility remains an eligible facility, continues to be eligible for a slot machine license, is exempt from certain provisions of chs. 550 and 551, F.S., is eligible to be a guest track, and if the permitholder is a harness horse racing permitholder, a host track for intertrack wagering and simulcasting, and remains eligible for a cardroom license; authorizing a harness horse racing permitholder to be a host track for purposes of intertrack wagering and simulcasting; authorizing the division to approve a change in racing dates for a permitholder if the request for a change is received before a specified date and under certain circumstances; amending s. 550.054, F.S.; requiring the Division of Pari-Mutuel Wagering to revoke a permit to conduct pari-mutuel wagering for a permitholder that fails to make specified payments or obtain an operating license; prohibiting the issuance of new permits; deleting provisions related to the conversion of permits; repealing s. 550.0745, F.S., relating to conversion of a pari-mutuel permit to a summer jai alai permit; amending ss. 550.09512 and 550.09515, F.S.; requiring the division to revoke the permit of a harness horse or thoroughbred racing permitholder, respectively, who does not pay tax on handle for a specified period of time; deleting provisions relating to the reissuance of escheated permits; amending s. 550.3345, F.S.; revising

provisions relating to a limited thoroughbred racing permit previously converted from a quarter horse racing permit; amending s. 551.104, F.S.; revising conditions of licensure and conditions for maintaining authority to conduct slot machine gaming; requiring certain permitholders to remit certain revenues to qualified thoroughbred permitholders; requiring qualified thoroughbred permitholders to use such payments for certain purposes; defining the term "qualified thoroughbred permitholder"; providing a process for remitting such payments; requiring qualified thoroughbred permitholders receiving such funds to remit a specified percentage of the funds to a specified association; amending s. 551.106, F.S.; deleting obsolete provisions; revising the tax rate on slot machine revenue effective on specified dates; providing a formula to calculate a surcharge amount; prohibiting the surcharge from exceeding a certain amount; amending s. 849.086, F.S.; revising legislative intent; revising definitions; authorizing the division to establish a reasonable period to respond to certain requests from a licensed cardroom; providing that the division must approve certain requests within 45 days; requiring the division to review and approve or reject certain revised internal controls or revised rules within 10 days after submission; deleting provisions relating to the renewal of a cardroom license; making technical changes; authorizing certain cardroom operators to

offer a certain number of certain designated player games; requiring the designated player and employees of the designated player to be licensed; requiring the designated player to pay certain fees; prohibiting a cardroom operator from serving as the designated player in a game and from having a financial interest in a designated player; authorizing a cardroom operator to collect a rake, subject to certain requirements; requiring the dealer button to be rotated under certain circumstances; prohibiting a cardroom operator from allowing a designated player to pay an opposing player under certain circumstances; prohibiting the rules of the game or of the cardroom to require a designated player to cover more than 10 times the maximum wager for players participating in any one game; prohibiting a cardroom or cardroom licensee from contracting with or receiving certain compensation from a player to allow that player to participate in any game as a designated player; requiring certain permitholders with a cardroom license to remit a certain amount of its monthly gross receipts to qualified thoroughbred permitholders; requiring qualified thoroughbred holders to use such payments for certain purposes; defining the term "qualified thoroughbred permitholder"; providing a process for remitting such payments; requiring qualified thoroughbred permitholders receiving such funds to remit a specified percentage of the funds to a specified association; deleting a provision relating

to the renewal or issuance of a cardroom license to a quarter horse racing permitholder; conforming a cross-reference; amending s. 849.16, F.S.; revising the definition of the term "slot machine or device"; 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. Paragraph (a) of subsection (1) and subsection (3) of section 285.710, Florida Statutes, are amended to read:

285.710 Compact authorization.—

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

(a) "Compact" means the Gaming Compact between the Seminole Tribe of Florida and the State of Florida~~, executed on April 7, 2010~~.

(3)(a) The Gaming Compact between the Seminole Tribe of Florida and the State of Florida, executed by the Governor and the Tribe on April 7, 2010, was ~~is~~ ratified and approved by chapter 2010-29, Laws of Florida. ~~The Governor shall cooperate with the Tribe in seeking approval of the compact from the United States Secretary of the Interior.~~

(b) The Governor, on behalf of this state, is hereby authorized and directed to execute a new compact with the Tribe as set forth in paragraph (c), and the Legislature hereby signifies in advance its approval and ratification of such compact, provided that it is identical to the compact set forth in paragraph (c) and becomes effective on or before January 1, 2019. The Governor shall cooperate with the Tribe in seeking

approval of such compact ratified and approved under this paragraph from the Secretary of the Department of the Interior. Upon becoming effective, such compact supersedes the Gaming Compact ratified and approved under paragraph (a), which shall then become null and void.

(c) The Legislature hereby approves and ratifies the following Gaming Compact between the State of Florida and the Seminole Tribe of Florida, provided that such compact becomes effective on or before January 1, 2019:

Gaming Compact Between the Seminole Tribe of Florida and the State of Florida

This compact is made and entered into by and between the Seminole Tribe of Florida and the State of Florida, with respect to the operation of covered games, as defined herein, on the Tribe's Indian lands, as defined by the Indian Gaming Regulatory Act, 25 U.S.C. ss. 2701 et seq.

PART I

TITLE.—This document shall be referred to as the "Gaming Compact between the Seminole Tribe of Florida and the State of Florida."

PART II

LEGISLATIVE FINDINGS.—

(1) The Seminole Tribe of Florida is a federally recognized

tribal government that possesses sovereign powers and rights of self-government.

(2) The State of Florida is a state of the United States of America that possesses the sovereign powers and rights of a state.

(3) The State of Florida and the Seminole Tribe of Florida maintain a government-to-government relationship.

(4) The United States Supreme Court has long recognized the right of an Indian Tribe to regulate activity on lands within its jurisdiction, but the United States Congress, through the Indian Gaming Regulatory Act, has given states a role in the conduct of tribal gaming in accordance with negotiated tribal-state compacts.

(5) Pursuant to the Seminole Tribe Amended Gaming Ordinance, adopted by Resolution No. C-195-06, and approved by the Chairman of the National Indian Gaming Commission on July 10, 2006, hereafter referred to as the "Seminole Tribal Gaming Code," the Seminole Tribe of Florida desires to offer the play of covered games, as defined in Part III, as a means of generating revenues for purposes authorized by the Indian Gaming Regulatory Act, including, without limitation, the support of tribal governmental programs, such as health care, housing, sewer and water projects, police, fire suppression, general assistance for tribal elders, day care for children, economic development, educational opportunities, per capita payments to tribal members, and other typical and valuable governmental services and programs for tribal members.

(6) This compact is the only gaming compact between the Tribe and the state. This compact supersedes the Gaming Compact

between the Tribe and the state executed on or about April 7, 2010, which was subsequently ratified by the Legislature and went into effect on or about July 6, 2010.

(7) It is in the best interests of the Seminole Tribe of Florida and the State of Florida for the state to enter into a compact with the Tribe that recognizes the Tribe's right to offer certain Class III gaming and provides substantial exclusivity of such activities in conjunction with a reasonable revenue sharing arrangement between the Tribe and the state that will entitle the state to significant revenue participation.

PART III

DEFINITIONS.—As used in this compact, the term:

(1) "Annual oversight assessment" means the amount owed by the Tribe to the state for reimbursement for the actual and reasonable costs incurred by the state compliance agency to perform the monitoring functions set forth under the compact.

(2) "Class II video bingo terminals" means any electronic aid to a Class II bingo game that includes a video spinning reel or mechanical spinning reel display.

(3) "Class III gaming" means the forms of Class III gaming defined in 25 U.S.C. s. 2703(8) and by the regulations of the National Indian Gaming Commission, as of January 1, 2018.

(4) "Commission" means the Seminole Tribal Gaming Commission, which is the tribal governmental agency that has the authority to carry out the Tribe's regulatory and oversight responsibilities under this compact.

(5) "Compact" means this Gaming Compact between the

Seminole Tribe of Florida and the State of Florida.

(6) "Covered game" or "covered gaming activity" means the following Class III gaming activities:

(a) Slot machines, which may use spinning reels, video displays, or both, and which machines must meet all of the following requirements:

1. Any mechanical or electrical contrivance, terminal that may or may not be capable of downloading slot games from a central server system, machine, or other device.

2. Require, for play or operation, the insertion of a coin, bill, ticket, token, or similar object, or payment of any consideration whatsoever, including the use of any electronic payment system, except a credit card or debit card, unless state law authorizes the use of an electronic payment system that uses a credit or debit card payment, in which case the Tribe is authorized to use such payment system.

3. Are available to play or operate, the play or operation of which, whether by reason of skill or application of the element of chance or both, may deliver or entitle the person or persons playing or operating the contrivance, terminal, machine, or other device to receive cash, billets, tickets, tokens, or electronic credits to be exchanged for cash or to receive merchandise or anything of value whatsoever, whether the payoff is made automatically from the machine or manually.

4. Include associated equipment necessary to conduct the operation of the contrivance, terminal, machine, or other device.

(b) Banking or banked card games, such as baccarat, chemin de fer, and blackjack or 21.

(c) Raffles and drawings.

(d) Live table games.

(e) Any new game, if expressly authorized by the Legislature pursuant to legislation enacted subsequent to the effective date of this compact and lawfully conducted by any person for any purpose pursuant to such authorization.

(7) "Covered game employee" or "covered employee" means an individual employed and licensed by the Tribe whose responsibilities include the rendering of services with respect to the operation, maintenance, or management of covered games, including, but not limited to, managers and assistant managers; accounting personnel; commission officers; surveillance and security personnel; cashiers, supervisors, and floor personnel; cage personnel; and any other employee whose employment duties require or authorize access to areas of the facility related to the conduct of covered games or the technical support or storage of covered game components. The term does not include the Tribe's elected officials, provided that such individuals are not directly involved in the operation, maintenance, or management of covered games or covered games components.

(8) "Documents" means books, records, electronic, magnetic, and computer media documents, and other writings and materials, copies of such documents and writings, and information contained in such documents and writings.

(9) "Effective date" means the date on which the compact becomes effective pursuant to subsection (1) of Part XVI.

(10) "Electronic bingo machine" means a card minding device, which may only be used in connection with a bingo game as defined in s. 849.0931(1)(a), Florida Statutes, which is

certified in advance by an independent testing laboratory approved by the Division of Pari-Mutuel Wagering as a bingo aid device that meets all of the following requirements:

(a) Aids a bingo game player by:

1. Storing in the memory of the device not more than three bingo faces of tangible bingo cards as defined by s. 849.0931(1)(b), Florida Statutes, purchased by a player.

2. Comparing the numbers drawn and individually entered into the device by the player to the bingo faces previously stored in the memory of the device.

3. Identifying preannounced winning bingo patterns marked or covered on the stored bingo faces.

(b) Is not capable of accepting or dispensing any coins, currency, or tokens.

(c) Is not capable of monitoring any bingo card face other than the faces of the tangible bingo card or cards purchased by the player for that game.

(d) Is not capable of displaying or representing the game result through any means other than highlighting the winning numbers marked or covered on the bingo card face or giving an audio alert that the player's card has a prize-winning pattern. No casino game graphics, themes, or titles, including, but not limited to, depictions of slot machine-style symbols, cards, craps, roulette, or lottery may be used.

(e) Is not capable of determining the outcome of any game.

(f) Does not award progressive prizes of more than $2,500.

(g) Does not award prizes exceeding $1,000, other than progressive prizes not exceeding $2,500.

(h) Does not contain more than one player position for

playing bingo.

(i) Does not contain or does not link to more than one video display.

(j) Awards prizes based solely on the results of the bingo game, with no additional element of chance.

(11) "Facility" means a building or buildings of the Tribe in which the covered games authorized by this compact are conducted.

(12) "Guaranteed minimum compact term payment" means a minimum total payment for the guarantee payment period of $3 billion, which shall include all revenue share payments during the guarantee payment period.

(13) "Guarantee payment period" means the seven-year period beginning July 1, 2018, and ending June 30, 2025.

(14) "Guaranteed revenue sharing cycle payment" means the payments as provided in Part XI.

(15) "Historic racing machine" means an individual historic race terminal linked to a central server as part of a network-based video game, where the terminals allow pari-mutuel wagering by players on the results of previously conducted horse or greyhound races, but only if the game is certified in advance by an independent testing laboratory approved by the Division of Pari-Mutuel Wagering as complying with all of the following requirements:

(a) Stores all data on previously conducted horse or greyhound races in a secure format on the central server, which is located at the pari-mutuel facility.

(b) Uses only horse or greyhound races that were recorded at licensed pari-mutuel facilities in the United States after

January 1, 2000.

(c) Offers one or more of the following three bet types on all historic racing machines: win-place-show, quinella, or tri-fecta.

(d) Offers one or more of the following racing types: thoroughbreds, harness, or greyhounds.

(e) Does not award progressive prizes of more than $2,500.

(f) Does not award prizes exceeding $1,000, other than progressive prizes not exceeding $2,500.

(g) After each wager is placed, displays a video of at least the final eight seconds of the horse or greyhound race before any prize is awarded or indicated on the historic racing machine.

(h) The display of the video of the horse or greyhound race occupies at least 70 percent of the historic racing machine's video screen and does not contain and is not linked to more than one video display.

(i) Does not use casino game graphics, themes, or titles, including but not limited to, depictions of slot machine-style symbols, cards, craps, roulette, lottery, or bingo.

(j) Does not use video or mechanical reel displays.

(k) Does not contain more than one player position for placing wagers.

(l) Does not dispense coins, currency, or tokens.

(m) Awards prizes solely on the results of a previously conducted horse or greyhound race with no additional element of chance.

(n) Uses a random number generator to select the race from the central server to be displayed to the player and the numbers

or other designations of race entrants that will be used in the various bet types for any "Quick Pick" bets. To prevent an astute player from recognizing the race based on the entrants and thus knowing the results before placing a wager, the entrants of the race may not be identified until after all wagers for that race have been placed.

(16) "Indian Gaming Regulatory Act" means the Indian Gaming Regulatory Act, Pub. L. 100-497, Oct. 17, 1988, 102 Stat. 2467, codified at 25 U.S.C. ss. 2701 et seq. and 18 U.S.C. ss. 1166 to 1168.

(17) "Indian lands" means the lands defined in 25 U.S.C. s. 2703(4).

(18) "Initial payment period" means the period beginning on the effective date of the compact and ending on June 30, 2018.

(19) "Live table games" means dice games, such as craps, sic-bo and any similar variations thereof, and wheel games, such as roulette, big six, and any similar variations thereof, but not including any game that is authorized as a slot machine, banking or banked card game, raffle, or drawing.

(20) "Lottery vending machine" means any of the following four types of machines:

(a) A machine that dispenses pre-printed paper instant lottery tickets, but that does not read or reveal the results of the ticket or allow a player to redeem any ticket. The machine, or any machine or device linked to the machine, does not include or make use of video reels or mechanical reels or other video depictions of slot machine or casino game themes or titles for game play, but does not preclude the use of casino game themes or titles on such tickets or signage or advertising displays on

the machines.

(b) A machine that dispenses pre-determined electronic instant lottery tickets and displays an image of the ticket on a video screen on the machine, where the player touches the image of the ticket on the video screen to reveal the outcome of the ticket, provided the machine does not permit a player to redeem winnings, does not make use of video reels or mechanical reels, and does not simulate the play of any casino game, and the lottery retailer is paid the same amount as would be paid for the sale of paper instant lottery tickets.

(c) A machine that dispenses a paper lottery ticket with numbers selected by the player or randomly by the machine, but does not reveal the winning numbers. Such winning numbers are selected at a subsequent time and different location through a drawing conducted by the state lottery. The machine, or any machine or device linked to the machine, does not include or make use of video reels or mechanical reels or other video depictions of slot machine or casino game themes or titles for game play. The machine is not used to redeem a winning ticket. This does not preclude the use of casino game themes, titles for signage, or advertising displays on the machine.

(21) "Monthly payment" means the monthly revenue share payment which the Tribe remits to the state on the 15th day of the month following each month of the revenue sharing cycle.

(22) "Net revenue base" means the net win for the 12 month period immediately preceding the offering of, for public or private use, Class III or other casino-style gaming at any of the licensed pari-mutuel facilities in Broward and Miami-Dade Counties, except that if the commencement of such new gaming is

made during the initial payment period, "net revenue base" means net win for the 12-month period immediately preceding this compact.

(23) "Net win" means the total receipts from the play of all covered games less all prize payouts and free play or promotional credits issued by the Tribe.

(24) "Pari-mutuel wagering activities" means those activities authorized on January 1, 2018, by chapter 550, which do not include any casino-style game or device that include video reels or mechanical reels or other slot machine or casino game themes or titles.

(25) "Patron" means any person who is on the premises of a facility, or who enters the Tribe's Indian lands for the purpose of playing covered games authorized by this compact.

(26) "Regular payment period" means the period beginning on July 1, 2025, and terminating at the end of the term of this compact.

(27) "Revenue share payment" means the periodic payment by the Tribe to the state provided for in Part XI.

(28) "Revenue sharing cycle" means the annual 12-month period of the Tribe's operation of covered games in its facilities beginning on July 1 of each fiscal year, except for during the initial payment period, when the first revenue sharing cycle begins on July 1 of the previous year, and the Tribe receives a credit for any amount paid to the state under the 2010 Compact for that revenue sharing cycle.

(29) "Rules and regulations" means the rules and regulations promulgated by the commission for implementation of this compact.

(30) "State" means the State of Florida.

(31) "State compliance agency" means the state agency designated by the Florida Legislature that has the authority to carry out the state's oversight responsibilities under this compact.

(32) "Tribe" means the Seminole Tribe of Florida or any affiliate thereof conducting activities pursuant to this compact under the authority of the Seminole Tribe of Florida.

PART IV

AUTHORIZATION AND LOCATION OF COVERED GAMES.—

(1) The Tribe and state agree that the Tribe is authorized to operate covered games on its Indian lands, as defined in the Indian Gaming Regulatory Act, in accordance with the provisions of this compact. Nothing in the compact is intended to prohibit the Tribe from operating slot machines that employ video or mechanical displays of roulette, wheels, or other table game themes. Except for the provisions in subsection (1) of Part XI, nothing in this compact shall limit the Tribe's right to operate any Class II gaming under the Indian Gaming Regulatory Act.

(2) The Tribe is authorized to conduct covered games under this compact only at the following seven existing facilities, which may be expanded or replaced as provided in subsection (3) on Indian lands:

(a) Seminole Indian Casino-Brighton in Okeechobee, FL.

(b) Seminole Indian Casino-Coconut Creek in Coconut Creek, FL.

(c) Seminole Indian Casino-Hollywood in Hollywood, FL.

(d) Seminole Indian Casino-Immokalee in Immokalee, FL.

(e) Seminole Indian Casino-Big Cypress in Clewiston, FL.

(f) Seminole Hard Rock Hotel & Casino-Hollywood in Hollywood, FL.

(g) Seminole Hard Rock Hotel & Casino-Tampa in Tampa, FL.

(3) Any of the facilities existing on Indian lands identified in subsection (2) may be expanded or replaced by another facility on the same Indian lands with at least 60 days' advance notice to the state.

PART V

RULES AND REGULATIONS; MINIMUM REQUIREMENTS FOR OPERATIONS.—

(1) At all times during the term of this compact, the Tribe shall be responsible for all duties that are assigned to it and the commission under this compact. The Tribe shall promulgate any rules necessary to implement this compact, which, at a minimum, shall expressly include or incorporate by reference all provisions of Parts V, VI, VII, and VIII. Nothing in this compact shall be construed to affect the Tribe's right to amend its rules, provided that any such amendment is in conformity with this compact. The state compliance agency may propose additional rules consistent with and related to the implementation of this compact to the commission at any time, and the commission shall give good faith consideration to such proposed rules and shall notify the state compliance agency of its response or action with respect to such rules.

(2) All facilities shall comply with, and all covered games

approved under this compact shall be operated in accordance with, the requirements set forth in this compact, including, but not limited to, the requirements set forth in subsections (3) and (4) and the Tribe's Internal Control Policies and Procedures. In addition, all facilities and all covered games shall be operated in strict compliance with tribal internal control standards that provide a level of control that equals or exceeds those set forth in the National Indian Gaming Commission's Minimum Internal Control Standards, 25 C.F.R. part 542 (2015), even if the 2015 regulations are determined to be invalid or are subsequently withdrawn by the National Indian Gaming Commission. The Tribe may amend or supplement its internal control standards from time to time, provided that such changes continue to provide a level of control that equals or exceeds those set forth in 25 C.F.R. part 542 (2015).

(3) The Tribe and the commission shall retain all documents in compliance with the requirements set forth in the Tribe's Record Retention Policies and Procedures.

(4) The Tribe shall continue and maintain its program to combat problem gambling and curtail compulsive gambling and work with the Florida Council on Compulsive Gambling or other organizations dedicated to assisting problem gamblers. The Tribe shall continue to maintain the following safeguards against problem gambling:

(a) The Tribe shall provide to every new gaming employee a comprehensive training and education program designed in cooperation with the Florida Council on Compulsive Gambling or other organization dedicated to assisting problem gamblers.

(b) The Tribe shall make printed materials available to

patrons, which include contact information for the Florida Council on Compulsive Gambling 24-hour helpline or other hotline dedicated to assisting problem gamblers, and will work with the Florida Council on Compulsive Gambling or other organization dedicated to assisting problem gamblers to provide contact information for the Florida Council on Compulsive Gambling or other organization dedicated to assisting problem gamblers, and to provide such information on the facility's website. The Tribe shall continue to display within the facilities all literature from the Florida Council on Compulsive Gambling or other organization dedicated to assisting problem gamblers.

(c)1. The commission shall establish a list of patrons voluntarily excluded from the Tribe's facilities, pursuant to subparagraph 3.

2. The Tribe shall employ its best efforts to exclude patrons on such list from entry into its facilities; provided that nothing in this compact shall create for patrons who are excluded but gain access to the facilities, or any other person, a cause of action or claim against the state, the Tribe or the commission, or any other person, entity, or agency for failing to enforce such exclusion.

3. Patrons who believe they may be compulsively playing covered games may request that their names be placed on the list of patrons voluntarily excluded from the Tribe's facilities.

(d) All covered game employees shall receive training on identifying compulsive gamblers and shall be instructed to ask such persons to leave. The facility shall make available signs bearing a toll-free help-line number and educational and informational materials at conspicuous locations and automated

teller machines in each facility, which materials aim at the prevention of problem gaming and which specify where patrons may receive counseling or assistance for gambling problems. All covered games employees shall also be screened by the Tribe for compulsive gambling habits. Nothing in this subsection shall create for patrons, or any other person, a cause of action or claim against the state, the Tribe or the commission, or any other person, entity, or agency for failing to identify a patron or person who is a compulsive gambler or ask that person to leave.

(e) The Tribe shall follow the rules for exclusion of patrons set forth in the Seminole Tribal Gaming Code.

(f) The Tribe shall make diligent efforts to prevent underage individuals from loitering in the area of each facility where the covered games take place.

(g) The Tribe shall ensure that any advertising and marketing of covered games at the facilities contains a responsible gambling message and a toll-free help-line number for problem gamblers, where practical, and that such advertising and marketing make no false or misleading claims.

(5) The state may secure an annual independent audit of the conduct of covered games subject to this compact, as set forth in Part VIII.

(6) The facility shall visibly display summaries of the rules for playing covered games and promotional contests and shall make available complete sets of rules upon request. The Tribe shall provide copies of all such rules to the state compliance agency within 30 calendar days after issuance or amendment.

(7) The Tribe shall provide the commission and state compliance agency with a chart of the supervisory lines of authority with respect to those directly responsible for the conduct of covered games, and shall promptly notify those agencies of any material changes to the chart.

(8) The Tribe shall continue to maintain proactive approaches to prevent improper alcohol sales, drunk driving, underage drinking, and underage gambling. These approaches shall involve intensive staff training, screening and certification, patron education, and the use of security personnel and surveillance equipment in order to enhance patrons' enjoyment of the facilities and provide for patron safety.

(a) Staff training includes specialized employee training in nonviolent crisis intervention, driver license verification, and detection of intoxication.

(b) Patron education shall be carried out through notices transmitted on valet parking stubs, posted signs in the facilities, and in brochures.

(c) Roving and fixed security officers, along with surveillance cameras, shall assist in the detection of intoxicated patrons, investigate problems, and engage with patrons to deescalate volatile situations.

(d) To help prevent alcohol-related crashes, the Tribe will continue to operate the "Safe Ride Home Program," a free taxi service.

(e) The Tribe shall maintain these programs and policies in its Alcohol Beverage Control Act for the duration of the compact but may replace such programs and policies with stricter or more extensive programs and policies. The Tribe shall provide the

state with written notice of any changes to the Tribe's Alcohol Beverage Control Act, which notice shall include a copy of such changes and shall be sent on or before the effective date of the change. Nothing in this subsection shall create for patrons, or any other person, a cause of action or claim against the state, the Tribe or the commission, or any other person, entity, or agency for failing to fulfill the requirements of this subsection.

(9) A person under 21 years of age may not play covered games, unless otherwise permitted by state law.

(10) The Tribe may establish and operate facilities that operate covered games only on its Indian lands as defined by the Indian Gaming Regulatory Act and as specified in Part IV.

(11) The commission shall keep a record of, and shall report at least quarterly to the state compliance agency, the number of covered games in each facility, by the name or type of each game and its identifying number.

(12) The Tribe and the commission shall make available, to any member of the public upon request, within 10 business days, a copy of the National Indian Gaming Commission's Minimum Internal Control Standards, 25 C.F.R. part 542 (2015), the Seminole Tribal Gaming Code, this compact, the rules of each covered game operated by the Tribe, and the administrative procedures for addressing patron tort claims under Part VI.

PART VI

PATRON DISPUTES, WORKERS' COMPENSATION, TORT CLAIMS; PRIZE CLAIMS; LIMITED CONSENT TO SUIT.—

(1) All patron disputes involving gaming shall be resolved in accordance with the procedures established in the Seminole Tribal Gaming Code.

(2) Tort claims by employees of the Tribe's facilities will be handled pursuant to the provisions of the Tribe's Workers' Compensation Ordinance, which shall provide workers the same or better protections as provided in state workers' compensation laws.

(3) Disputes involving employees of the Tribe's facilities will be handled pursuant to the provisions of the Tribe's policy for gaming employees, as set forth in the Employee Fair Treatment and Dispute Resolution Policy.

(4) A patron who claims to have been injured after the effective date of the compact at one of the Tribe's facilities in which covered games are played is required to provide written notice to the Tribe's Risk Management Department or the facility, in a reasonable and timely manner, but no longer than three years after the date of the incident giving rise to the claimed injury, or the claim shall be forever barred.

(5) The Tribe shall have 30 days to respond to a claim made by a patron. If the Tribe fails to respond within 30 days, the patron may file suit against the Tribe. When the Tribe responds to an incident alleged to have caused a patron's injury or illness, the Tribe shall provide a claim form to the patron. The form must include the address for the Tribe's Risk Management Department and provide notice of the Tribe's administrative procedures for addressing patron tort claims, including notice of the relevant deadlines that may bar such claims if the Tribe's administrative procedures are not followed. It is the

patron's responsibility to complete the form and forward the form to the Tribe's Risk Management Department within a reasonable period of time, and in a reasonable and timely manner. Nothing herein shall interfere with any claim a patron might have arising under the Federal Tort Claim Act.

(6) Upon receiving written notification of the claim, the Tribe's Risk Management Department shall forward the notification to the Tribe's insurance carrier. The Tribe shall use its best efforts to ensure that the insurance carrier contacts the patron within a reasonable period of time after receipt of the claim.

(7) The insurance carrier shall handle the claim to conclusion. If the patron, Tribe, and insurance carrier are not able to resolve the claim in good faith within one year after the patron provided written notice to the Tribe's Risk Management Department or the facility, the patron may bring a tort claim against the Tribe in any court of competent jurisdiction in the county in which the incident alleged to have caused injury occurred, as provided in this compact, and subject to a four-year statute of limitations, which shall begin to run from the date of the incident of the injury alleged in the claim. A patron's notice of injury to the Tribe pursuant to subsection (4) and the fulfillment of the good faith attempt at resolution pursuant to this part are conditions precedent to filing suit.

(8) For tort claims of patrons made pursuant to subsection (4), the Tribe agrees to waive its tribal sovereign immunity to the same extent as the state waives its sovereign immunity, as specified in s. 768.28(1) and (5), Florida Statutes, as such

provision may be amended from time to time by the Legislature. In no event shall the Tribe be deemed to have waived its tribal immunity from suit beyond the limits set forth in s. 768.28(5), Florida Statutes. These limitations are intended to include liability for compensatory damages, costs, pre-judgment interest, and attorney fees if otherwise allowable under state law arising out of any claim brought or asserted against the Tribe, its subordinate governmental and economic units, any Tribal officials, employees, servants, or agents in their official capacities and any entity which is owned, directly or indirectly, by the Tribe. All patron tort claims brought pursuant to this provision shall be brought solely against the Tribe, as the sole party in interest.

(9) Notices explaining the procedures and time limitations with respect to making a tort claim shall be prominently displayed in the facilities, posted on the Tribe's website, and provided to any patron for whom the Tribe has notice of the injury or property damage giving rise to the tort claim. Such notices shall explain:

(a) The method and places for making a tort claim, including where the patron must submit the claim.

(b) That the process is the exclusive method for asserting a tort claim arising under this section against the Tribe.

(c) That the Tribe and its insurance carrier have one year from the date the patron gives notice of the claim to resolve the matter, and that after that time, the patron may file suit in a court of competent jurisdiction.

(d) That the exhaustion of the process is a prerequisite to filing a claim in state court.

(e) That claims that fail to follow this process shall be forever barred.

(10) The Tribe shall maintain an insurance policy that shall:

(a) Prohibit the insurer or the Tribe from invoking tribal sovereign immunity for claims up to the limits to which the state has waived sovereign immunity as set forth in s. 768.28(5), Florida Statutes, or its successor statute.

(b) Include covered claims made by a patron or invitee for personal injury or property damage.

(c) Permit the insurer or the Tribe to assert any statutory or common law defense other than sovereign immunity.

(d) Provide that any award or judgment rendered in favor of a patron or invitee shall be satisfied solely from insurance proceeds.

(11) The Tribal Council of the Seminole Tribe of Florida may, in its discretion, consider claims for compensation in excess of the limits of the Tribe's waiver of its sovereign immunity.

PART VII

ENFORCEMENT OF COMPACT PROVISIONS.—

(1) The Tribe, the commission, and the state compliance agency, to the extent authorized by this compact, shall be responsible for regulating activities pursuant to this compact. As part of its responsibilities, the Tribe shall adopt or issue standards designed to ensure that the facilities are constructed, operated, and maintained in a manner that

adequately protects the environment and public health and safety. Additionally, the Tribe and the commission shall ensure that:

(a) Operation of the conduct of covered games is in strict compliance with:

1. The Seminole Tribal Gaming Code.

2. All rules, regulations, procedures, specifications, and standards lawfully adopted by the National Indian Gaming Commission and the commission.

3. The provisions of this compact, including, but not limited to, the Tribe's standards and rules.

(b) Reasonable measures are taken to:

1. Ensure the physical safety of facility patrons, employees, and any other person while in the facility.

2. Prevent illegal activity at the facilities or with regard to the operation of covered games, including, but not limited to, the maintenance of employee procedures and a surveillance system.

3. Ensure prompt notification is given, in accordance with applicable law, to appropriate law enforcement authorities of persons who may be involved in illegal acts.

4. Ensure that the construction and maintenance of the facilities complies with the standards of the Florida Building Code, the provisions of which the Tribe has adopted as the Seminole Tribal Building Code.

5. Ensure adequate emergency access plans have been prepared to ensure the health and safety of all covered game patrons.

(2) All licenses for members and employees of the

commission shall be issued according to the same standards and terms applicable to facility employees. The commission's officers shall be independent of the Tribal gaming operations, and shall be supervised by and accountable only to the commission. A commission officer shall be available to the facility during all hours of operation upon reasonable notice, and shall have immediate access to any and all areas of the facility for the purpose of ensuring compliance with the provisions of this compact. The commission shall investigate any suspected or reported violation of this part and shall officially enter into its files timely written reports of investigations and any action taken thereon, and shall forward copies of such investigative reports to the state compliance agency within 30 calendar days after such filing. The scope of such reporting shall be determined by the commission and the state compliance agency as soon as practicable after the effective date of this compact. Any such violations shall be reported immediately to the commission, and the commission shall immediately forward such reports to the state compliance agency. In addition, the commission shall promptly report to the state compliance agency any such violations which it independently discovers.

(3) In order to develop and foster a positive and effective relationship in the enforcement of the provisions of this compact, representatives of the commission and the state compliance agency shall meet at least annually to review past practices and examine methods to improve the regulatory scheme created by this compact. The meetings shall take place at a location mutually agreed upon by the commission and the state

compliance agency. The state compliance agency, before or during such meetings, shall disclose to the commission any concerns, suspected activities, or pending matters reasonably believed to constitute violations of the compact by any person, organization, or entity, if such disclosure will not compromise the interest sought to be protected.

PART VIII

STATE MONITORING OF COMPACT.—

(1) It is the express intent of the Tribe and the state for the Tribe to regulate its own gaming activities. Notwithstanding, the state shall conduct random inspections as provided for in this part to ensure that the Tribe is operating in accordance with the terms of the compact. The state may secure an annual independent audit of the conduct of covered games subject to this compact and the Tribe shall cooperate with such audit. The audit shall:

(a) Examine the covered games operated by the Tribe to ensure compliance with the Tribe's Internal Control Policies and Procedures and any other standards, policies, or procedures adopted by the Tribe, the commission, or the National Indian Gaming Commission which govern the play of covered games.

(b) Examine revenues in connection with the conduct of covered games and include only those matters necessary to verify the determination of net win and the basis and amount of the payments the Tribe is required to make to the state pursuant to Part XI and as defined by this compact.

(2) A copy of the audit report for the conduct of covered

games shall be submitted to the commission and the state compliance agency within 30 calendar days after completion. Representatives of the state compliance agency may, upon request, meet with the Tribe and its auditors to discuss the audit or any matters in connection therewith; provided that such discussions are limited to covered games information. The annual independent audit shall be performed by an independent firm selected by the state which has experience in auditing casino operations, subject to the consent of the Tribe, which shall not be unreasonably withheld. The Tribe shall pay for the cost of the annual independent audit.

(3) As provided herein, the state compliance agency may monitor the conduct of covered games to ensure that the covered games are conducted in compliance with the provisions of this compact. In order to properly monitor the conduct of covered games, agents of the state compliance agency shall have reasonable access, without prior notice, to all public areas of the facilities related to the conduct of covered games.

(a) The state compliance agency may review whether the Tribe's facilities are in compliance with the provisions of this compact and the Tribe's rules and regulations applicable to covered games and may advise on such issues as it deems appropriate. In the event of a dispute or disagreement between Tribal and state compliance agency regulators, the dispute or disagreement shall be resolved in accordance with the dispute resolution provisions of Part XIII.

(b) In order to fulfill its oversight responsibilities, the state compliance agency may perform on a routine basis specific oversight testing procedures as set forth in paragraph (c).

(c)1. The state compliance agency may inspect any covered games in operation at the facilities on a random basis, provided that such inspections may not exceed one inspection per facility per calendar month and the inspection may not exceed ten hours spread over those two consecutive days, unless the state compliance agency determines that additional inspection hours are needed to address the issues of substantial noncompliance, provided that the state compliance agency provides the Tribe with written notification of the need for additional inspection hours and a written summary of the substantial noncompliance issues that need to be addressed during the additional inspection hours. The total number of hours of random inspections and audit reviews per year may not exceed 1,200 hours. Inspection hours shall be calculated on the basis of the actual amount of time spent by the state compliance agency conducting the inspections at a facility, without accounting for a multiple for the number of state compliance agency inspectors or agents engaged in the inspection activities. The purpose of the random inspections is to confirm that the covered games function properly pursuant to the manufacturer's technical standards and are conducted in compliance with the Tribe's Internal Control Policies and Procedures and any other standards, policies, or procedures adopted by the Tribe, the commission, or the National Indian Gaming Commission which govern the play of covered games. The state compliance agency shall provide notice to the commission of such inspection at or before the commencement of a random inspection and a commission agent may accompany the inspection.

2. For each facility, the state compliance agency may

perform one annual review of the Tribe's slot machine compliance audit.

3. At least annually, the state compliance agency may meet with the Tribe's Internal Audit Department for Gaming to review internal controls and the record of violations for each facility.

(d) The state compliance agency shall cooperate with and obtain the assistance of the commission in the resolution of any conflicts in the management of the facilities, and the state and the Tribe shall make their best efforts to resolve disputes through negotiation whenever possible. Therefore, to foster a spirit of cooperation and efficiency, the state compliance agency and Tribe shall resolve disputes between the state compliance agency staff and commission regulators about the day-to-day regulation of the facilities through meeting and conferring in good faith. Notwithstanding, the parties may seek other relief that may be available when circumstances require such relief. In the event of a dispute or disagreement between tribal and state compliance agency regulators, the dispute or disagreement shall be resolved in accordance with the dispute resolution provisions of Part XIII.

(e) The state compliance agency shall have access to each facility during the facility's operating hours only. No advance notice is required when the state compliance agency inspection is limited to public areas of the facility; however, representatives of the state compliance agency shall provide notice and photographic identification to the commission of their presence before beginning any such inspections.

(f) The state compliance agency agents, to ensure that a

commission officer is available to accompany the state compliance agency agents at all times, shall provide one hour notice and photographic identification to the commission before entering any nonpublic area of a facility. Agents of the state compliance agency shall be accompanied in nonpublic areas of the facility by a commission officer.

(g) Any suspected or claimed violations of this compact or law shall be directed in writing to the commission. The state compliance agency, in conducting the functions assigned them under this compact, shall not unreasonably interfere with the functioning of any facility.

(4) Subject to the provisions herein, the state compliance agency may review and request copies of documents of the facility related to its conduct of covered games during normal business hours unless otherwise allowed by the Tribe. The Tribe may not refuse said inspection and copying of such documents, provided that the inspectors do not require copies of documents in such volume that it unreasonably interferes with the normal functioning of the facilities or covered games. To the extent that the Tribe provides the state with information that the Tribe claims to be confidential and proprietary, or a trade secret, the Tribe shall clearly mark such information with the following designation: "Trade Secret, Confidential, and Proprietary." If the state receives a request under chapter 119 that would include such designated information, the state shall promptly notify the Tribe of such a request and the Tribe shall promptly notify the state about its intent to seek judicial protection from disclosure. Upon such notice from the Tribe, the state may not release the requested information until a judicial

determination is made. This designation and notification procedure does not excuse the state from complying with the requirements of the state's public records law, but is intended to provide the Tribe the opportunity to seek whatever judicial remedy it deems appropriate. Notwithstanding the foregoing procedure, the state compliance agency may provide copies of tribal documents to federal law enforcement and other state agencies or state consultants that the state deems reasonably necessary in order to conduct or complete any investigation of suspected criminal activity in connection with the Tribe's covered games or the operation of the facilities or in order to assure the Tribe's compliance with this compact.

(5) At the completion of any state compliance agency inspection or investigation, the state compliance agency shall forward any written report thereof to the commission, containing all pertinent, nonconfidential, nonproprietary information regarding any violation of applicable laws or this compact which was discovered during the inspection or investigation unless disclosure thereof would adversely impact an investigation of suspected criminal activity. Nothing herein prevents the state compliance agency from contacting tribal or federal law enforcement authorities for suspected criminal wrongdoing involving the commission.

(6) Except as expressly provided in this compact, nothing in this compact shall be deemed to authorize the state to regulate the Tribe's government, including the commission, or to interfere in any way with the Tribe's selection of its governmental officers, including members of the commission.

PART IX

JURISDICTION.—The obligations and rights of the state and the Tribe under this compact are contractual in nature and are to be construed in accordance with the laws of the state. This compact does not alter tribal, federal, or state civil adjudicatory or criminal jurisdiction in any way.

PART X

LICENSING.—The Tribe and the commission shall comply with the licensing and hearing requirements set forth in 25 C.F.R. parts 556 and 558, as well as the applicable licensing and hearing requirements set forth in Articles IV, V, and VI of the Seminole Tribal Gaming Code. The commission shall notify the state compliance agency of any disciplinary hearings or revocation or suspension of licenses.

PART XI

PAYMENTS TO THE STATE OF FLORIDA.—

(1) The parties acknowledge and recognize that this compact provides the Tribe with partial but substantial exclusivity and other valuable consideration consistent with the goals of the Indian Gaming Regulatory Act, including special opportunities for tribal economic development through gaming within the external boundaries of the state with respect to the play of covered games. In consideration thereof, the Tribe covenants and agrees, subject to the conditions agreed upon in Part XII, to

make payments to the state derived from net win as set forth in subsections (2) and (7). The Tribe further agrees that it will not purchase or lease any new Class II video bingo terminals or their equivalents for use at its facilities after the effective date of this compact.

(2) The Tribe shall make periodic revenue share payments to the state derived from net win as set forth in this subsection, and any such payments shall be made to the state via electronic funds transfer. Of the amounts paid by the Tribe to the state, three percent shall be distributed to local governments, including both counties and municipalities, in the state affected by the Tribe's operation of covered games. Revenue share payments by the Tribe to the state shall be calculated as follows:

(a) During the initial payment period, the Tribe agrees to pay the state a revenue share payment in accordance with this subparagraph.

1. 13 percent of all amounts up to $2 billion of net win received by the Tribe from the operation and play of covered games during each revenue sharing cycle;

2. 17.5 percent of all amounts greater than $2 billion up to and including $3.5 billion of net win received by the Tribe from the operation and play of covered games during each revenue sharing cycle;

3. 20 percent of all amounts greater than $3.5 billion up to and including $4 billion of net win received by the Tribe from the operation and play of covered games during each revenue sharing cycle;

4. 22.5 percent of all amounts greater than $4 billion up

to and including $4.5 billion of net win received by the Tribe from the operation and play of covered games during each revenue sharing cycle; or

5. 25 percent of all amounts greater than $4.5 billion of net win received by the Tribe from the operation and play of covered games during each revenue sharing cycle.

(b) During the guarantee payment period, the Tribe agrees to make fixed payments in accordance with this paragraph. In addition, within 90 days after the end of the guarantee payment period, the Tribe shall make an additional payment to the state equal to the amount above $3 billion, if any, that would have been owed by the Tribe to the state had the percentages set forth in paragraph (c) been applicable during the guarantee payment period.

1. A payment of $325 million during the first revenue sharing cycle;

2. A payment of $350 million during the second revenue sharing cycle;

3. A payment of $375 million during the third revenue sharing cycle;

4. A payment of $425 million during the fourth revenue sharing cycle;

5. A payment of $475 million during the fifth revenue sharing cycle;

6. A payment of $500 million during the sixth revenue sharing cycle; and

7. A payment of $550 million during the seventh revenue sharing cycle.

(c) During the regular payment period, the Tribe agrees to

pay a revenue share payment, for each revenue sharing cycle, to the state equal to the amount calculated in accordance with this paragraph.

1. 13 percent of all amounts up to $2 billion of net win received by the Tribe from the operation and play of covered games during each revenue sharing cycle;

2. 17.5 percent of all amounts greater than $2 billion up to and including $3.5 billion of net win received by the Tribe from the operation and play of covered games during each revenue sharing cycle;

3. 20 percent of all amounts greater than $3.5 billion up to and including $4 billion of net win received by the Tribe from the operation and play of covered games during each revenue sharing cycle;

4. 22.5 percent of all amounts greater than $4 billion up to and including $4.5 billion of net win received by the Tribe from the operation and play of covered games during each revenue sharing cycle; or

5. 25 percent of all amounts greater than $4.5 billion of net win received by the Tribe from the operation and play of covered games during each revenue sharing cycle.

(3) The Tribe shall remit monthly payments as follows:

(a) On or before the 15th day of the month following each month of the revenue sharing cycle, the Tribe will remit to the state or its assignee the monthly payment. For purposes of this section, the monthly payment shall be 8.3 percent of the estimated revenue share payment to be paid by the Tribe during such revenue sharing cycle.

(b) The Tribe shall make available to the state at the time

of the monthly payment the basis for the calculation of the payment.

(c) The Tribe shall, on a monthly basis, reconcile the calculation of the estimated revenue share payment based on the Tribe's unaudited financial statements related to covered games.

(4) The Tribe shall have an audit conducted as follows:

(a) On or before the 45th day after the third month, sixth month, ninth month, and twelfth month of each revenue sharing cycle, provided that the 12-month period does not coincide with the Tribe's fiscal year end date as indicated in paragraph (c), the Tribe shall provide the state with an audit report by its independent auditors as to the annual revenue share calculation.

(b) For each quarter within revenue sharing cycle, the Tribe shall engage its independent auditors to conduct a review of the unaudited net revenue from covered games. On or before the 120th day after the end of the Tribe's fiscal year, the Tribe shall require its independent auditors to provide an audit report with respect to net win for covered games and the related payment of the annual revenue share.

(c) If the twelfth month of the revenue sharing cycle does not coincide with the Tribe's fiscal year, the Tribe shall deduct net win from covered games for any of the months outside of the revenue sharing cycle and include net win from covered games for those months outside of the Tribe's audit period but within the revenue sharing cycle, before issuing the audit report.

(d) No later than 30 calendar days after the day the audit report is issued, the Tribe shall remit to the state any underpayment of the annual revenue share, and the state shall

either reimburse to the Tribe any overpayment of the annual revenue share or authorize the overpayment to be deducted from the next successive monthly payment or payments.

(5) If, after any change in state law to affirmatively allow internet or online gaming, or any functionally equivalent remote gaming system that permits a person to play from home or any other location that is remote from a casino or other commercial gaming facility, but excluding any fantasy contest conducted pursuant to s. 546.13, the Tribe's net win from the operation of covered games at all of its facilities combined drops more than five percent below its net win from the previous 12-month period, the Tribe shall no longer be required to make payments to the state based on the guaranteed minimum compact term payment and shall not be required to make the guaranteed minimum compact term payment. However, the Tribe shall continue to make payments based on the percentage revenue share amount. The Tribe shall resume making the guaranteed minimum compact term payment for any subsequent revenue sharing cycle in which its net win rises above the level described in this subsection. This subsection does not apply if:

(a) The decline in net win is due to acts of God, war, terrorism, fires, floods, or accidents causing damage to or destruction of one or more of its facilities or property necessary to operate the facility of facilities; or

(b) The Tribe offers internet or online gaming or any functionally equivalent remote gaming system that permits a person to game from home or any other location that is remote from any of the Tribe's facilities, as authorized by law.

(6) The annual oversight assessment, which shall not exceed

$250,000 per year, indexed for inflation as determined by the Consumer Price Index, shall be determined and paid in quarterly installments within 30 calendar days after receipt by the Tribe of an invoice from the state compliance agency. The Tribe reserves the right to audit the invoices on an annual basis, a copy of which will be provided to the state compliance agency, and any discrepancies found therein shall be reconciled within 45 calendar days after receipt of the audit by the state compliance agency.

(7) The Tribe shall make an annual donation to the Florida Council on Compulsive Gaming as an assignee of the state in an amount not less than $250,000 per facility.

(8) Except as expressly provided in this part, nothing in this compact shall be deemed to require the Tribe to make payments of any kind to the state or any of its agencies.

PART XII

REDUCTION OF TRIBAL PAYMENTS BECAUSE OF LOSS OF EXCLUSIVITY OR OTHER CHANGES IN STATE LAW.—The intent of this compact is to provide the Tribe with the right to operate covered games on an exclusive basis throughout the state, subject to the exceptions and provisions in this part.

(1) For purposes of this part, the terms "Class III gaming" or "other casino-style gaming" include, but are not limited to, slot machines, electronically assisted bingo, electronically assisted pull-tab games, noncard table games, video lottery terminals, or any similar games, whether or not such games are determined through the use of a random number generator. For the

purposes of this part, the terms "Class III gaming" and "other casino-style gaming" do not include fantasy contests conducted pursuant to s. 546.13 or designated player games of poker authorized pursuant to s. 849.086, as those statutes are in effect on January 1, 2019.

(a) If, after January 1, 2019, state law is amended, implemented, or interpreted to allow the operation of Class III gaming or other casino-style gaming at any location under the jurisdiction of the state that was not in operation as of January 1, 2019, or a new form of Class III gaming or other casino-style gaming that was not in operation as of January 1, 2019, and such gaming is offered to the public as a result of the amendment, implementation, or interpretation, the Tribe, no fewer than 30 days after the commencement of such new gaming or 90 days after the state's receipt of written notice from the Tribe pursuant to paragraph (b), whichever occurs later, may elect to begin making the affected portion of its payments due to the state pursuant to subsections (2) and (7) of Part XI, into an escrow account.

(b) In order to exercise the provisions of paragraph (a), the Tribe must first notify the state, within 90 days after such amendment, implementation, or interpretation of state law, of the Tribe's objections to such action or interpretation and further specify the basis for the Tribe's contention that such action or interpretation infringes upon the substantial exclusivity afforded under this compact. As part of its written notice, the Tribe must also indicate, if applicable, its intention to begin making the affected portion of its payments due to the state into an escrow account.

(c) Upon receipt of written notice from the Tribe, the state may elect to:

1. Invoke the dispute resolution provisions of Part XIII to determine whether the Tribe's contention is well-founded. In such proceeding, the Tribe carries the burden of proof and persuasion. The pendency of such proceeding tolls the time periods set forth in paragraph (1)(a) of Part XII for the duration of the dispute or litigation; or

2. Seek through enforcement action, legislation, or other means to stop the conduct of such new games.

(d)1. If, within 15 months following the state's receipt of written notice from the Tribe, the Tribe's contention is deemed not to be well-founded at the conclusion of dispute resolution or new gaming is made illegal and is halted, then all funds being held in the escrow account shall be released to the state and all further payments due to the state pursuant to subsections (2) and (7) of Part XI shall promptly resume.

2. If, after 15 months following the state's receipt of written notice from the Tribe, the Tribe's contention is deemed to be well-founded at the conclusion of dispute resolution and such gaming is not made illegal and halted, then all funds being held in escrow shall be returned to the Tribe and all further payments due to the state pursuant to subsections (2) and (7) of Part XI shall cease or be reduced as provided in subsection (2) until such gaming is no longer operated, in which event the payments shall promptly resume.

(2) The following are exceptions to the exclusivity provisions of subsection (1):

(a) Any Class III gaming authorized by a compact between

the state and any other federally recognized tribe pursuant to Indian Gaming Regulatory Act, provided that the tribe has land in federal trust in the state as of January 1, 2018.

(b) The operation of slot machines, which does not include any game played with tangible playing cards, at each of the four currently operating licensed pari-mutuel facilities in Broward County and the four currently operating licensed pari-mutuel facilities in Miami-Dade County, whether or not currently operating slot machines, provided that such licenses are not transferred or otherwise used to move or operate such slot machines at any other location.

(c)1. If state law is amended to allow for the play of any additional type of Class III or other casino-style gaming at any of the presently operating licensed pari-mutuel facilities in Broward and Miami-Dade Counties, the Tribe may be entitled to a reduction in the revenue sharing payment as described in subparagraph 2.

2. If the Tribe's annual net win from its facilities located in Broward County for the 12 month period after the gaming specified in subparagraph 1. begins to be offered for public or private use is less than the net revenue base, the revenue share payments due to the state, pursuant to paragraph (2)(b) of Part XI, for the next revenue sharing cycle and future revenue sharing cycles shall be calculated by reducing the Tribe's payment on revenue generated from its facilities in Broward County by 50 percent of that reduction in annual net win from its facilities in Broward County. This paragraph does not apply if the decline in net win is due to acts of God, war, terrorism, fires, floods, or accidents causing damage to or

destruction of one or more of its facilities or property necessary to operate the facility or facilities.

3. If the Tribe's annual net win from its facilities located in Broward County subsequently equals or exceeds the net revenue base, then the Tribe's payments due to the state pursuant to paragraph (2)(b) of Part XI shall again be calculated without any reduction, but may be reduced again under the provisions set forth in subparagraph 2.

(d) If state law is amended to allow the play of Class III gaming or other casino-style gaming, as defined in this part, at any location in Miami-Dade County or Broward County under the jurisdiction of the state that is not presently licensed for the play of such games at such locations, other than those facilities set forth in paragraph (c) and this paragraph, and such games were not in play as of January 1, 2018, and such gaming begins to be offered for public or private use, the payments due the state pursuant to subparagraph (c)2., shall be calculated by excluding the net win from the Tribe's facilities in Broward County.

(e) The operation of a combined total of not more than 350 historic racing machines, connected to a central server at that facility, and electronic bingo machines at each pari-mutuel facility licensed as of January 1, 2018, and not located in either Broward County or Miami-Dade County.

(f) The operation of pari-mutuel wagering activities at pari-mutuel facilities licensed by the state.

(g) The operation by the Department of the Lottery of those types of lottery games authorized under chapter 24 as of January 1, 2018, but not including any player-activated or operated

machine or device other than a lottery vending machine or any banked or banking card or table game. However, not more than ten lottery vending machines may be installed at any facility or location and no lottery vending machine that dispenses electronic instant tickets may be installed at any licensed pari-mutuel facility.

(h) The operation of games of poker, including designated player games of poker, as authorized by chapter 849 as of January 1, 2019.

(i) The operation of games permitted by chapters 546 and 849, Florida Statutes, as of January 1, 2019.

(j) The following events shall not trigger any remedy under this compact and do not affect the exclusivity provisions of this compact:

1. Any change to the tax rate paid to the state by the licensed pari-mutuel permitholders for the operation of slot machines, provided the effective tax rate is not less than 25 percent. If the effective tax rate is less than 25 percent, then the Tribe shall be relieved of its obligations to make the guaranteed minimum compact term payment and any further guaranteed revenue sharing cycle payment, but instead shall make payments to the state for all future revenue sharing cycles based on the percentage payments set forth in paragraph (2)(c) of Part XI, but shall be permitted to exclude all revenue generated by slot machines at its facilities in Broward County; and

2. Any change in state law that removes the requirement for pari-mutuel permitholders to conduct performances of live races or games in order to operate other authorized gaming activities.

(3) To the extent that the exclusivity provisions of this part are breached or otherwise violated and the Tribe's ongoing payment obligations to the state pursuant to subsections (2) and (7) of Part XI cease, any outstanding payments that would have been due the state from the Tribe's facilities before the breach or violation shall be made within 30 business days after the breach or violation.

(4) The breach of this part's exclusivity provisions and the cessation of payments pursuant to subsections (2) and (7) of Part XI shall not excuse the Tribe from continuing to comply with all other provisions of this compact, including continuing to pay the state the annual oversight assessment as set forth in subsection (6) of Part XI.

PART XIII

DISPUTE RESOLUTION.—In the event that the Tribe or State believes that the other party has failed to comply with any requirements of this compact, or in the event of any dispute hereunder, including, but not limited to, a dispute over the proper interpretation of the terms and conditions of this compact, the goal of the parties is to resolve all disputes amicably and voluntarily whenever possible. In pursuit of this goal, the following procedures may be invoked:

(1) A party asserting noncompliance or seeking an interpretation of this compact first shall serve written notice on the other party. The notice shall identify the specific compact provision alleged to have been violated or in dispute and shall specify in detail the asserting party's contention and

any factual basis for the claim. Representatives of the Tribe and state shall meet within 30 calendar days after receipt of notice in an effort to resolve the dispute, unless they mutually agree to extend this period.

(2) A party asserting noncompliance or seeking an interpretation of this compact under this part shall be deemed to have certified that to the best of the party's knowledge, information, and belief formed after reasonable inquiry, the claim of noncompliance or the request for interpretation of this compact is warranted and made in good faith and not for any improper purpose, such as to harass or to cause unnecessary delay or the needless incurring of the cost of resolving the dispute.

(3) If the parties are unable to resolve a dispute through the process specified in subsections (1) and (2), either party may call for mediation under the Commercial Mediation Procedures of the American Arbitration Association or any successor procedures, provided that such mediation does not last more than 60 calendar days, unless an extension to this time limit is negotiated by the parties. Only matters arising under the terms of this compact may be available for resolution through mediation. If the parties are unable to resolve a dispute through the process specified in this part, notwithstanding any other provision of law, either party may bring an action in a United States District Court having venue regarding a dispute arising under this compact. If the court declines to exercise jurisdiction, or federal precedent exists that holds that the court would not have jurisdiction over such a dispute, either party may bring the action in the appropriate court of the

Seventeenth Judicial Circuit in Broward County, Florida. The parties are entitled to all rights of appeal permitted by law in the court system in which the action is brought.

(4) For purposes of actions based on disputes between the state and the Tribe that arise under this compact and the enforcement of any judgment resulting from such action, the Tribe and the state each expressly waive the right to assert sovereign immunity from suit and from enforcement of any ensuing judgment, and further consent to be sued in federal or state court, including the right of appeal specified above, as the case may be, provided that:

(a) The dispute is limited solely to issues arising under this compact.

(b) There is no claim for monetary damages, except that payment of any money required by the terms of this compact, as well as injunctive relief or specific performance enforcing a provision of this compact requiring the payment of money to the state may be sought.

(c) Nothing herein shall be construed to constitute a waiver of the sovereign immunity of the Tribe with respect to any third party that is made a party or intervenes as a party to the action. In the event that intervention, joinder, or other participation by any additional party in any action between the state and the Tribe would result in the waiver of the Tribe's sovereign immunity as to that additional party, the waiver of the Tribe may be revoked.

(5) The state may not be precluded from pursuing any mediation or judicial remedy against the Tribe on the grounds that the state has failed to exhaust its Tribal administrative

remedies.

(6) Notwithstanding any other provision of this part, any failure of the Tribe to remit the payments pursuant to the terms of Part XI entitles the state to seek injunctive relief in federal or state court, at the state's election, to compel the payments after the dispute resolution process in subsections (1) and (2) is exhausted.

PART XIV

CONSTRUCTION OF COMPACT; SEVERANCE; FEDERAL APPROVAL.—

(1) Each provision of this compact shall stand separate and independent of every other provision. In the event that a federal district court in Florida or other court of competent jurisdiction shall find any provision of this compact to be invalid, the remaining provisions shall remain in full force and effect, provided that severing the invalidated provision does not undermine the overall intent of the parties in entering into this compact. However, if subsection (6) of Part III, Part XI, or Part XII are held by a court of competent jurisdiction to be invalid, this compact will become null and void.

(2) It is understood that Part XII, which provides for a cessation of the payments to the state under Part XI, does not create any duty on the state but only a remedy for the Tribe if gaming under state jurisdiction is expanded.

(3) This compact is intended to meet the requirements of the Indian Gaming Regulatory Act as it reads on the effective date of this compact, and where reference is made to the Indian Gaming Regulatory Act, or to an implementing regulation thereof,

the reference is deemed to have been incorporated into this document. Subsequent changes to the Indian Gaming Regulatory Act that diminish the rights of the state or Tribe may not be applied retroactively to alter the terms of this compact, except to the extent that federal law validly mandates that retroactive application without the respective consent of the state or the Tribe. In the event that a subsequent change in the Indian Gaming Regulatory Act, or to an implementing regulation thereof, mandates retroactive application without the respective consent of the state or the Tribe, the parties agree that this compact is voidable by either party if the subsequent change materially alters the provisions in the compact relating to the play of covered games, revenue sharing payments, suspension or reduction of payments, or exclusivity.

(4) Neither the presence of language that is not included in this compact, nor the absence in this compact of language that is present in another state-tribal compact shall be a factor in construing the terms of this compact.

(5) The Tribe and the state shall defend the validity of this compact.

(6) The parties shall cooperate in seeking approval of this compact from the Secretary of the Department of the Interior.

PART XV

NOTICES.—All notices required under this compact shall be given by certified mail, return receipt requested, commercial overnight courier service, or personal delivery, to the Governor, the President of the Senate, the Speaker of the House

of Representatives, and the Chairman and General Counsel of the Seminole Tribe of Florida.

PART XVI

EFFECTIVE DATE AND TERM.—

(1) This compact, if identical to the version ratified by the Legislature in s. 285.710(3)(c), Florida Statutes, in 2018, shall become effective upon its approval as a tribal-state compact within the meaning of the Indian Gaming Regulatory Act either by action of the Secretary of the Department of the Interior or by operation of law under 25 U.S.C. s. 2710(d)(8) upon publication of a notice of approval in the Federal Register under 25 U.S.C. s. 2710(d)(8)(D).

(2) This compact shall have a term of twenty years beginning on the first day of the month following the month in which the compact becomes effective under subsection (1).

(3) The Tribe's authorization to offer covered games under this compact shall automatically terminate twenty years after the effective date unless renewed by an affirmative act of the Legislature.

PART XVII

AMENDMENT OF COMPACT AND REFERENCES.—

(1) Amendment of this compact may only be made by written agreement of the parties, subject to approval by the Secretary of the Department of the Interior, either by publication of the notice of approval in the Federal Register or by operation of

law under 25 U.S.C. s. 2710(d)(8).

(2) Legislative ratification is required for any amendment to the compact that alters the provisions relating to covered games, the amount of revenue sharing payments, suspension or reduction in payments, or exclusivity.

(3) Changes in the provisions of tribal ordinances, regulations, and procedures referenced in this compact may be made by the Tribe with 30 days' advance notice to the state. If the state has an objection to any change to the tribal ordinance, regulation, or procedure which is the subject of the notice on the ground that its adoption would be a violation of the Tribe's obligations under this compact, the state may invoke the dispute resolution provisions provided in Part XIII.

PART XVIII

MISCELLANEOUS.—

(1) Except to the extent expressly provided in this compact, this compact is not intended to, and shall not be construed to, create any right on the part of a third party to bring an action to enforce any of its terms.

(2) If, after the effective date of this compact, the state enters into a compact with any other Tribe that contains more favorable terms with respect to the provisions of this Compact and the Secretary of the Department of the Interior approves such compact, either by publication of the notice of approval in the Federal Register or by operation of law under 25 U.S.C. s. 2710(d)(8), upon tribal notice to the state and the Secretary, this compact shall be deemed amended to contain the more

favorable terms, unless the state objects to the change and can demonstrate, in a proceeding commenced under Part XIII, that the terms in question are not more favorable.

(3) Upon the occurrence of certain events beyond the Tribe's control, including acts of God, war, terrorism, fires, floods, or accidents causing damage to or destruction of one or more of its facilities or property necessary to operate the facility or facilities, the Tribe's obligation to pay the guaranteed minimum compact term payment described in Part XI shall be reduced pro rata to reflect the percentage of the total net win lost to the Tribe from the impacted facility or facilities and the net win specified under subsection (2) of Part XII for purposes of determining whether the Tribe's payments described in Part XI shall cease, shall be reduced pro rata to reflect the percentage of the total net win lost to the Tribe from the impacted facility or facilities. The foregoing shall not excuse any obligations of the Tribe to make payments to the state as and when required hereunder or in any related document or agreement.

(4) The Tribe and the state recognize that opportunities to engage in gaming in smoke-free or reduced-smoke environments provides both health and other benefits to patrons, and the Tribe has instituted a nonsmoking section at its Seminole Hard Rock Hotel & Casino-Hollywood Facility. As part of its continuing commitment to this issue, the Tribe shall:

(a) Install and utilize a ventilation system at all new construction at its facilities, which system exhausts tobacco smoke to the extent reasonably feasible under existing state-of-the-art technology.

(b) Designate a smoke-free area for slot machines at all new construction at its facilities.

(c) Install nonsmoking, vented tables for table games installed in its facilities sufficient to reasonably respond to demand for such tables.

(d) Designate a nonsmoking area for gaming within all of its facilities within five years after the effective date of the compact.

(5) The annual average minimum pay-out of all slot machines in each facility may not be less than 85 percent.

(6) Nothing in this compact shall alter any of the existing memoranda of understanding, contracts, or other agreements entered into between the Tribe and any other federal, state, or local governmental entity.

(7) The Tribe currently has, as set forth in its Employee Fair Treatment and Dispute Resolution Policy, and agrees to maintain, standards that are comparable to the standards provided in federal laws and state laws forbidding employers from discrimination in connection with the employment of persons working at the facilities on the basis of race, color, religion, national origin, gender, age, disability, or marital status. Nothing herein shall preclude the Tribe from giving preference in employment, promotion, seniority, lay-offs, or retention to members of the Tribe and other federally recognized tribes.

(8) The Tribe shall, with respect to any facility where covered games are played, adopt and comply with tribal requirements that meet the same minimum state requirements applicable to businesses in the state with respect to environmental and building standards.

PART XIX

EXECUTION.—The Governor of the State of Florida affirms that he has authority to act for the state in this matter and that, provided that this compact is identical to the compact ratified by the Legislature pursuant to s. 285.710(3)(c), Florida Statutes, no further action by the state or any state official is necessary for this compact to take effect upon federal approval by action of the Secretary of the Department of the Interior or by operation of law under 25 U.S.C. s. 2710(d)(8) by publication of the notice of approval in the Federal Register. The Governor affirms that he will proceed with obtaining such federal approval and take all other appropriate action to effectuate the purposes and intent of this Compact. The undersigned Chairman of the Tribal Council of the Seminole Tribe of Florida affirms that he is duly authorized and has the authority to execute this Compact on behalf of the Tribe. The Chairman also affirms that he will assist in obtaining federal approval and take all other appropriate action to effectuate the purposes and intent of this Compact.

Section 2. Subsection (4) of section 285.712, Florida Statutes, is amended to read:

285.712 Tribal-state gaming compacts.—

(4) Upon execution ~~receipt~~ of ~~an act ratifying~~ a tribal-state compact entered pursuant to s. 285.710(3)(b), the Governor shall provide a copy to the Secretary of State who shall forward a copy of the executed compact and the ratifying act to the United States Secretary of the Interior for his or her review

and approval, in accordance with 25 U.S.C. s. 2710(d)(8) ~~2710(8)(d)~~.

Section 3. Section 546.13, Florida Statutes, is created to read:

546.13 Fantasy contests and fantasy contest operators.—

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

(a) "Entry fee" means cash or a cash equivalent that is required to be paid by a participant in order to participate in a fantasy contest.

(b) "Fantasy contest" means a fantasy or simulated game or contest in which:

1. The value of all prizes and awards offered to winning participants is established and made known to the participants in advance of the contest;

2. All winning outcomes reflect the relative knowledge and skill of the participants and are determined predominantly by accumulated statistical results of the performance of individuals, including athletes in the case of sporting events;

3. No winning outcome is based on the score, point spread, or any performance or performances of any single actual team or combination of such teams, solely on any single performance of an individual athlete or player in any single actual event, or on the performances of participants in collegiate, high school, or youth sporting events.

(c) "Fantasy contest operator" means a person or an entity, including any employee or agent, that offers or conducts a fantasy contest with an entry fee for a cash prize or award and that is not a participant in the fantasy contest.

(2) EXEMPTIONS.—The Department of Business and Professional

Regulation may not regulate and the offenses established in s. 849.01, s. 849.08, s. 849.09, s. 849.11, s. 849.14, and s. 849.25 do not include or apply to a fantasy contest operated or conducted by a:

(a) Fantasy contest operator.

(b) Natural person who is a participant in the fantasy contest, serves as the commissioner of not more than 10 fantasy contests in a calendar year, and distributes all entry fees for the fantasy contest as prizes or awards to the participants in that fantasy contest.

Section 4. Subsections (1) and (3) of section 550.01215, Florida Statutes, are amended to read:

550.01215 License application; periods of operation; bond, conversion of permit.—

(1) Each permitholder shall annually, during the period between December 15 and January 4, file in writing with the division its application for an operating ~~a~~ license to conduct pari-mutuel wagering during the next state fiscal year, including intertrack and simulcast race wagering for greyhound racing permitholders, harness horse racing permitholders, and quarter horse racing permitholders that do not ~~to~~ conduct live performances ~~during the next state fiscal year~~. Each application for live performances must ~~shall~~ specify the number, dates, and starting times of all live performances that ~~which~~ the permitholder intends to conduct. It must ~~shall~~ also specify which performances will be conducted as charity or scholarship performances.

(a) ~~In addition,~~ Each application for an operating ~~a~~ license also must ~~shall~~ include:~~,~~

1. For each permitholder, whether the permitholder intends to accept wagers on intertrack or simulcast events.

2. For each permitholder that elects ~~which elects~~ to operate a cardroom, the dates and periods of operation the permitholder intends to operate the cardroom. ~~or,~~

3. For each thoroughbred racing permitholder that ~~which~~ elects to receive or rebroadcast out-of-state races after 7 p.m., the dates for all performances which the permitholder intends to conduct.

(b) A greyhound racing permitholder that conducted a full schedule of live racing for a period of at least 10 consecutive state fiscal years after the 1996-1997 state fiscal year, or that converted its permit to a permit to conduct greyhound racing after the 1996-1997 state fiscal year, may specify in its application for an operating license that it does not intend to conduct live racing, or that it intends to conduct less than a full schedule of live racing, in the next state fiscal year. A greyhound racing permitholder may retain its permit; is a pari-mutuel facility as defined in s. 550.002(23); if such permitholder has been issued a slot machine license, the facility where such permit is located remains an eligible facility as defined in s. 551.102(4), continues to be eligible for a slot machine license, and is exempt from ss. 551.104(3) and (4)(c)1. and 551.114(2) and (4); is eligible, but not required, to be a guest track for purposes of intertrack wagering and simulcasting pursuant to ss. 550.3551, 550.615, and 550.6305; and remains eligible for a cardroom license notwithstanding any requirement in s. 849.086 for the conduct of live performances. A greyhound racing permitholder may receive

an operating license to conduct pari-mutuel wagering activities at another permitholder's greyhound racing facility pursuant to s. 550.475.

(c) A harness horse racing permitholder or a quarter horse racing permitholder that has conducted live racing for at least 5 years irrevocably may elect not to conduct live racing if the election is made within 30 days after the effective date of this act. A permitholder that makes such election may retain its permit; is a pari-mutuel facility as defined in s. 550.002(23); if such permitholder has been issued a slot machine license, the facility where such permit is located remains an eligible facility as defined in s. 551.102(4), continues to be eligible for a slot machine license, and is exempt from ss. 551.104(3) and (4)(c)1. and 551.114(2) and (4); is eligible, but not required, to be a guest track and, if the permitholder is a harness horse racing permitholder, to be a host track for purposes of intertrack wagering and simulcasting pursuant to ss. 550.3551, 550.615, 550.625, and 550.6305; and remains eligible for a cardroom license notwithstanding any requirement in s. 849.086 to conduct live performances.

(d) Permitholders may ~~shall be entitled to~~ amend their applications through February 28.

(3) The division shall issue each license no later than March 15. Each permitholder shall operate all performances at the date and time specified on its license. The division shall have the authority to approve minor changes in racing dates after a license has been issued. The division may approve changes in racing dates after a license has been issued when there is no objection from any operating permitholder located

within 50 miles of the permitholder requesting the changes in operating dates. In the event of an objection, the division shall approve or disapprove the change in operating dates based upon the impact on operating permitholders located within 50 miles of the permitholder requesting the change in operating dates. In making the determination to change racing dates, the division shall take into consideration the impact of such changes on state revenues. Notwithstanding any other provision of law, and for the 2018-2019 fiscal year only, the division may approve changes in racing dates for permitholders if the request for such changes is received before May 31, 2018.

Section 5. Subsections (9), (13), (14), and paragraph (a) of subsection (11) of section 550.054, Florida Statutes, are amended to read:

550.054 Application for permit to conduct pari-mutuel wagering.—

(9)(a) After a permit has been granted by the division and has been ratified and approved by the majority of the electors participating in the election in the county designated in the permit, the division shall grant to the lawful permitholder, subject to the conditions of this chapter, a license to conduct pari-mutuel operations under this chapter, and, except as provided in s. 550.5251, the division shall fix annually the time, place, and number of days during which pari-mutuel operations may be conducted by the permitholder at the location fixed in the permit and ratified in the election. After the first license has been issued to the holder of a ratified permit for racing in any county, all subsequent annual applications for a license by that permitholder must be accompanied by proof, in

such form as the division requires, that the ratified permitholder still possesses all the qualifications prescribed by this chapter and that the permit has not been recalled at a later election held in the county.

(b) The division may revoke or suspend any permit or license issued under this chapter upon a ~~the~~ willful violation by the permitholder or licensee ~~of any provision~~ of chapter 551, chapter 849, or this chapter or rules ~~of any rule~~ adopted pursuant to those chapters. With the exception of the revocation of permits required in paragraphs (c) and (e) ~~under this chapter. In lieu of suspending or revoking a permit or license~~, the division, in lieu of suspending or revoking a permit or license, may impose a civil penalty against the permitholder or licensee for a violation of this chapter or rules adopted pursuant thereto ~~any rule adopted by the division~~. The penalty so imposed may not exceed $1,000 for each count or separate offense. All penalties imposed and collected must be deposited with the Chief Financial Officer to the credit of the General Revenue Fund.

(c)1. The division shall revoke the permit of any permitholder that fails to make payments due pursuant to chapter 550, chapter 551, or s. 849.086 for more than 24 consecutive months unless such failure was the direct result of fire, strike, war, or other disaster or event beyond the permitholder's control. Financial hardship to the permitholder does not, in and of itself, constitute just cause for failure to make payments.

2. The division shall revoke the permit of any permitholder that has not obtained an operating license in accordance with s.

550.01215 for a period of more than 24 consecutive months after June 30, 2012. The division shall revoke the permit upon adequate notice to the permitholder. Financial hardship to the permitholder does not, in and of itself, constitute just cause for failure to operate.

(d) A new permit to conduct pari-mutuel wagering may not be approved or issued after January 1, 2018.

(e) A permit revoked under this subsection is void and may not be reissued.

(11)(a) A permit granted under this chapter may not be transferred or assigned except upon written approval by the division pursuant to s. 550.1815~~, except that the holder of any permit that has been converted to a jai alai permit may lease or build anywhere within the county in which its permit is located~~.

(13)~~(a)~~ Notwithstanding any provisions of this chapter or chapter 551, a pari-mutuel ~~no thoroughbred horse racing~~ permit or license issued under this chapter may not ~~shall~~ be transferred, or reissued when such reissuance is in the nature of a transfer so as to permit or authorize a licensee to change the location of a pari-mutuel facility, or a cardroom or slot machine facility, except through the relocation of the pari-mutuel permit pursuant to s. 550.0555 ~~thoroughbred horse racetrack except upon proof in such form as the division may prescribe that a referendum election has been held:~~

~~1. If the proposed new location is within the same county as the already licensed location, in the county where the licensee desires to conduct the race meeting and that a majority of the electors voting on that question in such election voted in favor of the transfer of such license~~.

~~2. If the proposed new location is not within the same county as the already licensed location, in the county where the licensee desires to conduct the race meeting and in the county where the licensee is already licensed to conduct the race meeting and that a majority of the electors voting on that question in each such election voted in favor of the transfer of such license.~~

~~(b) Each referendum held under the provisions of this subsection shall be held in accordance with the electoral procedures for ratification of permits, as provided in s. 550.0651. The expense of each such referendum shall be borne by the licensee requesting the transfer.~~

(14)~~(a)~~ Notwithstanding any other provision of law, a pari-mutuel permit, cardroom, or slot machine facility may not be relocated, and a pari-mutuel permit may not be converted to another class of permit. ~~Any holder of a permit to conduct jai alai may apply to the division to convert such permit to a permit to conduct greyhound racing in lieu of jai alai if:~~

~~1. Such permit is located in a county in which the division has issued only two pari-mutuel permits pursuant to this section;~~

~~2. Such permit was not previously converted from any other class of permit; and~~

~~3. The holder of the permit has not conducted jai alai games during a period of 10 years immediately preceding his or her application for conversion under this subsection.~~

~~(b) The division, upon application from the holder of a jai alai permit meeting all conditions of this section, shall convert the permit and shall issue to the permitholder a permit~~

~~to conduct greyhound racing. A permitholder of a permit converted under this section shall be required to apply for and conduct a full schedule of live racing each fiscal year to be eligible for any tax credit provided by this chapter. The holder of a permit converted pursuant to this subsection or any holder of a permit to conduct greyhound racing located in a county in which it is the only permit issued pursuant to this section who operates at a leased facility pursuant to s. 550.475 may move the location for which the permit has been issued to another location within a 30-mile radius of the location fixed in the permit issued in that county, provided the move does not cross the county boundary and such location is approved under the zoning regulations of the county or municipality in which the permit is located, and upon such relocation may use the permit for the conduct of pari-mutuel wagering and the operation of a cardroom. The provisions of s. 550.6305(9)(d) and (f) shall apply to any permit converted under this subsection and shall continue to apply to any permit which was previously included under and subject to such provisions before a conversion pursuant to this section occurred.~~

Section 6. Section 550.0745, Florida Statutes, is repealed.

Section 7. Subsection (3) of section 550.09512, Florida Statutes, is amended to read:

550.09512 Harness horse taxes; abandoned interest in a permit for nonpayment of taxes.—

(3)~~(a)~~ The division shall revoke the permit of a harness horse racing permitholder who does not pay tax on handle for live harness horse performances for a full schedule of live races for more than 24 consecutive months ~~during any 2~~

~~consecutive state fiscal years shall be void and shall escheat to and become the property of the state~~ unless such failure to operate and pay tax on handle was the direct result of fire, strike, war, or other disaster or event beyond the ability of the permitholder to control. Financial hardship to the permitholder does ~~shall~~ not, in and of itself, constitute just cause for failure to operate and pay tax on handle. A permit revoked under this subsection is void and may not be reissued.

~~(b) In order to maximize the tax revenues to the state, the division shall reissue an escheated harness horse permit to a qualified applicant pursuant to the provisions of this chapter as for the issuance of an initial permit. However, the provisions of this chapter relating to referendum requirements for a pari-mutuel permit shall not apply to the reissuance of an escheated harness horse permit. As specified in the application and upon approval by the division of an application for the permit, the new permitholder shall be authorized to operate a harness horse facility anywhere in the same county in which the escheated permit was authorized to be operated, notwithstanding the provisions of s. 550.054(2) relating to mileage limitations.~~

Section 8. Subsections (3) and (7) of section 550.09515, Florida Statutes, are amended to read:

550.09515 Thoroughbred horse taxes; abandoned interest in a permit for nonpayment of taxes.—

(3)~~(a)~~ The division shall revoke the permit of a thoroughbred racing ~~horse~~ permitholder that ~~who~~ does not pay tax on handle for live thoroughbred horse performances for a full schedule of live races for more than 24 consecutive months ~~during any 2 consecutive state fiscal years shall be void and~~

~~shall escheat to and become the property of the state~~ unless such failure to operate and pay tax on handle was the direct result of fire, strike, war, or other disaster or event beyond the ability of the permitholder to control. Financial hardship to the permitholder does ~~shall~~ not, in and of itself, constitute just cause for failure to operate and pay tax on handle. A permit revoked under this subsection is void and may not be reissued.

~~(b) In order to maximize the tax revenues to the state, the division shall reissue an escheated thoroughbred horse permit to a qualified applicant pursuant to the provisions of this chapter as for the issuance of an initial permit. However, the provisions of this chapter relating to referendum requirements for a pari-mutuel permit shall not apply to the reissuance of an escheated thoroughbred horse permit. As specified in the application and upon approval by the division of an application for the permit, the new permitholder shall be authorized to operate a thoroughbred horse facility anywhere in the same county in which the escheated permit was authorized to be operated, notwithstanding the provisions of s. 550.054(2) relating to mileage limitations.~~

~~(7) If a thoroughbred permitholder fails to operate all performances on its 2001-2002 license, failure to pay tax on handle for a full schedule of live races for those performances in the 2001-2002 fiscal year does not constitute failure to pay taxes on handle for a full schedule of live races in a fiscal year for the purposes of subsection (3). This subsection may not be construed as forgiving a thoroughbred permitholder from paying taxes on performances conducted at its facility pursuant~~

~~to its 2001-2002 license other than for failure to operate all performances on its 2001-2002 license. This subsection expires July 1, 2003.~~

Section 9. Section 550.3345, Florida Statutes, is amended to read:

550.3345 ~~Conversion of quarter horse permit to a~~ Limited thoroughbred racing permit.—

(1) In recognition of the important and long-standing economic contribution of the thoroughbred horse breeding industry to this state and the state's vested interest in promoting the continued viability of this agricultural activity, the state intends to provide a limited opportunity for the conduct of live thoroughbred horse racing with the net revenues from such racing dedicated to the enhancement of thoroughbred purses and breeders', stallion, and special racing awards under this chapter; the general promotion of the thoroughbred horse breeding industry; and the care in this state of thoroughbred horses retired from racing.

(2) A limited thoroughbred racing permit previously converted from ~~Notwithstanding any other provision of law, the holder of~~ a quarter horse racing permit pursuant to chapter 2010-29, Laws of Florida, ~~issued under s. 550.334~~ may only be held by~~, within 1 year after the effective date of this section, apply to the division for a transfer of the quarter horse racing permit to~~ a not-for-profit corporation formed under state law to serve the purposes of the state as provided in subsection (1). The board of directors of the not-for-profit corporation must be composed ~~comprised~~ of 11 members, 4 of whom shall be designated by the applicant, 4 of whom shall be designated by the Florida

Thoroughbred Breeders' Association, and 3 of whom shall be designated by the other 8 directors, with at least 1 of these 3 members being an authorized representative of another thoroughbred racing permitholder in this state. A limited thoroughbred racing ~~The not-for-profit corporation shall submit an application to the division for review and approval of the transfer in accordance with s. 550.054. Upon approval of the transfer by the division, and notwithstanding any other provision of law to the contrary, the not-for-profit corporation may, within 1 year after its receipt of the permit, request that the division convert the quarter horse racing permit to a permit authorizing the holder to conduct pari-mutuel wagering meets of thoroughbred racing. Neither the transfer of the quarter horse racing permit nor its conversion to a limited thoroughbred permit shall be subject to the mileage limitation or the ratification election as set forth under s. 550.054(2) or s. 550.0651. Upon receipt of the request for such conversion, the division shall timely issue a converted permit. The converted~~ permit and the not-for-profit corporation are ~~shall be~~ subject to the following requirements:

(a) All net revenues derived by the not-for-profit corporation under the thoroughbred ~~horse~~ racing permit, after the funding of operating expenses and capital improvements, shall be dedicated to the enhancement of thoroughbred purses and breeders', stallion, and special racing awards under this chapter; the general promotion of the thoroughbred horse breeding industry; and the care in this state of thoroughbred horses retired from racing.

(b) From December 1 through April 30, ~~no~~ live thoroughbred

racing may not be conducted under the permit on any day during which another thoroughbred racing permitholder is conducting live thoroughbred racing within 125 air miles of the not-for-profit corporation's pari-mutuel facility unless the other thoroughbred racing permitholder gives its written consent.

(c) After ~~the conversion of the quarter horse racing permit and the~~ issuance of its initial license to conduct pari-mutuel wagering meets of thoroughbred racing, the not-for-profit corporation shall annually apply to the division for a license pursuant to s. 550.5251.

(d) Racing under the permit may take place only at the location for which the original quarter horse racing permit was issued, which may be leased by the not-for-profit corporation for that purpose~~; however, the not-for-profit corporation may, without the conduct of any ratification election pursuant to s. 550.054(13) or s. 550.0651, move the location of the permit to another location in the same county provided that such relocation is approved under the zoning and land use regulations of the applicable county or municipality~~.

(e) A limited thoroughbred racing ~~No~~ permit may not be transferred ~~converted under this section is eligible for transfer~~ to another person or entity.

(3) Unless otherwise provided in this section, ~~after conversion,~~ the permit and the not-for-profit corporation shall be treated under the laws of this state as a thoroughbred racing permit and as a thoroughbred racing permitholder, respectively, with the exception of ss. 550.054(9)(c) and 550.09515(3) ~~s. 550.09515(3)~~.

Section 10. Paragraph (c) of subsection (4) of section

551.104, Florida Statutes, is amended to read:

551.104 License to conduct slot machine gaming.—

(4) As a condition of licensure and to maintain continued authority for the conduct of slot machine gaming, a ~~the~~ slot machine licensee shall:

(c)1. Conduct no less ~~fewer~~ than a full schedule of live racing or games as defined in s. 550.002(11), unless conducting less than a full schedule of live racing or games pursuant to s. 550.01215(1)(b) or (c). A permitholder's responsibility to conduct a full schedule ~~such number~~ of live races or games, as defined in s. 550.002(11), shall be reduced by the number of races or games that could not be conducted due to the direct result of fire, war, hurricane, or other disaster or event beyond the control of the permitholder. A permitholder may conduct live races or games at another pari-mutuel facility pursuant to s. 550.475 if such permitholder has operated its live races or games by lease for at least 5 consecutive years immediately prior to the permitholder's application for a slot machine license.

2.a. If not licensed to conduct a full schedule of live racing or games, as defined in s. 550.002(11), pursuant to s. 550.01215(1)(b) or (c), remit each month to each qualified thoroughbred permitholder, by electronic funds transfer, an amount equal to one-twelfth of the lesser of $1.5 million or 2.75 percent of its slot machine revenues from the previous state fiscal year, divided by the total number of qualified thoroughbred permitholders for the applicable state fiscal year. Qualified thoroughbred permitholders shall use such payments exclusively for purses and awards for live thoroughbred horse

races held at the qualified thoroughbred permitholder's racing facility. For the purposes of this subparagraph, the term "qualified thoroughbred permitholder" means a thoroughbred permitholder conducting, in the applicable state fiscal year, no less than a full schedule of live racing or games, as defined in s. 550.002(11), and no fewer live thoroughbred horse racing performances than such permitholder conducted in state fiscal year 2017-2018. The term does not include a permitholder whose permit was issued pursuant to s. 550.3345 or a permitholder leasing at another thoroughbred permitholder's facility pursuant to s. 550.475.

b. The division shall notify each slot machine licensee required to remit such payments, not later than 15 days after issuing the slot machine license, of the qualified thoroughbred permitholders to which such payments must be paid. Each qualified thoroughbred permitholder shall provide each slot machine licensee required to remit payments pursuant to this subparagraph with written instructions for transmitting such electronic payments. Such payments shall be remitted to each qualified thoroughbred permitholder on the fifth day of each calendar month. If the fifth day of the calendar month falls on a weekend, such payment shall be remitted on the first Monday following the weekend.

c. A qualified thoroughbred permitholder receiving funds under this subparagraph shall remit, within 10 days after receipt, 10 percent of those funds to the Florida Thoroughbred Breeders' Association, Inc., for the payment of breeders', stallion, and special racing awards, subject to the fee authorized in s. 550.2625(3).

Section 11. Subsections (1), (2), and (4) of section 551.106, Florida Statutes, are amended to read:

551.106 License fee; tax rate; penalties.—

(1) LICENSE FEE.—

~~(a)~~ Upon submission of the initial application for a slot machine license, and annually thereafter~~,~~ on the anniversary date of the issuance of the initial license, the licensee must pay to the division a nonrefundable license fee of ~~$3 million for the succeeding 12 months of licensure. In the 2010-2011 fiscal year, the licensee must pay the division a nonrefundable license fee of $2.5 million for the succeeding 12 months of licensure. In the 2011-2012 fiscal year and for every fiscal year thereafter, the licensee must pay the division a nonrefundable license fee of~~ $2 million for the succeeding 12 months of licensure. The license fee must ~~shall~~ be deposited into the Pari-mutuel Wagering Trust Fund of the Department of Business and Professional Regulation to be used by the division and the Department of Law Enforcement for investigations, regulation of slot machine gaming, and enforcement of slot machine gaming provisions under this chapter. These payments must ~~shall~~ be accounted for separately from taxes or fees paid pursuant to ~~the provisions of~~ chapter 550.

~~(b) Prior to January 1, 2007, the division shall evaluate the license fee and shall make recommendations to the President of the Senate and the Speaker of the House of Representatives regarding the optimum level of slot machine license fees in order to adequately support the slot machine regulatory program.~~

(2) TAX ON SLOT MACHINE REVENUES.—

(a) 1. The tax rate on slot machine revenues at each facility is ~~shall be~~ 35 percent. Effective January 1, 2019, the tax rate on slot machine revenues at each facility is 30 percent. Effective July 1, 2020, the tax rate on slot machine revenues at each facility is 25 percent.

2.a. If, during any state fiscal year, the aggregate amount of tax paid to the state by ~~all~~ slot machine licensees in Broward and Miami-Dade Counties is less than the aggregate amount of tax paid to the state by ~~all slot machine~~ licensees in those counties in the 2017-2018 ~~2008-2009~~ fiscal year, each slot machine licensee shall pay to the state within 45 days after the end of the state fiscal year a surcharge ~~equal to its pro rata share of an amount equal to the difference between the aggregate amount of tax paid to the state by all slot machine licensees in the 2008-2009 fiscal year and the amount of tax paid during the fiscal year~~.

b. The amount of the surcharge to be paid by each such licensee must be calculated by dividing the aggregate amount of slot machine taxes paid to the state by all such slot machine licensees in the 2017-2018 fiscal year by the aggregate amount of slot machine taxes paid by all such licensees during the applicable state fiscal year, multiplying the result by the amount of slot machine taxes paid by the licensee during the applicable state fiscal year, and then subtracting from that product the amount of slot machine taxes paid by the licensee during the applicable state fiscal year. However, the sum of the taxes paid by a licensee pursuant to subparagraph 1. and any surcharge due from the licensee may not exceed 35 percent of the slot machine revenue of that licensee in the applicable state fiscal year ~~Each licensee's pro rata share shall be an amount~~

~~determined by dividing the number 1 by the number of facilities licensed to operate slot machines during the applicable fiscal year, regardless of whether the facility is operating such machines~~.

(b) The slot machine revenue tax imposed by this section must ~~shall~~ be paid to the division for deposit into the Pari-mutuel Wagering Trust Fund for immediate transfer by the Chief Financial Officer for deposit into the Educational Enhancement Trust Fund of the Department of Education. Any interest earnings on the tax revenues must ~~shall~~ also be transferred to the Educational Enhancement Trust Fund.

(c)1. Funds transferred to the Educational Enhancement Trust Fund under paragraph (b) must ~~shall~~ be used to supplement public education funding statewide.

2. If necessary to comply with any covenant established pursuant to s. 1013.68(4), s. 1013.70(1), or s. 1013.737(3), funds transferred to the Educational Enhancement Trust Fund under paragraph (b) must ~~shall~~ first be available to pay debt service on lottery bonds issued to fund school construction in the event lottery revenues are insufficient for such purpose or to satisfy debt service reserve requirements established in connection with lottery bonds. Moneys available pursuant to this subparagraph are subject to annual appropriation by the Legislature.

(4) TO PAY TAX; PENALTIES.—A slot machine licensee who fails to make tax and any applicable surcharge payments as required under this section is subject to an administrative penalty of up to $10,000 for each day the tax payment is not remitted. All administrative penalties imposed and collected

must ~~shall~~ be deposited into the Pari-mutuel Wagering Trust Fund of the Department of Business and Professional Regulation. If any slot machine licensee fails to pay penalties imposed by order of the division under this subsection, the division may deny, suspend, revoke, or refuse to renew the license of the permitholder or slot machine licensee.

Section 12. Present subsections (9) through (17) of section 849.086, Florida Statutes, are redesignated as subsections (10) through (18), respectively, a new subsection (9) is added to that section, subsections (1) and (2) of that section are amended, paragraph (g) is added to subsection (4) of that section, and paragraph (b) of subsection (5), paragraph (c) of subsection (7), paragraph (a) of subsection (8), present subsection (12), and paragraphs (d) and (h) of present subsection (13) are amended, to read:

849.086 Cardrooms authorized.—

(1) LEGISLATIVE INTENT.—It is the intent of the Legislature to provide additional entertainment choices for the residents of and visitors to the state, promote tourism in the state, provide revenues to support the continuation of live pari-mutuel activity, and provide additional state revenues through the authorization of the playing of certain games in the state at facilities known as cardrooms which are to be located at licensed pari-mutuel facilities. To ensure the public confidence in the integrity of authorized cardroom operations, this act is designed to strictly regulate the facilities, persons, and procedures related to cardroom operations. Furthermore, the Legislature finds that authorized games of poker and dominoes ~~as herein defined~~ are considered to be pari-mutuel style games and

not casino gaming because the participants play against each other instead of against the house.

(2) DEFINITIONS.—As used in this section:

(a) "Authorized game" means a game or series of games of poker, including designated player games, played in conformance with this section and in a manner consistent with the rules and requirements specified in the 1974 edition of Hoyle's Modern Encyclopedia of Card Games: Rules of All the Basic Games and Popular Variations and including three card poker, or dominoes played in conformance with this section ~~or dominoes which are played in a nonbanking manner~~.

(b) "Banking game" means a game in which the house is a participant in the game, taking on players, paying winners, and collecting from losers ~~or in which the cardroom establishes a bank against which participants play~~. A designated player game is not a banking game.

(c) "Cardroom" means a facility where authorized games are played for money or anything of value and to which the public is invited to participate in such games and charged a fee for participation by the operator of such facility. Authorized games and cardrooms do not constitute casino gaming operations if conducted at an eligible facility.

(d) "Cardroom management company" means any individual not an employee of the cardroom operator, any proprietorship, partnership, corporation, or other entity that enters into an agreement with a cardroom operator to manage, operate, or otherwise control the daily operation of a cardroom.

(e) "Cardroom distributor" means any business that distributes cardroom paraphernalia such as card tables, betting

chips, chip holders, dominoes, dominoes tables, drop boxes, banking supplies, playing cards, card shufflers, and other associated equipment to authorized cardrooms.

(f) "Cardroom operator" means a licensed pari-mutuel permitholder that ~~which~~ holds a valid permit and license issued by the division pursuant to chapter 550 and which also holds a valid cardroom license issued by the division pursuant to this section which authorizes such person to operate a cardroom and to conduct authorized games in such cardroom.

(g) "Designated player" means the player identified for each game by a button that rotates clockwise before each hand begins as the player in the dealer position and seated at a traditional player position in a designated player game who pays winning players and collects from losing players.

(h) "Designated player game" means a game in which the players compare their cards only to the cards of the designated player or to a combination of cards held by the designated player and cards common and available for play by all players.

(i) ~~(g)~~ "Division" means the Division of Pari-mutuel Wagering of the Department of Business and Professional Regulation.

(j) ~~(h)~~ "Dominoes" means a game of dominoes typically played with a set of 28 flat rectangular blocks, called "bones," which are marked on one side and divided into two equal parts, with zero to six dots, called "pips," in each part. The term also includes larger sets of blocks that contain a correspondingly higher number of pips. The term also means the set of blocks used to play the game.

(k) ~~(i)~~ "Gross receipts" means the total amount of money

received by a cardroom from any person for participation in authorized games.

(l) ~~(j)~~ "House" means the cardroom operator and all employees of the cardroom operator.

(m) ~~(k)~~ "Net proceeds" means the total amount of gross receipts received by a cardroom operator from cardroom operations less direct operating expenses related to cardroom operations, including labor costs, admission taxes only if a separate admission fee is charged for entry to the cardroom facility, gross receipts taxes imposed on cardroom operators by this section, the annual cardroom license fees imposed by this section on each table operated at a cardroom, and reasonable promotional costs excluding officer and director compensation, interest on capital debt, legal fees, real estate taxes, bad debts, contributions or donations, or overhead and depreciation expenses not directly related to the operation of the cardrooms.

(n) ~~(l)~~ "Rake" means a set fee or percentage of the pot assessed by a cardroom operator for providing the services of a dealer, table, or location for playing the authorized game.

(o) ~~(m)~~ "Tournament" means a series of games that have more than one betting round involving one or more tables and where the winners or others receive a prize or cash award.

(4) AUTHORITY OF DIVISION.—The Division of Pari-mutuel Wagering of the Department of Business and Professional Regulation shall administer this section and regulate the operation of cardrooms under this section and the rules adopted pursuant thereto, and is hereby authorized to:

(g) Establish a reasonable period to respond to requests from a licensed cardroom; provided however, the division has a

maximum of 45 days to approve:

1. A cardroom's internal controls or provide the cardroom with a list of deficiencies as to the internal controls.

2. Rules for a new authorized game submitted by a licensed cardroom or provide the cardroom with a list of deficiencies as to those rules.

No later than 10 days after the submission of revised internal controls or revised rules addressing the deficiencies identified by the division, the division must review and approve or reject the revised internal controls or revised rules.

(5) LICENSE REQUIRED; APPLICATION; FEES.—No person may operate a cardroom in this state unless such person holds a valid cardroom license issued pursuant to this section.

(b) After the initial cardroom license is granted, the application for the annual license renewal shall be made in conjunction with the applicant's annual application for its pari-mutuel license. If a permitholder has operated a cardroom during any of the 3 previous fiscal years and fails to include a renewal request for the operation of the cardroom in its annual application for license renewal, the permitholder may amend its annual application to include operation of the cardroom. ~~In order for a cardroom license to be renewed the applicant must have requested, as part of its pari-mutuel annual license application, to conduct at least 90 percent of the total number of live performances conducted by such permitholder during either the state fiscal year in which its initial cardroom license was issued or the state fiscal year immediately prior thereto if the permitholder ran at least a full schedule of live~~

~~racing or games in the prior year. If the application is for a harness permitholder cardroom, the applicant must have requested authorization to conduct a minimum of 140 live performances during the state fiscal year immediately prior thereto.~~ If more than one permitholder is operating at a facility, each permitholder must have applied for a license to conduct a full schedule of live racing.

(7) CONDITIONS FOR OPERATING A CARDROOM.—

(c) A cardroom operator must at all times employ and provide a nonplaying live dealer at ~~for~~ each table on which authorized ~~card~~ games ~~which traditionally use a dealer~~ are conducted ~~at the cardroom~~. Such dealers may not have a participatory interest in any game other than the dealing of cards and may not have an interest in the outcome of the game. The providing of such dealers by a licensee does not constitute the conducting of a banking game by the cardroom operator.

(8) METHOD OF WAGERS; LIMITATION.—

(a) ~~No~~ Wagering may not be conducted using money or other negotiable currency. Games may only be played utilizing a wagering system whereby all players' money is first converted by the house to tokens or chips that may ~~which shall~~ be used for wagering only at that specific cardroom.

(9) DESIGNATED PLAYER GAMES AUTHORIZED.—

(a) A cardroom operator may offer designated player games consisting of players making wagers against the designated player. However, not more than 50 percent of the total licensed tables in a cardroom may offer designated player games. The designated player must be licensed pursuant to paragraph (6)(b). Employees of a designated player also must be licensed, and the

designated player shall pay, in addition to the business occupational fee established pursuant to paragraph (6)(i), an employee occupational license fee that may not exceed $500 per employee for any 12-month period.

(b) A cardroom operator may not serve as a designated player in any game. The cardroom operator may not have a financial interest in a designated player in any game. A cardroom operator may collect a rake in accordance with the rake structure posted at the table.

(c) If there are multiple designated players at a table, the dealer button shall be rotated in a clockwise rotation after each hand.

(d) A cardroom operator may not allow a designated player to pay an opposing player who holds a lower-ranked hand.

(e) A designated player may not be required by the rules of a game or by the rules of a cardroom to cover more than 10 times the maximum wager for players participating in any one game.

(f) The cardroom, or any cardroom licensee, may not contract with, or receive compensation other than a posted table rake from, any player to participate in any game to serve as a designated player.

(13)~~(12)~~ PROHIBITED ACTIVITIES.—

(a) A ~~No~~ person licensed to operate a cardroom may not conduct any banking game or any game not specifically authorized by this section.

(b) A ~~No~~ person who is younger than ~~under~~ 18 years of age may not be permitted to hold a cardroom or employee license~~,~~ or to engage in any game conducted therein.

(c) With the exception of mechanical card shufflers, ~~No~~

electronic or mechanical devices~~, except mechanical card shufflers,~~ may not be used to conduct any authorized game in a cardroom.

(d) ~~No~~ Cards, game components, or game implements may not be used in playing an authorized game unless they have ~~such has~~ been furnished or provided to the players by the cardroom operator.

(14)~~(13)~~ TAXES AND OTHER PAYMENTS.—

(d)1. Each ~~greyhound and jai alai~~ permitholder that operates a cardroom facility shall use at least 4 percent of such permitholder's cardroom monthly gross receipts to supplement ~~greyhound~~ purses and awards or jai alai prize money, respectively, during the permitholder's next ensuing pari-mutuel meet.

2.a. Any permitholder with a cardroom license and conducting less than a full schedule of live racing or games, as defined in s. 550.002(11), pursuant to s. 550.01215(1)(b) or (c) shall remit each month to each qualified thoroughbred permitholder, by electronic funds transfer, an amount equal to 4 percent of its monthly cardroom gross receipts divided by the total number of qualified thoroughbred permitholders for a license year. Qualified thoroughbred permitholders shall use such payments exclusively for purses and awards for live thoroughbred horse races held at the qualified thoroughbred permitholder's racing facility. For the purposes of this subparagraph, the term "qualified thoroughbred permitholder" means a thoroughbred permitholder conducting, in the applicable state fiscal year, no less than a full schedule of live racing or games, as defined in s. 550.002(11), and no fewer live

thoroughbred horse racing performances than such permitholder conducted in state fiscal year 2017-2018. The term does not include a permitholder whose permit was issued pursuant to s. 550.3345 or a permitholder leasing at another thoroughbred permitholder's facility pursuant to s. 550.475.

b. The division shall notify each cardroom licensee required to remit such payments, not later than 15 days after issuing the cardroom license, of the qualified thoroughbred permitholders to which such payments must be paid. Each qualified thoroughbred permitholder shall provide each cardroom licensee required to remit payments pursuant to this subparagraph with written instructions for transmitting such electronic payments. Such payments shall be remitted to each qualified thoroughbred permitholder on the fifth day of each calendar month and shall be based upon the preceding month's cardroom activities. If the fifth day of the calendar month falls on a weekend, such payment shall be remitted on the first Monday following the weekend.

c. A qualified thoroughbred permitholder receiving funds under this subparagraph shall remit, within 10 days after receipt, 10 percent of those funds to the Florida Thoroughbred Breeders' Association, Inc., for the payment of breeders', stallion, and special racing awards, subject to the fee authorized in s. 550.2625(3).

3. Each thoroughbred and harness horse racing permitholder that operates a cardroom facility shall use at least 50 percent of such permitholder's cardroom monthly net proceeds as follows: 47 percent to supplement purses and 3 percent to supplement breeders' awards during the permitholder's next ensuing racing

meet.

~~3. No cardroom license or renewal thereof shall be issued to an applicant holding a permit under chapter 550 to conduct pari-mutuel wagering meets of quarter horse racing unless the applicant has on file with the division a binding written agreement between the applicant and the Florida Quarter Horse Racing Association or the association representing a majority of the horse owners and trainers at the applicant's eligible facility, governing the payment of purses on live quarter horse races conducted at the licensee's pari-mutuel facility. The agreement governing purses may direct the payment of such purses from revenues generated by any wagering or gaming the applicant is authorized to conduct under Florida law. All purses shall be subject to the terms of chapter 550.~~

(h) One-quarter of the moneys deposited into the Pari-mutuel Wagering Trust Fund pursuant to paragraph (g) shall, by October 1 of each year, be distributed to the local government that approved the cardroom under subsection (17) ~~(16)~~; however, if two or more pari-mutuel racetracks are located within the same incorporated municipality, the cardroom funds shall be distributed to the municipality. If a pari-mutuel facility is situated in such a manner that it is located in more than one county, the site of the cardroom facility shall determine the location for purposes of disbursement of tax revenues under this paragraph. The division shall, by September 1 of each year, determine: the amount of taxes deposited into the Pari-mutuel Wagering Trust Fund pursuant to this section from each cardroom licensee; the location by county of each cardroom; whether the cardroom is located in the unincorporated area of the county or

within an incorporated municipality; and, the total amount to be distributed to each eligible county and municipality.

Section 13. Subsection (1) of section 849.16, Florida Statutes, is amended to read:

849.16 Machines or devices which come within provisions of law defined.—

(1) As used in this chapter, the term "slot machine or device" means any machine or device or system or network of devices that is adapted for use in such a way that, upon activation, which may be achieved by, but is not limited to, the insertion of any piece of money, coin, account number, code, or other object or information, such device or system is directly or indirectly caused to operate or may be operated and if the user, whether by application of skill or by reason of any element of chance or any other outcome unpredictable by the user, regardless of whether the machine or device or system or networks of devices includes a preview of the outcome or whether the outcome is known, displayed, or capable of being known or displayed to the user, may:

(a) Receive or become entitled to receive any piece of money, credit, allowance, or thing of value; ~~, or~~ any check, slug, token, or memorandum, whether of value or otherwise, which may be exchanged for any money, credit, allowance, or thing of value or which may be given in trade; or the opportunity to purchase a subsequently displayed outcome that may have a monetary value, regardless of whether such value is equal to, greater than, or less than the cost of purchasing such outcome; or

(b) Secure additional chances or rights to use such

machine, apparatus, or device, even though the device or system may be available for free play or, in addition to any element of chance or unpredictable outcome of such operation, may also sell, deliver, or present some merchandise, indication of weight, entertainment, or other thing of value. The term "slot machine or device" includes, but is not limited to, devices regulated as slot machines pursuant to chapter 551.

Section 14. The Division of Law Revision and Information is directed to replace the phrase "the effective date of this act" wherever it appears in this act with the date this act becomes a law.

Section 15. This act shall take effect upon becoming a law.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 840
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Finance and Tax) and Senator Hutson
SUBJECT:	Gaming
DATE:	March 5, 2018
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kraemer	McSwain	RI	**Favorable**
2.	Fournier	Diez-Arguelles	AFT	**Recommend: Fav/CS**
3.	Fournier	Hansen	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 840 revises Florida law concerning gaming. The bill:

- Authorizes the execution of a new gaming compact between the State of Florida (state) and the Seminole Tribe of Florida (Seminole Tribe), which:
  - Authorizes the Seminole Tribe to continue to conduct slot machine gaming at its seven gaming facilities;
  - Permits the Seminole Tribe to offer live table games, such as craps and roulette, at its seven gaming facilities;
  - Authorizes banked card games, including blackjack, chemin de fer, and baccarat, at all seven facilities ;
  - Is for a term of 22 years, through June 30, 2040; and
  - Includes a $3 billion guarantee of revenue sharing payments to the State for the first seven-years (Guarantee Period), with specific payment amounts (Guaranteed Payments) during each year of the Guarantee Period. After the Guarantee Period, payments will be based on varying percentage rates that depend on the amount of the Seminole Tribe's net win (Revenue Share Payments);
  - Provides exceptions to the Tribe's exclusive rights to allow:
    - The authorization of fantasy contests;
    - Licensing of slot machine facilities in counties that conduct referenda, between January 1, 2012 and September 1, 2018.
    - The play of Designated Player Games in cardrooms in the state;

    - Certain pari-mutuel permitholders to end live racing or games.
- Authorizes certain fantasy contests in which participants pay an entry fee, fantasy contest operators and their employees and agents may not be participants in a fantasy contest, prizes and awards must be established and disclosed before a contest and be unrelated to the number of participants in the contest, winning outcomes must reflect knowledge and skill of participants and be determined predominantly by statistical results of performances of individuals, including athletes in sporting events, winning outcomes may not be based on performances in collegiate, high school, or youth sporting events, and casino themes such as slot machine symbol and cards may not be used.
- Provides that the Department of Business and Professional Regulation (DBPR) may not regulate fantasy contests and certain gambling laws set forth in Ch. 849, F.S., do not apply to a fantasy contest conducted by a fantasy contest operator or a commissioner who participates in fewer than ten contests each calendar year and distributes all contest entry fees as prizes.
- Allows, subject to eligibility requirements, greyhound racing permitholders, jai alai permitholders, harness horse racing permitholders, and quarter horse racing permitholders to stop conducting live performances but continue operating slot machine facilities or cardrooms (decoupling).
- Revises the operating requirements for limited thoroughbred horse wagering facilities and limited intertrack wagering.
- Requires permitholders licensed to conduct slot machine gaming or cardrooms that choose to discontinue live racing or games, (i.e., decouple), to make annual payments for the benefit of live thoroughbred horse racing purses.
- Eliminates dormant pari-mutuel permits and repeals authorization for the issuance of summer jai alai permits.
- Authorizes licensing of new slot machine facilities, under certain conditions, in counties that approve slot machine gaming in a referendum between January 1, 2012 and September 1, 2018.
- Reduces the tax rate on slot machines from 35 percent to 30 percent effective January 1, 2019, and to 25 percent effective July 1, 2020.
- Provides that if, in any state fiscal year, the aggregate amount of tax paid to the state by all the slot machine licensees in Broward and Miami-Dade counties is less than the aggregate amount paid in the 2017-2018 state fiscal year, each of those licensees must pay a surcharge to alleviate the shortfall.
- Requires all slot machine licensees located in a county that conducted a successful referendum to authorize slot machine gaming to pay slot machine taxes and license fees to the state of not less than $10 million in Fiscal Year 2018-2019, and not less than $20 million in each subsequent fiscal year.
- Allows slot machine facilities and cardrooms to operate 24 hours a day.
- Provides that a Designated Player Game is not a banking game and sets certain requirements and limitations for a Designated Player Game.
- Limits the number of Designated Player Game tables in a cardroom to not more than 50 percent of the cardroom's total licensed tables.
- Grants additional rulemaking authority to the DBPR's Division of Pari-Mutuel Wagering (division) relating to requests from licensed cardrooms and imposes deadlines for response by the division to submissions by cardroom licensees relating to rules for new authorized games, revisions to internal controls, and revisions to rules for games.

- Amends the definition of "slot machine or device" to include machines or devices that provide a preview of the outcome of the game (i.e., pre-reveal games).

If the new compact is agreed to by the Seminole Tribe and approved by the United States Secretary of the Interior, the payments made by the Seminole Tribe to the state will increase both during the Guarantee Period (Fiscal Years 2018-2019 through 2024-2025) and thereafter, compared to the payments the Seminole Tribe would be required to pay to the state under the 2010 Gaming Compact.

If the new gaming compact does not become effective, and any provisions of CS/SB 840 are determined to violate the 2010 Gaming Compact, the Seminole Tribe choose to cease making payments to the state. The payments are estimated to be $391.1 million in Fiscal Year 2018-2019, and from $328.2 to $361.4 million annually in the following seven years.

The bill will also result in the loss of $4.1 million on a recurring basis in slot machine revenue. See Section V., Fiscal Impact Statement.

The bill takes effect upon becoming a law.

II. Present Situation:

Background

In general, gambling is illegal in Florida.[1] Chapter 849, F.S., prohibits keeping a gambling house,[2] running a lottery,[3] or the manufacture, sale, lease, play, or possession of slot machines.[4] However, the following gaming activities are authorized by law and regulated by the state:

- Pari-mutuel[5] wagering at licensed greyhound and horse tracks and jai alai frontons;[6]
- Slot machine gaming at certain licensed pari-mutuel locations in Miami-Dade County and Broward County;[7] and
- Cardrooms[8] at certain pari-mutuel facilities.[9]

[1] *See* s. 849.08, F.S.
[2] *See* s. 849.01, F.S.
[3] *See* s. 849.09, F.S.
[4] Section 849.16, F.S., defines slot machines for purposes of ch. 849, F.S. Section 849.15(2), F.S., provides an exemption to the transportation of slot machines for the facilities that are authorized to conduct slot machine gaming under ch. 551, F.S.
[5] Pari-mutuel" is defined in Florida law as "a system of betting on races or games in which the winners divide the total amount bet, after deducting management expenses and taxes, in proportion to the sums they have wagered individually and with regard to the odds assigned to particular outcomes. *See* s. 550.002(22), F.S.
[6] *See* ch. 550, F.S., relating to the regulation of pari-mutuel activities.
[7] *See* ch. 551, F.S., relating to the regulation of slot machine gaming at pari-mutuel locations.
[8] Section 849.086, F.S., and *see* s. 849.086(2)(c), F.S., which defines "cardroom" to mean "a facility where authorized card games are played for money or anything of value and to which the public is invited to participate in such games and charged a fee for participation by the operator of such facility."
[9] The Department of Business and Professional Regulation (DBPR) has issued licenses to permitholders with 2017-2018 Operating Licenses to operate 25 cardrooms. *See* http://www.myfloridalicense.com/dbpr/pmw/PMW-PermitholderOperatingLicenses--2017-2018.html (last visited Jan. 11, 2018).

A license to offer pari-mutuel wagering, slot machine gambling, or a cardroom at a pari-mutuel facility is a privilege granted by the state.[10]

The 1968 State Constitution states that "[l]otteries, other than the types of pari-mutuel pools authorized by law as of the effective date of this constitution . . ." are prohibited.[11] A constitutional amendment approved by the voters in 1986 authorized state-operated lotteries. Net proceeds of the lottery are deposited to the Educational Enhancement Trust Fund (EETF) and appropriated by the Legislature. Lottery operations are self-supporting and function as an entrepreneurial business enterprise.[12]

Chapter 849, F.S., also authorizes, under specific and limited conditions, the conduct of penny-ante games,[13] bingo,[14] charitable drawings, game promotions (sweepstakes),[15] and bowling tournaments.[16] The Family Amusement Games Act was enacted in 2015 and authorizes skill-based amusement games and machines at specified locations.[17]

III. Effect of Proposed Changes:

For ease of reference to each of the topics addressed in the bill, the Present Situation for each topic will be described, followed immediately by an associated section detailing the Effect of Proposed Changes.

Gaming Compacts with Seminole Tribe of Florida

Present Situation:

In 2010, a gaming compact (2010 Gaming Compact) between the Seminole Tribe of Florida (Seminole Tribe) and the State of Florida (state) was ratified by the Legislature.[18] The 2010 Gaming Compact authorizes the Seminole Tribe to conduct certain Class III gaming for a 20-year period, and to offer banked card games for five years, through July 31, 2015. The 2010

[10] *See* s. 550.1625(1), F.S., "…legalized pari-mutuel betting at dog tracks is a privilege and is an operation that requires strict supervision and regulation in the best interests of the state." *See also Solimena v. State,* 402 So.2d 1240, 1247 (Fla. 3d DCA 1981), *review denied*, 412 So.2d 470, which states "Florida courts have consistently emphasized the special nature of legalized racing, describing it as a privilege rather than as a vested right," citing *State ex rel. Mason v. Rose,* 122 Fla. 413, 165 So. 347 (1936).

[11] The pari-mutuel pools that were authorized by law on the effective date of the Florida Constitution, as revised in 1968, include horseracing, greyhound racing, and jai alai games. The revision was ratified by the electorate on November 5, 1968.

[12] The Department of the Lottery is authorized by s. 15, Art. X, Florida Constitution. Chapter 24, F.S., was enacted by ch. 87-65, Laws of Fla., to establish the state lottery. Section 24.102, F.S., states the legislative purpose and intent for the operations of the state lottery.

[13] *See* s. 849.085, F.S.

[14] *See* s. 849.0931, F.S.

[15] *See* s. 849.094, F.S., authorizes game promotions in connection with the sale of consumer products or services.

[16] *See* s. 849.141, F.S.

[17] *See* s. 546.10, F.S.

[18] The 2010 Gaming Compact was executed by the Governor and the Seminole Tribe on April 7, 2010, ratified by the Legislature, effective April 28, 2010, and approved by U.S. Secretary of the Interior, pursuant to the Indian Gaming Regulatory Act of 1988, on June 24, 2010. It took effect when published in the Federal Register on July 6, 2010. The 20-year term of the 2010 Gaming Compact expires July 31, 2030, unless renewed. Section 285.710(1)(f), F.S., designates the Division of Pari-mutuel Wagering of the Department of Business and Professional Regulation as the "state compliance agency" having authority to carry out the state's oversight responsibilities under the 2010 Gaming Compact. *See* http://www.myfloridalicense.com/dbpr/pmw/documents/2010_Compact-Signed1.pdf (last visited Jan. 11, 2018).

Gaming Compact provides that any expanded gaming (beyond what is specifically acknowledged) allowed in the state relieves the Seminole Tribe of its obligations to make substantial revenue sharing payments.[19]

Pursuant to ch. 285, F.S., it is not a crime for a person to participate in raffles, drawings, slot machine gaming, or banked card games (e.g., blackjack or baccarat) at a tribal facility operating under the 2010 Gaming Compact.[20]

Section 285.710, F.S., provides that money received by the state from the compact is to be deposited into the General Revenue Fund and provides for the distribution of 3 percent of the amount paid by the Seminole Tribe to the specified local governments. The percentage of the local share distributed to the specified counties and municipalities is based on the net win per facility in each county and municipality.

The 2010 Gaming Compact provides for revenue sharing in consideration for the exclusive authority granted to the Seminole Tribe to offer banked card games on tribal lands and to offer slot machine gaming outside Miami-Dade and Broward counties.

The Division of Pari-mutuel Wagering of the Department of Business and Professional Regulation (DBPR) carries out the state's oversight responsibilities under the 2010 Gaming Compact.[21]

Federal Litigation Concerning the 2010 Gaming Compact

The state and the Seminole Tribe were parties to litigation in federal court relating to the offering of table games by the Seminole Tribe after July 31, 2015, in which the state alleged that the Seminole Tribe's conduct of banked card games violated the 2010 Gaming Compact. The Seminole Tribe alleged it had authority to conduct banked card games under the 2010 Gaming Compact after 2015 because the state had allowed pari-mutuel cardrooms to conduct banked games (i.e., Designated Player Games).

On November 9, 2016, U.S. District Court Judge Robert L. Hinkle issued an Opinion on the Merits, which held the Seminole Tribe may operate banked card games at all seven of its facilities (rather than the five facilities at which banked card games had been allowed since 2010) through the entire 20-year term of the 2010 Gaming Compact (i.e., until 2030) because the state permitted others to offer banked card games (i.e., pari-mutuel cardrooms).[22]

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[19] *See* last sentence in paragraph B of Part XII of 2010 Gaming Compact at page 43.

[20] *See* s. 285.710, F.S., especially subsections (3), (13), and (14). The seven tribal locations where gaming is authorized by the 2010 Gaming Compact are: (1) Seminole Hard Rock Hotel & Casino—Hollywood (Broward); (2) Seminole Indian Casino—Coconut Creek (Broward); (3) Seminole Indian Casino—Hollywood (Broward); (4) Seminole Hard Rock Hotel & Casino—Tampa (Hillsborough); (5) Seminole Indian Casino—Immokalee (Collier); (6) Seminole Indian Casino—Brighton (Glades); and (7) Seminole Indian Casino—Big Cypress (Hendry).

[21] *See* s. 285.710(1)(f), F.S.

[22] *See Seminole Tribe of Florida v. State of Florida,* 219 F.Supp. 3d 1177 (N.D. Fla. Nov. 9, 2016), Case No.: 4:15-cv-516-RH/CAS, Document 103. In addition to the holding as to banked card games, Judge Hinkle held that sovereign immunity barred the court from considering whether the State had failed to negotiate in good faith as to authorizing roulette and craps, and that a ruling on whether electronic forms of blackjack are also a banked card game was unnecessary as that issue was too close to resolve and was not essential to the outcome of the case.

Because of the finding that others had been allowed to conduct banked card games, the court found that the 2010 Gaming Compact allows the Seminole Tribe to conduct banked card games at all seven of its gaming facilities, for the Compact's full 20-year term (through July 31, 2030).[23] The DBPR appealed Judge Hinkle's decision.[24]

Settlement of the Federal Litigation and Establishment of Forbearance Period

After the appeal of Judge Hinkle's decision was filed, the Seminole Tribe and the DBPR entered into a Settlement Agreement and Stipulation (2017 Settlement) on July 5, 2017.[25] The parties agreed to undertake certain actions.

The state agreed to dismiss the pending appeal, and, upon issuance of the final order of dismissal of the appeal, the Seminole Tribe agreed to release the state from all claims by the Tribe for past Revenue Share Payments,[26] based on the operation of player-banked games which use a designated player (Designated Player Games) or electronic forms of blackjack (Electronic Table Games) in Florida. The state and the Seminole Tribe also agreed that the findings of fact and conclusions of law in Judge Hinkle's decision are binding on the parties.[27]

The Seminole Tribe also agreed it would not seek the return of funds associated with tribal gaming paid to and segregated by the state during the pendency of the federal litigation, granting the state unencumbered use of the segregated funds.[28]

As to the continued operation of banked card games (i.e., Designated Player Games operated as described in Judge Hinkle's decision), the Seminole Tribe agreed to delay taking certain actions until after the last day of the month that the Legislature adjourns[29] its 2018 legislative session (the Forbearance Period). The Seminole Tribe agreed not to:

- Suspend Revenue Share Payments; or
- Deposit Revenue Share Payments into an escrow account in accordance with Part XII of the 2010 Gaming Compact, provided that the State takes aggressive enforcement action against the continued operation of banked card games and no other violations of the Tribe's exclusivity occur during the Forbearance Period.[30]

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[23] *Id.* at p. 19, and s*ee* Judgment issued in *Seminole Tribe of Florida v. State of Florida*, Case No.: 4:15-cv-516-RH/CAS (U.S.D.C. N.D. Fla.), Document 104, filed Nov. 16, 2016, at p. 1. *See Federal Litigation Concerning the 2010 Gaming Compact and Banked Card Games (including Player Banked Card Games with a Designated Player)*, below, for a discussion of Judge Hinkle's decision relating to banked card games.

[24] *See Seminole Tribe of Florida v. State of Florida*, 219 F.Supp. 3d 1177 (N.D. Fla. Jan. 19, 2017), Case No.: 4:15-cv-516-RH/CAS, Document 120.

[25] *See* Settlement Agreement and Stipulation (2017 Settlement) (July 5, 2017) (on file with the Senate Committee on Regulated Industries).

[26] Revenue Share Payments are the periodic payments to the State by the Seminole Tribe, based on the Tribe's Net Win. Net Win is defined as total receipts from the play of authorized tribal gaming in Florida, less all prizes, free play, or promotional credits. *See* paragraphs U and X of Part III of the 2010 Gaming Compact at page 11 at http://www.myfloridalicense.com/dbpr/pmw/documents/2010_Compact-Signed1.pdf (last visited Jan. 11, 2018).

[27] *See* 2017 Settlement at page 8.

[28] *See* the 2017 Settlement at page 6.

[29] Should the 2018 legislative session be adjourned as anticipated on March 9, 2018, the Forbearance Period will end on March 31, 2018.

[30] *See* 2017 Settlement at page 7.

Effect of Proposed Changes:

Section 1 ratifies and approves in advance a new gaming compact between the Seminole Tribe and the State (the 2018 Gaming Compact) and authorizes the Governor to execute such a compact in the identical form set forth in the legislation. If ratified, the 2018 Gaming Compact will supersede the 2010 Gaming Compact; otherwise, the 2010 Gaming Compact remains in effect. The bill requires the Governor to cooperate with the Seminole Tribe in seeking approval of the 2018 Compact from the United States Secretary of the Interior. The state's ratification expires January 1, 2019, unless the 2018 Gaming Compact becomes effective.

The 2018 Gaming Compact:

- Authorizes the Seminole Tribe to conduct slot machine gaming at its seven gaming facilities;
- Permits the Seminole Tribe to offer live table games, such as craps and roulette, at its seven gaming facilities;
- Authorizes banked card games, including blackjack, chemin de fer, and baccarat, at its seven facilities;
- Is for a term of 22 years, through June 30, 2040; and
- Includes a $3 billion guarantee of revenue sharing payments to the state for the first seven-years (Guarantee Period), with specific payment amounts (Guaranteed Payments) during each year of the Guarantee Period. After the Guarantee Period, payments will be based on varying percentage rates that depend on the amount of the Seminole Tribe's net win (Revenue Share Payments).[31]

After ratification by the Legislature, the 2018 Gaming Compact is subject to approval by the United States Department of the Interior, as required under the Indian Gaming Regulatory Act of 1988. Notice of the approval by the Department of the Interior is published in the Federal Register.[32]

The following table compares the terms of the 2010 Gaming Compact to the 2018 Gaming Compact:

	2018 COMPACT	**2010 COMPACT**
Guarantee Money to State	7-year Guarantee worth $3 billion (Starts 7/1/2018) 1- $325 million 2- $350 million 3- $375 million 4- $425 million 5- $475 million 6- $500 million 7- $550 million Total: $3 Billion guaranteed (true-up at end of year 7)	5-year Guarantee worth $1 billion 1- $150 million 2- $150 million 3- $233 million 4- $233 million 5- $234 million Total: $1 Billion guaranteed

[31] *Id*.
[32] 25 U.S.C. s. 2710(d)(8). *See* **Section 2** of the bill.

	2018 COMPACT	2010 COMPACT
Term	22 years; 7-year minimum guarantee.	20 years; 5-year minimum guarantee; Banked Card Games exclusivity expired after 5 years.
Revenue Share to State	Revenue Share to State from Tribe's Gaming Revenue $0-2B: 13% (1% increase) $2-3B: 17.5% (2.5% increase) $3-3.5B: 17.5% $3.5-4B: 20% $4-4.5B: 22.5% $4.5B+: 25%	Revenue Share to State from Tribe's Gaming Revenue $0-2B: 12% $2-3B: 15% $3-3.5B: 17.5% $3.5-4B: 20% $4-4.5B: 22.5% $4.5B+: 25%
Games	1. Slot Machines 2. Banked Card Games 3. Raffles and Drawings 4. Any new game authorized for any person except Banked Card Games authorized for another Indian Tribe 5. Live Table Games	1. Slot Machines (all Facilities) 2. Banked Card Games (all Facilities except Big Cypress & Brighton) 3. Raffles and Drawings 4. Any new game authorized for any person except Banked Card Games authorized for another Indian Tribe
Facilities	1. Seminole Indian Casino-Brighton 2. Seminole Indian Casino-Coconut Creek 3. Seminole Indian Casino-Hollywood 4. Seminole Indian Casino-Immokalee 5. Seminole Indian Casino-Big Cypress 6. Seminole Hard Rock Hotel & Casino-Hollywood 7. Seminole Hard Rock Hotel & Casino-Tampa	1. Seminole Indian Casino-Brighton 2. Seminole Indian Casino-Coconut Creek 3. Seminole Indian Casino-Hollywood 4. Seminole Indian Casino-Immokalee 5. Seminole Indian Casino-Big Cypress 6. Seminole Hard Rock Hotel & Casino Hollywood 7. Seminole Hard Rock Hotel & Casino-Tampa
State Oversight	State Compliance Agency allowed 16 hours of inspection over course of two days per facility, per month, capped at 1,600 hours annually. Tribe pays annual oversight payment of $250,000, increased for inflation.	State Compliance Agency allowed 10 hours of inspection over course of two days per facility, per month, capped at 1,200 hours annually. Tribe pays annual oversight payment of $250,000, increased for inflation.
Pari-Mutuel Policy Choices for Legislature	Explicitly states that the following do not violate exclusivity: • The operation of slot machine gaming, if authorized by state law as of 1.1.19, at pari-mutuel facilities in Broward County and Miami-Dade County and in pari-mutuel facilities in other counties which have been authorized by	N/A

	2018 COMPACT	2010 COMPACT
	referendum after 1.1.12 and on or before 9.1.18. • Lower taxes for pari-mutuels on the operation of slot machines provided the effective tax rate is not less than 25% of slot machine revenues • Decoupling for pari-mutuels • Fantasy contests, as authorized in the bill • Designated player games	
Internet Gaming	Tribe recognizes that internet gaming, with the exception of fantasy contests as authorized in the bill, is illegal in Florida. If State authorizes internet gaming, other than fantasy contests, as authorized in the bill, THEN→ • Guaranteed Minimum Payments cease; but • Revenue Share Payments continue. If Tribe offers internet gaming to players in Florida then Guaranteed Minimum Payments continue. Affirmative recognition by Tribe that internet gaming is illegal in Florida.	If State authorizes internet gaming and Tribe's Net Win from all Facilities drops more than 5% below Net Win from previous year THEN → • Guaranteed Minimum Payments cease; but • Revenue Share Payments continue If Tribe offers internet gaming then Guaranteed Minimum Payments continue.
Smoking	Tribe will make efforts to promote smoke-free environment at Facilities	Tribe will make efforts to promote smoke-free environment at Facilities
Compulsive Gambling	Tribe will make annual $1,750,000 donation to the Florida Council on Compulsive Gambling and maintain a voluntary exclusion list.	Tribe will make annual $250,000 donation per Facility to the Florida Council on Compulsive Gambling and maintain a voluntary exclusion list.
Compact with another federally-recognized Indian Tribe in Florida	Florida may enter into a Compact with another federally-recognized Tribe that has land in trust in the State as of January 1, 2018.	Florida may enter into a Compact with another federally-recognized Tribe that has land in trust in the State as of February 1, 2010.

Fantasy Contests (Section 3)

Present Situation:

The operation of fantasy sports activities in Florida has received significant publicity, much like the operation of internet cafes in recent years. Many states are now evaluating the status of fantasy gaming activities in their jurisdictions,[33] as there are millions of participants.[34]

[33] *See* Marc Edelman, *A Short Treatise on Fantasy Sports and the Law: How America Regulates its New National Pastime*, Journal of Sports & Entertainment Law, Harvard Law School Vol. 3 (Jan. 2012) (Edelman Treatise), at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1907272 (last visited Jan. 11, 2018), and Jonathan Griffin, *The Legality of Fantasy Sports,* National Conference of State Legislatures Legisbrief (Sep. 2015) (on file with the Committee on Regulated Industries).

[34] According to the Fantasy Sports Trade Association, which states it represents the interests of 57 million fantasy sports players, fantasy sports leagues were originally referred to as "rotisserie leagues" with the development of Rotisserie League Baseball in 1980, by magazine writer/editor Daniel Okrent, who met and played it with friends at a New York City restaurant La Rotisserie Francaise. *See* http://fsta.org/about/history-of-fsta/ (last visited Jan. 11, 2018).

A fantasy game typically has multiple players who select and manage imaginary teams whose players are actual professional sports players. Fantasy game players compete against one another in various formats, including weekly leagues among friends and colleagues, season-long leagues, and on-line contests (daily and weekly) entered by using the Internet through personal computers or mobile telephones and other communications devices. There are various financial arrangements among players and game operators. The term "commissioner" has been used in the context of fantasy baseball leagues to denote a person who manages a fantasy baseball league, establishes league rules, resolves disputes over rule interpretations, publishes league standings, or selects the Internet service for publication of league standings.[35]

Florida law does not specifically address fantasy contests. Section 849.14, F.S.,[36] provides that a person who wagers any "thing of value" upon the result of a contest of skill or endurance of human or beast, or who receives any money wagered, or who knowingly becomes the custodian of money or other thing of value that is wagered, is guilty of a second degree misdemeanor.[37]

In 2013, Spectrum Gaming Group, as part of a Gambling Impact Study prepared for the Florida Legislature, analyzed data related to participation by adults in selected activities.[38] Based on 2012 U.S. Census data, participation in fantasy sports leagues in the prior 12 months (nearly nine million adults), and those who participate two or more times weekly (nearly three million adults), was greater than attendance at horse races in the prior 12 months (6,654,000 adults) with 159,000 attending two or more times weekly.[39]

Florida Attorney General Opinions on Fantasy Sports Leagues and Contests Involving Skill

In 1991, Florida Attorney General Robert A. Butterworth issued a formal opinion[40] evaluating the legality of groups of football fans (contestants) paying for the right to manage a team under certain specified conditions. The Attorney General stated:

> You ask whether the formation of a fantasy football league by a group of football fans in which contestants pay $100 for the right to "manage" one of eight teams violates the state's gambling laws. You state that these teams are created by contestants by "drafting" players from all current eligible National Football League (NFL) members. Thus, these fantasy teams consist of members of various NFL teams.

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[35] *See* Bernhard & Eade, *Gambling in a Fantasy World: An Exploratory Study of Rotisserie Baseball Games*, 9 UNLV Gaming Research & Review Journal Issue 1, at 30, at http://digitalscholarship.unlv.edu/grrj/vol9/iss1/3/, (last visited Jan. 11, 2018).
[36] *See* Fla. AGO 91-03 (Jan. 8, 1991), at http://myfloridalegal.com/. . . 91-03 (last visited Jan. 11, 2018).
[37] A conviction for a second degree misdemeanor may subject the violator to a definite term of imprisonment not exceeding 60 days, and a fine not exceeding $500. *See* ss. 775.082 and 775.083, F.S.
[38] *See* Spectrum Gaming Group Gambling Impact Study (Gambling Impact Study), at http://www.leg.state.fl.us/gamingstudy/docs/FGIS_Spectrum_28Oct2013.pdf (Oct. 28, 2013) (last visited Jan. 11, 2018).
[39] *Id.*, Figure 22 at page 119 (equivalent to page 67 of Part 1A of the printed Gambling Impact Study).
[40] *See* Fla. AGO 91-03 (Jan. 8, 1991), at http://myfloridalegal.com/. . . 91-03 (last visited Jan. 11, 2018).

> According to your letter, each week the performance statistics of the players in actual NFL games are evaluated and combined with the statistics of the other players on the fantasy team to determine the winner of the fantasy game and their ranking or standing in the fantasy league. No games are actually played by the fantasy teams; however, all results depend upon performance in actual NFL games. Following completion of the season, the proceeds are distributed according to the performance of the fantasy team.

In the contest described in the opinion, each contestant paid $100 to participate in the fantasy football league and manage one of eight teams. The resulting $800 in proceeds were used for prizes. The prizes were based upon the performance of the individual professional football players in actual games. Attorney General Butterworth determined that the proceeds qualified as a "stake, bet or wager" on the result of a contest of skill and, as a result, the operation of the fantasy sports leagues violated s. 849.14, F.S., relating to unlawful betting on the result of a trial or contest of skill.[41]

The 1991 opinion cited *Creash v. State*, 179 So. 149, 152 (Fla. 1938). In *Creash*, the Florida Supreme Court held:

> In gamblers' lingo, 'stake, bet or wager' are synonymous and refer to the money or other thing or value put up by the parties thereto with the understanding that one or the other gets the whole for nothing but on the turn of a card, the result of a race, or some trick of magic. A 'purse, prize, or premium' has a broader significance. *If offered by one (who in no way competes for it) to the successful contestant in a [feat] of mental or physical skill, it is not generally condemned as gambling*, while if contested for in a game of cards or other games of chance, it is so considered. [Citation omitted.] *It is also banned as gambling if created as in this case by paying admissions to the game, purchasing certificates, or otherwise contributing to a fund from which the 'purse, prize, or premium' contested for is paid*, and wherein the winner gains, and the other contestants lose all.[42] [Emphasis added.]

However, in a 1990 opinion, Attorney General Butterworth, again citing *Creash v. State*, determined that a contest of skill (such as a hole-in-one golf contest) "where the contestant pays an entry fee, which *does not make up* (i.e., create) *the prize*, for the opportunity to win a valuable prize by the exercise of skill, *did not violate the gambling laws of [Florida]*."[43] (Emphasis in original.) That 1990 opinion reasoned, "[t]hus, the payment of an entry fee to participate in a contest of skill when the sponsor of the contest does not participate in the contest of skill and where the prize money does not consist of entry fees would *not* appear to be a 'stake, bet or wager'" in violation of s. 849.14, F.S., relating to gambling. (Emphasis added.)[44]

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[41] *Id*.
[42] *See Creash v. State*, 179 So. 149, 152 (Fla. 1938).
[43] *See* Fla. AGO 90-58 (Jul. 27 1990) at http://www.myfloridalegal.com/ago.nsf/Opinions/DEF7C36F0D75C323852563D2007AA34C (last visited Jan. 11, 2018).
[44] *Id*.

Class III Gaming under the Indian Gaming Regulatory Act

Fantasy contests, if classified as Class III gaming, also could affect the revenue sharing provisions of the 2010 Gaming Compact.[45] Under the compact if fantasy contests are a form of new Class III gaming in Florida, payments due to the state under the compact would cease.[46]

Gambling on Indian lands is regulated by the Indian Gaming Regulatory Act of 1988 (IGRA).[47] The 2010 Gaming Compact authorizes the Seminole Tribe to conduct specified Class III gaming activities at its seven tribal facilities in Florida.[48]

Under IGRA, gaming is categorized in three classes:

- **Class I** gaming means social games for minimal value or traditional forms of Indian gaming engaged in by individuals for tribal ceremonies or celebrations;
- **Class II** gaming includes bingo and pull-tabs, lotto, punch boards, tip jars, instant bingo, other games similar to bingo, and certain non-banked card games if not explicitly prohibited by the laws of the state and if played in conformity with state law; and
- **Class III** gaming includes all forms of gaming that are not Class I or Class II gaming, such as banked card games (such as baccarat, chemin de fer, and blackjack(21), casino games such as craps and roulette, electronic or electromechanical facsimiles of games of chance, slot machines, and pari-mutuel wagering.[49]

If fantasy contests are gaming, constitute Class III gaming under federal law, and constitute *new* Class III gaming in Florida (i.e., gaming not in operation as of February 1, 2010, or July 1, 2015, respectively), then authorizing fantasy contests in Florida (i.e., additional Class III gaming) violates the exclusivity provisions in the 2010 Gaming Compact and the Proposed 2015 Gaming Compact. As a result, certain revenue sharing requirements would not apply, and the Seminole Tribe would be authorized to offer similar internet/on-line gaming.

In a letter to Senator Travis Hutson and Representative Mike La Rosa dated December 5, 2017,[50] Jim Shore, General Counsel for the Seminole Tribe, indicated:

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[45] *See* paragraph A of Part XII of the 2010 Gaming Compact at http://www.myfloridalicense.com/dbpr/pmw/documents/2010_Compact-Signed1.pdf (last visited Jan. 11, 2018).
[46] *See* paragraph A of Part XII of the 2010 Gaming Compact at pages 39-40 at http://www.myfloridalicense.com/dbpr/pmw/documents/2010_Compact-Signed1.pdf (last visited Jan. 11, 2018).
[47] *See* Pub. L. 100-497, 102 Stat. 2467, codified at 18 U.S.C. ss. 1166-1168 and 25 U.S.C. s. 2701 *et seq*.
[48] *See* paragraph F of Part III of the 2010 Gaming Compact at http://www.flsenate.gov/PublishedContent/Committees/2016-2018/RI/Links/2015_Gaming_Compact,_Chart,_and_Letter_from_Governor_Scott.pdf (last visited Jan. 11, 2018). The Tribe has three gaming facilities in Broward County (The Seminole Indian Casinos at Coconut Creek and Hollywood, and the Seminole Hard Rock Hotel & Casino-Hollywood), and gaming facilities in Collier County (Seminole Indian Casino-Immokalee), Glades County (Seminole Indian Casino-Brighton), Hendry County (Seminole Indian Casino-Big Cypress), and Hillsborough County (Seminole Hard Rock Hotel & Casino-Tampa). The 2010 Gaming Compact was approved by the U.S. Department of the Interior effective July 6, 2010. *See* 75 Fed. Reg. 38833-38834 at https://www.gpo.gov/fdsys/pkg/FR-2010-07-06/pdf/2010-16213.pdf (last visited Jan. 11, 2018). *See* http://www.flsenate.gov/PublishedContent/Committees/2016-2018/RI/Links/2015_Gaming_Compact,_Chart,_and_Letter_from_Governor_Scott.pdf (last visited Jan. 11, 2018).
[49] *See* Pub. L. 100-497, 102 Stat. 2467, codified at 18 U.S.C. ss. 1166-1168 and 25 U.S.C. s. 2701 *et seq*.
[50] *See* Letter from Jim Shore, General Counsel for the Seminole Tribe, to Senator Travis Hutson and Representative La Rosa (Dec. 5, 2017) (on file with the Senate Committee on Regulated Industries).

> The Tribe believes the games permitted by these bills [HB 223 and SB 374 (Fantasy Contests), and SB 840 (Gaming)] would violate the Tribe's exclusivity, as set forth in Part XII of the 2010 Gaming Compact between the State and Tribe. By providing this notice, the Tribe hopes to avoid a situation where the State enacts legislation that inadvertently violates the Tribe's exclusivity. That said, the Tribe and the State have discussed the issue of fantasy sports contests in previous compact negotiations and the Tribe remains willing to do so now. However, federal law requires that any reduction in the Tribe's exclusivity must be balanced by some additional consideration from the State. Without such an agreement, the 2010 Gaming Compact would allow the Tribe to cease all revenue sharing payments to the State based on the expanded gaming contemplated by these bills.

The National Indian Gaming Commission (commission) issued an opinion dated March 13, 2001,[51] relating to a sports betting game proposed for future play in Arizona and California via the Internet. In that sports betting game, players could wager upon various sporting *events*, including NFL football, baseball, golf, and the Olympics. The commission determined that game to be Class III gaming because it was not included within the definitions of Class I or Class II gaming under IGRA.

The Professional and Amateur Sports Protection Act of 1992 (PASPA)

In 1992, the U.S. Congress enacted the Professional and Amateur Sports Protection Act (PASPA),[52] which provides that it is unlawful for a governmental entity or any person to sponsor, operate, advertise, or promote:

> …a lottery, sweepstakes, or other betting, gambling, or wagering scheme based…on one or more competitive games in which amateur or professional athletes participate, or are intended to participate, or on one or more performances of such athletes in such games.[53]

The prohibited activity is known generally as "sports betting." Governmental entities are also prohibited from licensing such activities or authorizing them by law or compact.[54] However, PASPA does not apply to pari-mutuel animal racing or jai alai games.[55] It does not apply to a lottery, sweepstakes, or other betting, gambling, or wagering conducted by a governmental entity between January 1, 1976, and August 31, 1990.[56]

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[51] *See* https://www.nigc.gov/images/uploads/game-opinions/WIN%20Sports%20Betting%20Game-Class%20III.pdf (last visited Jan. 11, 2018).
[52] *See* 28 U.S.C. ss. 3701-3704 (2015), at https://www.govinfo.gov/content/pkg/USCODE-2015-title28/html/USCODE-2015-title28.htm (last visited Jan. 11, 2018).
[53] *See* 28 U.S.C. s. 3702 (2015), at https://www.govinfo.gov/content/pkg/USCODE-2015-title28/html/USCODE-2015-title28.htm (last visited Jan. 11, 2018).
[54] *Id*.
[55] *See* 28 U.S.C. s. 3704(a)(4) (2015), at https://www.govinfo.gov/content/pkg/USCODE-2015-title28/html/USCODE-2015-title28.htm (last visited Jan. 11, 20187).
[56] *See* 28 U.S.C. s. 3704(a)(1) (2015), at https://www.govinfo.gov/content/pkg/USCODE-2015-title28/html/USCODE-2015-title28.htm (last visited Jan. 11, 2018).

The prohibition against sports betting also does not apply to a lottery, sweepstakes, or other betting, gambling, or wagering lawfully conducted, where such activity was authorized by law on October 2, 1991, and was conducted in a state or other governmental entity at any time between September 1, 1989, and October 2, 1991.[57]

In a case pending before the United States Supreme Court, the State of New Jersey has challenged the constitutionality of PASPA, on the basis that PASPA "commandeers" or impermissibly controls the regulatory power of states relating to the legalization of sports betting, thereby violating the Tenth Amendment to the U.S. Constitution.[58] The respondents (the National Collegiate Athletic Association, the National Basketball Association, the National Football League, the National Hockey League, and the Office of the Commissioner of Baseball) defend PASPA's pre-emption of state laws that authorize sports gambling as a valid exercise of congressional power to regulate commerce.[59] The Court's decision in the case is anticipated no later than June 29, 2018.

The Unlawful Internet Gambling Enforcement Act of 2006 (UIGEA)

The Unlawful Internet Gambling Enforcement Act of 2006 (UIGEA)[60] was signed into law by President George W. Bush on October 13, 2006.[61] Internet gambling is not determined to be legal in a state, nor illegal. Instead, UIGEA targets financial institutions in an attempt to prevent the flow of money from an individual to an internet gaming company. Congress found that enforcement of gambling laws through new mechanisms "are necessary because traditional law enforcement mechanisms are often inadequate for enforcing gambling prohibitions or regulations on the Internet, especially where such gambling crosses State or national borders."[62] UIGEA expressly states that none of its provisions "shall be construed as altering, limiting, or extending any Federal or State law or Tribal-State compact prohibiting, permitting, or regulating gambling within the United States."[63]

"Unlawful internet gambling" prohibited by UIGEA includes the placement, receipt, or transmission of certain bets or wagers.[64] However, the definition of the term "bet or wager" specifically excludes any fantasy game or contest in which a fantasy team is not based on the current membership of a professional or amateur sports team, and:

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[57] *See* 28 U.S.C. s. 3704(a)(2) (2015), at https://www.govinfo.gov/content/pkg/USCODE-2015-title28/html/USCODE-2015-title28.htm (last visited Jan. 11, 2018).
[58] *See Christie v. National Collegiate Athletic Association,* Docket No. 16-476, (*Christie*) at http://www.scotusblog.com/case-files/cases/christie-v-national-collegiate-athletic-association-2/ (last visited Jan. 11, 2018). Oral argument in the case was held on December 4, 2017.
[59] *See* the respondents' Brief in Opposition at http://www.scotusblog.com/wp-content/uploads/2016/12/16-476-16-477-BIO.pdf at page 17 (last visited Jan. 11, 2018).
[60] *See* https://www.gpo.gov/fdsys/pkg/USCODE-2011-title31/pdf/USCODE-2011-title31-subtitleIV-chap53.pdf, (UIGEA online) at page 46 (last visited Jan. 11, 2018).
[61] The provisions of UIGEA were adopted in Conference Committee as an amendment to H.R. 4954 by Representative Daniel E. Lungren (CA-3), "The SAFE Ports Act of 2006."
[62] *See* 31 U.S.C. s. 5361(a)(4), UIGEA online, at page 46.
[63] *See* 31 U.S.C. s. 5361(b).
[64] *See* 31 U.S.C. s. 5362(10), UIGEA online, at page 48.

- (All prizes and awards are established and made known to the participants in advance of the game or contest and their value is not determined by the number of participants or the amount of fees by the participants;
- Prize amounts are not based on the number of participants or the amount of entry fees;
- Winning outcomes reflect the relative knowledge and skill of the participants and are determined predominantly by accumulated statistical results of the performance of individuals or athletes in multiple "real-world sporting or other events;" and
- No winning outcome is based:
  - On the score, point-spread, or any performance or performances of any single "real-world" team or combination of teams; or
  - Solely on any single performance of an individual athlete in any single "real-world sporting or other event."[65]

While UIGEA excludes bets or wagers of participants in certain fantasy sports games and contests,[66] it does not, however, authorize fantasy contests and activities in Florida.

Effect of Proposed Changes:

Section 3 creates s. 546.13, F.S., to authorize certain fantasy contests in which participants must pay an entry fee. Section 546.13(1), F.S., provides requirements for fantasy contests and associated definitions.

"Entry fee" means cash or a cash equivalent required to be paid by a person for the ability to participate in a fantasy contest offered by a fantasy contest operator.

"Fantasy contest operator" means a person or entity, including any employee or agent, that offers fantasy contests with an entry fee for a cash prize but is not a participant in the fantasy contest. The term does not include an individual who serves as the commissioner of no more than 10 fantasy contests in a calendar year. The term "commissioner" is not defined in the bill, but has been used in the context of fantasy baseball leagues to denote a person who manages a fantasy baseball league, establishes league rules, resolves disputes over rule interpretations, and publishes league standings or selects the Internet service for publication of league standings.[67]

A "fantasy contest" is a fantasy or simulated game in which:
- The value of all prizes and awards offered to winning participants must be established and disclosed to the participants in advance of the contest and be unrelated to the number of participants in the contest;
- All winning outcomes reflect the relative knowledge and skill of contest participants and are determined predominantly by accumulated statistical results of the performance of individuals, including athletes in the case of sporting events;
- No winning outcome is based:

[65] *See* 31 U.S.C. s. 5362(1)(E)(ix), UIGEA online, at page 47.
[66] *Id*.
[67] *See* Bernhard & Eade, *Gambling in a Fantasy World: An Exploratory Study of Rotisserie Baseball Games*, 9 UNLV Gaming Research & Review Journal Issue 1, at 30, at http://digitalscholarship.unlv.edu/grrj/vol9/iss1/3/, (last visited Jan. 11, 2018).

  - On the score, point spread, or any performance or performances of any single actual team or combination of teams;
  - Solely on any single performance of an individual athlete or player in any single actual event; or
  - On the performances of participants in collegiate, high schools, or youth sporting events; and
- No casino graphics, themes, or titles, including slot machine-style symbols, cards, craps, roulette, or lotto are displayed or depicted.

The bill provides that the Department of Business and Professional Regulation (DBPR) may not regulate fantasy contests and the offenses in ss. 849.01, 849.08, 849.09, 849.11, 849.14, or 849.25, F.S., relating to gambling, lotteries, games of chance, contests of skill, or bookmaking do not apply to a fantasy contest operated or conducted by:

- A fantasy contest operator; or
- A natural person, who is a participant in the fantasy contest, serves as the commissioner of not more than ten contests in a calendar year, and distributes all contest entry fees as prizes or awards to the participants in that fantasy contest.

If the 2018 Gaming Compact between the Seminole Tribe and the state, which is ratified in Section 1 of this bill, becomes effective, the provisions in this bill relating to fantasy contests will not cause any impact to the revenues to be paid to the state by the Seminole Tribe because fantasy contests, as authorized under this bill, are excluded from the consequences associated with any future authorization of internet gaming and are an exception to the exclusivity granted to the Seminole Tribe under that compact.

Regulation of Pari-Mutuel Wagering (Section 4)

Present Situation:

The Division of Pari-mutuel Wagering (division) in the Department of Business and Professional Regulation (DBPR) regulates pari-mutuel wagering. The division has regulatory oversight of permitted and licensed pari-mutuel wagering facilities, cardrooms located at pari-mutuel facilities, and slot machines at pari-mutuel facilities located in Miami-Dade and Broward counties. According to the division, there were 10 license suspensions, and $107,655 in fines assessed for violations of all pari-mutuel statutes and administrative rules in Fiscal Year 2015-2016.[68]

[68] *See* the 85th Annual Report for Fiscal Year 2015-2016 (the most current report) issued by the division *available at* http://www.myfloridalicense.com/dbpr/pmw/documents/AnnualReports/AnnualReport-2015-2016--85th--20170125.pdf (last visited Jan. 11, 2018) at page 5 (equivalent to page 3 of the printed Annual Report).

According to the latest information available from the DBPR, as of February 2017, there were 39 pari-mutuel permitholders with operating licenses[69] in Florida, operating at 12 greyhound tracks, six jai alai frontons, five quarter horse tracks, three thoroughbred tracks, and one harness track.[70] One jai alai permitholder voluntarily relinquished its permit in 2016.[71] Jai alai games were conducted pursuant to a new permitholder license beginning in June 2017 at a new jai alai fronton in Florida City (Miami-Dade County).[72]

Of the 19 greyhound racing permitholders with operating licenses during Fiscal Year 2016-2017, six permitholders conducted races at leased facilities.[73] Five pari-mutuel facilities have two permits operating at those locations.[74] One greyhound racing permitholder's operating license was suspended late in 2014.[75]

There are 11 permitholders that do not have operating licenses for Fiscal Year 2017-2018: two greyhound,[76] three jai alai,[77] one limited thoroughbred,[78] and five quarter horse.[79]

[69] *See* Pari-Mutuel Wagering Permitholders With 2016-2017 Operating Licenses map dated Feb. 10, 2017, (on file with Senate Committee on Regulated Industries).
[70] *Id.*
[71] *Id*. at page 8 (equivalent to page 6 of the printed Annual Report), and *see* the Stipulation and Consent Order, *available at* http://www.floridagamingwatch.com/wp-content/uploads/Hamilton-Jai-Alai-Consent-Order.pdf (last visited Jan. 11, 2018).
[72] *See* http://www.myfloridalicense.com/dbpr/pmw/documents/Licenses/2017-2018-j/284--License--KingsCourtKey--2017-2018--2017-03-15.pdf (last visited Jan. 11, 2018).
[73] According to information in the 2015-2016 Annual Report from the Division of Pari-Mutuel Wagering, *available at* http://www.myfloridalicense.com/dbpr/pmw/documents/AnnualReports/AnnualReport-2015-2016--85th--20170125.pdf, at pp. 29 - 33 of the online Annual Report (equivalent to pp. 25- - 29 the printed Annual Report),(last visited Jan. 11, 2018), both Jacksonville Kennel Club and Bayard Raceways (St. Johns Greyhound Park) conduct races at Orange Park Kennel Club; H&T Gaming conducts racing at Mardi Gras; Palm Beach Greyhound Racing conducts racing at Palm Beach Kennel Club; Tampa Greyhound conducts races at St. Petersburg Kennel Club (Derby Lane); West Volusia Racing conducts races at Daytona Beach Kennel Club; Dania Summer Ja Alai conducts games at Dania Jai Alai; Tropical Park conducts races at Gulfstream Park.
[74] The division indicated that H & T Gaming @ Mardi Gras and Mardi Gras operate at a facility in Hallandale Beach, Daytona Beach Kennel Club and West Volusia Racing-Daytona operate at a facility in Daytona Beach, Palm Beach Kennel Club and License Acquisitions-Palm Beach operate at a facility in West Palm Beach, Miami Jai Alai and Summer Jai Alai operate at a facility in Miami, and Sanford-Orlando Kennel Club and Penn Sanford at SOKC operate at a facility in Longwood.
[75] *See* http://www.myfloridalicense.com/dbpr/pmw/documents/CurrentPermitholdersList.pdf (last visited Jan. 11, 2018) for a list of current permitholders and their licensing status. For information about permitholders for Fiscal Years 2013-2014, 2014-2015, and 2015-2016, *see* http://www.myfloridalicense.com/dbpr/pmw/track.html (last visited Jan. 11, 2018).
[76] Jefferson County Kennel Club (Monticello) and North American Racing Association (Key West).
[77] Gadsden Jai-alai (Chattahoochee), Tampa Jai Alai, and West Flagler Associates (Miami).
[78] Under s. 550.3345, F.S., during Fiscal Year 2010-2011 only, holders of quarter horse racing permits were allowed to convert their permits to a thoroughbred racing permit, conditioned upon specific use of racing revenues for enhancement of thoroughbred purses and awards, promotion of the thoroughbred horse industry, and the care of retired thoroughbred horses. Two conversions occurred, Gulfstream Park Thoroughbred After Racing Program (GPTARP) (Hallandale, Broward County), and Ocala Thoroughbred Racing (Marion County).
[79] ELH Jefferson (Jefferson County), DeBary Real Estate Holdings (Volusia County), North Florida Racing (Jacksonville), Pompano Park Racing (Pompano Beach), and St. Johns Racing (St. Johns County).

Issuance of Pari-Mutuel Permits and Annual Licenses

Section 550.054, F.S., provides that any person meeting the qualification requirements of ch. 550, F.S., may apply to the division for a permit to conduct pari-mutuel wagering. Upon approval, a permit must be issued to the applicant that indicates:

- The name of the permitholder;
- The location of the pari-mutuel facility;
- The type of pari-mutuel activity to be conducted; and
- A statement showing qualifications of the applicant to conduct pari-mutuel performances under ch. 550, F.S.

A permit does not authorize any pari-mutuel performances until approved by a majority of voters in a ratification election in the county in which the applicant proposes to conduct pari-mutuel wagering activities. An application may not be considered, nor may a permit be issued by the division or be voted upon in any county, for the conduct of:

- Harness horse racing, quarter horse racing, thoroughbred horse racing, or greyhound racing at a location within 100 miles of an existing pari-mutuel facility; or
- Jai alai games within 50 miles of an existing pari-mutuel facility.

Distances are measured on a straight line from the nearest property line of one pari-mutuel facility to the nearest property line of the other facility.[80]

After issuance of the permit and a ratification election, the division may issue an annual operating license for wagering at the specified location in a county, indicating the time, place, and number of days during which pari-mutuel operations may be conducted at the specified location.[81]

The Definition of a "Full Schedule of Live Racing or Games"

Current law provides complex requirements for what constitutes a "full schedule of live racing or games:"

- For a greyhound or jai alai permitholder, at least 100 live evening or matinee performances during the preceding year;
- For a permitholder who has a converted permit . . . at least 100 live evening and matinee wagering performances during either of the two preceding years;
- For a jai alai permitholder who does not operate slot machines . . ., who has conducted at least 100 live performances per year for at least 10 years after December 31, 1992, and whose handle on live jai alai games . . . has been less than $4 million per state fiscal year for at least two consecutive years after June 30, 1992, . . . at least 40 live evening or matinee performances during the preceding year;
- For a jai alai permitholder who operates slot machines . . ., at least 150 performances during the preceding year;
- For a harness permitholder, the conduct of at least 100 live regular wagering performances during the preceding year;

[80] *See* s. 550.054(2), F.S.
[81] *See* s. 550.054(9)(a), F.S.

- For a quarter horse permitholder at its facility unless an alternative schedule of at least 20 live regular wagering performances is agreed upon by the permitholder and either the Florida Quarter Horse Racing Association or the horsemen's association representing the majority of the quarter horse owners and trainers at the facility and filed with the division along with its annual date application, in the Fiscal Year 2010-2011, . . . at least 20 regular wagering performances, in Fiscal Year 2011-2012 and Fiscal Year 2012-2013, . . . at least 30 live regular wagering performances, and for every fiscal year after Fiscal Year 2012-2013, . . . at least 40 live regular wagering performances;
- For a quarter horse permitholder leasing another licensed racetrack, the conduct of 160 events at the leased facility;
- For a thoroughbred permitholder, the conduct of at least 40 live regular wagering performances during the preceding year; and
- For a permitholder restricted by statute to certain operating periods within the year when other similar permitholders are authorized to operate throughout the year, the specified number of live performances which constitute a full schedule of live racing or games is calculated pro rata based on the authorized operating period and the full calendar year, and the resulting number of live performances is the full schedule of live games for such permitholder and all other permitholders of the same class within 100 air miles of such permitholder.[82]

A "performance" is a minimum of eight consecutive live races.[83] At least three live performances must be held at a track each week.[84] When a permitholder conducts at least three live performances in a week,[85] it must pay purses (cash prizes to participants) on wagers accepted at the track on certain greyhound races run at other tracks (in Florida or elsewhere).[86] In order to receive an operating license, permitholders must have conducted a full schedule of live racing during the preceding year.[87]

If a permitholder does not conduct all of the performances specified in its operating license, the division may determine whether to fine the permitholder or suspend[88] the license, unless the failure is due to certain events beyond the permitholder's control. Financial hardship itself is not an acceptable basis to avoid a fine or suspension.[89]

[82] *See* s. 550.002(11), F.S.
[83] Section 550.002(25), F.S.
[84] Section 550.002(11), F.S.
[85] The performances may be during the day or in the evenings, as set forth in the schedule that is part of the operating license issued by the division.
[86] Section 550.09514(2)(c), F.S.
[87] Section 550.002(11), F.S. In accordance with s. 550.002(38), F.S., a full schedule of live racing is calculated from July 1 to June 30, the state fiscal year.
[88] After Jefferson County Kennel Club failed to conduct scheduled performances, its operating license was suspended September 22, 2014 under a consent order a*vailable at* http://www.myfloridalicense.com/dbpr/pmw/documents/Licenses/PMW--Consent Order--JEFFERSON_COUNTY_KENNEL_CLUB_INC--146--2014-09-23--20141023.pdf (last visited Jan. 11, 2018).
[89] Section 550.01215(4), F.S.

The conduct of a full schedule of live racing or games is a condition of licensure for a slot machine licensee,[90] and the conduct of a minimum number of live races is a condition of renewal for a cardroom license.[91]

Leasing of Pari-mutuel Facilities

Section 550.475, F.S., allows a pari-mutuel permitholder licensed to conduct jai alai games, greyhound racing, or thoroughbred and harness horse racing to lease any and all of its facilities to any other permitholder of a same class, when located within a 35-mile radius of each other, and the lessee is entitled to a permit and license to operate its race meet or jai alai games at the leased premises.

Effect of Proposed Changes:

License Applications by Permitholders and Decoupling

Section 4 amends s. 550.01215, F.S., relating to operating license applications filed annually with the division by pari-mutuel permitholders for licenses for the next fiscal year (July 1 through June 30).

In general, permitholders, including those that do not conduct live performances, are required to file an application for a license to conduct pari-mutuel wagering, including intertrack wagering and simulcast wagering. Permitholders accepting wagers on intertrack and simulcast events are required to disclose the dates of all those events in their license application. For the 2018-2019 Fiscal Year only, the division may approve changes in racing dates for permitholders, if the requests are received before May 31, 2018.

Greyhound Racing Permitholders

Certain greyhound racing permitholders[92] are authorized to irrevocably elect, within 36 months after the bill's effective date, not to conduct live racing (i.e., decouple), while they continue to operate their licensed slot machine facilities and/or cardrooms, if any, pursuant to ch. 551, F.S., and s. 849.086, F.S., as amended by the bill.

Decoupled greyhound permitholders retain their pari-mutuel permits, are pari-mutuel facilities as defined in s. 550.002(23), and remain eligible, but not required, to be a guest track for purposes of intertrack wagering and simulcasting. Decoupled greyhound permitholders may receive an operating license to conduct pari-mutuel wagering activities at another permitholder's racing facility pursuant to s. 550.475.

Jai Alai, Harness Horse Racing and Quarter Horse Racing Permitholders

Section 4 provides that jai alai permitholders, harness horse racing permitholders and quarter horse racing permitholders that have conducted live racing or games for at least five years may

[90] Section 551.104(4)(c), F.S.
[91] Section. 849.086(5)(b), F.S.
[92] Those that conducted a full schedule of live racing for a period of at least 10 consecutive state fiscal years after the state Fiscal Year 1996-1997, or that converted a permit to a permit to conduct greyhound racing after that state fiscal year.

discontinue live racing (i.e., decouple), if the irrevocable election to discontinue live racing is made within 36 months after the effective date of the bill.

A jai alai permitholder, harness horse racing permitholder or quarter horse racing permitholder that makes the irrevocable election to decouple retains its permit and is a pari-mutuel facility as defined in s. 550.002(23), F.S.

A decoupled harness horse racing permitholder is eligible, but not required, to be a *host* track for purposes of intertrack wagering and simulcasting; a decoupled jai alai permitholder or quarter horse racing permitholder is eligible, but not required, to be a *guest* track for purposes of intertrack wagering and simulcasting.

Section 4 provides that a decoupled jai alai permitholder, decoupled harness horse racing permitholder, or decoupled quarter horse racing permitholder may continue to operate its slot machine facility, if any, and cardroom, if any, pursuant to ch. 551, F.S., and s. 849.086, F.S., as amended by the bill.

If the 2018 Gaming Compact between the Seminole Tribe and the state, which is ratified in Section 1 of this bill, becomes effective, the provisions in this bill relating to decoupling will not cause any impact to the revenues to be paid to the state by the Seminole Tribe because the decoupling of greyhound racing permitholders, jai alai permitholders, quarter horse racing permitholders and harness horse racing permitholders is permitted under that compact and is not a violation of the exclusivity granted to the Seminole Tribe under that compact.

Prohibition on Issuance of Additional Pari-Mutuel Permits, Revocation of Dormant Permits, and Repeal of the Authority to Issue New Summer Jai Alai Permits

Present Situation

The permit of a harness horse permitholder or thoroughbred horse permitholder that does not pay tax on handle for live performances for a full schedule of live races during any two consecutive state fiscal years is void and escheats to and becomes property of the state, unless the failure to operate and pay tax on handle is the direct result of fire, strike, war, or other disaster or event beyond the ability of the permitholder to control.[93] Financial hardship of the permitholder does not constitute just cause for either failure.[94]

An escheated harness horse permit or thoroughbred horse permit must be reissued by the division to a qualified applicant, using the procedures mandated for issuance of an initial permit. The requirements for a referendum before issuance of a pari-mutuel permit do not apply to reissuance of an escheated harness horse or thoroughbred horse permit.[95]

Pursuant to s. 550.054(9)(b), F.S., the division may revoke or suspend any permit or license upon the willful violation by the permitholder or licensee of any provision of ch. 550, F.S., or any administrative rule adopted by the division.

[93] *See* s. 550.09512(3), F.S. and s. 550.09515(3), F.S.
[94] *Id.*
[95] *See* ss. 550.09512(3)(b) and 550.09515(3)(b), F.S.

Section 550.0745, F.S., authorizes, under certain circumstances, the conversion of a pari-mutuel permit to a summer jai alai permit, for the conduct of jai alai games only during the summer season. Provisions of law prohibiting the location and operation of jai alai frontons within a specified distance from the location of another jai alai fronton or other permitholder, which prohibit the division from granting any permit at a location within a certain designated area, are inapplicable to summer jai alai permits issued pursuant to s. 550.0745, F.S.

The issuance of limited thoroughbred racing permits (through conversion from a quarter horse permit) is authorized in s. 550.3345, F.S. A limited thoroughbred racing permit authorizes the conduct of live thoroughbred horseracing, with net revenues dedicated to the enhancement of thoroughbred purses and breeders', stallion, and special racing awards under ch. 550, F.S., promotion of the thoroughbred horse breeding industry, and the care of retired thoroughbred horses in Florida.

Effect of Proposed Changes:

Section 5 amends s. 550.054, F.S., relating to applications for pari-mutuel wagering permits, to:

- Require the division to revoke a permit if the permitholder: (a) has not obtained an operating license for a period of more than 24 consecutive months after June 30, 2012, or (b) fails to make payments for taxes due on handle for more than 24 months, unless the failure to obtain an operating license was the direct result of fire, strike, war, or other disaster or event beyond the permitholder's control. Financial hardship of the permitholder does not constitute just cause for either failure. A revoked permit may not be reissued.
- Provide that a new pari-mutuel permit may not be approved or issued after January 1, 2018.
- Provide that a pari-mutuel license may not be transferred or reissued so as to change the location of a pari-mutuel facility, cardroom, or slot machine facility.
- Delete authority for the transfer of a thoroughbred permit to another racetrack and for conversion of a jai alai permit to a greyhound racing permit, except through the relocation of the pari-mutuel permit pursuant to s. 550.0555, F.S.
- Repeal provisions authorizing conversion and relocation of pari-mutuel permits, cardrooms, or slot machine facilities.

Section 6 repeals s. 550.0745, F.S., relating to summer jai alai permits.

Sections 7 and **8** amend s. 550.09512, F.S., relating to harness horse racing, and s. 550.09515, F.S., relating to thoroughbred racing, respectively, to:

- Require the division to revoke a harness or thoroughbred horse racing permit that has not paid the tax due on the handle for a full live schedule of harness or thoroughbred racing for more than 24 consecutive months, unless the failure to operate and pay tax was the direct result of fire, strike, war, or other disaster or event beyond the permitholder's control. A revoked permit is void and may not be reissued.
- Repeal a provision allowing reissuance of a revoked harness or thoroughbred horse permit that has been revoked for nonpayment of taxes.

Section 9 amends s. 550.3345, F.S., to delete provisions authorizing conversion of quarter horse racing permits to limited thoroughbred racing permits.

Limited Intertrack Wagering License

Present Situation:

Under s. 550.6308, F.S., a limited amount of intertrack wagering is authorized for one permanent thoroughbred sales facility.[96] To qualify for a license, the facility must have at least 15 days of thoroughbred horse sales at a permanent sales facility in this state for at least three consecutive years. Additionally, the facility must have conducted at least one day of nonwagering thoroughbred racing in this state, with a purse structure of at least $250,000 per year for two consecutive years before application for a license.

A limited intertrack wagering licensee is limited to conducting intertrack wagering during:
- The 21 days in connection with thoroughbred sales;
- Between November 1 and May 8;
- Between May 9 and October 31, if:
  1. No permitholder within the county is conducting live events;
  2. Permitholders operating live events within the county consent; or
  3. For the weekend of the Kentucky Derby, the Preakness, the Belmont, and a Breeders' Cup Meet.

The licensee is further limited to intertrack wagering on thoroughbred racing unless all permitholders in the same county consent. [97] The licensee must pay 2.5 percent of total wagers on jai alai or greyhound racing to thoroughbred permitholders operating live races for purses.[98]

Effect of Proposed Changes:

Section 10 amends s. 550.6308, F.S., to:
- Reduce the required number of days of sales to eight days from fifteen days; and
- Remove the requirement to conduct at least one day of nonwagering thoroughbred racing with a $250,000 purse per year for two consecutive years.

Certain restrictions and requirements for intertrack wagering are deleted, including requirements that intertrack wagering may be conducted:
- For up to 21 days in connection with sales;
- Between November 1 and May 8;
- Only with the consent of other permitholders that run live racing in the county, between May 9 and October 31; and
- During the weekend of the Kentucky Derby, the Preakness, the Belmont, and a Breeders' Cup Meet conducted after May 8 and before November 1.

The following requirements imposed on the limited intertrack wagering permitholder are deleted:

[96] Section 550.6308, F.S.
[97] *See* s. 550.6308(4), F.S.
[98] *See* s. 550.6308(5), F.S.

- That intertrack wagering must be conducted only on thoroughbred racing unless the consent of all thoroughbred, jai alai, and greyhound racing permitholders in the same county is obtained; and
- That a contribution to a purse pool of 2.5 percent be made for intertrack wagering on greyhound or jai alai.

Slot Machine Gaming and Decoupling (Sections 11 and 12)

Present Situation:

Chapter 551, F.S., authorizes slot machine gaming at the location of certain licensed pari-mutuel locations in Miami-Dade County or Broward County and provides for state regulation.[99] Currently eight facilities in Miami-Dade and Broward counties are authorized to operate slot machines. Voters in each county approved slot machine facilities after an amendment to the state Constitution was approved in 2004.[100]

As of January 1, 2018, eight additional counties have approved slot machine gaming by countywide referendum since January 1, 2012: Brevard, Duval, Gadsden, Hamilton, Lee, Palm Beach, St. Lucie, and Washington.

In 2017, the Florida Supreme Court determined, in *Gretna Racing, LLC v. Department of Business and Professional Regulation, Division of Pari-mutuel Wagering,*[101] that the powers granted by the State Constitution to non-charter counties[102] does not authorize the conduct of referenda to approve slot machine gaming in those counties, and upheld the division's denial of the slot machine license sought by Gretna Racing, a quarter horse permitholder.[103] Gretna Racing's facilities are located in Gadsden County, which held a countywide non-binding vote, in which a majority of the voters favored slot machines at pari-mutuel facilities in the county.[104]

In *Gretna*, the Florida Supreme Court did not reach the question of whether the powers granted to charter counties by the State Constitution authorize the conduct of referenda to approve slot machine gaming in charter counties, however, the issue is pending in the 4th District Court of Appeal.[105]

Effect of Proposed Changes:

Section 11 amends the term "eligible facility" in s. 551.102(4), F.S., to mean, "any licensed pari-mutuel facility." Certain provisions in this definition are transferred to s. 551.104(2)(a)1. and 2., F.S. *See* **Section 12** of the bill.

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[99] *See* ch. 551, F.S., relating to the regulation of slot machine gaming at pari-mutuel locations.
[100] *See* FLA. CONST., art. IX, s. 23 (1968).
[101] *See Gretna Racing, LLC v. Department of Business and Professional Regulation, Division of Pari-mutuel Wagering,* 225 So.3d 759 (Fla. 2017).
[102] *See* FLA. CONST. art VIII, s. 9(f).
[103] For information about the documents filed by the parties, *see* http://jweb.flcourts.org/pls/docket/ds_docket?p_caseyear=2015&p_casenumber=1929&psCourt=FSC&psSearchType= at p. 16 (last visited Jan. 23, 2017).
[104] *Id*. at p. 1.
[105] *See Investment Corporation of Palm Beach v. Dept. of Bus. & Prof. Reg.*, Case No. 4D15-460, at http://199.242.69.70/pls/ds/ds_docket_search?pnSearchType=1 (last visited Mar. 2, 2018).

Section 12 amends s. 551.104(2), F.S., to authorize the division to approve licenses for the conduct of slot machine gaming at:

- The eight pari-mutuel facilities in Broward County and Miami-Dade County which currently operate slot machines; and
- Pari-mutuel facilities in other counties, if authorized by referendum conducted after January 1, 2012 and on or before September 1, 2018, including pari-mutuel facilities contiguous with property of the qualified project of a public-private partnership between the pari-mutuel permitholder and a responsible public entity.[106]

Applicants for a slot machine license in a county that authorized slot machine gaming in a referendum held after January 1, 2012, and on or before September 1, 2018, must:

- Have conducted a full schedule of live racing or games for two consecutive calendar years immediately preceding its application.
- Pay the required license fee and meets other requirements of ch. 551, F.S.
- Irrevocably surrender one greyhound racing permit or one jai alai permit, issued pursuant to ch. 550, F.S., under which the permitholder, including any previous owner of such permit, conducted a full schedule of live racing or games for not less than the 5 state fiscal years immediately prior to state fiscal year 2018-2019.[107]
- Continue to hold a permit authorizing pari-mutuel wagering at the location at which the applicant intends to operate slot machine gaming, after surrendering such greyhound racing permit or jai alai permit.
- Pay total slot machine taxes and license fees, including a surcharge if necessary, to the State of not less than $10 million in Fiscal Year 2018-2019 and $20 million each fiscal year thereafter.

Section 12 also:

- Revises conditions for licensure and for maintaining continued authority for conducting slot machine gaming to reflect that certain pari-mutuel permitholders are authorized to discontinue conducting live racing or games (i.e., decouple).
- Authorizes a permitholder with a slot machine license to receive an operating license to conduct pari-mutuel wagering activities at another pari-mutuel facility, if the permitholder has operated its live races or games by lease for at least five consecutive years immediately prior to the permitholder's application for a slot machine license; however, the permitholders must be located within 35 miles of each other.[108] *See* s. 551.104(4)(c)1., as amended by the bill.

Section 12 requires a slot machine licensee that chooses not to run a full schedule of live racing or games, (i.e., decouple), to make payments for the benefit of live thoroughbred horse racing purses. If a slot machine licensee is not running a full schedule of live racing or games under its pari-mutuel permit, then the decoupled licensee must remit each month to each qualified

[106] *See* s. 255.065, F.S.; the bill requires execution of a comprehensive agreement pursuant to s. 255.065(7), F.S., relating to project design review, inspection, insurance, financial statement filing, users fees, lease payments, performance bonds, and similar development issues.
[107] After surrender, the permit is void and may not be reissued.
[108] *See* s. 550.475, F.S., and lines 2300 to 2305 of the bill

thoroughbred permitholder, by the fifth day of each calendar month[109] via electronic funds transfer instructions provided by the permitholder, an amount equal to one-twelfth of the lesser of $1.5 million or 2.75 percent of the permitholder's prior fiscal year slots revenue, divided by the total number of qualified thoroughbred permitholders for that fiscal year. A qualified thoroughbred permitholder must use such payments exclusively for purses and awards for live thoroughbred horse races held at that permitholder's racing facility.

The term "qualified thoroughbred permitholder":

- Does not include limited thoroughbred permitholders or thoroughbred permitholders leasing a racetrack facility from another thoroughbred permitholder.
- Includes thoroughbred permitholders conducting no less than a full schedule of live racing, and no fewer than the number of performances conducted in Fiscal Year 2017-2018.

The division must, within 15 days of issuing a slot machine license to a decoupled permitholder, notify the licensee of the qualified thoroughbred permitholders to which payments must be paid. A qualified thoroughbred permitholder that receives those funds must remit, within 10 days of receipt, ten percent of the funds to the Florida Thoroughbred Breeders' Association, Inc., for payment of breeders', stallion, and special racing awards, subject to the fee authorized in s. 550.2625(3), F.S.[110]

The bill disqualifies permitholders from receiving a slot machine license if a permitholder includes, or previously included, an ultimate equitable owner whose permit was voluntarily or involuntarily surrendered, suspended, or revoked by the division within 10 years before the date of the permitholder's application for a slot machine license.

Slot Machines Taxes (Section 13)

Present Situation:

The tax rate on slot machine revenues is 35 percent under s. 550.106(2), F.S. If, during any state fiscal year, the aggregate amount of tax paid to the state by all slot machine licensees in Broward and Miami-Dade counties is less than the aggregate amount of tax paid to the state by all slot machine licensees in the 2008-2009 fiscal year, each slot machine licensee must pay to the state, within 45 days after the end of the state fiscal year, a surcharge equal to its pro rata share of an amount equal to the difference between the aggregate amount of tax paid to the state by all slot machine licensees in the 2008-2009 fiscal year and the amount of tax paid during the fiscal year that resulted in the revenue shortfall. All revenue from slot machine gaming is deposited into the Educational Enhancement Trust Fund of the Department of Education.

Effect of Proposed Changes:

Section 13 amends s. 551.106, F.S., to:

[109] The bill provides if the fifth day of the calendar month falls on a weekend, the payment must be remitted on the first Monday following the weekend.

[110] Section 550.2625(3), F.S, states the Florida Thoroughbred Breeders' Association has the right to withhold up to 10 percent of a permitholder's payments under that section as a fee for administering the payments of awards and for general promotion of the horse racing industry.

- Reduce the tax rate for slot machine revenues to 30 percent, effective January 1, 2019, and to 25 percent effective July 1, 2020.
- Require that if, in any state fiscal year, the aggregate amount of tax paid to the state by all the slot machine licensees in Broward and Miami-Dade counties is less than the aggregate amount paid in the 2017-2018 state fiscal year, each of those licensees must pay a surcharge calculated by dividing the aggregate amount of slot machine taxes paid to the state by all such slot machine licensees in the 2017-2018 fiscal year by the aggregate amount of slot machine taxes paid by all such licensees during the applicable fiscal year, multiplying the result by the amount of slot machine taxes paid by the licensee during the applicable state fiscal year, and then subtracting from that product the amount of slot machine taxes paid by the licensee during the applicable state fiscal year. However, the sum of taxes paid by a licensee at the reduced tax rates and any surcharge may not exceed 35 percent of the licensee's slot machine revenue in the applicable state fiscal year.
- Provide that slot machine revenues from a slot machine licensee associated with a public-private partnership be deposited into the Pari-mutuel Wagering Trust Fund and that 90 percent of those revenues be transferred to the Educational Enhancement Trust Fund and 10 percent be transferred to the responsible public entity for the public-private partnership of the licensee. The funds transferred to the public entity must be used to finance the qualifying project that established the slot machine licensee's eligibility for initial licensure to conduct slot machine gaming.
- Require a permitholder with a slot machine license located in a county that conducted a successful slot machine referendum after January 1, 2012, (and on or before September 1, 2018), to pay at least $10 million in total slot machine taxes and license fees to the state in Fiscal Year 2018-2019, and at least $20 million in total slot machines taxes and license fees to the State in Fiscal Year 2019-2020 and thereafter, regardless of whether the permitholder or licensee operated slot machines during the fiscal year. If those requirements are not satisfied the permitholder must pay a surcharge equal to the difference between those amounts and the aggregate amount of slot machine taxes and license fees paid to the State. The surcharge is due 45 days after the end of each respective fiscal year.
- Remove obsolete language relative to the slot machine license fee for Fiscal Year 2010-2011.

If the 2018 Gaming Compact between the Seminole Tribe and the state, which is ratified in Section 1 of this bill becomes effective, the provisions in this bill relating to the taxation of slot machine revenues will not cause any impact to the revenues to be paid to the state **by the Seminole Tribe** because the reduction of the tax on slot machine revenues is permitted under that compact and is not a violation of the exclusivity granted to the Seminole Tribe under that compact. Slot machine tax revenues are likely to be reduced by this provision.

Slot Machine Gaming Operations

Present Situation:

Sections 551.114 and 551.116, F.S.:
(1) Allow slot machine licensees to make up to 2,000 slot machines available for play within their facilities;
(2) Require slot machine licensees to display pari-mutuel races or games to slot machine patrons in slot machine gaming areas;

(3) Require that slot machine gaming areas be within current live gaming areas or within a building contiguous or connected to the live gaming area; and
(4) Limit slot machine gaming to 18 hours per day, Monday through Friday, and 24 hours on Saturdays and Sundays.

Effect of Proposed Changes:

Section 14 amends s. 551.114, F.S. to:

- Limit the number of slot machines a slot machine licensee whose initial license was issued before January 1, 2018, may make available for play within the property of the licensee's facilities to:
  - 1,600 slot machines, if the licensee made available for play 1,250 or more slot machines during State Fiscal Year 2016-2017.
  - 1,200 slot machines, if the licensee made available for play 1,000 or more slot machines, but less than 1,250 slot machines, during State Fiscal Year 2016-2017.
  - 1,000 slot machines, if the licensee made available for play less than 1,000 slot machines during State Fiscal Year 2016-2017.
- Authorize a slot machine licensee whose initial license was issued on or after January 1, 2018, to make available for play within the property of the licensee's facility up to 750 slot machines. However, the total number of slot machines that may be made available for play by all slot machine licensees whose initial slot machine license was issued after January 1, 2018, may not exceed 6,000 slot machines.

  If the total number of such slot machines would exceed 6,000 slot machines if each such licensee were to operate 750 slot machines, the maximum number of slot machines each such licensee may make available for play may not exceed 6,000 divided by the number of licensees whose initial license was issued after January 1, 2018.

In addition, **Section 14** also amends ss. 551.114(2) and (4), F.S., to provide:

- Pari-mutuel races or games must be displayed to slot machine patrons in slot machine gaming areas, if such races or games are available to the slot machine licensee; and
- Designated slot machine gaming areas must be located anywhere within the property described in a slot machine licensee's pari-mutuel permit.

Section 15 amends s. 551.116, F.S., to allow slot machine facilities to operate 24 hours a day.

Cardrooms and Designated Player Games (Section 16)

Present Situation:

Chapter 849, F.S., authorizes cardrooms at certain pari-mutuel facilities.[111] In Fiscal Year 2017-2018, 25 cardrooms are authorized to operate.[112] Cardrooms are operated by 14 greyhound permitholders, five jai alai permitholders, one harness horse racing permitholder, three quarter

[111] Section 849.086, F.S. Section 849.086(2)(c), F.S., defines "cardroom" to mean a facility where authorized games are played for money or anything of value and to which the public is invited to participate in such games and charges a fee for participation by the operator of such facility.
[112] *See* http://www.myfloridalicense.com/dbpr/pmw/PMW-PermitholderOperatingLicenses--2017-2018.html (last visited Jan. 11, 2018).

horse racing permitholders, and two thoroughbred racing permitholders.[113] A license to offer pari-mutuel wagering, slot machine gaming, or a cardroom at a pari-mutuel facility is a privilege granted by the state.[114] A cardroom may be open 18 hours per day on Monday through Friday, and 24 hours per day on Saturday and Sunday.[115]

Section 849.086, F.S., provides that a licensed pari-mutuel permitholder that holds a valid pari-mutuel permit and license to conduct a full schedule of live racing or games may hold a cardroom license authorizing the operation of a cardroom and the conduct of authorized games at the cardroom. An authorized game is a game or series of games of poker or dominoes.[116] Such games must be played in a non-banking manner,[117] where the participants play against each other, instead of against the house (cardroom). At least four percent of the gross cardroom receipts of greyhound racing permitholders and jai alai permitholders must supplement greyhound purses, and quarter horse permitholders must have a contract with a horsemen's association governing the payment of purses on live quarter horse races conducted by the permitholder.[118]

Renewal of a cardroom license requires that a permitholder must, in its annual pari-mutuel license application, request to conduct at least 90 percent of the performances conducted either (1) in the year in which its first cardroom license was issued, or (2) in the state fiscal year immediately prior to the application if a full schedule of live racing was conducted ("90 percent rule").[119] If more than one permitholder is operating at a facility, each permitholder must have applied for a license to conduct a full schedule of live racing.[120]

Eleven of the 12 greyhound racing locations have cardrooms. As a result of the "90 percent rule," the required minimum of live performances varies among greyhound racing permitholders, from 93 to 394 performances.[121]

There is only one harness horse racing permitholder, and it has a cardroom. The permitholder must request authorization to conduct a minimum of 140 live performances during the state fiscal year immediately prior to its application for an operating license.[122] As a result of the "90 percent

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[113] Cardroom locations, by class of permit held are: (1) greyhound racing: Bonita Springs (Lee Co.), Daytona Beach (Volusia Co.), Ebro (Washington Co.), Hallandale Beach (Broward Co.), Melbourne (Brevard Co.), Miami (Miami-Dade Co.) Orange Park (Clay Co.), Pensacola (Escambia Co.), St. Petersburg (Pinellas Co.), and West Palm Beach (Palm Beach. Co.); (2) jai alai: Dania Beach (Broward Co.), Ft. Pierce (St. Lucie Co.), Florida City and Miami (Miami-Dade Co.), and Reddick (Marion Co.); (3) quarter horse: Gretna (Gadsden), Hialeah (Miami-Dade Co.) and Summerfield (Marion Co.); and (4) thoroughbred racing: Hallandale Beach (Broward Co.), and Tampa (Hillsborough Co.).

[114] *See* s. 550.1625(1), F.S., "…legalized pari-mutuel betting at dog tracks is a privilege and is an operation that requires strict supervision and regulation in the best interests of the state." *See also Solimena v. State,* 402 So.2d 1240, 1247 (Fla. 3d DCA 1981), review denied, 412 So.2d 470, which states "Florida courts have consistently emphasized the special nature of legalized racing, describing it as a privilege rather than as a vested right," citing *State ex rel. Mason v. Rose,* 122 Fla. 413, 165 So. 347 (1936).

[115] Section 849.086(7)(b), F.S.

[116] *See* s. 849.086(2)(a), F.S.

[117] *Id.*

[118] *See* s. 849.086(13)(d), F.S.

[119] *See* s. 849.086(5)(b), F.S.

[120] *Id.*

[121] Telephone interview with division staff (Jan. 23, 2017).

[122] *See* s. 849.086(5)(b), F.S.

rule," the required minimum of live performances for the harness horse racing permitholder is 126 performances.[123]

Five of the six jai alai permitholders have cardrooms. As a result of the "90 percent rule," the required minimum of live performances varies among jai alai permitholders, from 36 to 150 performances.[124]

Three of the five quarter horse permitholders have cardrooms. As a result of the "90 percent rule," the required minimum of live performances varies among quarter horse permitholders, from 18 to 40 performances.[125]

Two of the three thoroughbred permitholders have cardrooms. As a result of the "90 percent rule," the required minimum of live performances varies among thoroughbred racing permitholders, from 40 to 81 performances.[126]

If more than one permitholder is operating at a facility, each permitholder must have applied for a license to conduct a full schedule of live racing.[127]

State Litigation Challenging DBPR's Administrative Rules Relating to Designated Player Games

In July 2014, the Division of Pari-Mutuel Wagering (division) of the Department of Business and Professional Regulation (DBPR) adopted two administrative rules relating to the play of Designated Player Games.[128] Under the rules, a designated player game is not authorized if it is not played in compliance with house rules required to be available for review by players or the division, which must:

- Establish uniform requirements to be a designated player;
- Ensure that the dealer button rotates clockwise around the card table for each hand, so that all players desiring to be a designated player have the opportunity to do so; and
- Not require the designated player to cover all potential wagers.[129]

Banking games are defined in current law as those in which the house is a participant.[130] Designated player[131] games, if conducted as defined in Rule 61D-11.002(5), Florida Administrative Code, were not considered by the DBPR to be banking games.

The division pursued additional rulemaking concerning Designated Player Games in September 2014, to "address issues discovered in the implementation and practical application of [the July

[123] *Id*.
[124] *Id*.
[125] *Id*.
[126] *Id*.
[127] *See* s. 849.086(5)(b), F.S.
[128] *See* Fla. Admin. Code R. 61D-11.001(17) and R. 61D-002(5) (2018) at https://www.flrules.org/gateway/ChapterHome.asp?Chapter=61D-11 (last visited Jan. 11, 2018).
[129] *Id*. and *see* Fla. Admin. Code R. 61D-11.002(3) and (5) (2017).
[130] Section 849.086(2)(b), F.S.
[131] Fla. Admin. Code R. 61D-11.001(17) (2018) defines "designated player" as the "player identified by the button as the dealer in the player position."

2014] cardroom rules."[132] In October 2015, the division proposed to repeal the rule defining the term "designated player" as "the player identified by the button in the dealer position" and the rule establishing the standards for Designated Player Games.[133]

Various cardroom operators challenged the repeal of the rules in December 2015. In August 2016, Administrative Law Judge Gary Early of the Division of Administrative Hearings found:

> The evidence is conclusive that, by its repeal of rule 61D-11.002(5), Respondent simply changed its mind as to whether playing with a designated player constituted the establishment of a prohibited banking game. [Footnote omitted.] It previously determined that such games were lawful under the terms of section 849.086 [F.S.]; it has now determined they are not.[134]

Judge Early determined the division:

> Has taken divergent views of the statute in a manner that has substantially affected the interests of [cardroom operators]. For [the division] to suggest that its repeal of the rules is a clarification, a simplification, or reflection of the unambiguous terms of the statute, and that [the cardrooms] should just tailor their actions to the statute without any interpretive guidance from [the division], works contrary to the role of government to provide meaningful and understandable standards for the regulation of business in Florida. [The division] cannot, with little more than a wave and well-wishes, expect regulated businesses to expose themselves to liability through their actions under a statute that is open to more than more one interpretation, when the agency itself has found it problematic to decipher the statute under which it exercises its regulatory authority.[135]

In November 2017, the Florida First District Court of Appeal (DCA) affirmed Judge Early's ruling that the proposed repeal of the Designated Player Games rules was invalid.[136] The DCA stated the ruling correctly found that repeal of the rules was a rule itself because it was a change of the DBPR's policy on Designated Player Games[137] However, the DCA declined to adopt Judge Early's finding that the division "lacked the authority to either promulgate or to repeal rules" on Designated Player Games, noting that the role of the division "is to provide meaningful and understandable standards for cardrooms, particularly where a statute is ambiguous."[138]

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[132] *See Dania Entertainment Center, LLC. v. Dep't of Bus. and Prof. Reg., Div. of Pari-mutuel Wagering, (Dania Entertainment)* Case No. 15-7010RP (Fla DOAH 2016) at page 17.at https://www.doah.state.fl.us/ROS/2015/15007010.pdf (last visited Jan. 11, 2018).
[133] *Id*. at p. 18.
[134] *See Dania Entertainment* at pp. 24-25.
[135] *Id*. at page 25.
[136] *See Dep't of Bus. and Prof. Reg., Div. of Pari-Mutuel Wagering v. Dania Entertainment Center, et al.* 229 So.3d 1259 (Fla. 1st DCA 2017) at https://edca.1dca.org/DCADocs/2016/4275/164275_1284_11082017_08460223_i.pdf (last visited Jan. 11, 2018).
[137] *Id*. The DCA also affirmed the finding that the Division of Pari-Mutuel Wagering (division) of the DBPR failed to follow required rulemaking procedures by not preparing a statement of estimated regulatory costs (SERC). *Id*. at pp. 11-12.
[138] *Id*. at page 14.

Federal Litigation Concerning the 2010 Gaming Compact and Banked Card Games (including Player Banked Card Games with a Designated Player) and Settlement

As discussed above in connection with the 2018 Gaming Compact authorized in this bill, the state and the Seminole Tribe were parties to litigation in federal court relating to the offering of table games by the Seminole Tribe after July 31, 2015.
As to the banked card games issue, Judge Hinkle found:

- The 2010 Gaming Compact defines 'Covered Games' to include 'banking or banked card games, including baccarat, chemin de fer, and blackjack (21);[139]
- Under s. 849.086, F.S., licensed pari-mutuel facilities may operate cardrooms, but the statute explicitly forbids "banking" card games;[140]
- Baccarat, chemin de fer, and blackjack are all games in which there is no common pot, and the players do not compete against one another;
- A bank pays the winners and collects from the losers;
- In baccarat and blackjack, the bank is most often a dealer employed by the facility – in effect, the facility itself, commonly denominated the 'house;'
- In chemin de fer, the bank is always one of the players; and
- Under the 2010 Gaming Compact and [Indian Game Regulatory Act], banked games include both house banked games and player-banked games.[141]

Section 849.086(2)(b), F.S., defines a 'banking game' as a game in which:

- The house is a participant in the game, taking on players, paying winners, and collecting from losers; or
- The cardroom establishes a bank against which participants play.

The court found that:

- The first part of the definition in [1] describes a house banked game, one played in the manner that is typical for blackjack and baccarat;
- The second part of the definition in [2] describes a game banked by anyone else, including a player; that is, a game played in the manner of chemin de fer;[142]
- When the cardroom devises and runs the game and sets the rules, including the requirement that a player act as the bank, the cardroom 'establishes' a bank;

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[139] *See Seminole Tribe of Florida v. State of Florida, 219 F.Supp. 3d 1177 (N.D. Fla. Nov. 9, 2016), Case No.: 4:15-cv-516-RH/CAS, Document 103,* at pp. 4-5.
[140] *Id*. at p. 5, and *see* s. 849.086(12)(a), F.S. The court further held "[b]ecause of this statute, the Tribe's authority under the Compact to conduct banked card games afforded the Tribe the right to conduct bank card games without competition from cardrooms. This was perhaps the most important benefit the Tribe obtained under the Compact. **The most important benefit to the State was more than a billion dollars.** Because IGRA prohibits a state from receiving a share of a tribe's gaming revenue except to defray expenses or in exchange for a benefit conferred on the tribe, **the Tribe's billion-dollars-plus payments to the State under the Compact were justified in large part as compensation for the exclusive right to conduct banked card games** – exclusive, that is, except for any competition from other tribes or other types of games." *Id.* at pp. 5-6. (Emphasis added.)
[141] *See Seminole Tribe of Florida v. State of Florida*, Case No.: 4:15-cv-516-RH/CAS (U.S.D.C. N.D. Fla.), Document 103, filed Nov. 9, 2016, at p. 9.
[142] *Id*. at p. 10.

- Florida law does not state that a game is not 'banked' when the bank is a player rather than the house;
- There were no player-banked card games at pari-mutuel cardrooms when the parties entered into the 2010 Gaming Compact;
- The parties did not expect the Seminole Tribe to have to compete against such games; and
- The DBPR permitted cardrooms to conduct banked games as early as 2011, formally approved the practice by adopting a rule in 2014, continues to permit the games, and asserts the rule is currently valid.

After the DBPR's appeal of Judge Hinkle's decision,[143] the Seminole Tribe and the DBPR entered into a Settlement Agreement and Stipulation (2017 Settlement) on July 5, 2017.[144]

Authorization of Designated Player Games in Florida (i.e., player banked card games with a designated player) could affect the revenue sharing provisions of the 2010 Gaming Compact[145] Judge Hinkle found Designated Player Games to be banked card games, a form of Class III gaming. The Settlement Agreement that the state entered with the Seminole Tribe provides that Judge Hinkle's findings of fact and conclusions of law are binding on the State and the Seminole Tribe. Accordingly, payments due to the state under the 2010 Compact could cease.[146]

Additionally, the Tribe would also be authorized to offer Designated Player Games, because each compact provides the Tribe is authorized to offer "any new game authorized by Florida law for any person for any purpose.[147]

If the 2018 Gaming Compact between the Seminole Tribe and the state, which is ratified in Section 1 of this bill, becomes effective, the provisions in this bill relating to Designated Player Games will not cause any impact to the revenues to be paid to the state by the Seminole Tribe because the games are permitted under that compact and are not a violation of the exclusivity granted to the Seminole Tribe under that compact.

Effect of Proposed Changes:

Section 16 amends s. 849.086, F.S., to:

- Provide that a Designated Player Game is not a banking game, and that a designated player is the player in the dealer position seated at a traditional player position who pays winning players and collects from losing players.

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[143] *See Seminole Tribe of Florida v. State of Florida*, 219 F.Supp. 3d 1177 (N.D. Fla. Jan. 19, 2017), Case No.: 4:15-cv-516-RH/CAS, Document 120.

[144] *See* Settlement Agreement and Stipulation (2017 Settlement) (July 5, 2017) (on file with the Senate Committee on Regulated Industries).

[145] *See* paragraph A of Part XII of the 2010 Gaming Compact at http://www.flsenate.gov/. . .RI/Links/Gaming Compact between The Seminole Tribe of Florida and the State of Florida.pdf (last visited Jan. 11, 2018).

[146] *See* paragraph A of Part XII of the 2010 Gaming Compact at pages 39-40 at http://www.myfloridalicense.com/dbpr/pmw/documents/2010_Compact-Signed1.pdf (last visited Jan. 11, 2018).

[147] *See* subparagraph 4 of paragraph F of Part III of the 2010 Gaming Compact at page 4 at http://www.myfloridalicense.com/dbpr/pmw/documents/2010_Compact-Signed1.pdf (last visited Jan. 11, 2018) and *see* subparagraph 5 of paragraph G of Part XII of the 2015 Gaming Compact at http://www.flsenate.gov/. . .Proposed 2015 Gaming Compact, Comparison Chart, and Letter from Governor Scott.pdf (last visited Jan. 1, 2018).

- Define "Designated Player Game" as "a game in which the players compare their cards only to the cards of the designated player or to a combination of cards held by the designated player and cards common and available for play by all players."
- Repeal the "90 percent rule" in existing law mandating the minimum number of races that must be conducted by a permitholder to renew a cardroom license.
- Require that a permitholder conducting less than a full schedule of live racing or games make payments for the benefit of live thoroughbred horse racing purses. If a cardroom licensee is not running a full schedule of live racing or games under its pari-mutuel permit, then the decoupled licensee must remit each month to each qualified thoroughbred permitholder, an amount equal to four percent of the permitholder's monthly cardroom gross receipts divided by the total number of qualified thoroughbred permitholders for that fiscal year.
- The required uses of those payments, the requirements for making those payments and the definition of the term "qualified thoroughbred permitholder" are the same as those applicable to the payments decoupled pari-mutuel permitholders that have a slot machine license must pay for thoroughbred horse racing purses under this bill.
- Require the division to respond to requests from a licensed cardroom within 45 days for approval of a cardroom's internal controls or the rules for a new authorized game, or provide a list of deficiencies. The division has ten days after receipt of revised internal controls or rules for a new game addressing the deficiencies identified by the division to approve or reject the revised internal controls or rules.[148]
- Allow cardrooms to operate 24 hours a day.
- Authorize cardroom operators to offer Designated Player Games, at not more than 50 percent of the total licensed tables in a cardroom.
- Provide a cardroom operator may not serve as a designated player but may collect a table rake as posted at the table.
- Provide, if there are multiple designated players at a table, the dealer button must be rotated clockwise after each hand.
- Provide that a cardroom operator may not allow a designated player to pay an opposing player who holds a lower ranked hand.
- Provide that any designated player may not be required by the rules of a game or by the rules of a cardroom to cover more than 10 times the maximum wager for opposing players.
- Prohibit a cardroom, or any cardroom licensee, from contracting for or receiving compensation other than a posted table rake from any player to participate in any game to serve as a designated player.
- Require employees of a designated player be licensed, and a designated player pay, in addition to the cardroom business occupational fee, an employee occupational fee which may not exceed $500.00 per employee annually.

If the 2018 Gaming Compact between the Seminole Tribe and the state, which is ratified in Section 1 of this bill, becomes effective, the provisions in this bill relating to Designated Player Games at cardrooms will not cause any impact to the revenues to be paid to the state by the Seminole Tribe because the authorization for Designated Player Games is permitted under that

[148] According to the DBPR's Office of General Counsel, the terms "requests from a licensed cardroom" and "submission" in the bill "may create ambiguity in their application." *See 2018 Agency Legislative Bill Analysis (AGENCY: Department of Business and Professional Regulation)* for SB 840, dated Jan. 9, 2018 (on file with Senate Committee on Regulated Industries) at page 8.

compact and is not a violation of the exclusivity granted to the Seminole Tribe under that compact.

Definition of Slot Machines or Devices

Present Situation:

Slot machine gaming is lawful only in licensed slot machine facilities at pari-mutuel facilities located in Broward and Miami-Dade counties.[149] At issue in recent litigation is whether certain games, popularly known as pre-reveal games, are illegal slot machines.[150] The machines involve a "multiple game system with a preview feature" requiring a player to press a preview button that displays the outcome of the game before play may begin. The preview button shows the outcome of the next game but not the game after that. The circuit court concluded that pre-reveal machines are illegal slot machines, and an appeal of the case is now pending.[151]

Effect of Proposed Changes:

Section 17 amends the definition of "slot machine or device" in ch. 849, F.S., relating to gambling, to prohibit pre-reveal games.

Effective Date

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:

Fantasy Contests

None.

[149] Section 551.101, F.S.
[150] *See Gator Coin II, Inc. v. Florida Dep't of Bus. & Prof. Reg.*, No. 2015-CA-2629 (Fla. Cir. Ct. Jul. 10, 2017).
[151] *See Gator Coin II, Inc. v. Florida Dep't of Bus. & Prof. Reg.*, Case No. 1D 17-2966 (Fla. 1st DCA), at http://jweb.flcourts.org/pls/ds/ds_docket_search?pscourt=1 (last visited Feb. 13, 2018).

Pari-Mutuel Decoupling

The ending of live racing will reduce required daily license fees and taxes on wagering paid by pari-mutuel permitholders that decouple. According to the Department of Business and Professional Regulation (DBPR), the bill's fiscal impact to state government revenues is indeterminate.[152] The Revenue Estimating Conference (REC) has not analyzed this provision of the bill.

Authorization of Slot Machine Gaming in Additional Counties

The bill requires each permitholder in a county that conducted or conducts a successful referendum to authorize slot machine gaming to pay at least $10 million in total slot machine taxes and license fees to the State in Fiscal Year 2018-2019, and at least $20 million in total slot machines taxes and license fees to the State in Fiscal Year 2019-2020 and each fiscal year thereafter, regardless of whether the permitholder or licensee operated slot machines during the fiscal year. If those requirements are not satisfied, each permitholder must pay a surcharge equal to the difference between those amounts and the aggregate amount of slot machine taxes and license fees paid to the State.

Purse Supplements by Decoupled Slot Machine Licensees

None.

Slot Machine Tax Rate Reduction

The REC has not analyzed this bill, but staff expects the impact of this provision of the bill to be loss of $4.1 million on a recurring basis in slot machine revenue. Under current law and current administration, the REC forecasts[153] slot machine revenues to increase by 2.1 percent in Fiscal Year 2018-2019, and by 1.2 percent annually thereafter, growing from $191.9 million in Fiscal Year 2017-2018 to $205.0 million in Fiscal Year 2022-2023. The bill will result in a loss of the growth in slot machine revenue deposited in the Educational Enhancement Trust Fund.

Authorization of Designated Player Games

None.

B. Private Sector Impact:

The bill authorizes certain fantasy contests to be offered by fantasy contest operators, who will retain amounts participants pay as entry fees to participate in fantasy contests.

[152] *See 2018 Agency Legislative Bill Analysis (AGENCY: Department of Business and Professional Regulation)* for SB 840, dated Jan. 9, 2018 (on file with Senate Committee on Regulated Industries) at page 6.
[153] *See Revenue Estimating Conference Slot Machine Tax January 2018* at http://edr.state.fl.us/Content/conferences/slotmachines/SlotsResults.pdf (last visited Feb. 7, 2018).

Persons who pay entry fees to participate in fantasy contests have the opportunity to win prizes and awards.

The ending of live racing will reduce required daily license fees and taxes on wagering paid by pari-mutuel permitholders that decouple.

The bill reduces the tax rate on slot machine gaming revenue effective January 1, 2019, but also requires that the existing Broward and Miami-Dade slot machine facilities pay, in each year, at least as much as they paid in Fiscal Year 2017-2018.

The bill requires each permitholder in a county that conducted or conducts a successful referendum to authorize slot machine gaming to pay at least $10 million in total slot machine taxes and license fees to the State in Fiscal Year 2018-2019, and at least $20 million in total slot machines taxes and license fees to the State in Fiscal Year 2019-2020 and each fiscal year thereafter, regardless of whether the permitholder or licensee operated slot machines during the fiscal year. If those requirements are not satisfied, each permitholder must pay a surcharge equal to the difference between those amounts and the aggregate amount of slot machine taxes and license fees paid to the State.

As to Designated Player Games, the bill:

- Provides a Designated Player Game is not a banking game.
- Sets requirements and limitations for a Designated Player Game.
- Limits the number of Designated Player Game tables in a cardroom to not more than 50 percent of the cardroom's total licensed tables.
- Grants additional rulemaking authority to the DBPR's Division of Pari-Mutuel Wagering (division) relating to requests from licensed cardrooms and imposes deadlines for response by the division to submissions by cardroom licensees relating to rules for new authorized games, revisions to internal controls, and revisions to rules for games.

C. Government Sector Impact:

The REC has not adopted an official estimate of the impact of this bill, but based on preliminary analysis, if the 2018 Gaming Compact between the Seminole Tribe of Florida and the state, which is ratified in Section 1 of this bill, becomes effective, the state would cease to receive payments under the 2010 Gaming Compact and would receive the following revenue from the Seminole Tribe in the fiscal years indicated:

Fiscal Year	Revenue Share (in millions)
2018-2019	$325
2019-2020	350
2020-2021	375
2021-2022	425
2022-2023	475
2023-2024	500
2024-2025	550

In total, during the seven years of the Guarantee Payment Period, the state would receive $619.4 million more in payments from the Seminole Tribe under the 2018 Gaming Compact than the Revenue Estimating Conference (REC) projects will be received under the 2010 Gaming Compact for the same period.

During Fiscal Year 2018-2019, the amount the state would receive under the 2018 Gaming Compact would be an increase of $2.2 million above the amount the REC projects will be received under the 2010 Gaming Compact. In Fiscal Year 2019-2020, the state would receive $21.3 million more under the 2018 Gaming Compact than the amount the state is projected to receive under the 2010 Gaming Compact.

If the 2018 Gaming Compact authorized in Section 1 of this bill does not become effective, the bill may significantly impact the Revenue Share Payments[154] required to be paid by the Seminole Tribe of Florida under the 2010 Gaming Compact.

Under current law and current administration, and assuming the state does not violate the "exclusivity" requirements in the current Compact, the REC estimates that during Fiscal Year 2017-2018 $280.4 million revenue will be received from the Seminole Tribe associated with the 2010 Gaming Compact, of which $276.9 million will accrue to the General Revenue Fund and $3.5 million will be distributed to local governments as required by s. 285.710(10), F.S. During Fiscal Year 2018-2019, the REC estimates revenue associated with the 2010 Gaming Compact will be $391.1 million, of which $382.4 million will accrue to the General Revenue Fund and $8.7 million will be distributed to local governments. The REC estimates the revenue associated with the 2010 Gaming Compact will increase to $361.4 million for Fiscal Year 2025-2026.[155]

The REC currently classifies all future Revenue Share Payments to be paid by the Seminole Tribe to the state under the 2010 Gaming Compact as nonrecurring revenue because the continuation of these payments depends on actions by the state and the Seminole Tribe "that cannot be anticipated with sufficient certainty."[156]

Fantasy Contests

If the 2018 Gaming Compact between the Seminole Tribe and the state does not become effective, and if fantasy contests permitted under the bill constitute gaming, are considered Class III gaming under federal law, and constitute, under the 2010 Gaming Compact, *new* Class III gaming in Florida, then the payments due to the state under the 2010 Gaming Compact could end when fantasy contests begin to be offered for public or private use.[157]

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[154] Revenue Share Payments are the periodic payments to the State by the Seminole Tribe, based on the Tribe's Net Win. Net Win is defined as total receipts from the play of authorized tribal gaming in Florida, less all prizes, free play, or promotional credits. *See* paragraphs U and X of Part III of the 2010 Gaming Compact at page 11 at http://www.myfloridalicense.com/dbpr/pmw/documents/2010_Compact-Signed1.pdf (last visited Jan. 11, 2018).

[155] *See* the estimates for multiple fiscal years in the *Conference Results, Indian Gaming Revenues* at http://edr.state.fl.us/Content/conferences/Indian-gaming/IndianGamingResults.pdf (last visited Feb. 8, 2018).

[156] *Id.*

[157] *See* paragraph A of Part XII of the 2010 Gaming Compact at pages 39-40 at http://www.myfloridalicense.com/dbpr/pmw/documents/2010_Compact-Signed1.pdf (last visited Jan. 11, 2018); the Revenue

In a letter to Senator Travis Hutson and Representative Mike La Rosa dated December 5, 2017,[158] Jim Shore, General Counsel for the Seminole Tribe, indicated the Tribe believes the games permitted by HB 223 and SB 374 (Fantasy Contests), and SB 840 (Gaming) would violate the Tribe's exclusivity, as set forth in Part XII of the 2010 Gaming Compact between the State and Tribe. The stated purpose of the letter was to avoid enactment of legislation "that inadvertently violates the Tribe's exclusivity." Mr. Shore noted "federal law requires that any reduction in the Tribe's exclusivity must be balanced by some additional consideration from the State[, and] without such an agreement, the 2010 Gaming Compact would allow the Tribe to cease all revenue sharing payments to the State based on the expanded gaming contemplated by the referenced bills."

Pari-Mutuel Decoupling

The bill authorizes greyhound racing, harness horse racing, and quarter horse racing permitholders to stop conducting live racing while retaining intertrack and simulcast wagering, cardrooms, and, where relevant, slot machine facilities. The ending of live racing will reduce daily license fees and taxes on wagering payable by pari-mutuel permitholders that decouple. The Revenue Estimating Conference has not analyzed this bill, nor the impacts of ending live racing by greyhound racing permitholders and the various horse racing permitholders in the manner provided in the bill.

According to the Department of Business and Professional Regulation (DBPR), expenditures for licensing and sample collection may be reduced at permitholder facilities that choose to end live racing.[159] The DBPR's Office of General Counsel notes that rulemaking will be necessary to address revisions to permit and license application forms, as well as additional forms relating to the ending of live racing.[160]

Authorization of Slot Machine Gaming in Additional Counties

If the 2018 Gaming Compact authorized in Section 1 of the bill does not become effective, authorization and commencement of slot machine gaming in counties by referendum other than Broward County and Miami-Dade County,[161] as authorized in this bill, could impact the revenue sharing provisions of the 2010 Gaming Compact, as payments due to the state under the compact could cease when the expanded slot machine gaming begins to be offered.[162]

Share Payments and the required annual donation of $750,000 to the Florida Council on Compulsive Gaming must resume when the new Class III gaming is no longer operated.

[158] *See* Letter from Jim Shore, General Counsel for the Seminole Tribe, to Senator Travis Hutson and Representative La Rosa (Dec. 5, 2017) (on file with the Senate Committee on Regulated Industries).

[159] *See 2018 Agency Legislative Bill Analysis (AGENCY: Department of Business and Professional Regulation)* for SB 840, dated Jan. 9, 2018 (on file with Senate Committee on Regulated Industries) at page 6.

[160] *Id*. at page 8.

[161] As of January 1, 2018, eight counties have approved slot machine gaming by countywide referendum since January 1, 2012: Brevard, Duval, Gadsden, Hamilton, Lee, Palm Beach, St. Lucie, and Washington.

[162] *See* paragraph A of Part XII of the 2010 Gaming Compact at pages 39-40 at http://www.myfloridalicense.com/dbpr/pmw/documents/2010_Compact-Signed1.pdf (last visited Jan. 11, 2018).

However, the bill requires each permitholder in a county that conducted or conducts a successful referendum to authorize slot machine gaming to pay at least $10 million in total slot machine taxes and license fees to the state in Fiscal Year 2018-2019, and at least $20 million in total slot machines taxes and license fees to the State in Fiscal Year 2019-2020 and each fiscal year thereafter, regardless of whether the permitholder or licensee operated slot machines during the fiscal year. If those requirements are not satisfied, each permitholder must pay a surcharge equal to the difference between those amounts and the aggregate amount of slot machine taxes and license fees paid to the State. The surcharge is due 45 days after the end of each respective fiscal year.

When the slot machine facilities in additional counties would begin operation and begin paying slot machine taxes and license fees to the State is unknown. Likewise, when the revenues associated with those facilities would be received by the State also is unknown. Currently, eight additional counties (each with one pari-mutuel facility) have conducted successful referenda to authorize slot machine gaming; the bill requires those eight pari-mutuel permitholders to pay not less than $80 million to the State in total slot machine taxes, license fees, and any surcharge not later than August 15, 2019. For State Fiscal Year 2019-2010, the total amount of revenue those eight permitholders are required by the bill to pay the State is not less than $160 million.

Slot Machine Tax Rate Reduction

The bill provides for a slot machine tax rate reduction, which takes effect on January 1, 2019, combined with a requirement that the existing Broward and Miami-Dade slot machine facilities pay, in each year, at least as much as they paid in Fiscal Year 2017-2018, but not to exceed 35 percent of any facility's slot machine revenue. The Revenue Estimating Conference (REC) forecasts[163] that under current law slot machine revenues will increase by 2.1 percent in Fiscal Year 2018-2019, and by 1.2 percent annually thereafter, growing from $191.9 million in Fiscal Year 2017-2018 to $205.0 million in Fiscal Year 2022-2023. The REC has not analyzed this bill, but staff expects the impact of the reduction in the slot machine tax rate to be a loss to the Educational Enhancement Trust Fund of the **growth** in slot machine revenue.

Authorization of Designated Player Games

If the 2018 Gaming Compact authorized in Section 1 of the bill does not become effective, authorization of player banked card games with a designated player, which were determined to be Class III gaming in federal litigation between the state of Florida and the Seminole Tribe of Florida, could impact the revenue sharing provisions of the 2010 Gaming Compact, as payments due to the state under the compact could cease.[164]

[163] *See Revenue Estimating Conference Slot Machine Tax January 2018* at http://edr.state.fl.us/Content/conferences/slotmachines/SlotsResults.pdf (last visited Feb. 7, 2018).
[164] *See* paragraph A of Part XII of the 2010 Gaming Compact at pages 39-40 at http://www.myfloridalicense.com/dbpr/pmw/documents/2010_Compact-Signed1.pdf (last visited Jan. 11, 2018).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 285.710, 285.712, 550.01215, 550.054, 550.09512, 550.09515, 550.3345, 550.6308, 551.102, 551.104, 551.106, 551.114, 551.116, 849.086, and 849.16.

This bill creates section 546.13 of the Florida Statutes.

This bill repeals section 550.0745 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 March 2, 2018:
The committee substitute:

- Authorizes slot machine facilities in referendum counties (those conducting referenda between January 1, 2012 and September 1, 2018, including counties that undertake a public-private partnership with a pari-mutuel permitholder).
  - Requires a pari-mutuel permitholder seeking one of the new, referendum county slot machine licenses to surrender one ***active*** greyhound or jai alai pari-mutuel permit and still hold a pari-mutuel permit at the location for the new slot machine facility.
  - Requires that all new slot machine licensees pay not less than $10 million to the state in Fiscal Year 2018-2019 and $20 million annually each subsequent fiscal year.
- Authorizes decoupling for greyhound, harness racing, and quarter horse racing pari-mutuel permitholders, based on an irrevocable decision made within 36 months after the bill's effective date.
- Authorizes decoupling of jai alai in the same manner.
- Deletes decoupling of thoroughbred horse racing.
- Reduces the amount of slot machine revenue that a decoupled permitholder with a slot machine license must pay for thoroughbred horse purses to the *lesser* of 2.75 percent (reduced from 3 percent in the bill) of the licensee's slots revenue from the prior fiscal year or $1.5 million annually (reduced from $2 million in the bill).
- Revises provisions relating to the amount of slot machine revenue and cardroom revenue that decoupled permitholders must pay, so that qualified thoroughbred permitholders (conducting minimum live racing requirements) each receive the same amount.

- Provides that limited thoroughbred permitholders and thoroughbred permitholders leasing at another permitholder's racing facility are not qualified thoroughbred permitholders for purposes of receiving a share of revenues from decoupled permitholders.
- Provides that fantasy contest prizes must be unrelated to the number of contest participants and prohibits fantasy contests from using casino graphics, themes and titles, including slot machine-style symbols, cards, roulette, etc.
- Eliminates dormant pari-mutuel permits and repeals authorization for issuance of summer jai alai permits.
- Revises the operating requirements for limited thoroughbred horse wagering facilities.
- Authorizes slot machine facilities and cardrooms to operate 24 hours a day on weekdays (up from 18 hours per day currently).
- Amends the definition of "slot machine or device" to prohibit pre-reveal games.
- Authorizes the execution of a gaming compact between the state and the Seminole Tribe of Florida (Seminole Tribe), which:
  - Authorizes the Seminole Tribe to conduct slot machine gaming at its seven gaming facilities;
  - Permits the Seminole Tribe to offer live table games, such as craps and roulette, at its seven gaming facilities;
  - Authorizes banked card games, including blackjack, chemin de fer, and baccarat, at its seven facilities;
  - Is for a term of 22 years, through June 30, 2040; and
  - Includes a $3 billion guarantee of revenue sharing payments to the state for the first seven-years (Guarantee Period), with specific payment amounts (Guaranteed Payments) during each year of the Guarantee Period. After the Guarantee Period, payments will be based on varying percentage rates that depend on the amount of the Seminole Tribe's net win (Revenue Share Payments);
- Provides exceptions to the Tribe's exclusive rights to allow the authorization of fantasy contests, the authorization by countywide referendum for slot machines in counties other than Broward County or Miami-Dade County, the play of Designated Player Games in the state, and the ending of live racing by certain pari-mutuel permitholders.

B. Amendments:

None.

By Senator Hutson

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A bill to be entitled

An act relating to gaming; creating s. 546.13, F.S.; defining terms; exempting a fantasy contest from certain regulations; amending s. 550.01215, F.S.; revising application requirements for a pari-mutuel operating license; authorizing a greyhound racing permitholder to specify certain intentions on its application; providing that a greyhound racing permitholder that has been issued a slot machine license remains an eligible facility, continues to be eligible for a slot machine license, is exempt from certain provisions of ch. 551, F.S., is eligible to be a guest track for certain purposes, and remains eligible for a cardroom license; authorizing a greyhound racing permitholder to receive an operating license to conduct pari-mutuel wagering activities at another permitholder's greyhound racing facility; authorizing a thoroughbred horse racing permitholder to elect not to conduct live racing under certain circumstances; authorizing a thoroughbred horse racing permitholder that elects not to conduct live racing to retain its permit and requiring the permitholder to specify its intention not to conduct live racing in future applications and that it is a pari-mutuel facility; authorizing such thoroughbred racing permitholder's facility to remain an eligible facility, to continue to be eligible for a slot machine license, to be exempt from certain provisions of chs. 550 and 551, F.S., to be eligible as a guest

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track for intertrack wagering and simulcasting, and to remain eligible for a cardroom license; requiring that such permitholder comply with all contracts regarding distributions to thoroughbred horse purse supplements or breeders' awards entered into before a specified date; requiring, for a specified period, that such permitholder file with the division an irrevocable consent authorizing the use of certain contributions for specified purses and awards; authorizing harness horse and quarter horse racing permitholders to elect not to conduct live racing under certain circumstances; authorizing a permitholder that elects not to conduct live racing to retain its permit and remain a pari-mutuel facility; specifying that, if such permitholder has been issued a slot machine license, the permitholder's facility remains an eligible facility, continues to be eligible for a slot machine license, is exempt from certain provisions of chs. 550 and 551, F.S., is eligible to be a guest track, and if the permitholder is a harness horse racing permitholder, a host track for intertrack wagering and simulcasting, and remains eligible for a cardroom license; authorizing a harness horse racing permitholder to be a host track for purposes of intertrack wagering and simulcasting; authorizing the division to approve a change in racing dates for a permitholder if the request for a change is received before a specified date and under certain circumstances; amending s. 551.104, F.S.; revising

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conditions of licensure and conditions for maintaining authority to conduct slot machine gaming; amending s. 551.106, F.S.; deleting obsolete provisions; revising the tax rate on slot machine revenue effective on specified dates; providing a formula to calculate a surcharge amount; prohibiting the surcharge from exceeding a certain amount; amending s. 849.086, F.S.; revising legislative intent; revising definitions; authorizing the division to establish a reasonable period to respond to certain requests from a licensed cardroom; providing that the division must approve certain requests within 45 days; requiring the division to review and approve or reject certain revised internal controls or revised rules within 10 days after submission; deleting provisions relating to the renewal of a cardroom license; making technical changes; authorizing certain cardroom operators to offer a certain number of certain designated player games; requiring the designated player and employees of the designated player to be licensed; requiring the designated player to pay certain fees; prohibiting a cardroom operator from serving as the designated player in a game and from having a financial interest in a designated player; authorizing a cardroom operator to collect a rake, subject to certain requirements; requiring the dealer button to be rotated under certain circumstances; prohibiting a cardroom operator from allowing a designated player to pay an opposing player under certain circumstances;

prohibiting the rules of the game or of the cardroom to require a designated player to cover more than 10 times the maximum wager for players participating in any one game; prohibiting a cardroom or cardroom licensee from contracting with or receiving certain compensation from a player to allow that player to participate in any game as a designated player; revising requirements for a cardroom license to be issued or renewed; requiring a certain written agreement with a thoroughbred permitholder; providing contract requirements for the agreement; requiring a thoroughbred permitholder to remit a percentage of specified funds to the Florida Thoroughbred Breeders' Association, Inc., subject to certain requirements; deleting provisions relating to a quarter horse racing permitholder's cardroom license; conforming a cross-reference; providing a directive to the Division of Law Revision and Information; providing an effective date.

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

Section 1. Section 546.13, Florida Statutes, is created to read:

546.13 Fantasy contests and fantasy contest operators.—

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

(a) "Entry fee" means cash or a cash equivalent that is required to be paid by a participant in order to participate in a fantasy contest.

(b) "Fantasy contest" means a fantasy or simulated game or contest in which:

1. The value of all prizes and awards offered to winning participants is established and made known to the participants in advance of the contest;

2. All winning outcomes reflect the relative knowledge and skill of the participants and are determined predominantly by accumulated statistical results of the performance of individuals, including athletes in the case of sporting events;

3. No winning outcome is based on the score, point spread, or any performance or performances of any single actual team or combination of such teams, solely on any single performance of an individual athlete or player in any single actual event, or on the performances of participants in collegiate, high school, or youth sporting events.

(c) "Fantasy contest operator" means a person or an entity, including any employee or agent, that offers or conducts a fantasy contest with an entry fee for a cash prize or award and that is not a participant in the fantasy contest.

(2) EXEMPTIONS.—The Department of Business and Professional Regulation may not regulate and the offenses established in s. 849.01, s. 849.08, s. 849.09, s. 849.11, s. 849.14, and s. 849.25 do not include or apply to a fantasy contest operated or conducted by a:

(a) Fantasy contest operator.

(b) Natural person who is a participant in the fantasy contest, serves as the commissioner of not more than 10 fantasy contests in a calendar year, and distributes all entry fees for the fantasy contest as prizes or awards to the participants in

that fantasy contest.

Section 2. Subsections (1) and (3) of section 550.01215, Florida Statutes, are amended to read:

550.01215 License application; periods of operation; bond, conversion of permit.—

(1) Each permitholder shall annually, during the period between December 15 and January 4, file in writing with the division its application for an operating ~~a~~ license to conduct pari-mutuel wagering during the next state fiscal year, including intertrack and simulcast race wagering for greyhound racing permitholders and thoroughbred horse racing permitholders that do not ~~to~~ conduct live performances ~~during the next state fiscal year~~. Each application for live performances must ~~shall~~ specify the number, dates, and starting times of all live performances that ~~which~~ the permitholder intends to conduct. It must ~~shall~~ also specify which performances will be conducted as charity or scholarship performances.

(a) ~~In addition,~~ Each application for an operating ~~a~~ license also must ~~shall~~ include:~~,~~

1. For each permitholder, whether the permitholder intends to accept wagers on intertrack or simulcast events.

2. For each permitholder that elects ~~which elects~~ to operate a cardroom, the dates and periods of operation the permitholder intends to operate the cardroom. ~~or,~~

3. For each thoroughbred racing permitholder that ~~which~~ elects to receive or rebroadcast out-of-state races after 7 p.m., the dates for all performances which the permitholder intends to conduct.

(b) A greyhound racing permitholder that conducted a full

schedule of live racing for a period of at least 10 consecutive state fiscal years after the 1996-1997 state fiscal year, or that converted its permit to a permit to conduct greyhound racing after the 1996-1997 state fiscal year, may specify in its application for an operating license that it does not intend to conduct live racing, or that it intends to conduct less than a full schedule of live racing, in the next state fiscal year. A greyhound racing permitholder may retain its permit; is a pari-mutuel facility as defined in s. 550.002(23); if such permitholder has been issued a slot machine license, the facility where such permit is located remains an eligible facility as defined in s. 551.102(4), continues to be eligible for a slot machine license, and is exempt from ss. 551.104(3) and (4)(c)1. and 551.114(2) and (4); is eligible, but not required, to be a guest track for purposes of intertrack wagering and simulcasting pursuant to ss. 550.3551, 550.615, and 550.6305; and, if such permitholder has been issued a cardroom license, remains eligible for a cardroom license notwithstanding any requirement in s. 849.086 for the conduct of live racing. A greyhound racing permitholder may receive an operating license to conduct pari-mutuel wagering activities at another permitholder's greyhound racing facility pursuant to s. 550.475.

(c)1. A thoroughbred horse racing permitholder that has conducted live racing for at least 5 years irrevocably may elect not to conduct live racing if the election is made within 30 days after the effective date of this act. A thoroughbred horse racing permitholder that makes such election may retain such permit, must specify in future applications for an operating license that it does not intend to conduct live racing, and is a

pari-mutuel facility as defined in s. 550.002(23).

2. If a thoroughbred horse racing permitholder makes such election and if such permitholder holds a slot machine license when such election is made, the facility where such permit is located:

a. Remains an eligible facility pursuant to s. 551.102(4), and continues to be eligible for a slot machine license;

b. Is exempt from ss. 550.5251, 551.104(3) and (4)(c)1., and 551.114(2) and (4);

c. Is eligible, but not required, to be a guest track for purposes of intertrack wagering and simulcasting; and

d. Remains eligible for a cardroom license, notwithstanding any requirement in s. 849.086 for the conduct of live racing.

3. A thoroughbred horse racing permitholder that makes such election shall comply with all contracts regarding contributions by such permitholder to thoroughbred horse purse supplements or breeders' awards entered into before the effective date of this act pursuant to s. 551.104(10)(a). At the time of such election, such permitholder shall file with the division an irrevocable consent that such contributions shall be allowed to be used for purses and awards on live races at other thoroughbred horse racing facilities in this state. This subparagraph and s. 551.104(10)(a) do not apply after December 31, 2020, to a thoroughbred horse racing permitholder that made such election.

(d) A harness horse racing permitholder or a quarter horse racing permitholder that has conducted live racing for at least 5 years irrevocably may elect not to conduct live racing if the election is made within 30 days after the effective date of this act. A permitholder that makes such election may retain its

permit; is a pari-mutuel facility as defined in s. 550.002(23); if such permitholder has been issued a slot machine license, the facility where such permit is located remains an eligible facility as defined in s. 551.102(4), continues to be eligible for a slot machine license, and is exempt from ss. 551.104(3) and (4)(c)1. and 551.114(2) and (4); is eligible, but not required, to be a guest track and, if the permitholder is a harness horse racing permitholder, to be a host track for purposes of intertrack wagering and simulcasting pursuant to ss. 550.3551, 550.615, 550.625, and 550.6305; and, if such permitholder has been issued a cardroom license, remains eligible for a cardroom license notwithstanding any requirement in s. 849.086 to conduct live racing performances.

(e) Permitholders may ~~shall be entitled to~~ amend their applications through February 28.

(3) The division shall issue each license no later than March 15. Each permitholder shall operate all performances at the date and time specified on its license. The division shall have the authority to approve minor changes in racing dates after a license has been issued. The division may approve changes in racing dates after a license has been issued when there is no objection from any operating permitholder located within 50 miles of the permitholder requesting the changes in operating dates. In the event of an objection, the division shall approve or disapprove the change in operating dates based upon the impact on operating permitholders located within 50 miles of the permitholder requesting the change in operating dates. In making the determination to change racing dates, the division shall take into consideration the impact of such

changes on state revenues. Notwithstanding any other provision of law, and for the 2018-2019 fiscal year only, the division may approve changes in racing dates for permitholders if the request for such changes is received before May 31, 2018.

Section 3. Paragraph (c) of subsection (4) of section 551.104, Florida Statutes, is amended to read:

551.104 License to conduct slot machine gaming.—

(4) As a condition of licensure and to maintain continued authority for the conduct of slot machine gaming, a ~~the~~ slot machine licensee shall:

(c)1. Conduct no less ~~fewer~~ than a full schedule of live racing or games as defined in s. 550.002(11), unless conducting less than a full schedule of live racing or games pursuant to s. 550.01215(1)(b) or (c). A permitholder's responsibility to conduct a full schedule ~~such number~~ of live races or games, as defined in s. 550.002(11), shall be reduced by the number of races or games that could not be conducted due to the direct result of fire, war, hurricane, or other disaster or event beyond the control of the permitholder. A permitholder may conduct live races or games at another pari-mutuel facility pursuant to s. 550.475 if such permitholder has operated its live races or games by lease for at least 5 consecutive years immediately prior to the permitholder's application for a slot machine license.

2. If not licensed to conduct a full schedule of live racing or games, as defined in s. 550.002(11), pursuant to s. 550.01215(1)(b) or (c), remit for the payment of purses and awards on live races an amount equal to the lesser of $2 million or 3 percent of its slot machine revenues from the previous

state fiscal year to a slot machine licensee licensed to conduct not fewer than 160 days of thoroughbred racing. A slot machine licensee receiving funds under this subparagraph shall remit, within 10 days after receipt, 10 percent of those funds to the Florida Thoroughbred Breeders' Association, Inc., for the payment of breeders', stallion, and special racing awards, subject to the fee authorized in s. 550.2625(3). If no slot machine licensee is licensed for at least 160 days of live thoroughbred racing, no payments for purses are required. A slot machine licensee that conducts no live racing and is making purse and awards supplement payments due under agreements entered pursuant to paragraph (10)(a) prior to the effective date of this act may offset the total amount paid under such agreements for purses and awards on or after July 1, 2017, against any amount due under this subparagraph until the amount paid and the amount due equal zero.

Section 4. Subsections (1), (2), and (4) of section 551.106, Florida Statutes, are amended to read:

551.106 License fee; tax rate; penalties.—

(1) LICENSE FEE.—

~~(a)~~ Upon submission of the initial application for a slot machine license, and annually thereafter~~,~~ on the anniversary date of the issuance of the initial license, the licensee must pay to the division a nonrefundable license fee of ~~$3 million for the succeeding 12 months of licensure. In the 2010-2011 fiscal year, the licensee must pay the division a nonrefundable license fee of $2.5 million for the succeeding 12 months of licensure. In the 2011-2012 fiscal year and for every fiscal year thereafter, the licensee must pay the division a~~

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~~nonrefundable license fee of~~ $2 million for the succeeding 12 months of licensure. The license fee must ~~shall~~ be deposited into the Pari-mutuel Wagering Trust Fund of the Department of Business and Professional Regulation to be used by the division and the Department of Law Enforcement for investigations, regulation of slot machine gaming, and enforcement of slot machine gaming provisions under this chapter. These payments must ~~shall~~ be accounted for separately from taxes or fees paid pursuant to ~~the provisions of~~ chapter 550.

~~(b) Prior to January 1, 2007, the division shall evaluate the license fee and shall make recommendations to the President of the Senate and the Speaker of the House of Representatives regarding the optimum level of slot machine license fees in order to adequately support the slot machine regulatory program.~~

(2) TAX ON SLOT MACHINE REVENUES.—

(a)1. The tax rate on slot machine revenues at each facility is ~~shall be~~ 35 percent. Effective January 1, 2019, the tax rate on slot machine revenues at each facility is 30 percent. Effective July 1, 2020, the tax rate on slot machine revenues at each facility is 25 percent.

2.a. If, during any state fiscal year, the aggregate amount of tax paid to the state by ~~all~~ slot machine licensees in Broward and Miami-Dade Counties is less than the aggregate amount of tax paid to the state by ~~all slot machine~~ licensees in those counties in the 2017-2018 ~~2008-2009~~ fiscal year, each slot machine licensee shall pay to the state within 45 days after the end of the state fiscal year a surcharge ~~equal to its pro rata share of an amount equal to the difference between the aggregate amount of tax paid to the state by all slot machine licensees in~~

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~~the 2008-2009 fiscal year and the amount of tax paid during the fiscal year~~.

b. The amount of the surcharge to be paid by each such licensee must be calculated by dividing the aggregate amount of slot machine taxes paid to the state by all such slot machine licensees in the 2017-2018 fiscal year by the aggregate amount of slot machine taxes paid by all such licensees during the applicable state fiscal year, multiplying the result by the amount of slot machine taxes paid by the licensee during the applicable state fiscal year, and then subtracting from that product the amount of slot machine taxes paid by the licensee during the applicable state fiscal year. However, the sum of the taxes paid by a licensee pursuant to subparagraph 1. and any surcharge due from the licensee may not exceed 35 percent of the slot machine revenue of that licensee in the applicable state fiscal year ~~Each licensee's pro rata share shall be an amount determined by dividing the number 1 by the number of facilities licensed to operate slot machines during the applicable fiscal year, regardless of whether the facility is operating such machines~~.

(b) The slot machine revenue tax imposed by this section must ~~shall~~ be paid to the division for deposit into the Pari-mutuel Wagering Trust Fund for immediate transfer by the Chief Financial Officer for deposit into the Educational Enhancement Trust Fund of the Department of Education. Any interest earnings on the tax revenues must ~~shall~~ also be transferred to the Educational Enhancement Trust Fund.

(c)1. Funds transferred to the Educational Enhancement Trust Fund under paragraph (b) must ~~shall~~ be used to supplement

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public education funding statewide.

2. If necessary to comply with any covenant established pursuant to s. 1013.68(4), s. 1013.70(1), or s. 1013.737(3), funds transferred to the Educational Enhancement Trust Fund under paragraph (b) must ~~shall~~ first be available to pay debt service on lottery bonds issued to fund school construction in the event lottery revenues are insufficient for such purpose or to satisfy debt service reserve requirements established in connection with lottery bonds. Moneys available pursuant to this subparagraph are subject to annual appropriation by the Legislature.

(4) TO PAY TAX; PENALTIES.—A slot machine licensee who fails to make tax and any applicable surcharge payments as required under this section is subject to an administrative penalty of up to $10,000 for each day the tax payment is not remitted. All administrative penalties imposed and collected must ~~shall~~ be deposited into the Pari-mutuel Wagering Trust Fund of the Department of Business and Professional Regulation. If any slot machine licensee fails to pay penalties imposed by order of the division under this subsection, the division may deny, suspend, revoke, or refuse to renew the license of the permitholder or slot machine licensee.

Section 5. Present subsections (9) through (17) of section 849.086, Florida Statutes, are redesignated as subsections (10) through (18), respectively, and a new subsection (9) is added to that section, subsections (1) and (2) of that section are amended, paragraph (g) is added to subsection (4) of that section, and paragraph (b) of subsection (5), paragraph (c) of subsection (7), paragraph (a) of subsection (8), present

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subsection (12), and paragraphs (d) and (h) of present subsection (13) are amended, to read:

849.086 Cardrooms authorized.—

(1) LEGISLATIVE INTENT.—It is the intent of the Legislature to provide additional entertainment choices for the residents of and visitors to the state, promote tourism in the state, provide revenues to support the continuation of live pari-mutuel activity, and provide additional state revenues through the authorization of the playing of certain games in the state at facilities known as cardrooms which are to be located at licensed pari-mutuel facilities. To ensure the public confidence in the integrity of authorized cardroom operations, this act is designed to strictly regulate the facilities, persons, and procedures related to cardroom operations. Furthermore, the Legislature finds that authorized games of poker and dominoes ~~as herein defined~~ are considered to be pari-mutuel style games and not casino gaming because the participants play against each other instead of against the house.

(2) DEFINITIONS.—As used in this section:

(a) "Authorized game" means a game or series of games of poker or dominoes which are played in conformance with this section, including designated player games that are played in a manner consistent with the rules and requirements specified in the 1974 edition of Hoyle's Modern Encyclopedia of Card Games: Rules of All the Basic Games and Popular Variations and including three card poker ~~a nonbanking manner~~.

(b) "Banking game" means a game in which the house is a participant in the game, taking on players, paying winners, and collecting from losers ~~or in which the cardroom establishes a bank against which participants play~~. A designated player game is not a banking game.

(c) "Cardroom" means a facility where authorized games are played for money or anything of value and to which the public is invited to participate in such games and charged a fee for participation by the operator of such facility. Authorized games and cardrooms do not constitute casino gaming operations if conducted at an eligible facility.

(d) "Cardroom management company" means any individual not an employee of the cardroom operator, any proprietorship, partnership, corporation, or other entity that enters into an agreement with a cardroom operator to manage, operate, or otherwise control the daily operation of a cardroom.

(e) "Cardroom distributor" means any business that distributes cardroom paraphernalia such as card tables, betting chips, chip holders, dominoes, dominoes tables, drop boxes, banking supplies, playing cards, card shufflers, and other associated equipment to authorized cardrooms.

(f) "Cardroom operator" means a licensed pari-mutuel permitholder that ~~which~~ holds a valid permit and license issued by the division pursuant to chapter 550 and which also holds a valid cardroom license issued by the division pursuant to this section which authorizes such person to operate a cardroom and to conduct authorized games in such cardroom.

(g) "Designated player" means the player identified for each game by a button that rotates clockwise before each game begins as the player in the dealer position and seated at a traditional player position in a designated player game who pays winning players and collects from losing players.

(h) "Designated player game" means a game in which the players compare their cards only to the cards of the designated player or to a combination of cards held by the designated player and cards common and available for play by all players.

(i)~~(g)~~ "Division" means the Division of Pari-mutuel Wagering of the Department of Business and Professional Regulation.

(j)~~(h)~~ "Dominoes" means a game of dominoes typically played with a set of 28 flat rectangular blocks, called "bones," which are marked on one side and divided into two equal parts, with zero to six dots, called "pips," in each part. The term also includes larger sets of blocks that contain a correspondingly higher number of pips. The term also means the set of blocks used to play the game.

(k)~~(i)~~ "Gross receipts" means the total amount of money received by a cardroom from any person for participation in authorized games.

(l)~~(j)~~ "House" means the cardroom operator and all employees of the cardroom operator.

(m)~~(k)~~ "Net proceeds" means the total amount of gross receipts received by a cardroom operator from cardroom operations less direct operating expenses related to cardroom operations, including labor costs, admission taxes only if a separate admission fee is charged for entry to the cardroom facility, gross receipts taxes imposed on cardroom operators by this section, the annual cardroom license fees imposed by this section on each table operated at a cardroom, and reasonable promotional costs excluding officer and director compensation, interest on capital debt, legal fees, real estate taxes, bad

debts, contributions or donations, or overhead and depreciation expenses not directly related to the operation of the cardrooms.

(n)~~(l)~~ "Rake" means a set fee or percentage of the pot assessed by a cardroom operator for providing the services of a dealer, table, or location for playing the authorized game.

(o)~~(m)~~ "Tournament" means a series of games that have more than one betting round involving one or more tables and where the winners or others receive a prize or cash award.

(4) AUTHORITY OF DIVISION.—The Division of Pari-mutuel Wagering of the Department of Business and Professional Regulation shall administer this section and regulate the operation of cardrooms under this section and the rules adopted pursuant thereto, and is hereby authorized to:

(g) Establish a reasonable period to respond to requests from a licensed cardroom; provided however, the division has a maximum of 45 days to approve:

1. A cardroom's internal controls or provide the cardroom with a list of deficiencies as to the internal controls.

2. Rules for a new authorized game submitted by a licensed cardroom or provide the cardroom with a list of deficiencies as to those rules.

No later than 10 days after the submission of revised internal controls or revised rules addressing the deficiencies identified by the division, the division must review and approve or reject the revised internal controls or revised rules.

(5) LICENSE REQUIRED; APPLICATION; FEES.—No person may operate a cardroom in this state unless such person holds a valid cardroom license issued pursuant to this section.

(b) After the initial cardroom license is granted, the application for the annual license renewal shall be made in conjunction with the applicant's annual application for its pari-mutuel license. If a permitholder has operated a cardroom during any of the 3 previous fiscal years and fails to include a renewal request for the operation of the cardroom in its annual application for license renewal, the permitholder may amend its annual application to include operation of the cardroom. ~~In order for a cardroom license to be renewed the applicant must have requested, as part of its pari-mutuel annual license application, to conduct at least 90 percent of the total number of live performances conducted by such permitholder during either the state fiscal year in which its initial cardroom license was issued or the state fiscal year immediately prior thereto if the permitholder ran at least a full schedule of live racing or games in the prior year. If the application is for a harness permitholder cardroom, the applicant must have requested authorization to conduct a minimum of 140 live performances during the state fiscal year immediately prior thereto.~~ If more than one permitholder is operating at a facility, each permitholder must have applied for a license to conduct a full schedule of live racing.

(7) CONDITIONS FOR OPERATING A CARDROOM.—

(c) A cardroom operator must at all times employ and provide a nonplaying live dealer at ~~for~~ each table on which authorized ~~card~~ games ~~which traditionally use a dealer~~ are conducted ~~at the cardroom~~. Such dealers may not have a participatory interest in any game other than the dealing of cards and may not have an interest in the outcome of the game.

The providing of such dealers by a licensee does not constitute the conducting of a banking game by the cardroom operator.

(8) METHOD OF WAGERS; LIMITATION.—

(a) ~~No~~ Wagering may not be conducted using money or other negotiable currency. Games may only be played utilizing a wagering system whereby all players' money is first converted by the house to tokens or chips that may ~~which shall~~ be used for wagering only at that specific cardroom.

(9) DESIGNATED PLAYER GAMES AUTHORIZED.—

(a) A cardroom operator may offer designated player games consisting of players making wagers against the designated player. However, not more than 50 percent of the total licensed tables in a cardroom may offer designated player games. The designated player must be licensed pursuant to paragraph (6)(b). Employees of a designated player also must be licensed, and the designated player shall pay, in addition to the business occupational fee established pursuant to paragraph (6)(i), an employee occupational license fee that may not exceed $500 per employee for any 12-month period.

(b) A cardroom operator may not serve as a designated player in any game. The cardroom operator may not have a financial interest in a designated player in any game. A cardroom operator may collect a rake in accordance with the rake structure posted at the table.

(c) If there are multiple designated players at a table, the dealer button shall be rotated in a clockwise rotation after each hand.

(d) A cardroom operator may not allow a designated player to pay an opposing player who holds a lower-ranked hand.

(e) A designated player may not be required by the rules of a game or by the rules of a cardroom to cover more than 10 times the maximum wager for players participating in any one game.

(f) The cardroom, or any cardroom licensee, may not contract with, or receive compensation other than a posted table rake from, any player to participate in any game to serve as a designated player.

(13)~~(12)~~ PROHIBITED ACTIVITIES.—

(a) A ~~No~~ person licensed to operate a cardroom may not conduct any banking game or any game not specifically authorized by this section.

(b) A ~~No~~ person who is younger than ~~under~~ 18 years of age may not be permitted to hold a cardroom or employee license~~,~~ or to engage in any game conducted therein.

(c) With the exception of mechanical card shufflers, ~~No~~ electronic or mechanical devices~~, except mechanical card shufflers,~~ may not be used to conduct any authorized game in a cardroom.

(d) ~~No~~ Cards, game components, or game implements may not be used in playing an authorized game unless they have ~~such has~~ been furnished or provided to the players by the cardroom operator.

(14)~~(13)~~ TAXES AND OTHER PAYMENTS.—

(d)1. Each ~~greyhound and jai alai~~ permitholder that operates a cardroom facility shall use at least 4 percent of such permitholder's cardroom monthly gross receipts to supplement ~~greyhound~~ purses and awards or jai alai prize money, respectively, during the permitholder's next ensuing pari-mutuel meet.

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2. A cardroom license or renewal thereof may not be issued to a permitholder conducting less than a full schedule of live racing or games, as defined in s. 550.002(11), pursuant to s. 550.01215(1)(b), (c), or (d) unless the applicant has on file with the division a binding written contract with a thoroughbred permitholder that is licensed to conduct live racing and that does not possess a slot machine license. This contract must provide that the permitholder will pay an amount equal to 4 percent of its monthly cardroom gross receipts to the thoroughbred permitholder conducting the live racing for exclusive use as purses and awards during the current or ensuing live racing meet of the thoroughbred permitholder. A thoroughbred permitholder receiving funds under this subparagraph shall remit, within 10 days after receipt, 10 percent of those funds to the Florida Thoroughbred Breeders' Association, Inc., for the payment of breeders', stallion, and special racing awards, subject to the fee authorized in s. 550.2625(3). If there is not a thoroughbred permitholder that does not possess a slot machine license, payments for purses are not required, and the cardroom licensee shall retain such funds for its use. Each thoroughbred and harness horse racing permitholder that operates a cardroom facility shall use at least 50 percent of such permitholder's cardroom monthly net proceeds as follows: 47 percent to supplement purses and 3 percent to supplement breeders' awards during the permitholder's next ensuing racing meet.

~~3. No cardroom license or renewal thereof shall be issued to an applicant holding a permit under chapter 550 to conduct pari-mutuel wagering meets of quarter horse racing unless the~~

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~~applicant has on file with the division a binding written agreement between the applicant and the Florida Quarter Horse Racing Association or the association representing a majority of the horse owners and trainers at the applicant's eligible facility, governing the payment of purses on live quarter horse races conducted at the licensee's pari-mutuel facility. The agreement governing purses may direct the payment of such purses from revenues generated by any wagering or gaming the applicant is authorized to conduct under Florida law. All purses shall be subject to the terms of chapter 550.~~

(h) One-quarter of the moneys deposited into the Pari-mutuel Wagering Trust Fund pursuant to paragraph (g) shall, by October 1 of each year, be distributed to the local government that approved the cardroom under subsection (17) ~~(16)~~; however, if two or more pari-mutuel racetracks are located within the same incorporated municipality, the cardroom funds shall be distributed to the municipality. If a pari-mutuel facility is situated in such a manner that it is located in more than one county, the site of the cardroom facility shall determine the location for purposes of disbursement of tax revenues under this paragraph. The division shall, by September 1 of each year, determine: the amount of taxes deposited into the Pari-mutuel Wagering Trust Fund pursuant to this section from each cardroom licensee; the location by county of each cardroom; whether the cardroom is located in the unincorporated area of the county or within an incorporated municipality; and, the total amount to be distributed to each eligible county and municipality.

Section 6. The Division of Law Revision and Information is directed to replace the phrase "the effective date of this act"

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wherever it occurs in this act with the date this act becomes a law.

Section 7. This act shall take effect upon becoming a law.

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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 #840**, relating to Gaming, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Travis Hutson
Florida Senate, District 7

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/2/18
Meeting Date

840
Bill Number (if applicable)

~~Bradley~~ Braynon LF
Amendment Barcode (if applicable)

Topic Gaming

Name Christine Graves

Amend. 578864

Job Title Attorney

Address 215 S. Monroe St. Suite 500
Street

Phone 850-224-1585

Tallahassee FL 32301
City *State* *Zip*

Email cgraves@carltonfields.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Pace-O-Matic

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

3/2/18
Meeting Date

SB 840
Bill Number (if applicable)

Topic Greyhound decoupling

Amendment Barcode (if applicable)

Name Carey Theil

Job Title Executive director

Address 7 Central Street Suite 210
Street

Phone 617-501-6276

Arlington MA 02476
City *State* *Zip*

Email Carey@greyzkusa.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing GREYZK USA

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

3-2-2018
Meeting Date

840
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Gaming

Name Tim Parson

Job Title Gov. Affairs Director @ Liberty Partners

Address 113 E. College Ave.
Street

Tallahassee FL
City *State* *Zip*

Phone (850) 910-2678

Email timp@libertypartnersfl.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing NO CASINOS

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

3-2-2018
Meeting Date

840
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Gaming

Name Tim Parson

Job Title Dir. of Gov. Relations @ Liberty Partners

Address 113 E. College Ave.
Street

Tallahassee FL 32302
City *State* *Zip*

Phone (850) 910-2678

Email tim@libertypartnersfl.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL Quarterhorse Racing Assn.

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/2/18
Meeting Date

SB 840
Bill Number (if applicable)

Topic GREYHOUND RACING - DECOUPLING

Amendment Barcode (if applicable)

Name JENNIFER HOBGOOD

Job Title DIRECTOR, STATE LEGISLATION, SOUTHEAST REGION, GOVERNMENT AFFAIRS

Address P O BOX 20554
Street

Phone 850 445 5245

TALLAHASSEE FL 32301
City *State* *Zip*

Email jen.hobgood@aspca.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing ASPCA

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

3/2/18
Meeting Date

840
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Jeff Kottkamp

Job Title _____

Address _____ Phone _____

Street

Tallahassee FL Email _____

City *State* *Zip*

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Greyhound Assoc. & Florida Casino Watch

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

3/2/18
Meeting Date

840
Bill Number (if applicable)

184406
Amendment Barcode (if applicable)

Topic Gaming

Name Brittney Hunt

Job Title Policy Director

Address 136 S. Bronough St.
Street

Tall. FL 32301
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Phone (850) 521-1200

Email bhunt@flchamber.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Chamber of Commerce

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/2/18
Meeting Date

940
Bill Number (if applicable)

1844066 DS
Amendment Barcode (if applicable)

Topic GAMING

Name ANTONIO JEFFERSON

Job Title CITY MANAGER - CITY OF GRETNA

Address 14615 Main Street
Street

Gretna, FL 32332
City *State* *Zip*

Phone

Email

Speaking: ☑ For ☐ Against ☐ Information

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

Representing CITY OF GRETNA

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)

3/2/18
Meeting Date

940
Bill Number (if applicable)

184406 DE
Amendment Barcode (if applicable)

Topic GAMING

Name HELEN FRANKS

Job Title ~~Commissioner~~ Mayor Pro-Tem

Address 14615 Main Street
Street

Phone

Gretna FL 32332
City *State* *Zip*

Email

Speaking: ☑ For ☐ Against ☐ Information

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

Representing CITY OF GRETNA

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

3/2/19
Meeting Date

840
Bill Number (if applicable)

134404 DE
Amendment Barcode (if applicable)

Topic GAMING

Name CLARENCE JACKSON

Job Title COMMISSIONER

Address 14615 Main Street
Street

Phone

Gretna FL 32332
City *State* *Zip*

Email

Speaking: ☑ For ☐ Against ☐ Information

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

Representing CITY OF GRETNA

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

3-2-18
Meeting Date

840
Bill Number (if applicable)

184406 DF
Amendment Barcode (if applicable)

Topic Gaming

Name Anthony Baker

Job Title Mayor

Address 1415 Main Street
Street

Gretna, FL 32332
City State Zip

Phone

Email

Speaking: ☑ For ☐ Against ☐ Information

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

Representing City of Gretna

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons 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 844
INTRODUCER:	Education Committee and Senator Bean
SUBJECT:	Excess Credit Hour Surcharges
DATE:	March 1, 2018
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bouck	Graf	ED	**Fav/CS**
2.	Sikes	Elwell	AHE	**Recommend: Favorable**
3.	Sikes	Hansen	AP	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 844 requires a state university to refund the assessed excess hour surcharge, for up to 12 credit hours, to any first-time-in-college student who completes a baccalaureate degree program within 4 years after initial enrollment in a state university.

According to the Board of Governors and based on data related to the 2015-16 graduating class, universities may be required to refund approximately $2.4 million annually to students who earn excess credit hours and graduate within 4 years of initial enrollment.

The bill takes effect July 1, 2018.

II. Present Situation:

The Legislature established the excess credit hour surcharge in 2009[1] to encourage each undergraduate student who enrolls in a state university to complete the student's respective baccalaureate degree program in the most efficient way possible.[2] State universities must require a student to pay an excess hour surcharge for each credit hour in excess of the allowed number of credit hours required to complete the baccalaureate degree program in which the student is enrolled.[3]

[1] Section 11, ch. 2009-60, L.O.F.
[2] Section 1009.286(1), F.S.
[3] *Id.* at (2).

The excess hour surcharge applies to students who enter a state university for the first time and maintain continuous enrollment. The surcharge was phased in over four years between the 2009-2010 and 2012-2013 academic years. For students who enter a state university for the first time in 2012-2103 academic year and thereafter and maintain continuous enrollment, an excess hour surcharge equal to 100 percent of the tuition rate for each credit hour in excess of 110 percent applies.[4]

Under current law, a student enrolled in a 120 credit hour baccalaureate degree program may take up to 132 credit hours (or 110 percent) before being assessed the excess hour surcharge for each credit hour in excess of the 120 credit hour degree requirement. Similarly, a student enrolled in a 130 credit hour baccalaureate degree program may take up to 143 credit hours (or 110 percent) before being assessed the excess hour surcharge for each credit hour in excess of the 130 credit hour degree requirement.

All credit hours for courses taken at the state university from which the student is seeking a baccalaureate degree are included when calculating the number of hours taken by a student, including:[5]

- Failed courses.
- Courses that are dropped after the advertised last day of the drop and add period.
- Courses from which a student withdraws, except for withdrawals due to medical or personal hardship.[6]
- Repeated courses, except repeated courses for which the student has paid the full cost of instruction.[7]

In addition, all credit hours earned at another institution and accepted for transfer by the state university, which are applied toward the student's baccalaureate degree program are included when calculating the number of credit hours taken by the student.[8]

Credit hours earned under the following circumstances are not calculated as hours required to earn a baccalaureate degree and are not counted towards the extra hour surcharge:[9]

- College credits earned through an articulated accelerated mechanism identified in law.[10]
- Credit hours earned through internship programs.
- Credit hours required for certification, recertification, or certificate programs.
- Credit hours in courses from which a student must withdraw due to reasons of medical or personal hardship.
- Credit hours taken by active-duty military personnel.
- Credit hours required to achieve a dual major taken while pursuing a baccalaureate degree.
- Remedial and English as a Second Language credit hours.

[4] *Id.*
[5] Section 1009.286(3)(a), F.S.
[6] *Id*. at (4).
[7] Section 1009.285, F.S.
[8] Section 1009.286(3)(b), F.S.
[9] *Id.* at (4).
[10] Section 1007.27, F.S. Articulated acceleration mechanisms include, but are not limited to, dual enrollment and early admission, advanced placement, credit by examination, the International Baccalaureate Program, and the Advanced International Certificate of Education Program. *Id.*

- Credit hours earned in military science courses that are part of the Reserve Officers' Training Corps (ROTC) program.

The Board of Governors reports that 14,284 first-time-in-college students in the 2015-2016 graduating class graduated within 48 months.[11] Ten percent (or 1,450) of these students earned excess credit hours - totaling 12,000 excess credit hours.[12] On average, these students earned 8 credit hours for which they were assessed the excess hour surcharge.

III. Effect of Proposed Changes:

The bill amends s. 1009.286, F.S., to require a state university to refund the assessed excess hour surcharge, for up to 12 credit hours, to any first-time-in-college student who completes a baccalaureate degree program within 4 years after initial enrollment in a state university.

Accordingly, a student enrolled in a 120 credit hour baccalaureate degree program could take up to 144 credit hours, 12 credit hours more than allowed by current law. The student would be assessed the excess hour surcharge for the additional 12 credit hours but would receive a refund for the surcharge if he or she graduates in 4 years after initial enrollment.

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 may result in cost savings, in the form of refunds, for students who generate excess credit hours but who graduate with a baccalaureate degree within 4 years of initial enrollment.

[11] Board of Governors, *2018 Agency Bill Analysis for SB 844* (Dec. 15, 2017), at 3.
[12] *Id.*

C. Government Sector Impact:

Based on data from the Board of Governors for the 2015-16 graduating class, state universities may be required to refund approximately $2.4 million annually to students who were assessed the excess hour surcharge but graduated in 4 years.[13] This estimate is based on 1,450 identified first-time-in-college students who generated 12,000 excess credit hours but graduated in 4 years.[14]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 1009.286 of the Florida Statutes.

IX. Additional Information:

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

CS by Education on February 6, 2018:
The committee substitute:

- Modifies the bill provision regarding the application of the excess hour surcharge for first-time-in-college students who graduate with a baccalaureate degree in 4 years. Specifically, the committee substitute requires a state university to refund the assessed excess hour surcharge, for up to 12 credit hours, to any first-time-in-college student who completes a baccalaureate degree program within 4 years after initial enrollment in a state university.
- Removes from the bill the provision specifying the assessment of the excess hour surcharge for each credit hour in excess of 120 percent of the credit hours required to complete the baccalaureate degree for students enrolled in a degree program designated by the Board of Governors as an area of strategic emphasis in a science, technology, engineering, mathematics, or health discipline.

B. Amendments:

None.

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

[13] Board of Governors, *2018 Agency Bill Analysis for SB 844* (Dec. 15, 2017), at 4.
[14] *Id.*

By the Committee on Education; and Senator Bean

581-02904-18 2018844c1

A bill to be entitled

An act relating to excess credit hour surcharges; amending s. 1009.286, F.S.; requiring a state university to return up to a specified amount of assessed excess credit hour surcharges to first-time-in-college students who meet certain requirements; providing an effective date.

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

Section 1. Paragraph (c) of subsection (2) of section 1009.286, Florida Statutes, is amended to read:

1009.286 Additional student payment for hours exceeding baccalaureate degree program completion requirements at state universities.—

(2) State universities shall require a student to pay an excess hour surcharge for each credit hour in excess of the number of credit hours required to complete the baccalaureate degree program in which the student is enrolled. The excess hour surcharge shall become effective for students who enter a state university for the first time and maintain continuous enrollment as follows:

(c) For the 2012-2013 academic year and thereafter, an excess hour surcharge equal to 100 percent of the tuition rate for each credit hour in excess of 110 percent. Notwithstanding the requirements of this subsection, the state university shall refund the excess hour surcharge assessed pursuant to this paragraph, for up to 12 credit hours, to any first-time-in-college student who completes a baccalaureate degree program

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

581-02904-18 2018844c1

within 4 years after initial enrollment in a state university.

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 15, 2018

I respectfully request that **Senate Bill # 844**, relating to Excess Credit Hour Surcharge, 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:	CS/SB 848
INTRODUCER:	Health Policy Committee and Senator Grimsley
SUBJECT:	Telepharmacy
DATE:	February 26, 2018
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	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 848 creates a new pharmacy permit specific to remote dispensing site pharmacies (RDSP). The bill defines "remote dispensing site pharmacy" and provides exceptions to current law for the operation of an RDSP. In an RDSP, a registered pharmacy technician may dispense medicinal drugs under the supervision of an offsite pharmacist. The bill establishes requirements for RDSP permits including:

- Ownership and video surveillance for remote supervision by a Florida licensed pharmacist;
- A restriction that a remote dispensing site pharmacy must be located in a rural area and may not be located within 10 miles of a community pharmacy, with exceptions; and
- Policies and procedures that an RDSP must maintain.

The bill allows an RDSP to store, hold, and dispense all medicinal drugs,[1] including controlled substances listed in s. 893.03(3)-(5), F.S., but restricts an RDSP from storing, holding, and dispensing schedule II narcotic controlled substances. The bill restricts an RDSP from performing centralized prescription filling[2] and a registered pharmacy technician working in an RDSP from performing sterile or complex nonsterile compounding.

[1] "Medicinal drugs" are defined in s. 465.003(8), F.S., as those substances or preparations commonly known as "prescription" or "legend" drugs, which are required by federal or state law to be dispensed only on a prescription.

[2] "Centralized prescription filling" is defined in s. 465.003(16), F.S., as the filling of a prescription by one pharmacy upon request by another pharmacy to fill or refill the prescription. The term includes the performance by one pharmacy for another pharmacy of other pharmacy duties such as drug utilization review, therapeutic drug utilization review, claims adjudication, and the obtaining of refill authorizations.

The bill will increase costs in the DOH by an indeterminate amount; however, these costs will be absorbed within existing resources of the DOH.

The effective date of the bill is July 1, 2018.

II. Present Situation:

Pharmacy Regulation

The Florida Pharmacy Act (act) regulates the practice of pharmacy in Florida and contains the minimum requirements for safe practice.[3] The Board of Pharmacy (board) is tasked with adopting rules to implement the provisions of the act and setting standards of practice within the state.[4] Any person who operates a pharmacy in Florida must have a permit, and as of July 1, 2017, there were 9,835 permitted pharmacies in the state.[5] The Department of Health (DOH) issues the following permits:

- Community pharmacy – A permit is required for each location where medicinal drugs are compounded, dispensed, stored, or sold or where prescriptions are filled or dispensed on an outpatient basis.[6]
- Institutional pharmacy – A permit is required for every location in a hospital, clinic, nursing home, dispensary, sanitarium, extended care facility, or other facility where medicinal drugs are compounded, dispensed, stored, or sold.[7]
- Nuclear pharmacy – A permit is required for every location where radioactive drugs and chemicals within the classification of medicinal drugs are compounded, dispensed, stored, or sold. The term "nuclear pharmacy" does not include hospitals licensed under ch. 395, F.S., or the nuclear medicine facilities of such hospitals.[8]
- Special pharmacy – A permit is required for every location where medicinal drugs are compounded, dispensed, stored, or sold if the location does not otherwise meet an applicable pharmacy definition in s. 465.003, F.S.[9]
- Internet pharmacy – A permit is required for a location not otherwise licensed or issued a permit under this chapter, within or outside this state, which uses the Internet to communicate with, or obtain information from, consumers in this state to fill or refill prescriptions or to dispense, distribute, or otherwise practice pharmacy in this state.[10]
- Nonresident sterile compounding pharmacy – A permit is required for a registered nonresident pharmacy or an outsourcing facility to ship, mail, deliver, or dispense, in any manner, a compounded sterile product into this state.[11]

[3] Chapter 465, F.S.
[4] Sections 465.005, 465.0155, and 465.022, F.S.
[5] Department of Health, *Senate Bill 848 Analysis* (Nov. 13, 2017) (on file with the Senate Committee on Health Policy).
[6] Sections 465.003(11)(a)1. and 465.018, F.S.
[7] Sections 465.003(11)(a)2. and 465.019, F.S.
[8] Sections 465.003(11)(a)3. and 465.0193, F.S.
[9] Sections 465.003(11)(a)4. and 465.0196, F.S.
[10] Sections 465.003(11)(a)5. and 465.0197, F.S.
[11] Section 465.0158, F.S.

- Special sterile compounding – A separate permit is required for a pharmacy holding an active pharmacy permit that engages in sterile compounding.[12]

A pharmacy must pass an on-site inspection for a permit to be issued,[13] and the permit is valid only for the name and address to which it is issued.[14]

Regulation of Pharmacists and Pharmacy Technicians

Pharmacists

Licensure Requirements

A pharmacist is a person who is licensed under the act to practice the profession of pharmacy.[15] To be licensed as a pharmacist in Florida, a person must:[16]

- Be at least 18 years of age;
- Complete an application and remit an examination fee;
- Hold a degree from an accredited and approved school or college of pharmacy;[17]
- Have completed a board-approved internship; and
- Successfully complete the board-approved examination.

During each biennial licensure renewal cycle, a pharmacist must complete at least 30 hours of board-approved continuing education courses.[18] If a pharmacist is certified to administer vaccines or epinephrine, the pharmacist must complete a three-hour continuing education course on the safe and effective administration of vaccines and epinephrine autoinjections as a part of the biennial licensure renewal.[19]

Scope of Practice

The practice of the profession of pharmacy includes:[20]

- Compounding,[21] dispensing, and consulting concerning contents, therapeutic values, and uses of a medicinal drug;

[12] Rules 64B16-2.100 and 64B16-28.802, F.A.C. An outsourcing facility is considered a pharmacy and needs to hold a special sterile compounding permit if it engages in sterile compounding.
[13] Id.
[14] Rule 64B16-28.100, F.A.C.
[15] Section 465.003(10), F.S.
[16] Section 465.007, F.S. DOH may also issue a license by endorsement to a pharmacist who is licensed in another state upon meeting the applicable requirements set forth in law and rule. See s. 465.0075, F.S.
[17] If the applicant has graduated from a four-year undergraduate pharmacy program of a school or college of pharmacy located outside the United States, the applicant must demonstrate proficiency in English, pass the board-approved Foreign Pharmacy Graduate Equivalency Examination, and complete a minimum of 500 hours in a supervised work activity program within Florida under the supervision of a DOH-licensed pharmacist.
[18] Section 465.009, F.S.
[19] Section 465.009(6), F.S.
[20] Section 465.003(13), F.S.
[21] Rule 64B16-27.700, F.A.C., defines compounding as a professional act by a pharmacist incorporating ingredients to create a finished product for dispensing to a patient or to a practitioner for administration to a patient. The American Pharmacists Association, citing the U.S. Pharmacopeia Convention (USP), defines compounding as "the preparation, mixing, assembling, altering, packaging, and labeling of a drug, drug-delivery device, or device in accordance with a licensed practitioner's prescription, medication order, or initiative based on the practitioner/patient/ pharmacist/compounder relationship in the

- Consulting concerning therapeutic values and interactions of patent or proprietary preparations;
- Monitoring a patient's drug therapy and assisting the patient in the management of his or her drug therapy, including the review of the patient's drug therapy and communication with the patient's prescribing health care provider or other persons specifically authorized by the patient, regarding the drug therapy;
- Transmitting information from prescribers to their patients;
- Administering vaccines to adults;[22]
- Administering epinephrine injections;[23] and
- Administering antipsychotic medications by injection.[24]

Pharmacists are specifically prohibited from altering a prescriber's directions, diagnosing or treating any disease, initiating any drug therapy, and practicing medicine or osteopathic medicine unless permitted by law.[25]

Only a pharmacist or registered intern may:[26]
- Supervise or be responsible for the controlled substance inventory;
- Receive verbal prescriptions from a prescriber;
- Interpret and identify prescription contents;
- Engage in consultation with a health care practitioner regarding the interpretation of a prescription and date in a patient's profile record;
- Engage in professional communication with health care practitioners;
- Advise or consult with a patient, both as to the prescription and the patient profile record; and
- Perform certain duties related to the preparation of parenteral and bulk solutions.

Pharmacists must perform the final check of a completed prescription, thereby assuming complete responsibility for its preparation and accuracy.[27] A pharmacist must be personally available at the time of dispensing.[28] A prescription department is considered closed if a Florida-licensed pharmacist is not present and on duty unless the pharmacist leaves the prescription department to:[29]
- Consult, respond to inquiries, or provide assistance to customers or patients;
- Attend to personal hygiene needs; or
- Perform functions for which the pharmacist is responsible if such activities are performed in a manner that is consistent with the pharmacist's responsibility to provide pharmacy services.

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course of professional practice." See http://www.pharmacist.com/frequently-asked-questions-about-pharmaceutical-compounding (last visited Feb. 1, 2018).
[22] See s. 465.189, F.S.
[23] Id.
[24] Section 465.1893, F.S.
[25] Supra note 21.
[26] Rule 64B16-27.1001(1)-(2), F.A.C. Section 465.003(12), F.S., defines a pharmacy intern as a person who is currently registered in, and attending, or is a graduate of a duly accredited college or school of pharmacy and is properly registered with DOH.
[27] Rule 64B16-27.1001(3), F.A.C.
[28] Rule 64B16-27.1001(4), F.A.C.
[29] Section 465.003(11)(b), F.S.

Prescription Department Managers

Each community pharmacy must designate a licensed pharmacist as a prescription department manager.[30] The prescription department manager is responsible for maintaining all drug records, providing for the security of the prescription department, and ensuring that all regulations of the practice of the profession of pharmacy are followed.[31] A pharmacist may only serve as the prescription department manager of one pharmacy.[32] However, the board may grant an exception based on circumstances, such as the proximity of the pharmacies and the workload of the pharmacist.

Pharmacy Technicians

Registration Requirements

Pharmacy technicians assist pharmacists in dispensing medications and are accountable to a supervising pharmacist who is legally responsible for the care and safety of the patients served.[33] A person must register with DOH to practice as a pharmacy technician. To register, an individual must:[34]

- Be at least 17 years of age;
- Submit an application and pay an application fee; and
- Complete a board-approved pharmacy technician-training program.[35]

The pharmacy technician must renew the registration biennially. For each renewal cycle, a pharmacy technician must complete 20 continuing education hours.[36]

Pharmacy Technician Training Programs

A pharmacy technician may only be registered with DOH if he or she completes a board-approved training program. These include pre-approved training programs that were accredited on or before April 1, 2017, by certain accreditation entities, such as the Accreditation Council on Pharmacy Education, as well as pharmacy technician training programs provided by a branch of the United States Armed Forces whose curriculum was developed on or before April 1, 2017.[37]

The board may review and approve other training programs that do not meet the criteria for pre-approval. Such programs must be licensed by the Commission for Independent Education or equivalent licensing authority or be within the public school system of this state and offer a course of study that includes:[38]

- Introduction to pharmacy and health care systems;

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[30] Rules 64B16-27.104 and 64B16-27.450, F.A.C.
[31] Id.
[32] Id.
[33] Pharmacy Technician Certification Board, Pharmacy Technicians, *available at* https://www.ptcb.org/who-we-serve/pharmacy-technicians#.WnjALPwUlPZ (last visited on Feb. 1, 2018).
[34] Section 465.014(2), F.S.
[35] An individual is exempt from the training program if he or she was registered as a pharmacy technician before January 1, 2011, and either worked as a pharmacy technician at least 1,500 hours under a licensed pharmacists or received certification from an accredited pharmacy technician program.
[36] Section 465.014(6), F.S.
[37] Rule 64B16-26.351(1)-(2), F.A.C.
[38] Rule 64B16-26.351(3)(b), F.A.C.

- Confidentiality;
- Patient rights and the Health Insurance Portability and Accountability Act (HIPAA);
- Relevant state and federal law;
- Pharmaceutical topics, including medical terminology, abbreviations, and symbols; medication safety and error prevention; and prescriptions and medication orders;
- Records management and inventory control, including pharmaceutical supplies, medication labeling, medication packaging and storage, controlled substances, and adjudication and billing;
- Interpersonal relations and ethics, including diversity of communications, empathetic communications, ethics governing pharmacy practice, patient and caregiver communications; and
- Pharmaceutical calculations.

The training program must provide the board with educational and professional background of its faculty.[39] A licensed pharmacist or registered pharmacy technician with appropriate expertise must be involved with planning and instruction and must supervise learning experiences.[40]

The board may also review and approve employer-based pharmacy technician training programs. An employer-based program must be offered by a Florida-permitted pharmacy or affiliated group of pharmacies under common ownership. [41] The program must include 160 hours of training over a period of no more than six months and may be provided only to the employees of that pharmacy.[42] The employer-based training program must:[43]

- Meet the same qualifications as required for non-employment based pharmacy technician training programs as indicated above;
- Provide an opportunity for students to evaluate learning experiences, instructional methods, facilitates, and resources;
- Ensure that self-directed learning experience, such as home study or web-based courses, evaluate the participant's knowledge at the completion of the learning experience; and
- Designate a person to assume responsibility for the registered pharmacy technician-training program.

Scope of Practice

A registered pharmacy technician may not engage in the practice of the profession of pharmacy; however, a licensed pharmacist may delegate those duties, tasks, and functions that do not fall within the definition of the practice of professional pharmacy.[44] Registered pharmacy technicians' responsibilities include: [45]

- Retrieval of prescription files;
- Data entry;
- Label preparation;

[39] Rule 64B16-26.351(3)(e), F.A.C.
[40] Id.
[41] Rule 64B16-26.351(4), F.A.C.
[42] Id.
[43] Id.
[44] Section 465.014(1), F.S.
[45] Rule 64B16-27.420(1), F.A.C.

- Counting, weighing, measuring, and pouring of prescription medication;
- Initiation of communication with a prescribing practitioner regarding requests for prescription refill authorization, obtaining clarification on missing or illegible information on prescriptions, and confirmation of information such as names, medication, strength, directions, and refills;
- Acceptance of authorization for prescription renewals; and
- Any other mechanical, technical, or administrative tasks that do not themselves constitute the practice of the profession of pharmacy.

A licensed pharmacist must directly supervise the performance of a registered pharmacy technician[46] and is responsible for acts performed by persons under his or her supervision.[47] A pharmacist may use technological means to communicate with or observe a registered pharmacy technician who is performing delegated tasks.[48]

The board specifies, by rule, certain acts that registered pharmacy technicians are prohibited from performing, which include:[49]

- Receiving new verbal prescriptions or any change in the medication, strength, or directions of an existing prescription;
- Interpreting a prescription or medication order for therapeutic acceptability and appropriateness;
- Conducting a final verification of dosage and directions;
- Engaging in prospective drug review;
- Monitoring prescription drug usage;
- Transferring a prescription;
- Overriding clinical alerts without first notifying the pharmacist;
- Preparing a copy of a prescription or reading a prescription to any person for the purpose of providing reference concerning treatment of the patient for whom the prescription was written;
- Engaging in patient counseling; or
- Engaging in any other act that requires the exercise of a pharmacist's professional judgment.

A registered pharmacy technician must wear an identification badge with a designation as a "registered pharmacy technician" and identify herself or himself as a registered pharmacy technician in telephone or other forms of communication.[50]

[46] Direct supervision means supervision by a pharmacist who is on the premises at all times the delegated tasks are being performed; who is aware of delegated tasks being performed; and who is readily available to provide personal assistance, direction, and approval throughout the time the delegated tasks are being performed (Rule 64B16-27.4001(2)(a), F.A.C.)
[47] Rule 64B16-27.1001(7), F.A.C.
[48] Rule 64B16-27.4001(2)(b), F.A.C.
[49] Rule 64B16-27.420(2), F.A.C.
[50] Rule 64B16-27.100(2), F.A.C.

Pharmacist-to-Technician Ratios

Florida law prohibits a pharmacist from supervising more than one registered pharmacy technician, unless otherwise permitted by guidelines adopted by the board.[51] The guidelines include the following restrictions:[52]

- A pharmacist engaging in sterile compounding may supervise up to three registered pharmacy technicians.
- A pharmacist who is not engaged in sterile compounding may supervise up to four registered pharmacy technicians.
- In a pharmacy that does not dispense medicinal drugs, a pharmacist may supervise up to six registered pharmacy technicians, as long as the pharmacist or pharmacy is not involved in sterile compounding.
- In a pharmacy that dispenses medicinal drugs in a physically separate area[53] of the pharmacy from which medicinal drugs are not dispensed, a pharmacist may supervise up to six registered pharmacy technicians.

Telehealth

There is no universally accepted definition of telehealth. In broad terms, telehealth is:

The delivery of health care services, where distance is a critical factor, by all health care professionals using information and communication technologies for the exchange of valid information for diagnosis, treatment,[54] and prevention of disease and injuries,[55] research and evaluation, and for the continuing education of health care providers, all in the interests of advancing the health of individuals and their communities.[56]

Definitions that are more specific vary by state and occasionally by profession; however,[57] there are common elements among the varied definitions of telehealth.

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[51] Section 465.014(1), F.S.
[52] Rule 64B16-27.410, F.A.C.
[53] A "physically separate area" is a part of the pharmacy that is separated by a permanent wall or other barrier, which restricts access between the two areas.
[54] The University of Florida's Diabetes Institute utilizes telehealth to deliver treatment to children with diabetes and other endocrine problems who live in Volusia County. This allows the children to receive specialized treatment without the necessity of traveling from Volusia County to Gainesville. The Florida Department of Health's Children's Medical Services underwrites the program. See https://ufhealth.org/diabetes-center-excellence/telemedicine (last visited on Feb. 1, 2018).
[55] The University of South Florida has partnered with American Well to provide health care services to the residents of the Villages via telehealth. The goal is to reduce hospital admissions, readmission rates, and pharmacy costs, while maintaining Medicare beneficiaries in their homes rather than long-term care settings. See http://hscweb3.hsc.usf.edu/blog/2012/06/22/usf-health-and-american-well-to-bring-telehealth-to-seniors-living-at-the-villages/ (last visited on Feb. 1, 2018).
[56] World Health Organization, Telemedicine: Opportunities and Developments in Member States, Global Observatory for Ehealth Series- Volume 2, Section 1.2, page 9 (2010), *available at* http://apps.who.int/iris/bitstream/10665/44497/1/9789241564144_eng.pdf (last visited on Feb. 1, 2018).
[57] Center for Connected Health Policy, The National Telehealth Policy Resource Center, *State Telehealth Laws and Medicaid Program Policies* (August 2016), *available at* http://www.cchpca.org/sites/default/files/resources/50%20STATE%20COMPLETE%20REPORT%20PASSWORD%20AUG%202016_1.pdf (last visited on Feb. 1, 2018)

Telehealth generally consists of synchronous and/or asynchronous transmittal of information.[58] Synchronous refers to the live[59] transmission of information between patient and provider during the same time period.[60] Asynchronous telehealth is the transfer of data over a period of time and typically in separate time frames.[61] This is commonly referred to as "store and forward." Definitions of telehealth also commonly contain restrictions related to the location where telehealth may be used. For example, the use of the "hub and spoke" model is a common location restriction. A hub site is the location from which specialty or consultative services originate from the provider.[62] A spoke site is a remote site where the patient is presented during the telehealth encounter.[63] Under this model, health services may be provided through telehealth only if the patient is located at a designated spoke site and the provider is located at a designated hub site.

Telehealth is not a type of health care service but rather is a mechanism for the delivery of health care services. Health care professionals use telehealth as a platform to provide traditional health care services in a non-traditional manner. These services include, among others, preventative medicine and the treatment of chronic conditions.[64]

Telepharmacy

Telepharmacy is the provision of pharmaceutical care by pharmacies and pharmacists using telepharmacy technologies to patients or their agents at a distance.[65] Telepharmacy operations include, but are not limited to, drug review and monitoring, dispensing of medications, medication therapy management, clinical consultation, and patient counseling.[66]

In 2001, North Dakota became the first state to regulate telepharmacy.[67] North Dakota created a pilot project using telepharmacy to save rural pharmacies from closing and to provide

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[58] The majority of telehealth definitions allow for both synchronous and asynchronous transmittal of information, but some definitions omit asynchronous from the definition of telehealth.
[59] This is also referred to as "real time" or "interactive" telehealth.
[60] American Telemedicine Association, Telemedicine Glossary, *available at* http://thesource.americantelemed.org/resources/telemedicine-glossary (last visited on Feb. 1, 2018). The use of live video to evaluate and diagnosis a patient would be considered synchronous telehealth.
[61] Id. A common example of synchronous telehealth is the transfer of X-rays or MRI images from one health care provider to another health care provider for review in the future.
[62] Id.
[63] Id.
[64] U.S. Department of Health and Human Services, Report to Congress: E-Health and Telemedicine, (August 2016), *available at* https://aspe.hhs.gov/system/files/pdf/206751/TelemedicineE-HealthReport.pdf (last visited Feb. 1, 2018).
[65] National Association of Boards of Pharmacy, "Model State Pharmacy Act and Model Rules of the National Association of Boards of Pharmacy," (Aug. 2017), *available at* https://nabp.pharmacy/publications-reports/resource-documents/model-pharmacy-act-rules/ (last visited Feb. 1, 2018). Telepharmacy technologies means secure electronic communications, information exchange, or other methods that meet state and federal requirements.
[66] E. Alexander et al, ASHP Statement on Telepharmacy, 74 Am J Health-System Pharm., e236 (May 2017), available at http://www.ajhp.org/content/74/9/e236?sso-checked=true (last visited Feb. 1, 2018).
[67] George Tzanetakos et al, RUPRI Center for Rural Health Policy Analysis, University of Iowa College of Public Health, Rural Policy Brief: Telepharmacy Rules and Statutes: A 50-State Survey, Brief No. 2017-4, (April 2017), *available at* https://www.public-health.uiowa.edu/rupri/publications/policybriefs/2017/Telepharmacy%20Rules%20and%20Statutes.pdf (last visited Feb. 1, 2018).

telepharmacy services to underserved rural communities in that state.[68] The pilot project authorized community pharmacies to open and operate telepharmacy sites in rural communities without a pharmacist being physically present to supervise a registered pharmacy technician working at the remote site.[69] A pharmacist supervises the pharmacy technician and speaks with patients using real-time communications technology.[70] Almost 80,000 rural citizens had pharmacy services established, restored, or retained under the pilot project.[71]

At least 23 states have enacted laws or regulations that allow for the use of telepharmacy and/or remote dispensing sites since 2001.[72] The regulation of telepharmacy and remote dispensing varies by state. Some states geographically limit the provision of telepharmacy services to ensure that remote dispensing sites are only established in rural areas or medically underserved areas[73] while others restrict it by facility type such as rural health centers.[74] Many states have included minimum staffing and education requirements, such as requiring a minimum level of experience for the pharmacy technicians or limiting the number of pharmacy technicians that a pharmacist may supervise.[75]

III. Effect of Proposed Changes:

Section 1 amends s. 465.003, F.S., to define an RDSP to include every location where medicinal drugs are prepared by a registered pharmacy technician who is electronically supervised by an offsite pharmacist and dispensed pursuant to s. 465.014(1), F.S., to the patient after verification, certification, and counseling by the pharmacist. The bill exempts an RDSP from the requirement to close when a pharmacist is not present and on duty if the pharmacist is remotely supervising a registered pharmacy technician at an RDSP.

Section 2 amends s. 465.014(1), F.S., to allow a registered pharmacy technician to dispense medicinal drugs at an RDSP when operating under electronic supervision of an offsite Florida licensed pharmacist.

Section 3 amends s. 465.015, F.S., to exempt any person who owns, operates, maintain, opens, establishes, conducts, or has charge of an RDSP from the requirement that a licensed pharmacist

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[68] Daniel L. Friesner et al, Do Remote Community Telepharmacies Have Higher Medication Error Rates than Traditional Community Pharmacies? Evidence from the North Dakota Telepharmacy Project, 51 J Am Pharm Assoc., 580 (Sept./Oct. 2011), available at https://www.ndsu.edu/fileadmin/telepharmacy/APhA_article_2011_-_Copy.pdf (last visited Feb. 1, 2018).
[69] Id at 582.
[70] Id.
[71] National Association of Boards of Pharmacy, Telepharmacy: The New Frontier of Patient Care and Professional Practice, 46 Innovations 46 (June/July 2017), *available at* https://nabp.pharmacy/wp-content/uploads/2016/07/Innovations_June_July_Final.pdf (last visited Feb.1, 2018).
[72] Supra note 678. These states include Alaska, Colorado, Hawaii, Idaho, Illinois, Indiana, Iowa, Louisiana, Minnesota, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Tennessee, Texas, Utah, Vermont, West Virginia, Wisconsin, and Wyoming.
[73] Id. For example, Colorado requires that a telepharmacy outlet be more than 20 miles from the nearest prescription drug outlet or another telepharmacy outlet. (Colo. Rev. Stat. s. 12-12.5-102 (2017)).
[74] Id. For example, Wisconsin limits the operation of a remote dispensing site to a health care facility, office or clinic of a practitioner, county jail, rehabilitation facility, state prison, county house of correction, juvenile correctional facility, juvenile detention center, or residential care center for children and youth. (Wis. Admin. Code s. Phar. 7.095(3)).
[75] Id. For example, Illinois requires a pharmacy technician to have at least one year of experience and prohibits a pharmacist from supervising more than three sites that are simultaneously open. (Ill. Admin. Code tit. 68, s. 1330.510).

or registered intern must fill, compound, or dispense any prescription or medicinal drugs. The bill also exempts a registered pharmacy technician working in an RDSP from the restriction on dispensing medicinal medications without an active pharmacist's license or without being a registered pharmacy intern.

Section 4 creates s. 465.0198, F.S., to allow for the operation of RDSPs. The bill:

- Requires any person desiring to operate an RDSP to apply to the DOH for a permit. To receive a permit, the application must comply with the laws and board rules governing pharmacy and must designate a licensed pharmacist or consultant pharmacist as the prescription department manager responsible for oversight of the RDSP. The bill requires an RDSP to notify the DOH within 10 days if the prescription department manager changes.
- Requires an RDSP to pass an onsite inspection before receiving an initial permit or changing locations. The DOH is required to inspect the RDSP within 90 days before issuing the permit.
- Establishes requirements for an RDSP, including that:
  - An RDSP be jointly owned, or operated under contract with, a supervising pharmacy. A "supervising pharmacy" is defined as a licensed pharmacy in Florida that employs a Florida licensed pharmacist who remotely supervises the registered pharmacy technician at the RDSP.
  - An RDSP must be under 24-hour video surveillance, display a sign indicating that the RDSP is an RDSP and is under video surveillance, and must keep video surveillance recordings for at least 45 days.
  - An RDSP must be located in a rural area[76] and at least 10 miles from an existing community pharmacy unless the RDSP is located in a hospital or a clinic. For the purposes of this requirement, a "clinic" is defined as an entity where health care services are provided to individuals and which tenders charges for reimbursement for such services, excluding a mobile clinic and a portable equipment provider. The bill specifies that an RDSP may not lose its permit if a community pharmacy opens within 10 miles of the RDSP subsequent to the opening of the RDSP.
  - The prescription department manager or other pharmacist employed by the supervising pharmacy visits the RDSP on a schedule determined by the board to inspect the pharmacy, address personnel matters, and provide clinic services for patients.
  - A registered pharmacy technician must have completed at least 2,080 hours of experience at a pharmacy within the two years immediately preceding the date on which the registered pharmacy technician begins employment at the RDSP.
- Allows an RDSP to store, hold, and dispense all medicinal drugs[77] including schedule III-V controlled substances listed in s. 893.03(3)-(5), F.S.
- Restricts an RDSP from storing, holding, or dispensing schedule II narcotic controlled substances and performing centralized prescription filling. [78]
- Restricts a registered pharmacy technician from performing sterile or complex nonsterile compounding.

[76] As defined in s. 381.0406, F.S. A map of rural counties is *available at* http://www.floridahealth.gov/programs-and-services/community-health/rural-health/_documents/ruralcountiespdf.12.pdf. (Last visited on Feb. 6, 2018).
[77] Supra note 1
[78] Supra note 2

- Requires an RDSP to maintain a policy and procedures manual that must be made available to the board upon request. The manual must include:
  - A description of how the RDSP will comply with state and federal laws, rules, and regulations.
  - The procedure for supervising the RDSP and counseling its patients before the dispensing of any medicinal drug.
  - The procedure for reviewing the prescription drug inventory and drug records maintained by the RDSP.
  - The policy and procedure for providing appropriate security to protect the confidentiality and integrity of patient information.
  - The written plan for recovery from an event that interrupts or prevents the pharmacist from supervising the RDSP's operation.
  - The procedure by which the supervising pharmacist consults the state prescription drug-monitoring program (PDMP) before authorizing any controlled substance for dispensing and reports the dispensing of controlled substances to the PDMP.
  - The specific duties, tasks, and functions that a registered pharmacy technician is authorized to perform at the RDSP.

Section 5 amends s. 460.022, F.S., to allow a Florida licensed pharmacist to serve as a prescription manager for up to two RDSPs that are under common control and to make a technical change.

Section 6 amends s. 465.0265, F.S., to conform its provisions to the restriction on RDSPs performing centralized prescription filling.

Section 7 establishes 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:

CS/SB 848 may have an indeterminate fiscal impact on persons who open and run an RDSP pursuant to the provisions of the bill. It may also have an indeterminate fiscal impact on community pharmacies that are nearby but beyond the 10-mile zone.

C. Government Sector Impact:

The DOH will incur indeterminate costs to establish the RDSP permit and regulate permitted RDSPs; however, these costs will be absorbed within existing resources of the DOH.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Lines 158-162 of the bill specify that a RDSP may store, hold, and dispense medicinal drugs listed as a controlled substance in schedules III-V but may not store, hold, and dispense narcotic controlled substances listed in schedule II. The bill does not specify whether an RDSP may store, hold, and dispense nonnarcotic schedule II controlled substances. The bill should be clarified to specify whether an RDSP may or may not store, hold, and dispense nonnarcotic controlled substances listed in schedule II.

Lines 201-203 of the bill restrict a registered pharmacy technician working in an RDSP from performing sterile and complex nonsterile compounding. The use of the term "complex" nonsterile compounding implies that a pharmacy technician may perform noncomplex nonsterile compounding at an RDSP. However, it is unclear what the definitions of "complex" and "noncomplex" nonsterile compounding include. The bill should be amended to clarify what compounding, if any, a registered pharmacy technician is authorized to perform at an RDSP.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 465.003, 465.014, 465.015, 465.022, and 465.0265.

This bill creates section 465.0198 of the Florida Statutes.

IX. Additional Information:

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

CS by Health Policy on February 6, 2018:
The CS changes the title of the bill to Telepharmacy and:

- Tightens the regulation of RDSPs by:
  - Requiring that RDSPs be supervised by Florida licensed pharmacists;

  - Restricting a pharmacy technician at an RDSP from performing sterile or complex nonsterile compounding;
  - Restricting a pharmacy technician at an RDSP from dispensing narcotic drugs listed as a schedule II controlled substance; and
  - Requiring a registered pharmacy technician who works in a RDSP to have certain experience.
- Requires all RDSPs to be located in rural areas (as defined in s. 381.0406, F.S.) and be located at least 10 miles from an existing community pharmacy unless the RDSP is located in a hospital or a clinic.
- Requires each RDSP to be inspected by the DOH before being issued an initial permit or a permit for a change of location.
- Specifies that the section establishing RDSPs does not alter supervisory requirements for pharmacy technicians.
- Removes the provision that an RDSP may not be counted toward network adequacy in managed care programs.
- Makes a number of technical changes to clean up the bill's provisions.

B. Amendments:

None.

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

By the Committee on Health Policy; and Senator Grimsley

588-02911-18 2018848c1

A bill to be entitled

An act relating to telepharmacy; amending s. 465.003, F.S.; revising and providing definitions; amending s. 465.014, F.S.; authorizing a registered pharmacy technician to dispense medicinal drugs under certain conditions; amending s. 465.015, F.S.; conforming provisions to changes made by the act; creating s. 465.0198, F.S.; providing permit requirements for remote dispensing site pharmacies; providing operating requirements and prohibitions for a remote dispensing site pharmacy; defining the term "clinic"; requiring the prescription department manager or other pharmacist employed by the supervising pharmacy to visit the remote dispensing site pharmacy; providing an experience requirement for a registered pharmacy technician working at a remote site pharmacy; prohibiting a registered pharmacy technician from performing sterile or nonsterile compounding; providing construction; amending s. 465.022, F.S.; authorizing a Florida licensed pharmacist to serve as the prescription drug manager at more than one remote dispensing site pharmacy under certain conditions; amending s. 465.0265, 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. Subsection (11) of section 465.003, Florida Statutes, is amended to read:

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588-02911-18 2018848c1

465.003 Definitions.—As used in this chapter, the term:

(11)(a) "Pharmacy" includes a community pharmacy, an institutional pharmacy, a nuclear pharmacy, a special pharmacy, ~~and~~ an Internet pharmacy, and a remote dispensing site pharmacy.

1. The term "community pharmacy" includes every location where medicinal drugs are compounded, dispensed, stored, or sold or where prescriptions are filled or dispensed on an outpatient basis.

2. The term "institutional pharmacy" includes every location in a hospital, clinic, nursing home, dispensary, sanitarium, extended care facility, or other facility, hereinafter referred to as "health care institutions," where medicinal drugs are compounded, dispensed, stored, or sold.

3. The term "nuclear pharmacy" includes every location where radioactive drugs and chemicals within the classification of medicinal drugs are compounded, dispensed, stored, or sold. The term "nuclear pharmacy" does not include hospitals licensed under chapter 395 or the nuclear medicine facilities of such hospitals.

4. The term "special pharmacy" includes every location where medicinal drugs are compounded, dispensed, stored, or sold if such locations are not otherwise defined in this subsection.

5. The term "Internet pharmacy" includes locations not otherwise licensed or issued a permit under this chapter, within or outside this state, which use the Internet to communicate with or obtain information from consumers in this state and use such communication or information to fill or refill prescriptions or to dispense, distribute, or otherwise engage in the practice of pharmacy in this state. Any act described in

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this definition constitutes the practice of pharmacy as defined in subsection (13).

6. The term "remote dispensing site pharmacy" includes every location where medicinal drugs are prepared by a registered pharmacy technician who is electronically supervised by an offsite pharmacist and dispensed pursuant to s. 465.014(1) to the patient after verification, certification, and counseling by the pharmacist.

(b) The pharmacy department of any permittee shall be considered closed whenever a Florida licensed pharmacist is not present and on duty. The term "not present and on duty" may ~~shall~~ not be construed to prevent:

1. A pharmacist from exiting the prescription department for the purposes of consulting or responding to inquiries or providing assistance to patients or customers~~;~~;

2. A pharmacist attending to personal hygiene needs~~;~~; ~~or~~

3. A pharmacist performing any other function for which the pharmacist is responsible, provided that such activities are conducted in a manner consistent with the pharmacist's responsibility to provide pharmacy services; or

4. An offsite pharmacist from remotely supervising a registered pharmacy technician at a remote dispensing site pharmacy.

Section 2. Subsection (1) of section 465.014, Florida Statutes, is amended to read:

465.014 Pharmacy technician.—

(1) A person other than a licensed pharmacist or pharmacy intern may not engage in the practice of the profession of pharmacy, except that a licensed pharmacist may delegate to

pharmacy technicians who are registered pursuant to this section those duties, tasks, and functions that do not fall within the purview of s. 465.003(13). However, a registered pharmacy technician may dispense medicinal drugs when operating under the electronic supervision of an offsite Florida licensed pharmacist pursuant to s. 465.0198. All such delegated acts must be performed under the direct supervision of a licensed pharmacist who is responsible for all such acts performed by persons under his or her supervision. A registered pharmacy technician, under the supervision of a pharmacist, may initiate or receive communications with a practitioner or his or her agent, on behalf of a patient, regarding refill authorization requests. A licensed pharmacist may not supervise more than one registered pharmacy technician unless otherwise permitted by the guidelines adopted by the board. The board shall establish guidelines to be followed by licensees or permittees in determining the circumstances under which a licensed pharmacist may supervise more than one pharmacy technician.

Section 3. Subsections (1) and (2) of section 465.015, Florida Statutes, are amended to read:

465.015 Violations and penalties.—

(1) It is unlawful for any person to own, operate, maintain, open, establish, conduct, or have charge of, either alone or with another person or persons, a pharmacy:

(a) Which is not registered under ~~the provisions of~~ this chapter.

(b) In which a person not licensed as a pharmacist in this state or not registered as an intern in this state or in which an intern who is not acting under the direct and immediate

personal supervision of a licensed pharmacist fills, compounds, or dispenses any prescription or dispenses medicinal drugs. This paragraph does not apply to any person who owns, operates, maintains, opens, establishes, conducts, or has charge of a remote dispensing site pharmacy pursuant to s. 465.0198.

(2) It is unlawful for any person:

(a) To make a false or fraudulent statement, either for herself or himself or for another person, in any application, affidavit, or statement presented to the board or in any proceeding before the board.

(b) To fill, compound, or dispense prescriptions or to dispense medicinal drugs if such person does not hold an active license as a pharmacist in this state, is not registered as an intern in this state, or is an intern not acting under the direct and immediate personal supervision of a licensed pharmacist. This paragraph does not apply to a registered pharmacy technician dispensing medicinal drugs pursuant to s. 465.0198.

(c) To sell or dispense drugs as defined in s. 465.003(8) without first being furnished with a prescription.

(d) To sell samples or complimentary packages of drug products.

Section 4. Section 465.0198, Florida Statutes, is created to read:

465.0198 Remote dispensing site pharmacy permits.—

(1) Any person desiring a permit to operate a remote dispensing site pharmacy must apply to the department for a remote dispensing site pharmacy permit. If the board certifies that the application complies with the laws and board rules

governing the practice of the profession of pharmacy, the department must issue the permit. A permit may not be issued unless a licensed pharmacist or consultant pharmacist is designated as the prescription department manager responsible for the oversight of the remote dispensing site pharmacy. The permittee must notify the department within 10 days after any change of the prescription department manager.

(2) As a prerequisite to issuance of an initial permit or a permit for a change of location, the remote dispensing site pharmacy must pass an onsite inspection. The department must make the inspection within 90 days before issuance of the permit.

(3) The remote dispensing site pharmacy must:

(a) Be jointly owned by a supervising pharmacy or operated under a contract with a supervising pharmacy. For purposes of this subsection, "supervising pharmacy" means a licensed pharmacy in this state which employs a Florida licensed pharmacist who remotely supervises a registered pharmacy technician at a remote dispensing site pharmacy.

(b) Display a sign visible to the public indicating that the location is a remote dispensing site pharmacy and that the facility is under 24-hour video surveillance. The remote dispensing site pharmacy must retain the video surveillance recordings for at least 45 days.

(c) Be located in an area defined as rural pursuant to s. 381.0406 and be at least 10 miles from an existing community pharmacy, unless the remote dispensing site pharmacy is located in a hospital licensed under chapter 395 or in a clinic. For purposes of this paragraph, the term "clinic" means an entity

where health care services are provided to individuals and which tenders charges for reimbursement for such services, excluding a mobile clinic and a portable equipment provider.

(4) A remote dispensing site pharmacy may not lose its permit based on the subsequent opening of a community pharmacy within 10 miles of the remote dispensing site pharmacy.

(5) A remote dispensing site pharmacy may store, hold, and dispense all medicinal drugs including those listed in s. 893.03(3)-(5). A remote dispensing pharmacy may not store, hold, or dispense narcotic controlled substances listed in s. 893.03(2).

(6) A remote dispensing site pharmacy may not perform centralized prescription filling, as defined in s. 465.003(16).

(7) A remote dispensing site pharmacy must maintain a policy and procedures manual, which shall be made available to the board or its agent upon request. The policy and procedures manual shall include:

(a) A description of how the pharmacy will comply with federal and state laws, rules, and regulations.

(b) The procedure for supervising the remote dispensing site pharmacy and counseling its patients before the dispensing of any medicinal drug pursuant to this section.

(c) The procedure for reviewing the prescription drug inventory and drug records maintained by the remote dispensing site pharmacy.

(d) The policy and procedure for providing appropriate security to protect the confidentiality and integrity of patient information.

(e) The written plan for recovery from an event that

interrupts or prevents the pharmacist from supervising the remote dispensing site pharmacy's operation.

(f) The procedure by which a supervising pharmacist consults the state prescription drug monitoring program before authorizing any controlled substance for dispensing and reports the dispensing of a controlled substance as required under s. 893.055.

(g) The specific duties, tasks, and functions that a registered pharmacy technician is authorized to perform at the remote dispensing site pharmacy.

(8) The prescription department manager or other pharmacist employed by the supervising pharmacy must visit the remote dispensing site pharmacy, based on a schedule designated by the board, to inspect the pharmacy, address personnel matters, and provide clinical services for patients.

(9) A registered pharmacy technician must have completed at least 2,080 hours of experience at a pharmacy within the 2 years immediately preceding the date on which the registered pharmacy technician begins employment at the remote dispensing site pharmacy.

(10) A registered pharmacy technician working at a remote dispensing site pharmacy may not perform sterile or complex nonsterile compounding.

(11) This section does not alter the supervision requirements established in s. 465.014.

Section 5. Paragraph (c) of subsection (11) of section 465.022, Florida Statutes, is amended to read:

465.022 Pharmacies; general requirements; fees.—

(11) A permittee must notify the department of the identity

of the prescription department manager within 10 days after employment. The prescription department manager must comply with the following requirements:

(c) A Florida licensed ~~registered~~ pharmacist may not serve as the prescription department manager in more than one location unless approved by the board. However, a Florida licensed pharmacist may serve as a prescription department manager for no more than two remote dispensing site pharmacies, if such pharmacies are under common control.

Section 6. Subsection (1) of section 465.0265, Florida Statutes, is amended to read:

465.0265 Centralized prescription filling.—

(1) Except as otherwise provided in this chapter, a pharmacy licensed under this chapter may perform centralized prescription filling for another pharmacy, provided that the pharmacies have the same owner or have a written contract specifying the services to be provided by each pharmacy, the responsibilities of each pharmacy, and the manner in which the pharmacies will comply with federal and state laws, rules, and regulations.

Section 7. This act shall take effect July 1, 2018.

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D

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/2/18
Meeting Date

848
Bill Number (if applicable)

Topic TELEPHARMACY 848

Amendment Barcode (if applicable)

Name ADAM CHESLER

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Speaking: ☒ For ☐ Against ☐ Information

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

Representing CARDINAL HEALTH

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/8/16
Meeting Date

SB 848
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Telepharmacy

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Speaking: ☐ For ☑ Against ☐ Information

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

Representing Florida Society of Health-System Pharmacists

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

3/2/2018
Meeting Date

CS/SB 848
Bill Number (if applicable)

Topic TELEPHARMACY

Amendment Barcode (if applicable)

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

Representing FLORIDA PHARMACY ASSOCIATION

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

Duplicate

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/2
Meeting Date

848
Bill Number (if applicable)

Topic Telepharmacy 848

Amendment Barcode (if applicable)

Name Chris Hansen

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing TelePharm LLC

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons 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 852 (859872)
INTRODUCER:	Appropriations Committee (Recommended by Subcommittee on Transportation, Tourism, and Economic Development); Transportation Committee; and Senator Brandes and others
SUBJECT:	Florida Smart City Challenge Grant Program
DATE:	February 26, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Miller	TR	**Fav/CS**
2.	McAuliffe	Hrdlicka	ATD	**Recommend: Fav/CS**
3.	McAuliffe	Hansen	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 852 creates the Florida Smart City Challenge Grant Program to provide opportunities to cities and other regions of the state for developing smart mobility solutions to local transportation challenges. The bill authorizes certain state, county, municipal, regional, or other agencies to submit applications to the Florida Department of Transportation (FDOT) for grants to fund certain innovative transportation projects.

The bill requires the FDOT to issue a request for proposals by September 1, 2018, and sets out information and documentation requirements for inclusion in grant proposals. The FDOT must award at least three grants, and each grant is limited to $6 million. Grant awards may be used to fund up to 50 percent of project implementation costs. A grant recipient must fund at least 10 percent of project costs. The FDOT must distribute awards by January 1, 2019.

The bill provides project selection, matching funds, and reporting requirements. The FDOT is directed to provide administrative support and to conduct expedited proposal reviews to facilitate smart city technology deployment within the state.

Related to electric vehicles, the bill requires the Florida Transportation Commission (FTC) to review all funding sources for transportation infrastructure and maintenance projects when it is determined that electric and hybrid vehicles make up two percent or more of the total number of registered vehicles in this state. The report must assess the effect of projected electric and hybrid

vehicle use on future revenues from existing fuel taxes and other fees related to nonelectric vehicles. The report must also make recommendations to: provide continued funding to maintain existing infrastructure; continue to meet projected infrastructure demand; and improve infrastructure to support emergency evacuations by users of electric vehicles.

The report must be submitted to the Governor and the Legislature by September 1 of the year immediately after the year in which the FTC determines that electric and hybrid vehicles make up two percent or more of the total number of vehicles registered in Florida. The FTC may complete the review and report before the two-percent threshold if the FTC determines it appropriate.

The bill also requires the FTC, in consultation with the Florida Division of Emergency Management (FDEM), to assess transportation infrastructure with respect to emergency evacuations and electric vehicles, including the availability of electric vehicle charging stations in this state. Lastly, the bill requires metropolitan planning organization's long-range transportation plans to include an assessment of the increased use of autonomous technology and electric vehicles.

The FTC will incur indeterminate expenses associated with the reporting requirements of this bill. The DHSMV expects the bill to have no impact on expenditures. The FDEM may incur indeterminate expenses associated with its participation in the emergency evacuation assessment.

The bill appropriates $15 million in nonrecurring funds from the State Transportation Trust Fund to the FDOT implement the Florida Smart City Challenge Grant Program.

The bill takes effect on July 1, 2018.

II. Present Situation:

Smart City Challenge Grant Program

According to the National League of Cities, 66 percent of cities are investing in smart city technology, and 25 percent of cities with no smart city technology are investigating how to implement it.[1] A single definition of smart city technology is difficult to identify, but in the context of transportation, it relates to "using sensors to collect data about the movement of people, all forms of vehicles and bikes. A smart city is one that greatly reduces vehicle traffic and allows people and goods to be moved easily through various means."[2] Examples include intelligent vehicle systems and autonomous vehicle transportation. Outcomes of smart city efforts are reduced vehicle related deaths, reduced pollution, reduced traffic times, and healthier populations.[3]

[1] National League of Cities, *Cities and Innovation Economy: Perceptions of Local Leaders (October 18, 2017)*, available at: http://www.nlc.org/resource/cities-and-innovation-economy-perceptions-of-local-leaders (Last visited January 14, 2018).
[2] TechRepublic, *Smart Cities: 6 Essential Technologies*, available at: https://www.techrepublic.com/article/smart-cities-6-essential-technologies/ (Last visited January 13, 2018).
[3] *Id.*

The Federal Smart City Challenge

The United States Department of Transportation (USDOT) launched a Smart City Challenge in December 2015. The challenge asked mid-sized cities "to develop ideas for an integrated, first-of-its-kind smart transportation system that would use data, applications, and technology to help people and goods move more quickly, cheaply, and efficiently."[4] The USDOT committed up to $40 million to one winning city.[5] The USDOT received 78 applications from cities across America, including the following cities in Florida: Jacksonville, Miami, Orlando, St. Petersburg, Tallahassee, and Tampa.[6] However, no Florida city received any funding.

Ultimately, Columbus, Ohio won the challenge by proposing "a comprehensive, integrated plan addressing challenges in residential, commercial, freight, and downtown districts using a number of new technologies, including connected infrastructure, an integrated data platform, autonomous vehicles, and more."[7] The USDOT then worked with selected finalists to further develop the ideas proposed by the cities and, in October 2016, announced an additional $65 million in grants to support advanced technology transportation projects.[8] Again, no city in Florida was selected for project funding.[9]

The State Smart City Challenge Grant Program

The 2017 Legislature enacted legislation[10] requiring the FDOT, in consultation with the Department of Highway Safety & Motor Vehicles and *subject to appropriation*, to develop the Florida Smart City Challenge Grant Program and establish grant award requirements for municipalities or regions for the purpose of receiving grant awards. The law requires grant applications to demonstrate and document the adoption of emerging technologies and their impact on transportation systems and to address at least the following focus areas: autonomous vehicles, connected vehicles, sensor-based infrastructure, collecting and using data, electric vehicles (including charging stations), and developing strategic models and partnerships. The law also specifies a non-exclusive list of goals of the grant program.

The law requires the FDOT to develop eligibility, application, and selection criteria for the program grants and a plan for promotion of the grant program to municipalities or regions of the state as an opportunity to compete for the grant funding. Criteria must include the award of grants to a single recipient and secondary grants to specific projects of merit within other applications. The law authorizes the FDOT to contract with a third party demonstrating knowledge and expertise in the focuses and goals of the program to provide guidance in the development of the program requirements. By January 1, 2018, the FDOT was to submit the

[4] US Department of Transportation, *Smart City Challenge (June 29, 2017)*, available at: https://www.transportation.gov/smartcity (Last visited January 14, 2018).
[5] *Id.*
[6] US Department of Transportation, *Smart City Challenge Vision Statements (September 29, 2016)*, available at: https://www.transportation.gov/smartcity/visionstatements/index (Last visited January 14, 2018).
[7] US Department of Transportation, *The Winner: Columbus Ohio (January 3, 2017)*, available at: https://www.transportation.gov/smartcity/winner (Last visited January 14, 2018).
[8] US Department of Transportation, *What Comes Next (April 28, 2016)*, available at: https://www.transportation.gov/smartcity/what-comes-next (Last visited January 12, 2018).
[9] The USDOT advises that no further funding rounds under the federal program are currently anticipated. Telephone conversation with the USDOT staff and Senate Transportation Committee staff, January 12, 2018.
[10] Chapter 2017-42, Laws of Florida. Section 316.0898, F.S.

grant program guidelines and plans for promotion of the grant program to the Governor, the Senate President, and the House Speaker.

The 2017 General Appropriations Act contained an appropriation for the Smart City Challenge Grant program, authorizing the FDOT to use up to $325,000 from the State Transportation Trust Fund (STTF) to establish the program. However, that appropriation was vetoed.[11] The program, currently codified in s. 316.0898, F.S., expires on July 1, 2018.

Electric and Hybrid Vehicles

Florida law currently defines two types of vehicles powered, in whole or in part, by electricity: an electric vehicle and a hybrid vehicle. An "electric vehicle," defined for purposes of vehicle registration under ch. 320, F.S., is "a motor vehicle that is powered by an electric motor that draws current from rechargeable storage batteries, fuel cells, or other sources of electrical current."[12] A "hybrid vehicle," defined for purposes of use of high-occupancy-vehicle lanes, is a motor vehicle:

- That draws propulsion energy from onboard sources of stored energy which are both an internal combustion or heat engine using combustible fuel and a rechargeable energy-storage system;
- That, in the case of a passenger automobile or light truck, has received a certificate of conformity under the Clean Air Act…and meets or exceeds the equivalent qualifying California standards for a low-emission vehicle;[13] and
- That, in the case of a tri-vehicle,[14] is an inherently low-emission vehicle.[15]

Florida has enacted a number of EV-related provisions that may incentivize people to purchase EVs. They include:

- Authorizing a local government to enact a program to allow property owners to apply for financing from the local government to install EV charging equipment on his or her property. The local government can collect the loan payments through ad valorem assessments.[16]
- Authorizing a local government to use the proceeds of a levied infrastructure surtax (discretionary sales surtax) to provide loans to property owners to install EV charging equipment.[17]
- Allowing hybrid electric vehicles to use high-occupancy-vehicle lanes regardless of occupancy and to use such lanes without paying a toll if one is otherwise required.[18]

[11] Specific Appropriation 1869, proviso, ch. 2017-70, Laws of Florida.
[12] Section 320.01(36), F.S.
[13] For detailed information on California's Low-Emission Vehicle Program, *see* California Air Resources Board, *Low-Emission Vehicle Program (January 25, 2017)*, available at: https://www.arb.ca.gov/msprog/levprog/levprog.htm (Last visited February 21, 2018).
[14] Defined in s. 316.003(93), F.S.
[15] Section 316.0741, F.S.
[16] Section 163.08, F.S.
[17] Section 212.055, F.S.
[18] Generally, a high-occupancy-vehicle lane is a lane designed for use by vehicles in which there is more than one occupant. Section 316.0741, F.S.

In addition, local Florida entities offer EV incentives. The National Conference of State Legislatures reports that, through June 30 of this year or until funds were depleted,[19] Duke Energy and Orlando Utilities Commission customers and employees were eligible for a $10,000 rebate for the purchase of a new, all-electric, 2017 Nissan Leaf at participating dealerships; and the Jacksonville Electric Authority offers rebates for plug-in HEVs with a battery less than 15 kilowatt hours in capacity to receive $500, and plug-in HEVs with larger battery capacity are eligible for $1,000.[20] The federal government also allows an income tax credit of up to $7,500 for certain EVs.[21]

Impact of Electric and Hybrid Vehicles on Transportation Funding/Prior Studies

Taxes on gas and diesel fuel are a primary source of revenue for both the federal highway fund and the State Transportation Trust Fund.[22] Transportation funding has generally experienced a continuing shortfall attributed to static federal gas tax rates, more fuel efficient vehicles, and increasing transportation construction and maintenance costs.[23]

Annual fuel tax revenues at both the state and federal levels are directly based on the number of gallons of gasoline and diesel fuel consumed. Because electric vehicles (EV) are not powered by gasoline or diesel, and because hybrid electric vehicles (HEV) use less gasoline or diesel fuel than a conventional vehicle with only an internal combustion engine, an increase in the number of these vehicles operating in Florida results in less revenue being raised from fuel taxes for comparable vehicle miles traveled.

There are a limited number of studies specifically focused on the impact of EVs[24] on fuel tax revenues. A 2015 study conducted by the University of Central Florida acknowledges the increasing national EV sales trend for the 5-year period prior to the study but concludes:

> Of course, despite the increase, electric and plug-in electric vehicles still represent a small portion of the US auto market. With total vehicles sales for 2014 coming in at around 16.5 million, EVs made up less than 1 percent of total sales.[25]

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[19] US Department of Energy, Alternative Fuels Data Center reports this rebate expired on July 1 of this year. *See* AFDC, *Expired, Repealed, and Archived Florida Incentives and Laws*, available at: https://www.afdc.energy.gov/laws/laws_expired?jurisdiction=FL (Last visited February 22, 2018).

[20] *See* National Conference of State Legislature's website for additional details on available incentives related to EVs, *State Efforts to Promote Hybrid and Electric Vehicles (September 26, 2017)*, available at: http://www.ncsl.org/research/energy/state-electric-vehicle-incentives-state-chart.aspx#other (Last visited February 22, 2018).

[21] *See* Internal Revenue Service, *Plug-In Electric Drive Vehicle Credit (IRC 30D) (January 24, 2018)*, available at: https://www.irs.gov/credits-deductions/individuals/plug-in-electric-drive-vehicle-credit-section-30d (Last visited February 22, 2018).

[22] *See* Florida Department of Transportation, *Florida's Transportation Tax Sources, A Primer (January 2017)*, at p. 4, for a listing of federal and state transportation tax sources and rates for calendar year 2017, available at: http://www.fdot.gov/comptroller/pdf/GAO/RevManagement/Tax%20Primer.pdf (Last visited February 21, 2018).

[23] *See* US Department of Energy National Renewable Energy Laboratory, *Primer on Motor Fuel Excise Taxes and the Role of Alternative Fuels and Energy Efficient Vehicles (August 2015)*, at p. 7, available at: https://www.afdc.energy.gov/uploads/publication/motor_fuel_tax_primer.pdf (Last visited February 22, 2018).

[24] Unless otherwise noted, EV includes both EVs and HEVs.

[25] *See* Electric Vehicle Transportation Center, *Implications of Electric Vehicles on Gasoline Tax Revenues*, December 2015, at p. 8 available at: http://www.fsec.ucf.edu/en/publications/pdf/FSEC-CR-2011-15.pdf (Last visited February 22, 2018).

The study further concludes that EVs, for now and in the near future, will have only a small impact on fuel tax revenues but notes a University of Texas study on EV market share suggesting that by 2050, over 50 percent of fuel tax funds may be lost.[26] The authors highlight the importance of understanding that "the rate at which revenue declines depends on many factors. The relationship among these factors is complex and continued investigation is warranted to better understand vehicle fleet mix, fuel economy, and fuel tax revenue."[27]

According to the study, a number of states are exploring or implementing revenue generating alternatives, both to increase transportation funding in general and also to prepare for revenue reduction due to increased EV sales. These alternatives include a fee based on the number of miles a given vehicle travels,[28] as well as increased direct taxes and surcharges on EV purchases.[29]

For example, in 2015, the Georgia Legislature repealed "one of the nation's most generous state tax credits for electric cars." The Legislature also voted to impose a $200 annual registration fee on owners of some plug-in hybrids and all zero-emissions vehicles to make up for the lost fuel taxes. EV sales then experienced a sharp reduction, a result attributed to the repealed credit and imposed fee.[30]

EV Registration in Florida

The license tax for EVs is the same as that for a vehicle that is not electrically powered.[31] The exact number of EVs registered in Florida is somewhat unclear. Under the Department of Highway Safety and Motor Vehicles' (DHSMV) current vehicle registration system programming, a "fuel type" classification is an optional field and therefore the precise number of EVs registered is unknown.[32]

The DHSMV analyzed vehicle identification numbers (VINs) in its motor vehicle registration database using available software and estimated that of the 16.2 million vehicles with VINs that could be analyzed, approximately 247,131 EVs and HEVs, are registered in Florida, or about 1.53 percent.[33]

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[26] *Id.* at p. 12.
[27] *Id.*
[28] Known as VMT (vehicle miles traveled) and MBUF (mileage-based user fee). Fees are assessed based on the actual amount of road use, not on fuel consumption.
[29] *See* US Department of Energy National Renewable Energy Laboratory, *Primer on Motor Fuel Excise Taxes and the Role of Alternative Fuels and Energy Efficient Vehicles*, August 2015, at p. 29-31, available at: https://www.afdc.energy.gov/uploads/publication/motor_fuel_tax_primer.pdf (Last visited February 22, 2018).
[30] *See* Politifact Georgia, *Electric car sales hit the brakes as tax credit axed and fee added*, (November 2, 2015), available at: http://www.politifact.com/georgia/statements/2015/nov/02/don-francis/electric-car-sales-hit-brakes-tax-credit-axed-and-/ (Last visited February 22, 2018).
[31] Section 320.08001, F.S. Registration fees differ based on factors such as the type of vehicle, its weight, the license plate chosen, and whether the registration period is one or two years.
[32] The DHSMV also advises a system change is underway to make "fuel type" a mandatory field. *See* email from DHSMV staff dated September 22, 2017, to staff of the Senate Transportation Committee.
[33] *See* DHSMV, *SB 384 Bill Analysis* (November 9, 2017), at p. 5.

Emergency Evacuation

The Florida Division of Emergency Management (FDEM) is responsible for maintaining a comprehensive statewide program of emergency management. Among the FDEM's duties is a requirement to prepare a state comprehensive emergency management plan containing provisions that will ensure the state is prepared for emergencies and minor, major, and catastrophic disasters.[34] As part of the plan, the FDEM must include an evacuation component including specific regional and interregional planning provisions and promoting intergovernmental coordination of evacuation activities. Among other items, this part of the plan must establish strategies for ensuring sufficient, reasonably priced fueling locations along evacuation routes.[35] A review of available documents and information on the FDEM's website did not identify an assessment of electric vehicle charging stations for the purpose of emergency evacuations.

Section 377.815, F.S., authorizes the Florida Department of Agriculture and Consumer Services to post information on its website relating to alternative fueling stations or EV charging stations that are available for public use in this state. The department's website provides a list of stations, however, the list is not specific to emergency evacuations.[36]

According to the U.S Department of Energy's Alternative Fuels Data Center, 949 electric vehicle charging stations (2,130 outlets) are currently available in the State of Florida, excluding private stations.[37] The DHSMV notes that no EV charging stations within Florida's transportation infrastructure are specifically designated for use during emergency evacuations.[38]

III. Effect of Proposed Changes:

The bill creates a new Florida Smart City Challenge Grant Program to provide opportunities for grants to fund certain innovative transportation projects. The FDOT must issue a request for proposals by September 1, 2018, and distribute awards by January 1, 2019. The bill establishes goals and eligibility requirements for the program; provides project selection criteria and matching funds requirements; sets out reporting requirements; provides for administrative support for the program; and provides an appropriation from the STTF to implement the program.

Section 1 creates s. 316.0899, F.S., effective July 1, 2018, to create a new Florida Smart City Challenge Grant Program within the FDOT. The bill identifies the goals of the program to include:

- Providing opportunities to municipalities and other regions of the state to develop innovative smart mobility solutions to local transportation challenges.

[34] Section 252.35(2)(a), F.S.
[35] *Id.*
[36] *See* Florida Department of Agriculture and Consumer Services, Florida Energy Clearinghouse, Transportation, available at: http://www.freshfromflorida.com/Energy/Florida-Energy-Clearinghouse/Transportation (Last visited February 22, 2018).
[37] *See* US Department of Energy, Alternative Fuels Data Center, Electric Vehicles Charging Station Locations, available at: https://www.afdc.energy.gov/fuels/electricity_locations.html, including a map and a download spreadsheet of locations and related information (Last visited February 22, 2018).
[38] *See* DHSMV, *SB 384 Bill Analysis* (November 9, 2017), at p. 5.

- Deploying smart city technology that has an immediate impact on the safe and efficient movement of people and goods within municipalities and other regions of the state.
- Advancing autonomous, connected, grid-integrated,[39] and electric vehicle readiness and deployment throughout the state.
- Providing enhanced education and workforce development opportunities by deploying emerging technologies that support the state's future workforce.
- Meeting the mobility needs of residents of this state, particularly transportation disadvantaged persons[40] by increasing access to and convenience of transportation within municipalities and other regions of the state.
- Facilitating the efficient movement of freight within the state, especially in and around airports and seaports.
- Supporting the reduction or elimination of fossil fuel consumption by relying on renewable energy sources and electric technologies.
- Creating a smart mobility demonstration community in the state that serves as a model for municipalities and other regions nationwide.

The bill authorizes the various government entities to apply to the FDOT for project funding under the program. These government entities include:

- A state, county, municipal, regional, or other agency that is responsible for the movement of persons, goods, or services within a defined geographical region, including an entity created pursuant to chs. 343,[41] 348,[42] or 349,[43] F.S.
- A metropolitan planning organization (MPO) or transportation planning organization (TPO), with a requirement that each entity responsible for deploying or operating a project on behalf of an MPO or TPO must submit to the FDOT a letter detailing its commitment to the implementation, operation, and maintenance of the project.
- A state university.

The bill requires an applicant to have in place a plan or framework for the implementation of the proposed project in at least one of the following categories:

- Autonomous vehicle deployment or demonstration.
- Connected vehicle technology deployment.
- Shared mobility services innovation and deployment.
- Acceleration of the use of plug-in electric vehicles and electric charging infrastructure, including the deployment of grid-integrated vehicles.

[39] The bill defines this term to mean "a motor vehicle that has the ability for two-way power flow between the vehicle and the electric grid and the communications hardware and software that allow for external control of battery charging and discharging."
[40] Section 427.011(1), F.S., defines a "transportation disadvantaged person" as a person who, because of physical or mental disability, income status, or age is unable to transport himself or herself or to purchase transportation and is, therefore, dependent on others to obtain access to health care, employment, education, shopping, social activities, or other life-sustaining activities, or children who are handicapped or high-risk or at-risk as defined in s. 411.202, F.S.
[41] Chapter 343, F.S., creates the Northeast Florida Regional Transportation Commission, the South Florida Regional Transportation Authority, the Central Florida Regional Transportation Authority, the Northwest Florida Transportation Corridor Authority, and the Tampa Bay Area Regional Transit Authority.
[42] Chapter 348, F.S., creates the Miami-Dade Expressway Authority, the Tampa-Hillsborough County Expressway Authority, the Santa Rosa Bay Bridge Authority, and the Osceola County Expressway Authority.
[43] Chapter 349, F.S., creates the Jacksonville Transportation Authority.

The FDOT is required to issue a request for proposals for the award of program grants by September 1, 2018. Each submitted proposal must include:

- A statement by the applicant certifying that the project will be implement within 2 years after receipt of the grant.
- A plan for fulfilling documentation requirements under the FDOT's Statewide Systems Engineering Management Plan within such 2-year period.[44]
- A description of how operation and maintenance costs for the project will be funded in order to ensure that the FDOT's investment in the project is sustained.
- A plan for evaluation of the project and the methods by which such evaluation will be shared with residents of the area served by the project.
- The procedure for integrating the project's transportation-related data into the FDOT's Data Integration and Video Aggregation System.[45]

The FDOT must award a grant to at least three recipients, with each award limited to no more than $6 million. The FDOT must distribute awards by January 1, 2019. An award may fund up to 50 percent of project costs. A grant recipient must fund at least 10 percent of project costs. Grant funds must be used exclusively for startup costs, including acquisition of hardware, software, and assets associated with implementing a project. Grant funds may not be used for costs associated with operation, maintenance, or evaluation of the project.

When selecting grant recipients, the FDOT must give priority to proposals that:

- Demonstrate the availability of matching funds;[46]
- Include a plan for documenting the acquisition and expenditure of matching funds; and
- Include matching funds from private sector partner organizations.

Matching funds may be used for costs associated with operation, maintenance, and evaluation of the project.

Each grant recipient must submit a quarterly report to the FDOT regarding the development, implementation, and operation of the project. A grant recipient that receives matching funds must document the contribution of such funds in the quarterly report that details the manner in

[44] A Systems Engineering Management Plan (SEMP) enables an engineer "to manage a project using systems engineering principles and methods to maximize the quality of the system being implemented, while minimizing the budget and schedule required for its completion." For extensive details, see the FDOT's systems engineering website available at: http://www.fdot.gov/traffic/its/projects_deploy/semp.shtm (Last visited January 12, 2018). Federal regulations require all Intelligent Transportation System projects funded with federal highway funds to be based on a systems engineering analysis on a scale commensurate with the project scope. See 23 C.F.R. s. 940.11. Required documentation in a SEMP can be extensive. See the list of document templates on the identified FDOT website.

[45] This system integrates and manages real-time information. It consists of a data integration subsystem, which collects and integrates transportation and related data from numerous sources and integrates that data for internal and external dissemination and consumption; and a video aggregation subsystem, which aggregates "live streaming video from FDOT and external agency cameras for distribution using ubiquitous, modern video streaming technologies, such that video is made available to users regardless of their specific location or device platform. See the FDOT's *TSM&O Disseminator*, July-August 2017, at p. 9, available at: http://www.fdot.gov/traffic/Newsletters/2017/2017-AUG.pdf (Last visited January 12, 2018).

[46] Under the bill, "matching funds" includes in-kind services, goods, equipment, or other noncash contributions calculated at fair market value.

which the value of such contribution is calculated. The FDOT must submit a quarterly report to the Senate President and House Speaker regarding the overall status of the grant program.

After a project is implemented, each grant recipient must submit a report to the Governor, the Senate President, and the House Speaker detailing: the project's impact on the transportation system within the area served by the project; the extent to which the goals of the grant program have been met; and recommendations for project revisions or improvements to guide future deployment activities. A final report must be submitted 2 years after submission of the initial report.

The bill requires the FDOT to provide administrative support to the grant program to facilitate the deployment of smart city technology within the state, including expedited review of submitted proposals.

The FDOT may select an independent nongovernmental entity to assist in project construction, management, and evaluation; to oversee the implementation of the project; and to analyze and document lessons learned during, and benefits derived from, implementation of the project. The nongovernmental entity must have experience with the national (federal) Smart Cities Initiative, advanced transportation deployment experience in this state, extensive engineering experience, or expertise in stakeholder engagement of potential partners to create a demonstration community.

Section 2 appropriates $15 million in nonrecurring funds from the State Transportation Trust Fund for the 2018-2019 fiscal year to the FDOT to implement the program.

Electric and Hybrid Vehicles

Section 3 requires the FTC to review all sources of revenue for transportation infrastructure and maintenance projects and prepare a report to the Governor and the Legislature when the FTC determines that electric vehicles, as defined in s. 320.01(36), F.S., and hybrid vehicles, as defined in s. 316.0741, F.S., make up two percent or more of the total number of vehicles registered in this state.

The FTC, in consultation with the DHSMV, is authorized to use commercially available data that the FTC deems reliable to support its determination and report. In consultation with the FDEM, the FTC is also required to assess transportation infrastructure with respect to emergency evacuations and EVs, including, but not limited to, the availability of EV charging stations in this state.

At a minimum, the report must assess the effect of projected electric and hybrid vehicle use in this state on future revenue from existing taxes, fees, and surcharges related to nonelectric, private-use motorcycles, mopeds, automobiles, tri-vehicles, and trucks. The report must include recommendations to the Legislature to:

- Ensure continued funding for necessary maintenance that provides for adequate levels of service on existing transportation infrastructure;
- Accomplish improvements and capacity projects on transportation infrastructure which meet the demand from projected population and economic growth; and

- Accomplish necessary improvements to transportation infrastructure that would support emergency evacuations by users of electric vehicles.

The bill requires the report to be submitted to the Governor and the Legislature by September 1 of the year immediately after the year in which the FTC determines that electric and hybrid vehicles make up two percent or more of the total number of vehicles registered in this state. The FTC is authorized to complete the review and report before the two-percent threshold is reached if the FTC determines that earlier completion is appropriate to maintain a financially stable long-term transportation work program.

Section 4 amends s. 339.175(7)(c)2., F.S., requiring each metropolitan planning organization to consider the increased use of autonomous technology and electric vehicles, and other developments, when making its capital investment assessment as part of development of its long-range transportation plan.

The bill takes effect on July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not implicate the mandates provisions of the State Constitution. Counties and cities are not required to apply to the program, but those that do apply for funding from the Florida Smart City Challenge Grant Program will be required to provide matching funds.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Private-sector partners who invest in innovative transportation projects may benefit to the extent that the project receives state grant funding.

C. Government Sector Impact:

The bill appropriates $15 million in nonrecurring funds from the State Transportation Trust Fund for Fiscal Year 2018-2019 to the FDOT to implement the program. This appropriation may be used to fund the costs incurred by FDOT to implement the Florida Smart City Challenge Grant Program as noted below.

The FDOT will incur administrative expenses associated with:
- Issuing the request for proposals.
- Conducting expedited reviews of proposals and awarding grants.
- Preparing the required quarterly reports.
- Providing administrative support.

Related to the report on EVs in Florida, the FTC will incur indeterminate expenses associated with:
- Determining when EVs make up two percent of vehicle registrations;
- Assessing transportation revenue impacts of EV registrations;
- Assessing infrastructure related to emergency evacuations for EVs; and
- Preparing the report required by the bill.

The DHSMV expects the bill to have no impact on its expenditures.

The FDEM may incur indeterminate expenses associated with its participation in the emergency evacuation assessment.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 316.0899 of the Florida Statutes.

This bill creates an undesignated section of Florida Law.

This bill amends section 339.175 of the Florida Statutes.

IX. Additional Information:

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

Recommended CS/CS by Appropriations Subcommittee on Transportation, Tourism, and Economic Development on February 21, 2018:
The committee substitute changes the bill to "[a]n act relating to transportation infrastructure" and adds the substance of CS/SB 384 (2017) to the bill.

The committee substitute requires the FTC to review all revenue sources for transportation infrastructure and maintenance projects and assess the effect of projected electric and hybrid vehicle use on future revenue from existing taxes, fees, and surcharges; make an assessment with the FDEM of transportation infrastructure with respect to emergency evacuations and electric vehicles; and prepare a report containing certain recommendations at the specified time.

The committee substitute revises planning requirements related to autonomous technology and electric vehicles to be considered as part of each metropolitan planning organization's development of the long-range transportation plan.

CS by Transportation on January 18, 2018:
The Committee Substitute:

- Creates a "Definitions" subsection, defines "grid-integrated vehicle," and relocates the definition of "matching funds" to this subsection.
- Revises one of the categories for which an applicant must have in place a plan or framework for project implementation to include acceleration of deployment of grid-integrated vehicles.
- Requires the FDOT to award at least three grants, rather than a awarding a maximum of three.
- Requires a grant recipient to fund at least ten percent of project costs and correspondingly removes a reference to partner organizations funding "50 percent of" projects costs in the provisions relating to priority selection of proposals.
- Revises the authorized uses of grant funds to specifically include acquisition of hardware, software, and assets associated with project implementation.
- Requires each recipient's initial report to be submitted to the Governor, in addition to the Senate President and the House Speaker.
- Authorizes the FDOT to select an independent nongovernmental entity to assist in project construction, management, and evaluation; and requires such entity to have certain prior experience.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/02/2018	.	
	.	
	.	
	.	

The Committee on Appropriations (Brandes) recommended the following:

Senate Amendment (with title amendment)

Delete lines 94 - 147
and insert:
2. An independent special district with powers that include or are related to infrastructure development or transportation systems and services.
3. A metropolitan planning organization or transportation planning organization. Each entity responsible for deploying or operating the project on behalf of a metropolitan planning

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organization or transportation planning organization must submit a letter to the department detailing its commitment to the implementation, operation, and maintenance of the project.

4. A state university.

(b) An applicant for a Florida Smart City Challenge Grant must have in place a plan or framework for the implementation of the proposed project in at least one of the following categories:

1. Autonomous vehicle deployment or demonstration.

2. Connected vehicle technology deployment.

3. Shared mobility services innovation and deployment.

4. Acceleration of the use of plug-in electric vehicles and electric charging infrastructure, including deployment of grid-integrated vehicles.

(4) PROPOSALS.—By September 1, 2018, the Department of Transportation shall issue a request for proposals for the award of a Florida Smart City Challenge Grant. Each proposal submitted to the department must include:

(a) A statement by the applicant certifying that the project will be implemented and operational within 5 years after receipt of the grant.

(b) A plan for fulfilling documentation requirements under the department's Statewide Systems Engineering Management Plan within such 5-year period.

(c) A description of how operation and maintenance costs for the project will be funded in order to ensure that the department's investment in the project is sustained.

(d) A plan for evaluation of the project and the methods by which such evaluation will be shared with residents of the area

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served by the project.

(e) The procedure for integrating the project's transportation-related data into the department's Data Integration and Video Aggregation System.

(5) AWARD OF GRANTS.—The Department of Transportation shall award a Florida Smart City Challenge Grant to at least three recipients. Each award may not exceed $6 million. The department shall distribute the award to each recipient by January 1, 2019.

(a) The grant may fund up to 50 percent of project costs. At least 10 percent of project costs must be funded by the grant recipient. An additional minimum of 10 percent of project costs must be funded by the private sector. Grant funds must be used exclusively for startup costs, including, but not limited to, acquisition of hardware, software, and assets associated with implementation of the project, and may not be used for costs associated with operation or maintenance of the project.

(b) In selecting grant recipients, the department shall give priority to those proposals that demonstrate the availability of matching funds from partner organizations to fund project costs and that include a plan for documenting the acquisition and expenditure of such matching funds.

1. The department shall give further priority to those proposals that include larger amounts of matching funds from private-sector

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

And the title is amended as follows:

Delete line 5

and insert:

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Florida Smart City Challenge Grant Program within the Department of Transportation;

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/02/2018	.	
	.	
	.	
	.	

The Committee on Appropriations (Brandes) recommended the following:

Senate Amendment (with title amendment)

Delete line 289
and insert:
Section 5. Paragraph (a) of subsection (4) of section 201.15, Florida Statutes, is amended, and paragraph (b) of that subsection is republished, to read:
201.15 Distribution of taxes collected.—All taxes collected under this chapter are hereby pledged and shall be first made

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available to make payments when due on bonds issued pursuant to s. 215.618 or s. 215.619, or any other bonds authorized to be issued on a parity basis with such bonds. Such pledge and availability for the payment of these bonds shall have priority over any requirement for the payment of service charges or costs of collection and enforcement under this section. All taxes collected under this chapter, except taxes distributed to the Land Acquisition Trust Fund pursuant to subsections (1) and (2), are subject to the service charge imposed in s. 215.20(1). Before distribution pursuant to this section, the Department of Revenue shall deduct amounts necessary to pay the costs of the collection and enforcement of the tax levied by this chapter. The costs and service charge may not be levied against any portion of taxes pledged to debt service on bonds to the extent that the costs and service charge are required to pay any amounts relating to the bonds. All of the costs of the collection and enforcement of the tax levied by this chapter and the service charge shall be available and transferred to the extent necessary to pay debt service and any other amounts payable with respect to bonds authorized before January 1, 2017, secured by revenues distributed pursuant to this section. All taxes remaining after deduction of costs shall be distributed as follows:

(4) After the required distributions to the Land Acquisition Trust Fund pursuant to subsections (1) and (2) and deduction of the service charge imposed pursuant to s. 215.20(1), the remainder shall be distributed as follows:

(a) The lesser of 24.18442 percent of the remainder or $541.75 million in each fiscal year shall be paid into the State

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Treasury to the credit of the State Transportation Trust Fund. Of such funds, $75 million for each fiscal year shall be transferred to the General Revenue Fund. Notwithstanding any other law, the remaining amount credited to the State Transportation Trust Fund shall be used for:

1. Capital funding for the New Starts Transit Program, authorized by Title 49, U.S.C. s. 5309 and specified in s. 341.051, in the amount of 10 percent of the funds;

2. The Small County Outreach Program specified in s. 339.2818, in the amount of 10 percent of the funds;

3. The Strategic Intermodal System specified in ss. 339.61, 339.62, 339.63, and 339.64, in the amount of 75 percent of the funds after deduction of the payments required pursuant to subparagraphs 1. and 2.; and

4.a. The Transportation Regional Incentive Program specified in s. 339.2819, in the amount of 25 percent of the funds after deduction of the payments required pursuant to subparagraphs 1. and 2.

b. In fiscal years 2018-2019, 2019-2020, and 2020-2021, the first $60 million of the funds allocated pursuant to this subparagraph must ~~shall~~ be allocated annually to the Florida Rail Enterprise for the purposes established in s. 341.303(5). This sub-subparagraph expires July 1, 2021.

c. Beginning in the 2021-2022 fiscal year, the first $60 million of the funds allocated pursuant to this subparagraph must be allocated annually as follows:

(I) Twenty-five million dollars on a matching basis to the Tampa Bay Area Regional Transit Authority for the design and construction of an innovative mobility system, as defined in s.

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339.84. One dollar in local or private matching funds must be provided for each dollar distributed under this sub-sub-subparagraph. Federal funds may not be substituted for the local or private matching funds. In any fiscal year in which the Tampa Bay Area Regional Transit Authority notifies the Department of Transportation that the authority will not request all of the funds allocated under this sub-sub-subparagraph for an innovative mobility system, the Department of Transportation shall allocate such funds to projects in the 5-year work program under s. 339.135 in the area described in s. 343.91(1)(a) and such funds shall be in addition to currently scheduled work program commitments in that area.

(II) Thirty-five million dollars to the Statewide Mobility Innovation Program for the purposes established in s. 339.84.

(b) The lesser of 0.1456 percent of the remainder or $3.25 million in each fiscal year shall be paid into the State Treasury to the credit of the Grants and Donations Trust Fund in the Department of Economic Opportunity to fund technical assistance to local governments.

Moneys distributed pursuant to paragraphs (a) and (b) may not be pledged for debt service unless such pledge is approved by referendum of the voters.

Section 6. Section 339.84, Florida Statutes, is created to read:

339.84 Statewide Mobility Innovation Program.—

(1) As used in this section the term "innovative mobility system" means a system of infrastructure, appurtenances, and technology designed to move the greatest number of people in the

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least amount of time. The term includes, but is not limited to, autonomous vehicles as defined in s. 316.003, automated people movers, bus rapid transit networks, transportation network companies as defined in s. 627.748, ridesharing as defined in 341.031(9)(a), and commuter highway vehicles as defined in 49 U.S.C. s. 5323(i)(2)(C)(ii). The term does not include other traditional uses of a roadway system for conveyance.

(2) The Statewide Mobility Innovation Program is created within the department. The goals of the program include, but are not limited to:

(a) Evaluating, financing, and overseeing proposals for innovative mobility systems in this state.

(b) Expending funds to publicize and promote innovative mobility systems and to contract with entities to accomplish these purposes.

(c) Soliciting proposals in accordance with chapter 287 for the design and construction of innovative mobility systems and contracting with entities to expend funds to accomplish this purpose.

(3) Beginning in the 2021-2022 fiscal year, the department shall use funds allocated pursuant to s. 201.15(4)(a)4.c.(II) in a county to fund the design and construction of an innovative mobility system based on a proposal that the county submits to the department which the department approves as being consistent with the requirements of this section.

(4) Of the $35 million allocated under s. 201.15(4)(a)4.c.(II), the department must use:

(a) Twenty-five million dollars for an innovative mobility system in a county as defined in s. 125.011(1) and $5 million

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for an alternative transportation system within the jurisdiction of the Jacksonville Transportation Authority. In any fiscal year in which a county as defined in s. 125.011(1) notifies the department that the county will not request all of the funds allocated under this paragraph for an innovative mobility system, the department shall allocate such funds to projects in the 5-year work program under s. 339.135 in the county and such funds shall be in addition to currently scheduled work program commitments in that area.

(b) The remainder for such a system in any other county or counties in the state.

(5) A county proposing the use of funds for an innovative mobility system must submit a request to the department which must include a detailed project and financial plan. The funding request must specify the duration of the project and the total amount sought by state fiscal year. Two or more counties may submit a joint proposal to the department.

(6) One dollar in local or private matching funds must be provided for each dollar distributed under this section. Federal funds may not be substituted for the local or private matching funds.

(7) Funds distributed under this section may not be used to subsidize projects with existing funding commitments as of July 1, 2018.

(8) Each recipient of funds under this program must submit a quarterly report to the department regarding the development, implementation, and operation of the project. The department must submit an annual report by September 1 to the President of the Senate and the Speaker of the House of Representatives

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regarding the overall status of the program.

Section 7. Subsection (5) of section 341.303, Florida Statutes, is amended to read:

341.303 Funding authorization and appropriations; eligibility and participation.—

(5) FUND PARTICIPATION; FLORIDA RAIL ENTERPRISE.—The department, through the Florida Rail Enterprise, is authorized to use funds provided pursuant to s. 201.15(4)(a)4. to fund:

(a) Up to 50 percent of the nonfederal share of the costs of any eligible passenger rail capital improvement project.

(b) Up to 100 percent of planning and development costs related to the provision of a passenger rail system, including, but not limited to, preliminary engineering, revenue studies, environmental impact studies, financial advisory services, engineering design, and other appropriate professional services.

(c) The high-speed rail system.

(d) Projects necessary to identify or address anticipated impacts of increased freight rail traffic resulting from the implementation of passenger rail systems as provided in s. 341.302(3)(b).

After June 30, 2018, the department may not program any projects to be funded pursuant to this subsection for any year of the work program if the project was not in the 5-year work program adopted for the 2017-2018 fiscal year.

Section 8. Effective July 1, 2021, subsection (5) of section 341.303, Florida Statutes, is repealed.

Section 9. Effective July 1, 2021, paragraph (b) of subsection (4) of section 343.58, Florida Statutes, is amended

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to read:

343.58 County funding for the South Florida Regional Transportation Authority.—

(4) Notwithstanding any other provision of law to the contrary and effective July 1, 2010, until as provided in paragraph (d), the department shall transfer annually from the State Transportation Trust Fund to the South Florida Regional Transportation Authority the amounts specified in subparagraph (a)1. or subparagraph (a)2.

(b) Funding required by this subsection may not be provided from the funds dedicated to the Florida Rail Enterprise or the Statewide Mobility Innovation Program pursuant to s. 201.15(4)(a)4.

Section 10. Except as otherwise expressly provided in this act, 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 line 42

and insert:

electric vehicles; amending s. 201.15, F.S.; beginning in a specified fiscal year, revising the annual allocations in the State Transportation Trust Fund for the Transportation Regional Incentive Program; providing for future repeal of a provision that allocates funds annually to the Florida Rail Enterprise; beginning in a specified fiscal year, providing for annual allocations to the Tampa Bay Area Regional Transit Authority and the Statewide Mobility

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Innovation Program for certain purposes; specifying requirements for matching funds for the Tampa Bay Area Regional Transit Authority; requiring the Department of Transportation to allocate specified funds under certain circumstances to projects in a certain 5-year work program in a certain area, in addition to currently scheduled work program commitments in that area; creating s. 339.84, F.S.; defining the term "innovative mobility system"; creating within the department the Statewide Mobility Innovation Program; providing goals for the program; beginning in a specified fiscal year, requiring the department to use specified funds in a county to fund the design and construction of a certain innovative mobility system; providing requirements for the use of specified funds by the department; requiring a county proposing the use of funds for an innovative mobility system to submit a request to the department, subject to certain requirements; authorizing the submission of joint proposals by two or more counties; requiring local or private matching funds for certain distributions, subject to certain requirements; prohibiting certain funds distributed from being used to subsidize projects with existing funding commitments as of a specified date; requiring each recipient of funds under the program to submit a quarterly report to the department regarding the development, implementation, and operation of the project; requiring the department to submit to the Legislature by a specified date an

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annual report on the overall status of the program; amending s. 341.303, F.S.; prohibiting the department from programing certain projects to be funded in the 5-year work program after June 30, 2018; providing for the future repeal of s. 341.303(5), F.S., relating to fund participation and the Florida Rail Enterprise; amending s. 343.58, F.S.; conforming a provision to changes made by the act; providing effective dates.

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576-03500-18

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

A bill to be entitled

An act relating to transportation infrastructure; creating s. 316.0899, F.S.; defining the terms "grid-integrated vehicle" and "matching funds"; creating the program within the Department of Transportation; providing program goals; providing grant eligibility requirements; requiring the department to issue a request for proposals by a specified date; providing proposal requirements; providing requirements for the award of grants and the use of grant funds; providing reporting requirements; requiring administrative support by the department; authorizing the department to select an independent nongovernmental entity to assist in project construction, management, and evaluation for specified purposes; providing requirements for the nongovernmental entity; providing an appropriation; requiring the Florida Transportation Commission to review all sources of revenue for transportation infrastructure and maintenance projects and prepare a report to the Governor and the Legislature when the commission determines that electric and hybrid vehicles make up a certain percentage or more of the total number of vehicles registered in this state; authorizing the commission, in consultation with the Department of Highway Safety and Motor Vehicles, to use certain commercially

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available data; providing minimum reporting requirements; requiring the commission, in consultation with the Division of Emergency Management, to make an assessment of transportation infrastructure with respect to emergency evacuations and electric vehicles; specifying requirements for the report; requiring the report to be submitted to the Governor and the Legislature no later than a certain date; authorizing the commission to undertake and complete the review before the specified percentage threshold is reached, under certain circumstances; amending s. 339.175, F.S.; requiring a long-range transportation plan to consider infrastructure and technological improvements necessary to accommodate the increased use of autonomous technology and electric vehicles; providing an effective date.

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

Section 1. Section 316.0899, Florida Statutes, is created to read:

316.0899 Florida Smart City Challenge Grant Program.—

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

(a) "Grid-integrated vehicle" means a motor vehicle that has the ability for two-way power flow between the vehicle and the electric grid and the communications hardware and software that allow for external control of battery charging and discharging.

(b) "Matching funds" includes in-kind services, goods,

equipment, or other noncash contributions calculated at fair market value.

(2) CREATION; GOALS.—The Florida Smart City Challenge Grant Program is created within the Department of Transportation. The goals of the grant program include, but are not limited to:

(a) Providing opportunities to municipalities and other regions of the state to develop innovative smart mobility solutions to local transportation challenges.

(b) Deploying smart city technology that has an immediate impact on the safe and efficient movement of people and goods within municipalities and other regions of the state.

(c) Advancing autonomous, connected, grid-integrated, and electric vehicle readiness and deployment throughout the state.

(d) Providing enhanced education and workforce development opportunities by deploying emerging technologies that support the state's future workforce.

(e) Meeting the mobility needs of residents of this state, particularly transportation disadvantaged persons as defined in s. 427.011, by increasing access to and convenience of transportation within municipalities and other regions of the state.

(f) Facilitating the efficient movement of freight within the state, especially in and around airports and seaports.

(g) Supporting the reduction or elimination of fossil fuel consumption by relying on renewable energy sources and electric technologies.

(h) Creating a smart mobility demonstration community in the state that serves as a model for municipalities and other regions nationwide.

(3) ELIGIBILITY REQUIREMENTS.—

(a) The following entities may apply to the Department of Transportation for a grant to fund projects under the Florida Smart City Challenge Grant Program:

1. A state, county, municipal, regional, or other agency that is responsible for the movement of persons, goods, or services within a defined geographical region, including an entity created pursuant to chapter 343, chapter 348, or chapter 349.

2. A metropolitan planning organization or transportation planning organization. Each entity responsible for deploying or operating the project on behalf of a metropolitan planning organization or transportation planning organization must submit a letter to the department detailing its commitment to the implementation, operation, and maintenance of the project.

3. A state university.

(b) An applicant for a Florida Smart City Challenge Grant must have in place a plan or framework for the implementation of the proposed project in at least one of the following categories:

1. Autonomous vehicle deployment or demonstration.

2. Connected vehicle technology deployment.

3. Shared mobility services innovation and deployment.

4. Acceleration of the use of plug-in electric vehicles and electric charging infrastructure, including deployment of grid-integrated vehicles.

(4) PROPOSALS.—By September 1, 2018, the Department of Transportation shall issue a request for proposals for the award of a Florida Smart City Challenge Grant. Each proposal submitted

to the department must include:

(a) A statement by the applicant certifying that the project will be implemented and operational within 2 years after receipt of the grant.

(b) A plan for fulfilling documentation requirements under the department's Statewide Systems Engineering Management Plan within such 2-year period.

(c) A description of how operation and maintenance costs for the project will be funded in order to ensure that the department's investment in the project is sustained.

(d) A plan for evaluation of the project and the methods by which such evaluation will be shared with residents of the area served by the project.

(e) The procedure for integrating the project's transportation-related data into the department's Data Integration and Video Aggregation System.

(5) AWARD OF GRANTS.—The Department of Transportation shall award a Florida Smart City Challenge Grant to at least three recipients. Each award may not exceed $6 million. The department shall distribute the award to each recipient by January 1, 2019.

(a) The grant may fund up to 50 percent of project costs. At least 10 percent of project costs must be funded by the grant recipient. Grant funds must be used exclusively for startup costs, including, but not limited to, acquisition of hardware, software, and assets associated with implementation of the project, and may not be used for costs associated with operation or maintenance of the project.

(b) In selecting grant recipients, the department shall give priority to those proposals that demonstrate the

availability of matching funds from partner organizations to fund project costs and that include a plan for documenting the acquisition and expenditure of such matching funds.

1. The department shall give further priority to those proposals that include matching funds from private-sector partner organizations; however, local public funds may also be used.

2. Matching funds may be used for costs associated with operation, maintenance, and evaluation of the project.

3. A grant recipient that receives matching funds must document the contribution of such funds in a quarterly report that details the manner in which the value of such contribution is calculated.

(6) REPORTING REQUIREMENTS.—

(a) Each recipient of a Florida Smart City Challenge Grant shall submit a quarterly report to the Department of Transportation regarding the development, implementation, and operation of the project. Such report must include information documented pursuant to subparagraph (5)(b)3.

(b) The Department of Transportation must submit a quarterly report to the President of the Senate and the Speaker of the House of Representatives regarding the overall status of the grant program.

(c) After implementation of the project is complete, each recipient must submit an initial report to the Governor, the President of the Senate, and the Speaker of the House of Representatives which details the project's impact on the transportation system within the area served by the project, the extent to which the goals of the grant program have been met,

and recommendations for project revisions or improvements to guide future deployment activities. A final report must be submitted 2 years after submission of the initial report.

(7) ADMINISTRATIVE SUPPORT.—The Department of Transportation shall provide administrative support to the Florida Smart City Challenge Grant Program in order to facilitate the deployment of smart city technology within the state, including, but not limited to, expedited review of proposals submitted under subsection (4). The department may select an independent nongovernmental entity to assist in project construction, management, and evaluation; to oversee the implementation of the project; and to analyze and document lessons learned during, and benefits derived from, implementation of the project. The nongovernmental entity must have experience with the national Smart Cities Initiative, advanced transportation deployment experience in this state, extensive engineering experience, or expertise in stakeholder engagement of potential partners to create a demonstration community as described in paragraph (2)(h).

Section 2. For the 2018-2019 fiscal year, the sum of $15 million in nonrecurring funds is appropriated from the State Transportation Trust Fund to the Department of Transportation for the purpose of implementing s. 316.0899, Florida Statutes.

Section 3. Florida Transportation Commission review; electric and hybrid vehicles report.—

(1)(a) The Florida Transportation Commission shall review all sources of revenue for transportation infrastructure and maintenance projects and prepare a report to the Governor and the Legislature when the commission determines that electric

vehicles, as defined in s. 320.01(36), Florida Statutes, and hybrid vehicles, as defined in s. 316.0741, Florida Statutes, make up 2 percent or more of the total number of vehicles registered in this state.

(b) The commission, in consultation with the Department of Highway Safety and Motor Vehicles, may use commercially available data that the commission deems reliable to support its determination and report. The report must, at a minimum, assess the effect of projected electric and hybrid vehicle use in this state on future revenue from existing taxes, fees, and surcharges related to nonelectric, private-use motorcycles, mopeds, automobiles, tri-vehicles, and trucks.

(c) The commission, in consultation with the Division of Emergency Management, shall also make an assessment of transportation infrastructure with respect to emergency evacuations and electric vehicles, including, but not limited to, the availability of electric vehicle charging stations in this state.

(2) The report must include recommendations to the Legislature:

(a) To ensure continued funding for necessary maintenance that provides for adequate levels of service on existing transportation infrastructure;

(b) To accomplish improvements and capacity projects on transportation infrastructure which meet the demand from projected population and economic growth; and

(c) To accomplish necessary improvements to transportation infrastructure that would support emergency evacuations by users of electric vehicles.

(3) The report shall be submitted to the Governor and the Legislature no later than September 1 of the year immediately after the year in which the commission determines that electric vehicles, as defined in s. 320.01(36), Florida Statutes, and hybrid vehicles, as defined in s. 316.0741, Florida Statutes, make up 2 percent or more of the total number of vehicles registered in this state.

(4) Notwithstanding any other provisions of this section, the commission may undertake and complete the review and report before the 2-percent threshold is reached if the commission finds that earlier completion is appropriate to maintain a financially stable, long-term transportation work program.

Section 4. Paragraph (c) of subsection (7) of section 339.175, Florida Statutes, is amended to read:

339.175 Metropolitan planning organization.—

(7) LONG-RANGE TRANSPORTATION PLAN.—Each M.P.O. must develop a long-range transportation plan that addresses at least a 20-year planning horizon. The plan must include both long-range and short-range strategies and must comply with all other state and federal requirements. The prevailing principles to be considered in the long-range transportation plan are: preserving the existing transportation infrastructure; enhancing Florida's economic competitiveness; and improving travel choices to ensure mobility. The long-range transportation plan must be consistent, to the maximum extent feasible, with future land use elements and the goals, objectives, and policies of the approved local government comprehensive plans of the units of local government located within the jurisdiction of the M.P.O. Each M.P.O. is encouraged to consider strategies that integrate transportation

and land use planning to provide for sustainable development and reduce greenhouse gas emissions. The approved long-range transportation plan must be considered by local governments in the development of the transportation elements in local government comprehensive plans and any amendments thereto. The long-range transportation plan must, at a minimum:

(c) Assess capital investment and other measures necessary to:

1. Ensure the preservation of the existing metropolitan transportation system including requirements for the operation, resurfacing, restoration, and rehabilitation of major roadways and requirements for the operation, maintenance, modernization, and rehabilitation of public transportation facilities; and

2. Make the most efficient use of existing transportation facilities to relieve vehicular congestion, improve safety, and maximize the mobility of people and goods. Such efforts must include, but are not limited to, consideration of infrastructure and technological improvements necessary to accommodate advances in vehicle technology, such as the increased use of autonomous technology and electric vehicles, and other developments.

In the development of its long-range transportation plan, each M.P.O. must provide the public, affected public agencies, representatives of transportation agency employees, freight shippers, providers of freight transportation services, private providers of transportation, representatives of users of public transit, and other interested parties with a reasonable opportunity to comment on the long-range transportation plan. The long-range transportation plan must be approved by the

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M.P.O.

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/CS/SB 852
INTRODUCER:	Appropriations Committee (Recommended by Subcommittee on Transportation, Tourism, and Economic Development); Transportation Committee; and Senator Brandes and others
SUBJECT:	Transportation Infrastructure
DATE:	March 5, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Miller	TR	**Fav/CS**
2.	McAuliffe	Hrdlicka	ATD	**Recommend: Fav/CS**
3.	McAuliffe	Hansen	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 852 creates the Florida Smart City Challenge Grant Program; requires the Florida Transportation Commission to project the effect of electric and hybrid vehicles on fuel tax revenues; and, creates the Statewide Mobility Innovation Program within the Department of Transportation.

The Florida Smart City Challenge Grant Program is created to provide opportunities to cities and other regions of the state for developing smart mobility solutions to local transportation challenges. The bill authorizes certain state, county, municipal, regional, or other agencies to submit applications to the Florida Department of Transportation (FDOT) for grants to fund certain innovative transportation projects. The bill provides project selection, matching funds, and reporting requirements. The FDOT is directed to provide administrative support and to conduct expedited proposal reviews to facilitate smart city technology deployment within the state.

The bill also requires the Florida Transportation Commission (FTC) to review all funding sources for transportation infrastructure and maintenance projects when it is determined that electric and hybrid vehicles make up two percent or more of the total number of registered vehicles in this state. The report must assess the effect of projected electric and hybrid vehicle use on future revenues from existing fuel taxes and other fees related to nonelectric vehicles. The report must also make recommendations to: provide continued funding to maintain existing

infrastructure; continue to meet projected infrastructure demand; and improve infrastructure to support emergency evacuations by users of electric vehicles.

The bill also requires the FTC, in consultation with the Florida Division of Emergency Management (FDEM), to assess transportation infrastructure with respect to emergency evacuations and electric vehicles, including the availability of electric vehicle charging stations in this state. The bill requires metropolitan planning organization's long-range transportation plans to include an assessment of the increased use of autonomous technology and electric vehicles.

The bill further creates the Statewide Mobility Innovation Program within the Department of Transportation (FDOT). Through the program, FDOT will solicit, evaluate, and finance proposals for the design and construction of innovative mobility systems.

Currently, the Florida Rail Enterprise receives a $60 million from documentary stamp taxes. Beginning in the 2021-2022 fiscal year, the bill redistributes the $60 million to provide $35 million to the Statewide Mobility Innovation Program and $25 million to the Tampa Bay Area Regional Transit Authority (TBARTA). Of the $35 million distributed to the program, $25 million is allocated to Miami-Dade County, $5 million to the Jacksonville Transportation Authority (JTA), and the remaining $5 million will be available to all other counties competing for funding for innovative mobility system projects.

The bill appropriates $15 million in nonrecurring funds from the State Transportation Trust Fund to the FDOT implement the Florida Smart City Challenge Grant Program.

The FTC will incur indeterminate expenses associated with the reporting requirements of this bill. The DHSMV expects the bill to have no impact on expenditures. The FDEM may incur indeterminate expenses associated with its participation in the emergency evacuation assessment.

Beginning in Fiscal Year 2021-2022, the bill will reduce revenues directed to the FRE and may negatively impact FRE projects planned in the FDOT's work program. The FDOT will also incur indeterminate expenses associated with creation and administration of the Statewide Mobility Innovation Program. Counties that elect to apply for funding for innovative mobility system projects will be required to provide matching funds.

The bill takes effect on July 1, 2018.

II. Present Situation:

Smart City Challenge Grant Program

According to the National League of Cities, 66 percent of cities are investing in smart city technology, and 25 percent of cities with no smart city technology are investigating how to implement it.[1] A single definition of smart city technology is difficult to identify, but in the context of transportation, it relates to "using sensors to collect data about the movement of

[1] National League of Cities, *Cities and Innovation Economy: Perceptions of Local Leaders (October 18, 2017)*, available at: http://www.nlc.org/resource/cities-and-innovation-economy-perceptions-of-local-leaders (Last visited January 14, 2018).

people, all forms of vehicles and bikes. A smart city is one that greatly reduces vehicle traffic and allows people and goods to be moved easily through various means."[2] Examples include intelligent vehicle systems and autonomous vehicle transportation. Outcomes of smart city efforts are reduced vehicle related deaths, reduced pollution, reduced traffic times, and healthier populations.[3]

The Federal Smart City Challenge

The United States Department of Transportation (USDOT) launched a Smart City Challenge in December 2015. The challenge asked mid-sized cities "to develop ideas for an integrated, first-of-its-kind smart transportation system that would use data, applications, and technology to help people and goods move more quickly, cheaply, and efficiently."[4] The USDOT committed up to $40 million to one winning city.[5] The USDOT received 78 applications from cities across America, including the following cities in Florida: Jacksonville, Miami, Orlando, St. Petersburg, Tallahassee, and Tampa.[6] However, no Florida city received any funding.

Ultimately, Columbus, Ohio won the challenge by proposing "a comprehensive, integrated plan addressing challenges in residential, commercial, freight, and downtown districts using a number of new technologies, including connected infrastructure, an integrated data platform, autonomous vehicles, and more."[7] The USDOT then worked with selected finalists to further develop the ideas proposed by the cities and, in October 2016, announced an additional $65 million in grants to support advanced technology transportation projects.[8] Again, no city in Florida was selected for project funding.[9]

The State Smart City Challenge Grant Program

The 2017 Legislature enacted legislation[10] requiring the FDOT, in consultation with the Department of Highway Safety & Motor Vehicles and *subject to appropriation*, to develop the Florida Smart City Challenge Grant Program and establish grant award requirements for municipalities or regions for the purpose of receiving grant awards. The law requires grant applications to demonstrate and document the adoption of emerging technologies and their impact on transportation systems and to address at least the following focus areas: autonomous vehicles, connected vehicles, sensor-based infrastructure, collecting and using data, electric vehicles (including charging stations), and developing strategic models and partnerships. The law also specifies a non-exclusive list of goals of the grant program.

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[2] TechRepublic, *Smart Cities: 6 Essential Technologies*, available at: https://www.techrepublic.com/article/smart-cities-6-essential-technologies/ (Last visited January 13, 2018).
[3] *Id.*
[4] US Department of Transportation, *Smart City Challenge (June 29, 2017)*, available at: https://www.transportation.gov/smartcity (Last visited January 14, 2018).
[5] *Id.*
[6] US Department of Transportation, *Smart City Challenge Vision Statements (September 29, 2016)*, available at: https://www.transportation.gov/smartcity/visionstatements/index (Last visited January 14, 2018).
[7] US Department of Transportation, *The Winner: Columbus Ohio (January 3, 2017)*, available at: https://www.transportation.gov/smartcity/winner (Last visited January 14, 2018).
[8] US Department of Transportation, *What Comes Next (April 28, 2016)*, available at: https://www.transportation.gov/smartcity/what-comes-next (Last visited January 12, 2018).
[9] The USDOT advises that no further funding rounds under the federal program are currently anticipated. Telephone conversation with the USDOT staff and Senate Transportation Committee staff, January 12, 2018.
[10] Chapter 2017-42, Laws of Florida. Section 316.0898, F.S.

The law requires the FDOT to develop eligibility, application, and selection criteria for the program grants and a plan for promotion of the grant program to municipalities or regions of the state as an opportunity to compete for the grant funding. Criteria must include the award of grants to a single recipient and secondary grants to specific projects of merit within other applications. The law authorizes the FDOT to contract with a third party demonstrating knowledge and expertise in the focuses and goals of the program to provide guidance in the development of the program requirements. By January 1, 2018, the FDOT was to submit the grant program guidelines and plans for promotion of the grant program to the Governor, the Senate President, and the House Speaker.

The 2017 General Appropriations Act contained an appropriation for the Smart City Challenge Grant program, authorizing the FDOT to use up to $325,000 from the State Transportation Trust Fund (STTF) to establish the program. However, that appropriation was vetoed.[11] The program, currently codified in s. 316.0898, F.S., expires on July 1, 2018.

Electric and Hybrid Vehicles

Florida law currently defines two types of vehicles powered, in whole or in part, by electricity: an electric vehicle and a hybrid vehicle. An "electric vehicle," defined for purposes of vehicle registration under ch. 320, F.S., is "a motor vehicle that is powered by an electric motor that draws current from rechargeable storage batteries, fuel cells, or other sources of electrical current."[12] A "hybrid vehicle," defined for purposes of use of high-occupancy-vehicle lanes, is a motor vehicle:

- That draws propulsion energy from onboard sources of stored energy which are both an internal combustion or heat engine using combustible fuel and a rechargeable energy-storage system;
- That, in the case of a passenger automobile or light truck, has received a certificate of conformity under the Clean Air Act…and meets or exceeds the equivalent qualifying California standards for a low-emission vehicle;[13] and
- That, in the case of a tri-vehicle,[14] is an inherently low-emission vehicle.[15]

Florida has enacted a number of EV-related provisions that may incentivize people to purchase EVs. They include:

- Authorizing a local government to enact a program to allow property owners to apply for financing from the local government to install EV charging equipment on his or her property. The local government can collect the loan payments through ad valorem assessments.[16]

[11] Specific Appropriation 1869, proviso, ch. 2017-70, Laws of Florida.
[12] Section 320.01(36), F.S.
[13] For detailed information on California's Low-Emission Vehicle Program, *see* California Air Resources Board, *Low-Emission Vehicle Program (January 25, 2017)*, available at: https://www.arb.ca.gov/msprog/levprog/levprog.htm (Last visited February 21, 2018).
[14] Defined in s. 316.003(93), F.S.
[15] Section 316.0741, F.S.
[16] Section 163.08, F.S.

- Authorizing a local government to use the proceeds of a levied infrastructure surtax (discretionary sales surtax) to provide loans to property owners to install EV charging equipment.[17]
- Allowing hybrid electric vehicles to use high-occupancy-vehicle lanes regardless of occupancy and to use such lanes without paying a toll if one is otherwise required.[18]

In addition, local Florida entities offer EV incentives. The National Conference of State Legislatures reports that, through June 30 of this year or until funds were depleted,[19] Duke Energy and Orlando Utilities Commission customers and employees were eligible for a $10,000 rebate for the purchase of a new, all-electric, 2017 Nissan Leaf at participating dealerships; and the Jacksonville Electric Authority offers rebates for plug-in HEVs with a battery less than 15 kilowatt hours in capacity to receive $500, and plug-in HEVs with larger battery capacity are eligible for $1,000.[20] The federal government also allows an income tax credit of up to $7,500 for certain EVs.[21]

Impact of Electric and Hybrid Vehicles on Transportation Funding/Prior Studies

Taxes on gas and diesel fuel are a primary source of revenue for both the federal highway fund and the State Transportation Trust Fund.[22] Transportation funding has generally experienced a continuing shortfall attributed to static federal gas tax rates, more fuel efficient vehicles, and increasing transportation construction and maintenance costs.[23]

Annual fuel tax revenues at both the state and federal levels are directly based on the number of gallons of gasoline and diesel fuel consumed. Because electric vehicles (EV) are not powered by gasoline or diesel, and because hybrid electric vehicles (HEV) use less gasoline or diesel fuel than a conventional vehicle with only an internal combustion engine, an increase in the number of these vehicles operating in Florida results in less revenue being raised from fuel taxes for comparable vehicle miles traveled.

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[17] Section 212.055, F.S.
[18] Generally, a high-occupancy-vehicle lane is a lane designed for use by vehicles in which there is more than one occupant. Section 316.0741, F.S.
[19] US Department of Energy, Alternative Fuels Data Center reports this rebate expired on July 1 of this year. *See* AFDC, *Expired, Repealed, and Archived Florida Incentives and Laws*, available at: https://www.afdc.energy.gov/laws/laws_expired?jurisdiction=FL (Last visited February 22, 2018).
[20] *See* National Conference of State Legislature's website for additional details on available incentives related to EVs, *State Efforts to Promote Hybrid and Electric Vehicles (September 26, 2017)*, available at: http://www.ncsl.org/research/energy/state-electric-vehicle-incentives-state-chart.aspx#other (Last visited February 22, 2018).
[21] *See* Internal Revenue Service, *Plug-In Electric Drive Vehicle Credit (IRC 30D) (January 24, 2018)*, available at: https://www.irs.gov/credits-deductions/individuals/plug-in-electric-drive-vehicle-credit-section-30d (Last visited February 22, 2018).
[22] *See* Florida Department of Transportation, *Florida's Transportation Tax Sources, A Primer (January 2017)*, at p. 4, for a listing of federal and state transportation tax sources and rates for calendar year 2017, available at: http://www.fdot.gov/comptroller/pdf/GAO/RevManagement/Tax%20Primer.pdf (Last visited February 21, 2018).
[23] *See* US Department of Energy National Renewable Energy Laboratory, *Primer on Motor Fuel Excise Taxes and the Role of Alternative Fuels and Energy Efficient Vehicles (August 2015)*, at p. 7, available at: https://www.afdc.energy.gov/uploads/publication/motor_fuel_tax_primer.pdf (Last visited February 22, 2018).

There are a limited number of studies specifically focused on the impact of EVs[24] on fuel tax revenues. A 2015 study conducted by the University of Central Florida acknowledges the increasing national EV sales trend for the 5-year period prior to the study but concludes:

> Of course, despite the increase, electric and plug-in electric vehicles still represent a small portion of the US auto market. With total vehicles sales for 2014 coming in at around 16.5 million, EVs made up less than 1 percent of total sales.[25]

The study further concludes that EVs, for now and in the near future, will have only a small impact on fuel tax revenues but notes a University of Texas study on EV market share suggesting that by 2050, over 50 percent of fuel tax funds may be lost.[26] The authors highlight the importance of understanding that "the rate at which revenue declines depends on many factors. The relationship among these factors is complex and continued investigation is warranted to better understand vehicle fleet mix, fuel economy, and fuel tax revenue."[27]

According to the study, a number of states are exploring or implementing revenue generating alternatives, both to increase transportation funding in general and also to prepare for revenue reduction due to increased EV sales. These alternatives include a fee based on the number of miles a given vehicle travels,[28] as well as increased direct taxes and surcharges on EV purchases.[29]

For example, in 2015, the Georgia Legislature repealed "one of the nation's most generous state tax credits for electric cars." The Legislature also voted to impose a $200 annual registration fee on owners of some plug-in hybrids and all zero-emissions vehicles to make up for the lost fuel taxes. EV sales then experienced a sharp reduction, a result attributed to the repealed credit and imposed fee.[30]

EV Registration in Florida

The license tax for EVs is the same as that for a vehicle that is not electrically powered.[31] The exact number of EVs registered in Florida is somewhat unclear. Under the Department of Highway Safety and Motor Vehicles' (DHSMV) current vehicle registration system

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[24] Unless otherwise noted, EV includes both EVs and HEVs.
[25] *See* Electric Vehicle Transportation Center, *Implications of Electric Vehicles on Gasoline Tax Revenues*, December 2015, at p. 8 available at: http://www.fsec.ucf.edu/en/publications/pdf/FSEC-CR-2011-15.pdf (Last visited February 22, 2018).
[26] *Id.* at p. 12.
[27] *Id.*
[28] Known as VMT (vehicle miles traveled) and MBUF (mileage-based user fee). Fees are assessed based on the actual amount of road use, not on fuel consumption.
[29] *See* US Department of Energy National Renewable Energy Laboratory, *Primer on Motor Fuel Excise Taxes and the Role of Alternative Fuels and Energy Efficient Vehicles*, August 2015, at p. 29-31, available at: https://www.afdc.energy.gov/uploads/publication/motor_fuel_tax_primer.pdf (Last visited February 22, 2018).
[30] *See* Politifact Georgia, *Electric car sales hit the brakes as tax credit axed and fee added*, (November 2, 2015), available at: http://www.politifact.com/georgia/statements/2015/nov/02/don-francis/electric-car-sales-hit-brakes-tax-credit-axed-and-/ (Last visited February 22, 2018).
[31] Section 320.08001, F.S. Registration fees differ based on factors such as the type of vehicle, its weight, the license plate chosen, and whether the registration period is one or two years.

programming, a "fuel type" classification is an optional field and therefore the precise number of EVs registered is unknown.[32]

The DHSMV analyzed vehicle identification numbers (VINs) in its motor vehicle registration database using available software and estimated that of the 16.2 million vehicles with VINs that could be analyzed, approximately 247,131 EVs and HEVs, are registered in Florida, or about 1.53 percent.[33]

Emergency Evacuation

The Florida Division of Emergency Management (FDEM) is responsible for maintaining a comprehensive statewide program of emergency management. Among the FDEM's duties is a requirement to prepare a state comprehensive emergency management plan containing provisions that will ensure the state is prepared for emergencies and minor, major, and catastrophic disasters.[34] As part of the plan, the FDEM must include an evacuation component including specific regional and interregional planning provisions and promoting intergovernmental coordination of evacuation activities. Among other items, this part of the plan must establish strategies for ensuring sufficient, reasonably priced fueling locations along evacuation routes.[35] A review of available documents and information on the FDEM's website did not identify an assessment of electric vehicle charging stations for the purpose of emergency evacuations.

Section 377.815, F.S., authorizes the Florida Department of Agriculture and Consumer Services to post information on its website relating to alternative fueling stations or EV charging stations that are available for public use in this state. The department's website provides a list of stations, however, the list is not specific to emergency evacuations.[36]

According to the U.S Department of Energy's Alternative Fuels Data Center, 949 electric vehicle charging stations (2,130 outlets) are currently available in the State of Florida, excluding private stations.[37] The DHSMV notes that no EV charging stations within Florida's transportation infrastructure are specifically designated for use during emergency evacuations.[38]

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[32] The DHSMV also advises a system change is underway to make "fuel type" a mandatory field. *See* email from DHSMV staff dated September 22, 2017, to staff of the Senate Transportation Committee.
[33] *See* DHSMV, *SB 384 Bill Analysis* (November 9, 2017), at p. 5.
[34] Section 252.35(2)(a), F.S.
[35] *Id.*
[36] *See* Florida Department of Agriculture and Consumer Services, Florida Energy Clearinghouse, Transportation, available at: http://www.freshfromflorida.com/Energy/Florida-Energy-Clearinghouse/Transportation (Last visited February 22, 2018).
[37] *See* US Department of Energy, Alternative Fuels Data Center, Electric Vehicles Charging Station Locations, available at: https://www.afdc.energy.gov/fuels/electricity_locations.html, including a map and a download spreadsheet of locations and related information (Last visited February 22, 2018).
[38] *See* DHSMV, *SB 384 Bill Analysis* (November 9, 2017), at p. 5.

Statewide Mobility Innovation Program

FDOT Organization and the Florida Rail Enterprise

The FDOT is organized into seven geographic districts, each headed by a district secretary, and the Florida Turnpike Enterprise (FTE) and the FRE, each of which are headed by an executive director.[39] The district secretaries and executive directors must be registered professional engineers or hold an advanced degree in an appropriate related discipline.

The FRE operates pursuant to the Florida Rail Enterprise Act[40] and is responsible for:

- Developing and operating the high-speed and passenger rail systems established in ch. 341, F.S.;
- Directing funding for passenger rail systems under s. 341.303, F.S.; and
- Coordinating publicly funded passenger rail operations, including freight rail interoperability issues.

Generally[41] the FRE is exempt from the FDOT's policies, procedures, and standards, subject to the FDOT secretary's authority to apply any such policies, procedures, and standards to the FRE as the secretary deems appropriate.[42]

The FRE is a single budget entity that submits its budget to the Legislature along with the FDOT's budget. All passenger rail funding is included in the FRE's budget.[43] Notwithstanding certain provisions of law relating to undisbursed appropriations balances,[44] on July 1 each year the Governor is required to certify forward (into the next state fiscal year) all unexpended funds appropriated or provided pursuant to s. 341.303, F.S., to the FRE. This includes any expended funds that are unencumbered. The carried-forward funds cannot exceed 5 percent of the original approved FRE operating budget.[45] Funds carried forward may be used for any lawful purpose, including, but not limited to, promotional and market activities, technology, and training. Any certified forward funds that are undisbursed on September 30 of each year are carried forward.[46]

[39] Section 20.23(4)(f), F.S.
[40] Section 20.23(4)(f)1., F.S. The Florida Rail Enterprise Act is located in ss. 341.8201-341.842, F.S.
[41] Except as provided in the Consultants' Competitive Negotiation Act, which relates to agency acquisition of professional architectural, engineering, landscape architectural, or survey and mapping services. s. 287.055, F.S.
[42] Section 20.23(4)(f)2., F.S. Florida's Turnpike Enterprise (FTE) is likewise exempt, subject to the FDOT secretary's same authority, under s. 20.23(4)(e)2., F.S.
[43] Section 341.303(6)(a), F.S.
[44] See s. 216.301, F.S., which generally provides that the balance of any operations appropriation not identified in the state's financial system as an incurred obligation effective June 30th each year ("unencumbered") reverts to the fund from which it was appropriated and is available for re-appropriation by the Legislature. Funds for an identified incurred obligation are "carried forward" in the amount of the identified obligations (unexpended, but encumbered). Generally, fixed capital outlay appropriation balances which are not disbursed but are expended, contracted, or committed to be expended prior to February 1 of the second fiscal year of the appropriation are "certified forward." Similarly, any balance not certified reverts to the fund from which it was appropriated and is available for re-appropriation.
[45] Per s. 216.181, F.S., the General Appropriations Act and any other acts containing appropriations are considered the original approved operating budgets for operational and fixed capital expenditures. The original approved operating budgets may be amended in accordance with provisions contained in that section of law.
[46] Section 341.303(6)(b), F.S. Similar provisions apply to the FTE under s. 338.2216(3), F.S.

Funding for the FRE

The Transportation Regional Incentive Program receives a distribution from documentary stamp taxes, of which the first $60 million of funds are redirected annually to the FRE.[47] Such distribution must be used to fund:

- Up to 50 percent of the nonfederal share of the costs of any eligible[48] passenger rail capital improvement project.
- Up to 100 percent of planning and development costs related to the provision of a passenger rail system.
- The high-speed rail system.
- Projects necessary to identify or address anticipated impact of increased freight rail traffic resulting from the implementation of passenger rail systems.[49]

In addition to documentary stamp tax revenues, the FRE is appropriated additional funds from the State Transportation Trust Fund in the General Appropriations Act. For the 2017-2018 fiscal year, the FRE was authorized one position and a total budget of approximately $237.4 million. Of that amount, $74.4 million was for public transit development grants, $159.6 million for rail development grants, and $2.8 million for intermodal development grants.[50]
Examples of major passenger rail projects that have received funding by the FRE include the Central Florida Commuter Rail System (SunRail)[51] and the South Florida Regional Transportation Authority (TriRail)[52].

Transportation Regional Incentive Program

The Transportation Regional Incentive Program (TRIP) was created in 2005 as part of growth management legislation to "encourage regional planning by providing state matching funds for improvements to regionally significant transportation facilities identified and prioritized by regional partners."[53] It is a "matching program designed to leverage investments in regionally-significant road and public transportation projects."[54] The TRIP funds provide up to 50 percent of the project costs and must be matched by regional, local, or federal dollars or in-kind contributions. Funds are "distributed to the FDOT Districts based on a statutory formula of equal parts population and fuel tax collections."[55] Certain projects receive priority, such as providing connectivity to the strategic intermodal system or supporting economic development and goods movement in rural areas of opportunity.

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[47] Section 201.15(4)(a), F.S.
[48] Any project necessary to carry out the FDOT's duties and responsibilities provided in s. 341.302, F.S., that is consistent with the approved local government comprehensive plan of the unit of government of the areas served by the rail service, and that is contained in the adopted work program, is eligible for funding in accordance with the identified participation rates, per s. 341.303(2), F.S.
[49] Section 341.303(5), F.S.
[50] Specific Appropriations 1883-1891, ch. 2017-70, L.O.F.
[51] For additional information, see the SunRail website available at: http://sunrail.com/ (last visited February 11, 2018).
[52] For additional information, see the TriRail website available at: http://www.tri-rail.com/; and the South Florida Regional Transportaton Authority website available at: http://www.sfrta.fl.gov/ (both sites last visited February 11, 2018).
[53] Section 339.2819, F.S. FDOT, *Transportation Regional Incentive Program Fact Sheet*, available at http://www.fdot.gov/programmanagement/LP/TRIP/TRIPFactsheet.pdf (last visited February 12, 2018).
[54] Id.
[55] Id.

Tampa Bay Area Regional Transit Authority

Part V of ch. 343, F.S., creates the Tampa Bay Area Regional Transit Authority (TBARTA). TBARTA covers Hernando, Hillsborough, Manatee, Pasco, and Pinellas Counties and any other contiguous county that is party to an agreement of participation.[56] TBARTA's express purposes are to:

- Plan, implement, and operate mobility improvements and expansions of multimodal transportation options for passengers and freight throughout the designated region;
- Produce a regional transit development plan, integrating the transit development plans of participant counties, to include a prioritization of regionally significant transit projects and facilities; and
- Serve, with the consent of the Governor or designee, as the recipient of federal funds supporting an intercountry project or an intracounty capital project that represents a phase of an intercountry project that exists in a single county within the designated region.[57]

The TBARTA was required to provide to the Legislature a plan to produce the regional development plan on or before the 2018 Regular Session. Currently, the TBARTA is developing the plan to identify projects "that have the greatest potential to be funded (compete for federal grants) and implemented[,]… are the most forward thinking and make the best use of today's technology[, and]…best serve our region today while supporting tomorrow's growth."[58] An evaluation process will use "clearly defined criteria [to] identify the top transit corridors in the region, and ultimately one "catalyst project" that could be implemented first, followed by other projects to move forward around the region."[59]

South Florida Regional Transportation Authority

Part I of ch. 343, F.S., creates the South Florida Regional Transportation Authority (SFRTA). SFRTA covers Broward, Miami-Dada, and Palm Beach Counties, and may expand its service area into Monroe County by resolution of the SFRTA's governing board and consent of the board of county commissioners and any other county with FDOT's approval.[60]

SFRTA receives funding from the State Transportation Trust Fund for the operation, maintenance, and dispatch of the South Florida Rail Corridor.[61] The law specifically prohibits the provision of these funds from the funds dedicated to the FRE from documentary stamp tax distributions.

[56] Section 343.91(1)(a), F.S.
[57] 343.922(1), F.S.
[58] TBARTA, Regional Transit Feasibility Plan, *About*, available at http://tbregionaltransit.com/about/ (last visited February 11, 2018).
[59] Id.
[60] Section 343.54, F.S.
[61] Section 343.58(4), F.S.

Jacksonville Transportation Authority

Chapter 349, F.S., creates the Jacksonville Transportation Authority (JTA). The JTA covers the Duval County and any jurisdiction outside of Duval County with the consent of that jurisdiction.[62] Some of the JTA's purposes and powers are to:

- Acquire, hold, construct, improve, operate, maintain, and lease in the capacity of lessor a mass transit system employing motor cars or buses; street railway systems; or any other means determined useful to the rapid transfer of large numbers of people among the locations of residence, commerce, industry, and education in Duval County;
- Plan, coordinate, and recommend to methods and facilities for the parking of vehicles, the movement of pedestrians, and vehicular traffic (including bicycles), public and private, in Duval County to accomplish a coordinated transportation system for the greater Jacksonville area.[63]

III. Effect of Proposed Changes:

The bill creates a new Florida Smart City Challenge Grant Program to provide opportunities for grants to fund certain innovative transportation projects. The FDOT must issue a request for proposals by September 1, 2018, and distribute awards by January 1, 2019. The bill establishes goals and eligibility requirements for the program; provides project selection criteria and matching funds requirements; sets out reporting requirements; provides for administrative support for the program; and provides an appropriation from the STTF to implement the program.

Section 1 creates s. 316.0899, F.S., effective July 1, 2018, to create a new Florida Smart City Challenge Grant Program within the FDOT. The bill identifies the goals of the program to include:

- Providing opportunities to municipalities and other regions of the state to develop innovative smart mobility solutions to local transportation challenges.
- Deploying smart city technology that has an immediate impact on the safe and efficient movement of people and goods within municipalities and other regions of the state.
- Advancing autonomous, connected, grid-integrated,[64] and electric vehicle readiness and deployment throughout the state.
- Providing enhanced education and workforce development opportunities by deploying emerging technologies that support the state's future workforce.
- Meeting the mobility needs of residents of this state, particularly transportation disadvantaged persons[65] by increasing access to and convenience of transportation within municipalities and other regions of the state.

[62] Section 349.04(2)(q), F.S.
[63] Section 349.04(1), F.S.
[64] The bill defines this term to mean "a motor vehicle that has the ability for two-way power flow between the vehicle and the electric grid and the communications hardware and software that allow for external control of battery charging and discharging."
[65] Section 427.011(1), F.S., defines a "transportation disadvantaged person" as a person who, because of physical or mental disability, income status, or age is unable to transport himself or herself or to purchase transportation and is, therefore, dependent on others to obtain access to health care, employment, education, shopping, social activities, or other life-sustaining activities, or children who are handicapped or high-risk or at-risk as defined in s. 411.202, F.S.

- Facilitating the efficient movement of freight within the state, especially in and around airports and seaports.
- Supporting the reduction or elimination of fossil fuel consumption by relying on renewable energy sources and electric technologies.
- Creating a smart mobility demonstration community in the state that serves as a model for municipalities and other regions nationwide.

The bill authorizes the various government entities to apply to the FDOT for project funding under the program. These government entities include:

- A state, county, municipal, regional, or other agency that is responsible for the movement of persons, goods, or services within a defined geographical region, including an entity created pursuant to chs. 343,[66] 348,[67] or 349,[68] F.S.
- An independent special district with powers that include or are related to infrastructure development or transportation systems or services.
- A metropolitan planning organization (MPO) or transportation planning organization (TPO), with a requirement that each entity responsible for deploying or operating a project on behalf of an MPO or TPO must submit to the FDOT a letter detailing its commitment to the implementation, operation, and maintenance of the project.
- A state university.

The bill requires an applicant to have in place a plan or framework for the implementation of the proposed project in at least one of the following categories:

- Autonomous vehicle deployment or demonstration.
- Connected vehicle technology deployment.
- Shared mobility services innovation and deployment.
- Acceleration of the use of plug-in electric vehicles and electric charging infrastructure, including the deployment of grid-integrated vehicles.

The FDOT is required to issue a request for proposals for the award of program grants by September 1, 2018. Each submitted proposal must include:

- A statement by the applicant certifying that the project will be implement within 5 years after receipt of the grant.
- A plan for fulfilling documentation requirements under the FDOT's Statewide Systems Engineering Management Plan within such 5-year period.[69]

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[66] Chapter 343, F.S., creates the Northeast Florida Regional Transportation Commission, the South Florida Regional Transportation Authority, the Central Florida Regional Transportation Authority, the Northwest Florida Transportation Corridor Authority, and the Tampa Bay Area Regional Transit Authority.

[67] Chapter 348, F.S., creates the Miami-Dade Expressway Authority, the Tampa-Hillsborough County Expressway Authority, the Santa Rosa Bay Bridge Authority, and the Osceola County Expressway Authority.

[68] Chapter 349, F.S., creates the Jacksonville Transportation Authority.

[69] A Systems Engineering Management Plan (SEMP) enables an engineer "to manage a project using systems engineering principles and methods to maximize the quality of the system being implemented, while minimizing the budget and schedule required for its completion." For extensive details, see the FDOT's systems engineering website available at: http://www.fdot.gov/traffic/its/projects_deploy/semp.shtm (Last visited January 12, 2018). Federal regulations require all Intelligent Transportation System projects funded with federal highway funds to be based on a systems engineering analysis on a scale commensurate with the project scope. See 23 C.F.R. s. 940.11. Required documentation in a SEMP can be extensive. See the list of document templates on the identified FDOT website.

- A description of how operation and maintenance costs for the project will be funded in order to ensure that the FDOT's investment in the project is sustained.
- A plan for evaluation of the project and the methods by which such evaluation will be shared with residents of the area served by the project.
- The procedure for integrating the project's transportation-related data into the FDOT's Data Integration and Video Aggregation System.[70]

The FDOT must award a grant to at least three recipients, with each award limited to no more than $6 million. The FDOT must distribute awards by January 1, 2019. An award may fund up to 50 percent of project costs. A grant recipient must fund at least 10 percent of project costs, and a minimum of 10 percent of project costs must be funded by the private sector. Grant funds must be used exclusively for startup costs, including acquisition of hardware, software, and assets associated with implementing a project. Grant funds may not be used for costs associated with operation, maintenance, or evaluation of the project.

When selecting grant recipients, the FDOT must give priority to proposals that:
- Demonstrate the availability of matching funds;[71]
- Include a plan for documenting the acquisition and expenditure of matching funds; and
- Include a larger amount of matching funds from private sector partner organizations.

Matching funds may be used for costs associated with operation, maintenance, and evaluation of the project.

Each grant recipient must submit a quarterly report to the FDOT regarding the development, implementation, and operation of the project. A grant recipient that receives matching funds must document the contribution of such funds in the quarterly report that details the manner in which the value of such contribution is calculated. The FDOT must submit a quarterly report to the Senate President and House Speaker regarding the overall status of the grant program.

After a project is implemented, each grant recipient must submit a report to the Governor, the Senate President, and the House Speaker detailing: the project's impact on the transportation system within the area served by the project; the extent to which the goals of the grant program have been met; and recommendations for project revisions or improvements to guide future deployment activities. A final report must be submitted 2 years after submission of the initial report.

[70] This system integrates and manages real-time information. It consists of a data integration subsystem, which collects and integrates transportation and related data from numerous sources and integrates that data for internal and external dissemination and consumption; and a video aggregation subsystem, which aggregates "live streaming video from FDOT and external agency cameras for distribution using ubiquitous, modern video streaming technologies, such that video is made available to users regardless of their specific location or device platform. See the FDOT's *TSM&O Disseminator*, July-August 2017, at p. 9, available at: http://www.fdot.gov/traffic/Newsletters/2017/2017-AUG.pdf (Last visited January 12, 2018).

[71] Under the bill, "matching funds" includes in-kind services, goods, equipment, or other noncash contributions calculated at fair market value.

The bill requires the FDOT to provide administrative support to the grant program to facilitate the deployment of smart city technology within the state, including expedited review of submitted proposals.

The FDOT may select an independent nongovernmental entity to assist in project construction, management, and evaluation; to oversee the implementation of the project; and to analyze and document lessons learned during, and benefits derived from, implementation of the project. The nongovernmental entity must have experience with the national (federal) Smart Cities Initiative, advanced transportation deployment experience in this state, extensive engineering experience, or expertise in stakeholder engagement of potential partners to create a demonstration community.

Section 2 appropriates $15 million in nonrecurring funds from the State Transportation Trust Fund for the 2018-2019 fiscal year to the FDOT to implement the program.

Electric and Hybrid Vehicles

Section 3 requires the FTC to review all sources of revenue for transportation infrastructure and maintenance projects and prepare a report to the Governor and the Legislature when the FTC determines that electric vehicles, as defined in s. 320.01(36), F.S., and hybrid vehicles, as defined in s. 316.0741, F.S., make up two percent or more of the total number of vehicles registered in this state.

The FTC, in consultation with the DHSMV, is authorized to use commercially available data that the FTC deems reliable to support its determination and report. In consultation with the FDEM, the FTC is also required to assess transportation infrastructure with respect to emergency evacuations and EVs, including, but not limited to, the availability of EV charging stations in this state.

At a minimum, the report must assess the effect of projected electric and hybrid vehicle use in this state on future revenue from existing taxes, fees, and surcharges related to nonelectric, private-use motorcycles, mopeds, automobiles, tri-vehicles, and trucks. The report must include recommendations to the Legislature to:

- Ensure continued funding for necessary maintenance that provides for adequate levels of service on existing transportation infrastructure;
- Accomplish improvements and capacity projects on transportation infrastructure which meet the demand from projected population and economic growth; and
- Accomplish necessary improvements to transportation infrastructure that would support emergency evacuations by users of electric vehicles.

The bill requires the report to be submitted to the Governor and the Legislature by September 1 of the year immediately after the year in which the FTC determines that electric and hybrid vehicles make up two percent or more of the total number of vehicles registered in this state. The FTC is authorized to complete the review and report before the two-percent threshold is reached if the FTC determines that earlier completion is appropriate to maintain a financially stable long-term transportation work program.

Section 4 amends s. 339.175(7)(c)2., F.S., requiring each metropolitan planning organization to consider the increased use of autonomous technology and electric vehicles, and other developments, when making its capital investment assessment as part of development of its long-range transportation plan.

Statewide Mobility Innovation Program Funding

Section 5 amends s. 201.15(4)(a)4., F.S., relating to the distribution of documentary stamp taxes to the TRIP. For the 2018-2019, 2019-2020, and 2021-2021 fiscal years, the FRE will continue to receive $60 million distributed from the documentary stamp taxes pursuant to this subparagraph.

Beginning in the 2021-2022 fiscal year, the first $60 million allocated to the TRIP will be allocated for innovative mobility systems as follows:

- $25 million on a matching basis to TBARTA for the design and construction of an innovative mobility system.
- $35 million to the Statewide Mobility Innovation Program for the purposes established in s. 341.86, F.S. (which directs that $25 million of those funds be distributed to Miami-Dade County, $5 million to the JTA, and the remaining $5 million available for any other counties).

The funds distributed to the TBARTA require one dollar in local or private matching funds for each dollar distributed, and federal funds may not be substituted for the local or private matching funds. If TBARTA notifies the FDOT that it will not request all of the funds allocated for an innovative mobility system, the FDOT must allocate those funds to projects in the 5-year work program in the jurisdiction of TBARTA.

The existing prohibition against pledging the distributed funds for debt service unless such pledge is approved by referendum of the voters is unchanged.

Statewide Mobility Innovation Program

Section 6 creates s. 339.84, F.S., creating the Statewide Mobility Innovation Program within the FDOT. "Innovative mobility system" is defined as a "system of infrastructure, appurtenances, and technology designed to move the greatest number of people in the least amount of time." An innovative mobility system includes automated people movers, bus rapid transit networks, autonomous vehicles,[72] transportation network companies,[73] ridesharing,[74] and commuter highway vehicles,[75] but not other traditional uses of a roadway system for conveyance.

[72] Section 316.003, F.S., currently defines "autonomous vehicle" as any vehicle equipped with autonomous technology, with certain exclusions. "Autonomous technology" is defined to mean technology installed on a motor vehicle that has the capability to drive the vehicle on which the technology is installed without the active control of monitoring by a human operator.
[73] Section 627.748, F.S., defines "transportation network company" or "TNC" as an entity operating in this state using a digital network to connect a rider to a TNC driver, who provides prearranged rides.
[74] The term "ridesharing" is defined in s. 341.031(9)(a), F.S.
[75] 49 U.S.C. s. 5323(i)(2)(C)(ii) defines "commuter highway vehicle as "any vehicle…the seating capacity of which is at least 6 adults (not including the driver); and…at least 80 percent of the mileage use of which can be reasonably expected to be for the purposes of transporting commuters in connection with travel between their residences and their place of employment."

The goals of the program include, but are not limited to:

- Evaluating, financing, and overseeing proposals for innovative mobility systems in this state;
- Expending funds to publicize and promote innovative mobility systems and to contract with entities to accomplish these purposes; and
- Soliciting proposals in accordance with ch. 287, F.S.,[76] for the design and construction of innovative mobility systems and contracting with entities to expend funds to accomplish this purpose.

The FDOT, through the program, is required to use the $35 million distributed from documentary stamp tax revenues in a county to fund the design and construction of an innovative mobility system for passengers, based on a county proposal that the FDOT approves as being consistent with the requirements of the new law. More specifically, the bill requires the program to use:

- $25 million for an innovative mobility systems in a county as defined in s. 125.011(1), F.S. (Miami-Dade County).[77]
- $5 million for an innovative mobility systems in the Jacksonville Transportation Authority.
- $5 million for an innovative mobility systems in any other county or counties in the state.

If Miami-Dade County notifies the FDOT that it will not request all of the funds allocated for an innovative mobility system, the FDOT must allocate those funds to projects in the 5-year work program in the jurisdiction of the county.

A county proposing use of innovative mobility system funds must submit a request to the FDOT. The request must include a detailed project and financial plan, and must specify the project's duration and the total amount of funding sought by state fiscal year.

One dollar in local or private matching funds is required for each dollar distributed, and federal funds may not be substituted for the local or private matching funds. Additionally, funds distributed may not be used to subsidize projects with existing funding commitments as of July 1, 2018.

Conforming Revision

Section 7 amends s. 341.303, F.S., to provide the FDOT may not program any funds from the documentary stamps after Fiscal Year 2017-2018 to ensure funding will be available for the Statewide Mobility Innovation Program beginning in 2021.

Section 8 repeals subsection (5) of s. 341.303, F.S., effective July 1, 2021, which sets forth how the FRE is required to use the distribution from the documentary stamp taxes.

[76] Chapter 287, F.S., sets forth requirements and procedures to be used by state agencies in managing and procuring commodities and contractual services.

[77] Section 125.011(1), F.S., defines a county as: "[A]any county operating under a home rule charter adopted pursuant to Art. VIII, ss. 10, 11, and 24 of the State Constitution of 1885, as preserved by Art. VIII, s. 6(e) of the State Constitution of 1968, which county, by resolution of its board of county commissioners, elects to exercise the powers herein conferred." Of the local governments authorized to operate under a home rule charter by the State Constitutions of 1885 and 1968, only Miami-Dade County operates under a home-rule charter, which was adopted on May 21, 1957, under the constitutional provision.

Section 9 amends s. 343.58(4), F.S., effective July 1, 2021, to conform to changes made in the bill by prohibiting the SFRTA from receiving documentary stamp tax revenues distributed to the Statewide Mobility Innovation Program, instead of the FRE.

The bill takes effect on July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not implicate the mandates provisions of the State Constitution. Counties and cities are not required to apply to the program, but those that do apply for funding from the Florida Smart City Challenge Grant Program will be required to provide matching funds.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Private-sector partners who invest in innovative transportation projects may benefit to the extent that the project receives state grant funding.

The traveling public in Miami-Dade County and in the counties covered by the JTA and TBARTA, as well as in any other county in which an innovative mobility system project is constructed, may benefit from increased mobility options.

C. Government Sector Impact:

Florida Smart City Challenge Grant Program

The bill appropriates $15 million in nonrecurring funds from the State Transportation Trust Fund for Fiscal Year 2018-2019 to the FDOT to implement the program. This appropriation may be used to fund the costs incurred by FDOT to implement the Florida Smart City Challenge Grant Program as noted below.

The FDOT will incur administrative expenses associated with:
- Issuing the request for proposals.
- Conducting expedited reviews of proposals and awarding grants.
- Preparing the required quarterly reports.
- Providing administrative support.

FTC EV Report

Related to the report on EVs in Florida, the FTC will incur indeterminate expenses associated with:
- Determining when EVs make up two percent of vehicle registrations;
- Assessing transportation revenue impacts of EV registrations;
- Assessing infrastructure related to emergency evacuations for EVs; and
- Preparing the report required by the bill.

The DHSMV expects the bill to have no impact on its expenditures.

The FDEM may incur indeterminate expenses associated with its participation in the emergency evacuation assessment.

Statewide Mobility Innovation Program

Beginning in Fiscal Year 2021-2022, a distribution of the first $60 million in documentary stamp tax revenues for TRIP will be distributed to the:
- TBARTA in the amount of $25 million.
- Statewide Mobility Innovation Program in the amount of $35 million.

The FRE portion of the FDOT's work program will have a $60 million reduction in funding starting in Fiscal Year 2021-2022. As a result, FRE projects planned for the future may be either delayed or canceled. The FDOT states that it has $342.6 million of plan commitments related to the FRE in the Adopted 5-Year Work Program (FYs 2017-2018 to 2021-2022). The FDOT estimates that "redirecting revenue resources would significantly disrupt the FRE-related projects as well as other projects in the work program."[78]

The FDOT will incur indeterminate expenses associated with creation of the program.[79]

Under the bill, Miami-Dade County and the TBARTA will each receive $25 million per year, and the JTA will receive $5 million per year for innovative mobility systems projects. The remaining $5 million will be available to all other counties competing for funding for innovative mobility system projects.

To the extent that counties, including Miami-Dade County, wish to engage in innovative mobility system projects, the bill requires local or private matching funds to be provided.

[78] FDOT, *2018 Agency Legislative Bill Analysis: SB 1200*, February 7, 2018.
[79] Id.

To the extent that a county provides matching funds, the local resources used as a match would not be available for other purposes in that county. Further, projects with existing funding commitments as of July 1, 2018, will not be eligible for funding.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Under the portion of the bill creating the Statewide Mobility Innovation Program, the bill does not include the same provision for the Jacksonville Transportation Authority as it does for Miami-Dade County, which allows Miami-Dade County to notify the FDOT that it will not request all of the funds allocated for an innovative mobility system and requires the FDOT to allocate those funds to projects in the 5-year work program in the jurisdiction of the county.

VIII. Statutes Affected:

This bill creates section 316.0899 of the Florida Statutes.

This bill creates an undesignated section of Florida Law.

This bill amends section 339.175 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 March 2, 2018:
The committee substitute changes the bill to "[a]n act relating to transportation infrastructure" and adds the substance of CS/SB 384 and CS/SB 1200 (2017) to the bill.

The committee substitute requires the FTC to review all revenue sources for transportation infrastructure and maintenance projects and assess the effect of projected electric and hybrid vehicle use on future revenue from existing taxes, fees, and surcharges; make an assessment with the FDEM of transportation infrastructure with respect to emergency evacuations and electric vehicles; and prepare a report containing certain recommendations at the specified time.

The committee substitute revises planning requirements related to autonomous technology and electric vehicles to be considered as part of each metropolitan planning organization's development of the long-range transportation plan.

The committee substitute creates the Statewide Mobility Innovation Program within the Department of Transportation (FDOT). Through the program, FDOT will solicit, evaluate, and finance proposals for the design and construction of innovative mobility systems.

CS by Transportation on January 18, 2018:
The Committee Substitute:

- Creates a "Definitions" subsection, defines "grid-integrated vehicle," and relocates the definition of "matching funds" to this subsection.
- Revises one of the categories for which an applicant must have in place a plan or framework for project implementation to include acceleration of deployment of grid-integrated vehicles.
- Requires the FDOT to award at least three grants, rather than a awarding a maximum of three.
- Requires a grant recipient to fund at least ten percent of project costs and correspondingly removes a reference to partner organizations funding "50 percent of" projects costs in the provisions relating to priority selection of proposals.
- Revises the authorized uses of grant funds to specifically include acquisition of hardware, software, and assets associated with project implementation.
- Requires each recipient's initial report to be submitted to the Governor, in addition to the Senate President and the House Speaker.
- Authorizes the FDOT to select an independent nongovernmental entity to assist in project construction, management, and evaluation; and requires such entity to have certain prior experience.

B. Amendments:

None.

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

By the Committee on Transportation; and Senators Brandes and Taddeo

596-02191-18 2018852c1

A bill to be entitled

An act relating to the Florida Smart City Challenge Grant Program; creating s. 316.0899, F.S.; defining the terms "grid-integrated vehicle" and "matching funds"; creating the program within the Department of Transportation; providing program goals; providing grant eligibility requirements; requiring the department to issue a request for proposals by a specified date; providing proposal requirements; providing requirements for the award of grants and the use of grant funds; providing reporting requirements; requiring administrative support by the department; authorizing the department to select an independent nongovernmental entity to assist in project construction, management, and evaluation for specified purposes; providing requirements for the nongovernmental entity; providing an appropriation; providing an effective date.

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

Section 1. Section 316.0899, Florida Statutes, is created to read:

316.0899 Florida Smart City Challenge Grant Program.—

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

(a) "Grid-integrated vehicle" means a motor vehicle that has the ability for two-way power flow between the vehicle and the electric grid and the communications hardware and software that allow for external control of battery charging and discharging.

(b) "Matching funds" includes in-kind services, goods, equipment, or other noncash contributions calculated at fair market value.

(2) CREATION; GOALS.—The Florida Smart City Challenge Grant Program is created within the Department of Transportation. The goals of the grant program include, but are not limited to:

(a) Providing opportunities to municipalities and other regions of the state to develop innovative smart mobility solutions to local transportation challenges.

(b) Deploying smart city technology that has an immediate impact on the safe and efficient movement of people and goods within municipalities and other regions of the state.

(c) Advancing autonomous, connected, grid-integrated, and electric vehicle readiness and deployment throughout the state.

(d) Providing enhanced education and workforce development opportunities by deploying emerging technologies that support the state's future workforce.

(e) Meeting the mobility needs of residents of this state, particularly transportation disadvantaged persons as defined in s. 427.011, by increasing access to and convenience of transportation within municipalities and other regions of the state.

(f) Facilitating the efficient movement of freight within the state, especially in and around airports and seaports.

(g) Supporting the reduction or elimination of fossil fuel consumption by relying on renewable energy sources and electric technologies.

(h) Creating a smart mobility demonstration community in

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

the state that serves as a model for municipalities and other regions nationwide.

(3) ELIGIBILITY REQUIREMENTS.—

(a) The following entities may apply to the Department of Transportation for a grant to fund projects under the Florida Smart City Challenge Grant Program:

1. A state, county, municipal, regional, or other agency that is responsible for the movement of persons, goods, or services within a defined geographical region, including an entity created pursuant to chapter 343, chapter 348, or chapter 349.

2. A metropolitan planning organization or transportation planning organization. Each entity responsible for deploying or operating the project on behalf of a metropolitan planning organization or transportation planning organization must submit a letter to the department detailing its commitment to the implementation, operation, and maintenance of the project.

3. A state university.

(b) An applicant for a Florida Smart City Challenge Grant must have in place a plan or framework for the implementation of the proposed project in at least one of the following categories:

1. Autonomous vehicle deployment or demonstration.

2. Connected vehicle technology deployment.

3. Shared mobility services innovation and deployment.

4. Acceleration of the use of plug-in electric vehicles and electric charging infrastructure, including deployment of grid-integrated vehicles.

(4) PROPOSALS.—By September 1, 2018, the Department of

Transportation shall issue a request for proposals for the award of a Florida Smart City Challenge Grant. Each proposal submitted to the department must include:

(a) A statement by the applicant certifying that the project will be implemented and operational within 2 years after receipt of the grant.

(b) A plan for fulfilling documentation requirements under the department's Statewide Systems Engineering Management Plan within such 2-year period.

(c) A description of how operation and maintenance costs for the project will be funded in order to ensure that the department's investment in the project is sustained.

(d) A plan for evaluation of the project and the methods by which such evaluation will be shared with residents of the area served by the project.

(e) The procedure for integrating the project's transportation-related data into the department's Data Integration and Video Aggregation System.

(5) AWARD OF GRANTS.—The Department of Transportation shall award a Florida Smart City Challenge Grant to at least three recipients. Each award may not exceed $6 million. The department shall distribute the award to each recipient by January 1, 2019.

(a) The grant may fund up to 50 percent of project costs. At least 10 percent of project costs must be funded by the grant recipient. Grant funds must be used exclusively for startup costs, including, but not limited to, acquisition of hardware, software, and assets associated with implementation of the project, and may not be used for costs associated with operation or maintenance of the project.

(b) In selecting grant recipients, the department shall give priority to those proposals that demonstrate the availability of matching funds from partner organizations to fund project costs and that include a plan for documenting the acquisition and expenditure of such matching funds.

1. The department shall give further priority to those proposals that include matching funds from private-sector partner organizations; however, local public funds may also be used.

2. Matching funds may be used for costs associated with operation, maintenance, and evaluation of the project.

3. A grant recipient that receives matching funds must document the contribution of such funds in a quarterly report that details the manner in which the value of such contribution is calculated.

(6) REPORTING REQUIREMENTS.—

(a) Each recipient of a Florida Smart City Challenge Grant shall submit a quarterly report to the Department of Transportation regarding the development, implementation, and operation of the project. Such report must include information documented pursuant to subparagraph (5)(b)3.

(b) The Department of Transportation must submit a quarterly report to the President of the Senate and the Speaker of the House of Representatives regarding the overall status of the grant program.

(c) After implementation of the project is complete, each recipient must submit an initial report to the Governor, the President of the Senate, and the Speaker of the House of Representatives which details the project's impact on the

transportation system within the area served by the project, the extent to which the goals of the grant program have been met, and recommendations for project revisions or improvements to guide future deployment activities. A final report must be submitted 2 years after submission of the initial report.

(7) ADMINISTRATIVE SUPPORT.—The Department of Transportation shall provide administrative support to the Florida Smart City Challenge Grant Program in order to facilitate the deployment of smart city technology within the state, including, but not limited to, expedited review of proposals submitted under subsection (4). The department may select an independent nongovernmental entity to assist in project construction, management, and evaluation; to oversee the implementation of the project; and to analyze and document lessons learned during, and benefits derived from, implementation of the project. The nongovernmental entity must have experience with the national Smart Cities Initiative, advanced transportation deployment experience in this state, extensive engineering experience, or expertise in stakeholder engagement of potential partners to create a demonstration community as described in paragraph (2)(h).

Section 2. For the 2018-2019 fiscal year, the sum of $15 million in nonrecurring funds is appropriated from the State Transportation Trust Fund to the Department of Transportation for the purpose of implementing this act.

Section 3. 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)

3/2/18
Meeting Date

852
Bill Number (if applicable)

Topic SMART CITIES CHALLENGE GRANT

Amendment Barcode (if applicable)

Name LENA JUAREZ

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 CHARGE POINT

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons 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 992 (757058)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on the Environment and Natural Resources) and Senator Book
SUBJECT:	C-51 Reservoir Project
DATE:	February 26, 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 - Substantial Changes

I. Summary:

PCS/SB 992 revises provisions relating to the C-51 reservoir project, which is located in western Palm Beach County. Specifically, the bill:

- Adds the phrase "to the extent practicable" to the requirement that the South Florida Water Management District (SFWMD) operate the reservoir project to maximize the reduction of high-volume Lake Okeechobee regulatory releases to the St. Lucie or Caloosahatchee estuaries;
- Requires the operation of Phase I of the reservoir project to be in accordance with any operation and maintenance agreement adopted by the SFWMD;
- Requires that water made available by Phase I or Phase II of the reservoir project be used for natural systems in addition to any permitted, rather than allocated, amounts for water supply;
- Provides that water received from Lake Okeechobee may only be available to support consumptive use permits if such use is in accordance with the SFWMD rules; and
- Authorizes the SFWMD to enter into a capacity allocation agreement with a water supply entity for a pro rata share of unreserved capacity in the water storage facility and request the Department of Environmental Protection (DEP) to waive repayment of all or a portion of the loan issued through the water storage facility revolving loan fund.
- If any or all of the loan is waived, the DEP will not receive repayment of up to $30 million depending on what reasonable value the DEP deems appropriate.
- Clarifies that the SFWMD is not responsible for repaying any portion of a loan that is waived pursuant to this bill.

II. Present Situation:

Water Storage Reservoirs

It is the policy of the state that waters in the state are among its basic resources and the Legislature promote the conservation, replenishment, capture, enhancement, development, and proper utilization of surface and groundwater; and develop and regulate dams, impoundments, reservoirs, and other works to provide water storage for beneficial purposes.[1] Storing water is a commonly used technique for optimizing the use of water supplies by collecting water during times of plenty for use during dry or peak use times.[2]

Water storage reservoirs are constructed to improve the quality, timing, and distribution of water within a system. Water storage reservoirs can be used to store raw water prior to treatment at municipal water treatment facilities, to store treated water prior to distribution and use, and to store water for power generation facilities and agricultural uses.[3] Reservoirs can also be used to store water for environmental enhancement, including maintaining minimum flows and levels within a waterbody, as well as reducing the rates and volumes of freshwater discharges into estuaries.[4]

C-51 reservoir project

The C-51 reservoir project is located in western Palm Beach County on land owned by Palm Beach Aggregates, LLC (PBA). The project consists of in-ground reservoirs and conveyance structures that will provide water supply and water management benefits to participating water supply utilities. The project will also provide environmental benefits by reducing freshwater discharges to tide[5] and making additional water available for natural systems.

Phase I of the project will provide 14,000 acre-feet of water storage and costs approximately $161 million.[6] The SFWMD has declared Phase I of the C-51 reservoir project as one of its alternative water supply pilot projects, as it is located in the Lower East Coast Regional Planning Area, which is a restricted allocation area.[7] The water will be used to provide direct aquifer recharge to offset withdrawals from the Biscayne Aquifer. The Broward County Water and Wastewater Services, the City of Sunrise, the City of Lauderhill, and the City of Dania Beach have submitted letters of intent to utilize water made available by Phase I of the C-51 reservoir project.

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[1] Section 373.016, F.S.
[2] Office of Water Policy, Department of Environmental Protection (DEP), *Report on Expansion of Beneficial Use of Reclaimed Water, Stormwater, and Excess Surface Water (Senate Bill 536)*, 76 (Dec. 1, 2015), *available at* https://floridadep.gov/sites/default/files/SB536%20Final%20Report.pdf (last visited Jan 29, 2018).
[3] *Id*. at 78.
[4] *Id*.
[5] The C-51 Canal contributes about 50 percent of the freshwater runoff to the Lake Worth Lagoon.
[6] *See* Lenhart J. Lindahl, P.E., Assistant Executive Director, South Florida Water Management District (SFWMD), Governing Board Meeting, *C-51 Reservoir O&M Agreement*, slide 3 (Feb. 9, 2017), *available at* http://my.sfwmd.gov/webapps/publicMeetings/viewFile/10427 (last visited Jan. 29, 2018).
[7] Resolution No. 2017-0210, *Enter into an Operation & Maintenance Agreement with Palm Beach Aggregates, LLC for Phase 1 of the C-51 Reservoir Project*, *available at* https://apps.sfwmd.gov/webapps/publicMeetings/viewFile/10423 (last visited Jan. 29, 2018).

Phase I of the reservoir project is designed to hydraulically connect to the L-8 Flow Equalization Basin and is dependent upon the SFWMD's regional system. Because of the interconnectedness, the SFWMD agreed to operate, maintain, repair, replace, and rehabilitate Phase I of the project provided the PBA pays the SFWMD for such operation, maintenance, repair, replacement, and rehabilitation.[8] On February 20, 2017, the SFWMD and the PBA entered into an Operation and Maintenance Agreement which details the rights and responsibilities of each party and requires the SFWMD to operate and maintain the project upon completion.[9]

Phase II of the C-51 reservoir project is estimated to provide 46,000 acre-feet of water storage and cost approximately $286 million.[10] Phase II of the project is being considered under some of the alternatives that are being modeled for the Loxahatchee River Watershed Restoration project, which is a project component of the Comprehensive Everglades Restoration Program.[11]

The SFWMD is authorized to negotiate with the owners of the C-51 reservoir project site for the acquisition of the project site for Phase II of the project or to enter into a public-private partnership.[12] The SFWMD is authorized to acquire land near the C-51 reservoir through the purchase or exchange of land that is owned by the SFWMD or the state as necessary to implement Phase II of the project.[13] The state and the SFWMD are authorized to consider potential swaps of land that is owned by the state or the SFWMD to achieve the optimal combination of water quality and water storage. The SFWMD is prohibited from exercising eminent domain for the purpose of implementing the C-51 reservoir project.[14]

If state funds are appropriated for Phase I or Phase II of the C-51 reservoir project, state law requires that:

- The SFWMD must operate the reservoir to maximize the reduction of high-volume Lake Okeechobee regulatory releases to the St. Lucie or Caloosahatchee estuaries in addition to providing relief to the Lake Worth Lagoon;
- Water made available by the reservoir must be used for natural systems in addition to any allocated amounts for water supply; and
- Any water received from Lake Okeechobee may not be made available to support consumptive use permits.[15]

Phase I of the C-51 reservoir project is authorized to be funded through specific appropriation or through the water storage facility revolving loan fund, as provided in s. 373.475, F.S.[16] For the 2017-2018 fiscal year, the sum of $30 million was appropriated to the Water Resource Protection and Sustainability Trust Fund for the purpose of providing a loan to implement Phase I of the C-

[8] *Id*.
[9] *Id*.
[10] *Id*.
[11] *See* United States Army Corps of Engineers, *Read-Ahead and Reference Document for Loxahatchee River Watershed Restoration Protect, Array of Alternative Plans to be Evaluated* (Dec. 13, 2017) *available at* http://cdm16021.contentdm.oclc.org/utils/getfile/collection/p16021coll7/id/6006 (last visited Jan. 29, 2018).
[12] Section 373.4598, F.S.
[13] *Id*.
[14] *Id*.
[15] *Id*.
[16] *Id*.

51 reservoir project.[17] The loan is required to have a 30-year term, may be prepaid at any time, and accrues interest until repayment. The loan is required to be repaid from the proceeds of the sale of unreserved capacity in the water storage facility, or other appropriate payment, at the time of receipt less reasonable expenses. The loan is secured by a first mortgage lien on the water storage facility and a collateral assignment of unreserved capacity as adequate security for the loan. The loan does not reserve for use by the state or the SFWMD any capacity authorized pursuant to the consumptive use permit for Phase I of the C-51 reservoir.[18]

Phase II of the C-51 reservoir project is authorized to be funded using Florida Forever bonds, pursuant to the water storage revolving loan fund, or as a project component of the Comprehensive Everglades Restoration Program pursuant to s. 375.041(3)(b)4., F.S.[19]

Restricted Allocation Areas

The term "restricted allocation area" is defined in s. 373.037, F.S., to mean an area within a water supply planning region of the Southwest Florida Water Management District, the South Florida Water Management District, or the St. Johns River Water Management District where the governing board of the water management district has determined that existing sources of water are not adequate to supply water for all existing and future reasonable-beneficial uses and to sustain the water resources and related natural systems for the planning period pursuant to ss. 373.036 and 373.709, F.S., and where the governing board of the water management district has applied allocation restrictions with regard to the use of specific sources of water.

Due to concerns regarding water availability, the SFWMD has declared the Lake Okeechobee Basin a restricted allocation area. Therefore, additional restrictions apply when allocating surface water derived from the Lake Okeechobee Waterbody for consumptive use within the Lake Okeechobee Basin. This rule is a component of the recovery strategy for minimum flows and levels for Lake Okeechobee, as set forth in Chapter 40E-8 of the Florida Administrative Code, to address lower lake management levels and storage under the U.S. Army Corps of Engineers' Lake Okeechobee Regulation Schedule.[20]

Another restricted allocation area within the SFWMD's planning region is the Lower East Coast Regional Planning Area. As a component of the recovery strategy for the minimum flows and levels for the Everglades and the Northwest Fork of the Loxahatchee River additional restrictions have been adopted for the permitted allocations of water use withdrawals. These restrictions assist in implementing the objective of the SFWMD to ensure that water necessary for Everglades restoration and the restoration of the Loxahatchee River Watershed is not allocated for consumptive use upon permit renewal or modification.[21]

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[17] Chapter 2017-10, s. 12, Laws of Fla.
[18] *Id*.
[19] Section 373.4598, F.S.
[20] SFWMD, *Applicant's Handbook for Water Use Permit Applications within the South Florida Water Management District*, 63 (Sept. 7, 2015), *available at* https://www.sfwmd.gov/sites/default/files/documents/wu_applicants_handbook.pdf (last visited Jan. 30, 2018).
[21] *Id*. at 55.

III. Effect of Proposed Changes:

The bill adds the phrase "to the extent practicable" to the requirement that the SFWMD operate the reservoir project to maximize the reduction of high-volume Lake Okeechobee regulatory releases to the St. Lucie or Caloosahatchee estuaries. The bill requires the operation of Phase I of the reservoir project to be in accordance with any operation and maintenance agreement adopted by the SFWMD. An agreement between the SFWMD and Palm Beach Aggregates, LLC, was adopted in February of 2017.

The bill requires that the water made available by Phase I or Phase II of the reservoir project must be used for natural systems in addition to any permitted, rather than allocated, amounts for water supply. The bill provides that water received from Lake Okeechobee may only be available to support consumptive use permits if such use is in accordance with the rules of the SFWMD.

The bill authorizes the SFWMD to enter into a capacity allocation agreement with a water supply entity for a pro rata share of unreserved capacity in the water storage facility and request the DEP to waive repayment of all or a portion of the loan issued through the water storage facility revolving loan fund pursuant to s. 373.475, F.S. The DEP may only authorize such waiver if, at its determination, it has received reasonable value for such waiver. The bill provides that the SFWMD is not responsible for repayment of any portion of a loan that is waived pursuant to this bill.

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:

Depending on if the DEP approves of a waiver of any or all of the loan amount and what reasonable value the DEP deems appropriate, the loan recipient may receive a positive fiscal impact.

C. Government Sector Impact:

If any or all of the loan is waived, the DEP will not receive repayment of up to $30 million depending on what reasonable value the DEP deems appropriate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 373.4598 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 the Environment and Natural Resources on February 14, 2018:
The committee substitute:

- Requires that the water made available by Phase I or Phase II of the reservoir project must be used for natural systems in addition to any permitted, rather than allocated, amounts for water supply.
- Provides that water received from Lake Okeechobee may only be available to support consumptive use permits if such use is in accordance with the rules of the SFWMD, rather than in accordance with the rules for the applicable allocation area defined in s. 373.037(1), F.S.
- Clarifies that the SFWMD is not responsible for repayment of any portion of a loan which is waived pursuant to this bill.

B. Amendments:

None.

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576-03246-18

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 the C-51 reservoir project; amending s. 373.4598, F.S.; revising requirements relating to the operation of water storage and use for Phase I and Phase II of the C-51 reservoir project if state funds are appropriated for such phases; authorizing the South Florida Water Management District to enter into certain capacity allocation agreements and to request a waiver for repayment of certain loans; authorizing the Department of Environmental Protection to waive such loan repayment under certain conditions; specifying that the district is not responsible for repayment of such waived loans; providing an effective date.

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

Section 1. Paragraph (d) of subsection (9) of section 373.4598, Florida Statutes, is amended, and paragraph (f) is added to that subsection, to read:

373.4598 Water storage reservoirs.—

(9) C-51 RESERVOIR PROJECT.—

(d) If state funds are appropriated for Phase I or Phase II of the C-51 reservoir project:

1. The district, to the extent practicable, must ~~shall~~ operate either Phase I or Phase II of the reservoir project to

757058

576-03246-18

maximize the reduction of high-volume Lake Okeechobee regulatory releases to the St. Lucie or Caloosahatchee estuaries, in addition to maximizing the reduction of harmful discharges ~~providing relief~~ to the Lake Worth Lagoon. However, the operation of Phase I of the C-51 reservoir project must be in accordance with any operation and maintenance agreement adopted by the district;

2. Water made available by Phase I or Phase II of the reservoir must ~~shall~~ be used for natural systems in addition to any permitted ~~allocated~~ amounts for water supply; and

3. ~~Any~~ Water received from Lake Okeechobee may only ~~not~~ be available to support consumptive use permits if such use is in accordance with district rules.

(f) The district may enter into a capacity allocation agreement with a water supply entity for a pro rata share of unreserved capacity in the water storage facility and may request the department to waive repayment of all or a portion of the loan issued pursuant to s. 373.475. The department may authorize such waiver if, in its determination, it has received reasonable value for such waiver. The district is not responsible for repaying any portion of a loan issued pursuant to s. 373.475 which is waived pursuant to this paragraph.

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 992
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on the Environment and Natural Resources) and Senator Book
SUBJECT:	C-51 Reservoir Project
DATE:	March 2, 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 - Substantial Changes

I. Summary:

CS/SB 992 revises provisions relating to the C-51 reservoir project, which is located in western Palm Beach County. Specifically, the bill:

- Adds the phrase "to the extent practicable" to the requirement that the South Florida Water Management District (SFWMD) operate the reservoir project to maximize the reduction of high-volume Lake Okeechobee regulatory releases to the St. Lucie or Caloosahatchee estuaries;
- Requires the operation of Phase I of the reservoir project to be in accordance with any operation and maintenance agreement adopted by the SFWMD;
- Requires that water made available by Phase I or Phase II of the reservoir project be used for natural systems in addition to any permitted, rather than allocated, amounts for water supply;
- Provides that water received from Lake Okeechobee may only be available to support consumptive use permits if such use is in accordance with the SFWMD rules; and
- Authorizes the SFWMD to enter into a capacity allocation agreement with a water supply entity for a pro rata share of unreserved capacity in the water storage facility and request the Department of Environmental Protection (DEP) to waive repayment of all or a portion of the loan issued through the water storage facility revolving loan fund.
- If any or all of the loan is waived, the DEP will not receive repayment of up to $30 million depending on what reasonable value the DEP deems appropriate.
- Clarifies that the SFWMD is not responsible for repaying any portion of a loan that is waived pursuant to this bill.

II. Present Situation:

Water Storage Reservoirs

It is the policy of the state that waters in the state are among its basic resources and the Legislature promote the conservation, replenishment, capture, enhancement, development, and proper utilization of surface and groundwater; and develop and regulate dams, impoundments, reservoirs, and other works to provide water storage for beneficial purposes.[1] Storing water is a commonly used technique for optimizing the use of water supplies by collecting water during times of plenty for use during dry or peak use times.[2]

Water storage reservoirs are constructed to improve the quality, timing, and distribution of water within a system. Water storage reservoirs can be used to store raw water prior to treatment at municipal water treatment facilities, to store treated water prior to distribution and use, and to store water for power generation facilities and agricultural uses.[3] Reservoirs can also be used to store water for environmental enhancement, including maintaining minimum flows and levels within a waterbody, as well as reducing the rates and volumes of freshwater discharges into estuaries.[4]

C-51 reservoir project

The C-51 reservoir project is located in western Palm Beach County on land owned by Palm Beach Aggregates, LLC (PBA). The project consists of in-ground reservoirs and conveyance structures that will provide water supply and water management benefits to participating water supply utilities. The project will also provide environmental benefits by reducing freshwater discharges to tide[5] and making additional water available for natural systems.

Phase I of the project will provide 14,000 acre-feet of water storage and costs approximately $161 million.[6] The SFWMD has declared Phase I of the C-51 reservoir project as one of its alternative water supply pilot projects, as it is located in the Lower East Coast Regional Planning Area, which is a restricted allocation area.[7] The water will be used to provide direct aquifer recharge to offset withdrawals from the Biscayne Aquifer. The Broward County Water and Wastewater Services, the City of Sunrise, the City of Lauderhill, and the City of Dania Beach have submitted letters of intent to utilize water made available by Phase I of the C-51 reservoir project.

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[1] Section 373.016, F.S.
[2] Office of Water Policy, Department of Environmental Protection (DEP), *Report on Expansion of Beneficial Use of Reclaimed Water, Stormwater, and Excess Surface Water (Senate Bill 536)*, 76 (Dec. 1, 2015), *available at* https://floridadep.gov/sites/default/files/SB536%20Final%20Report.pdf (last visited Jan 29, 2018).
[3] *Id*. at 78.
[4] *Id*.
[5] The C-51 Canal contributes about 50 percent of the freshwater runoff to the Lake Worth Lagoon.
[6] *See* Lenhart J. Lindahl, P.E., Assistant Executive Director, South Florida Water Management District (SFWMD), Governing Board Meeting, *C-51 Reservoir O&M Agreement*, slide 3 (Feb. 9, 2017), *available at* http://my.sfwmd.gov/webapps/publicMeetings/viewFile/10427 (last visited Jan. 29, 2018).
[7] Resolution No. 2017-0210, *Enter into an Operation & Maintenance Agreement with Palm Beach Aggregates, LLC for Phase 1 of the C-51 Reservoir Project*, *available at* https://apps.sfwmd.gov/webapps/publicMeetings/viewFile/10423 (last visited Jan. 29, 2018).

Phase I of the reservoir project is designed to hydraulically connect to the L-8 Flow Equalization Basin and is dependent upon the SFWMD's regional system. Because of the interconnectedness, the SFWMD agreed to operate, maintain, repair, replace, and rehabilitate Phase I of the project provided the PBA pays the SFWMD for such operation, maintenance, repair, replacement, and rehabilitation.[8] On February 20, 2017, the SFWMD and the PBA entered into an Operation and Maintenance Agreement which details the rights and responsibilities of each party and requires the SFWMD to operate and maintain the project upon completion.[9]

Phase II of the C-51 reservoir project is estimated to provide 46,000 acre-feet of water storage and cost approximately $286 million.[10] Phase II of the project is being considered under some of the alternatives that are being modeled for the Loxahatchee River Watershed Restoration project, which is a project component of the Comprehensive Everglades Restoration Program.[11]

The SFWMD is authorized to negotiate with the owners of the C-51 reservoir project site for the acquisition of the project site for Phase II of the project or to enter into a public-private partnership.[12] The SFWMD is authorized to acquire land near the C-51 reservoir through the purchase or exchange of land that is owned by the SFWMD or the state as necessary to implement Phase II of the project.[13] The state and the SFWMD are authorized to consider potential swaps of land that is owned by the state or the SFWMD to achieve the optimal combination of water quality and water storage. The SFWMD is prohibited from exercising eminent domain for the purpose of implementing the C-51 reservoir project.[14]

If state funds are appropriated for Phase I or Phase II of the C-51 reservoir project, state law requires that:

- The SFWMD must operate the reservoir to maximize the reduction of high-volume Lake Okeechobee regulatory releases to the St. Lucie or Caloosahatchee estuaries in addition to providing relief to the Lake Worth Lagoon;
- Water made available by the reservoir must be used for natural systems in addition to any allocated amounts for water supply; and
- Any water received from Lake Okeechobee may not be made available to support consumptive use permits.[15]

Phase I of the C-51 reservoir project is authorized to be funded through specific appropriation or through the water storage facility revolving loan fund, as provided in s. 373.475, F.S.[16] For the 2017-2018 fiscal year, the sum of $30 million was appropriated to the Water Resource Protection and Sustainability Trust Fund for the purpose of providing a loan to implement Phase I of the C-

[8] *Id*.
[9] *Id*.
[10] *Id*.
[11] *See* United States Army Corps of Engineers, *Read-Ahead and Reference Document for Loxahatchee River Watershed Restoration Protect, Array of Alternative Plans to be Evaluated* (Dec. 13, 2017) *available at* http://cdm16021.contentdm.oclc.org/utils/getfile/collection/p16021coll7/id/6006 (last visited Jan. 29, 2018).
[12] Section 373.4598, F.S.
[13] *Id*.
[14] *Id*.
[15] *Id*.
[16] *Id*.

51 reservoir project.[17] The loan is required to have a 30-year term, may be prepaid at any time, and accrues interest until repayment. The loan is required to be repaid from the proceeds of the sale of unreserved capacity in the water storage facility, or other appropriate payment, at the time of receipt less reasonable expenses. The loan is secured by a first mortgage lien on the water storage facility and a collateral assignment of unreserved capacity as adequate security for the loan. The loan does not reserve for use by the state or the SFWMD any capacity authorized pursuant to the consumptive use permit for Phase I of the C-51 reservoir.[18]

Phase II of the C-51 reservoir project is authorized to be funded using Florida Forever bonds, pursuant to the water storage revolving loan fund, or as a project component of the Comprehensive Everglades Restoration Program pursuant to s. 375.041(3)(b)4., F.S.[19]

Restricted Allocation Areas

The term "restricted allocation area" is defined in s. 373.037, F.S., to mean an area within a water supply planning region of the Southwest Florida Water Management District, the South Florida Water Management District, or the St. Johns River Water Management District where the governing board of the water management district has determined that existing sources of water are not adequate to supply water for all existing and future reasonable-beneficial uses and to sustain the water resources and related natural systems for the planning period pursuant to ss. 373.036 and 373.709, F.S., and where the governing board of the water management district has applied allocation restrictions with regard to the use of specific sources of water.

Due to concerns regarding water availability, the SFWMD has declared the Lake Okeechobee Basin a restricted allocation area. Therefore, additional restrictions apply when allocating surface water derived from the Lake Okeechobee Waterbody for consumptive use within the Lake Okeechobee Basin. This rule is a component of the recovery strategy for minimum flows and levels for Lake Okeechobee, as set forth in Chapter 40E-8 of the Florida Administrative Code, to address lower lake management levels and storage under the U.S. Army Corps of Engineers' Lake Okeechobee Regulation Schedule.[20]

Another restricted allocation area within the SFWMD's planning region is the Lower East Coast Regional Planning Area. As a component of the recovery strategy for the minimum flows and levels for the Everglades and the Northwest Fork of the Loxahatchee River additional restrictions have been adopted for the permitted allocations of water use withdrawals. These restrictions assist in implementing the objective of the SFWMD to ensure that water necessary for Everglades restoration and the restoration of the Loxahatchee River Watershed is not allocated for consumptive use upon permit renewal or modification.[21]

[17] Chapter 2017-10, s. 12, Laws of Fla.
[18] *Id*.
[19] Section 373.4598, F.S.
[20] SFWMD, *Applicant's Handbook for Water Use Permit Applications within the South Florida Water Management District*, 63 (Sept. 7, 2015), *available at* https://www.sfwmd.gov/sites/default/files/documents/wu_applicants_handbook.pdf (last visited Jan. 30, 2018).
[21] *Id*. at 55.

III. Effect of Proposed Changes:

The bill adds the phrase "to the extent practicable" to the requirement that the SFWMD operate the reservoir project to maximize the reduction of high-volume Lake Okeechobee regulatory releases to the St. Lucie or Caloosahatchee estuaries. The bill requires the operation of Phase I of the reservoir project to be in accordance with any operation and maintenance agreement adopted by the SFWMD. An agreement between the SFWMD and Palm Beach Aggregates, LLC, was adopted in February of 2017.

The bill requires that the water made available by Phase I or Phase II of the reservoir project must be used for natural systems in addition to any permitted, rather than allocated, amounts for water supply. The bill provides that water received from Lake Okeechobee may only be available to support consumptive use permits if such use is in accordance with the rules of the SFWMD.

The bill authorizes the SFWMD to enter into a capacity allocation agreement with a water supply entity for a pro rata share of unreserved capacity in the water storage facility and request the DEP to waive repayment of all or a portion of the loan issued through the water storage facility revolving loan fund pursuant to s. 373.475, F.S. The DEP may only authorize such waiver if, at its determination, it has received reasonable value for such waiver. The bill provides that the SFWMD is not responsible for repayment of any portion of a loan that is waived pursuant to this bill.

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:

Depending on if the DEP approves of a waiver of any or all of the loan amount and what reasonable value the DEP deems appropriate, the loan recipient may receive a positive fiscal impact.

C. Government Sector Impact:

If any or all of the loan is waived, the DEP will not receive repayment of up to $30 million depending on what reasonable value the DEP deems appropriate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 373.4598 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 March 2, 2018:
The committee substitute:

- Requires that the water made available by Phase I or Phase II of the reservoir project must be used for natural systems in addition to any permitted, rather than allocated, amounts for water supply.
- Provides that water received from Lake Okeechobee may only be available to support consumptive use permits if such use is in accordance with the rules of the SFWMD, rather than in accordance with the rules for the applicable allocation area defined in s. 373.037(1), F.S.
- Clarifies that the SFWMD is not responsible for repayment of any portion of a loan which is waived pursuant to this bill.

B. Amendments:

None.

By Senator Book

32-00203B-18 2018992__

A bill to be entitled

An act relating to the C-51 reservoir project; amending s. 373.4598, F.S.; revising requirements related to the operation of water storage and use for Phase I and Phase II of the C-51 reservoir project if state funds are appropriated for such phases; authorizing the South Florida Water Management District to enter into certain capacity allocation agreements and to request a waiver for repayment of certain loans; authorizing the Department of Environmental Protection to waive such loan repayment under certain conditions; providing an effective date.

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

Section 1. Paragraph (d) of subsection (9) of section 373.4598, Florida Statutes, is amended, and paragraph (f) is added to that subsection, to read:

373.4598 Water storage reservoirs.—

(9) C-51 RESERVOIR PROJECT.—

(d) If state funds are appropriated for Phase I or Phase II of the C-51 reservoir project:

1. The district, to the extent practicable, shall operate either Phase I or Phase II of the reservoir project to maximize the reduction of high-volume Lake Okeechobee regulatory releases to the St. Lucie or Caloosahatchee estuaries, in addition to maximizing the reduction of harmful discharges ~~providing relief~~ to the Lake Worth Lagoon. However, the operation of Phase I of the C-51 reservoir project must be in accordance with any

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

32-00203B-18 2018992__

operation and maintenance agreement adopted by the district;

2. Water made available by Phase I or Phase II of the reservoir shall be used for natural systems in addition to any permitted ~~allocated~~ amounts for water supply issued in accordance with executed capacity allocation agreements; and

3. ~~Any~~ Water received from Lake Okeechobee may only ~~not~~ be available to support consumptive use permits if such use is in accordance with the rules for the applicable restricted allocation area as defined in s. 373.037(1).

(f) The South Florida Water Management District may enter into a capacity allocation agreement with a water supply entity for a pro rata share of unreserved capacity in the water storage facility and may request the department to waive repayment of all or a portion of the loan issued pursuant to s. 373.475. The department may authorize such waiver if, at its determination, it has received reasonable value for such waiver.

Section 2. 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)

March 2 2018
Meeting Date

992
Bill Number (if applicable)

Topic C-51 Reservoir Project

Amendment Barcode (if applicable)

Name Edgar G. Fernandez

Job Title

Address 201 W Park Ave #100
Street

Tallahassee FL 32301
City *State* *Zip*

Phone (786) 255-5755

Email Edg@Atfieldflorida.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Palm Beach County

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

March 2, 2018
Meeting Date

992
Bill Number (if applicable)

Topic C-51 Reservoir Project

Amendment Barcode (if applicable)

Name Edgar G. Fernandez

Job Title

Address 201 W Park Ave #100
Street

Phone (786) 255-5755

Tallahassee FL 32301
City *State* *Zip*

Email Edg@Adelfflorida.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Broward County

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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 1012 (291154)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Transportation, Tourism, and Economic Development); and Senators Passidomo and Young
SUBJECT:	Alligator Alley Toll Road
DATE:	February 26, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Miller	TR	**Favorable**
2.	McAuliffe	Hrdlicka	ATD	**Recommend: Fav/CS**
3.	McAuliffe	Hansen	AP	**Pre-meeting**

I. Summary:

PCS/SB 1012 extends the statutory obligation of the Florida Department of Transportation (FDOT) to reimburse a county or another local governmental entity for the direct actual costs of operating the fire station at mile marker 63 on I-75/Alligator Alley (the Alley), currently set to expire on June 30, 2018. The bill requires the FDOT to make such reimbursement by interlocal agreement through June 30, 2021.

The bill also provides that all law enforcement officers on official law enforcement business are exempt from paying tolls on toll facilities. The bill defines "official law enforcement business."

The fiscal impact regarding the reimbursement by the FDOT for the costs of operating the fire station is indeterminate, but any FDOT expenditures will be based on an agreed-upon estimated schedule of such operational expenses incorporated into the required extended interlocal agreement.

The Revenue Estimating Conference reviewed the effect of a similar exemption from tolls for law enforcement vehicles (marked and unmarked vehicles) and estimated that the fiscal impact of the provision would be negative, but indeterminate, to the State Transportation Trust Fund, Turnpike trust funds, and local trust funds. State and local agencies with law enforcement traveling through toll facilities will have less expenditures.

The bill takes effect July 1, 2018.

II. Present Situation:

Fire Station 63 on I-75/Alligator Alley

Collier County provides fire, rescue, and emergency management services along the Alley through its dependent fire district, the Ochopee Fire Control and Rescue District, and the county's emergency medical services. These services are provided at a facility located at the FDOT's rest area on the Alley at mile marker 63 (MM63).[1]

Use of Alley Tolls to Fund Fire Station 63

Section 338.26, F.S., establishes the Alley as a toll road, because the construction of the road "contributed to the alteration of water flows in the Everglades and affected ecological patterns of the historical southern Everglades." The statute sets forth required uses of the fees generated from tolls for use of the Alley, which are deposited into the State Transportation Trust Fund. Fees must be used to reimburse outstanding contractual obligations and to operate and maintain the highway and toll facilities, including reconstruction and restoration.

Currently, related to the fire station on the Alley, the statute requires the fees to be used:

- To design and construct the fire station, which may be used by a county or other local governmental entity to provide the services to the public on the Alley; and
- To reimburse a county or other local governmental entity for the direct actual costs of operating the fire station, through an interlocal agreement effective July 1, 2014, to no later than June 30, 2018.[2]

Fees may also be transferred to the Everglades Trust Fund for certain environmental projects or may be pledged for revenue bonds or notes issued to pay for environmental projects in the area.

Upon termination of the interlocal agreement for the fire station, the FDOT would be authorized to use the fees for the other required or authorized uses described above.

Toll Revenues and Expenses

According to the FDOT's 2016 Annual Report for its Enterprise Toll Operations,[3] for Fiscal Year 2016-17 through 2020-21 the Alligator Alley will average $34.5 million in gross toll revenue each year with annual operating and maintenance expenses averaging $8.9 million and annual debt service payments averaging $3.45 million. The maintenance expenses include funding for rest area improvements, fire station operations, and interchange lighting projects.

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[1] National Park Service, *Big Cypress: I-75, Mile Marker 63*, available at https://www.nps.gov/bicy/planyourvisit/i-75-mm-63.htm (last visited February 2, 2018). Greater Naples Fire Rescue District, *Station 63*, available at https://www.greaternaplesfire.org/gnfrd-location/station-63/ (last visited February 2, 2018).

[2] Chapter 2014-223, Laws of Florida.

[3] The 2016 report is the latest posted to the FDOT's Turnpike Enterprise webpage and is available at http://www.floridasturnpike.com/documents/reports/Toll%20Operations%20Annual%20Report/2016/2016%20OTO_Department%20Owned.pdf (last visited February 2, 2018.)

The Interlocal Agreement for Fire Station 63

On May 9, 2014, the FDOT and the Board of Commissioners of Collier County entered into an interlocal agreement to provide the terms and conditions under which the FDOT would "provide funding to the County for the County's expenses in purchasing equipment, compensating County employees, and otherwise providing fire, rescue and emergency services utilizing the Fire Station."[4]

The FDOT included the fire station in its construction project when it rebuilt the rest area at MM63 and the fire station opened in early 2015.[5] The fire station was built "for the exclusive use of the County for the duration of this Agreement."[6] The FDOT owns the fire station and leases it to the County.[7] However, under the agreement, "all equipment, personal property, vehicles, apparatus and supplies acquired by County with funding provided by DEPARTMENT…shall remain the property of County, notwithstanding any termination of this Agreement."[8]

Funding in the Interlocal Agreement

For the term of the agreement, the FDOT agreed to provide a maximum of $1,761,235 for direct actual capital costs and a maximum of $1,498,100 for the county's direct actual costs of operating the fire station.[9] The county agreed to bear all expenses in excess of the FDOT's specified participation.[10] The agreed-upon funding includes various annual operating items such as hired paramedics and fire fighters; expenses for administrative and building maintenance; expenses for bulk fuel and various types of search and rescue equipment. Capital costs include items such as vehicles, radios, vehicles, and breathing air compressors.[11]

Information regarding the FDOT's Adopted Five-Year Work Program for 2014-2018 reflects the following funding for the MM63 fire station:[12]

Fiscal Year	Amount
2014	$1,761,235
2015	$1,498,100
2016	$1,522,070
2017	$1,522,070
2018	$1,498,100

[4] Department-Collier County Interlocal Agreement, CSFA No. 55.036, May 9, 2014, at pp. 2-3.
[5] Department-Collier County Interlocal Agreement at p. 2 and 3. Marco Eagle, *New fire/EMS station opens on Alligator Alley*, April 5, 2015, available at http://www.marconews.com/story/news/2015/04/03/new-fully-staffed-fireems-station-opens-alligator-alley/25238329/ (last visited February 2, 2018).
[6] Department-Collier County Interlocal Agreement at p. 3. The agreement provides that state or local law enforcement may station officers, agents, or response teams at the fire station, based on space and availability.
[7] Department-Collier County Interlocal Agreement at p. 12.
[8] Department-Collier County Interlocal Agreement at p. 13.
[9] The Agreement also authorizes the County to request a Consumer Price Index adjustment of the total operating amount 30 days prior to July 1 for each year after the first covered by the Agreement. Department-Collier County Interlocal Agreement at p. 10.
[10] Department-Collier County Interlocal Agreement at p. 11.
[11] Department-Collier County Interlocal Agreement at Exhibit B.
[12] FDOT, Web Application, Office of Work Program and Budget, *Five Year Work Program – Project Summary for Transportation System: Intrastate Interstate, Description: Alligator Alley Fire Station @ MM63*, updated January 10, 2018,

Toll Exemptions

Section 338.155, F.S., requires the payment of tolls on toll facilities. However, the DOT may suspend tolls when necessary to assist in an emergency evacuation and the law provides the following exemptions:

- Employees of the agency operating the toll facility on official state business.
- State military personnel while on official military business.
- Certain disabled persons.
- Persons exempt from toll payment by the authorizing resolution for bonds issued to finance the toll facility.
- Persons exempt on a temporary basis when a toll facility is part of a detour route.
- Any law enforcement officer operating a marked official vehicle when on official law enforcement business.
- Any person operating a fire or rescue vehicle when on official business.
- Any person participating in the funeral procession of a law enforcement officer or firefighter killed in the line of duty.
- Any person driving a Department of Military Affairs automobile or other vehicle used for transporting military personnel, stores, and property that is properly identified.

For toll facilities managed by the DOT, the revenues of which are not pledged to repayment of bonds, the DOT is authorized to allow certain vehicles exemptions from the payment of tolls:[13]

- Public transit vehicles.[14]
- Vehicles participating in a funeral procession for an active-duty military service member.[15]
- Registered hybrid vehicles using high-occupancy-vehicle or express lanes.[16]

Toll Exemptions for Law Enforcement Marked Vehicles

According to the DOT, law enforcement agencies with marked vehicles submit a "SunPass Non-Revenue Account Application," in which the agency lists each marked vehicle that will have a non-revenue SunPass transponder along with certain identifying information regarding each vehicle. The agency representative attests that the vehicles listed on the application qualify for the toll exemption for marked law enforcement vehicles.[17]

available at http://www2.dot.state.fl.us/fmsupportapps/workprogram/Support/WPItemRept.ASPX?RF=HIS&CD=03&SD=FIRE%20STATION&FY=FALSE|FALSE|FALSE|FALSE|FALSE|FALSE&ITM=435389~1&RP=ITEM and http://www2.dot.state.fl.us/fmsupportapps/workprogram/Support/WPItemRept.ASPX?RF=WP&CD=03&SD=FIRE%20STATION&FY=FALSE|FALSE|FALSE|FALSE|FALSE|FALSE&ITM=435389~1&RP=ITEM (last visited February 2, 2018.)

[13] See Rules 14-100.006 and 14-100.004, F.A.C. Respectively the rules exempt public transit vehicles, certain carpools, motorcycles, and hybrid vehicles registered and operating on I-95 in Miami-Dade, Broward and Palm Beach Counties; and for public transit vehicles operating on express lanes.

[14] Section 338.155, F.S.

[15] Section 338.155, F.S.

[16] Section 316.0741, F.S.

[17] Department of Transportation, *2018 Agency Legislative Bill Analysis: SB 356*, Oct. 8, 2017.

Turnpike Bonds

Section 338.227, F.S., authorizes the DOT to borrow money as provided in the State Bond Act[18] to pay all or any part of the cost of any one or more legislatively approved turnpike projects. The principal of, and the interest on, these bonds is paid solely from revenues pledged for their payment.

In s. 338.229, F.S., in connection with the issuance of Turnpike bonds, the state agrees not to limit or restrict the rights vested in the DOT to establish and collect tolls for the use of the Turnpike System and to fulfill the terms of any agreements made with bondholders. The agreement includes not impairing the rights or remedies of the bondholders until the bonds, together with interest on the bonds, are fully paid and discharged.[19]

The DOT provided information about the Turnpike's master bond resolution under which the current Turnpike bonds were issued. The resolution contains the DOT's commitments regarding the funding and operation of the Turnpike System. The resolution is a contract with the bondholders and "may not be amended in any way that affects 'the unconditional promises of the Department to fix, maintain and collect tolls for the use of the Turnpike System' without consent of all the holders of outstanding Turnpike bonds."[20]

Additionally, the DOT states that the resolution includes a section in which the DOT agreed that it "shall not allow or permit any free use of the Toll roads of the Florida Turnpike, except to officials or employees of the Department whose official duties in connection with the Florida Turnpike require them to travel over the Florida Turnpike, or except as may be provided by laws in effect on the date of the adoption of this Resolution."[21]

Toll Exemptions under the Turnpike Bonds

The Turnpike bond resolution was adopted and restated on May 17, 2005. At that time, state law authorized the DOT to suspend tolls in the event of emergencies and included the enumerated exemptions discussed above in s. 338.155, F.S.[22]

Such provisions were also in place when bonds were sold for Alligator Alley in 2007.[23]

In 2008 and 2012, when additional toll exemptions were created they were limited to DOT managed toll facilities, whose revenues were not pledged to repayment of bonds. As discussed above, the DOT is authorized to exempt public transit vehicles, vehicles participating in a funeral procession for an active-duty military service member, and hybrid vehicles from paying tolls.

[18] Sections 215.57 – 215.83, F.S. Statutes creating the state's expressway and bridge authorities contain similar provisions. See ss. 348.0010, 348.64, 348.761, and 348.974, F.S.
[19] Statutes creating the state's expressway and bridge authorities contain similar provisions. See ss. 348.0010, 348.64, 348.761, and 348.974, F.S.
[20] Department of Transportation, *2018 Agency Legislative Bill Analysis: SB 356*, Oct. 8, 2017.
[21] Department of Transportation, *2018 Agency Legislative Bill Analysis: SB 356*, Oct. 8, 2017.
[22] Department of Transportation, *2018 Agency Legislative Bill Analysis: SB 356*, Oct. 8, 2017.
[23] Department of Transportation, *2018 Agency Legislative Bill Analysis: SB 356*, Oct. 8, 2017.

Because the revenues of the Turnpike System are pledged to repayment of bonds, these provisions do not apply to the Turnpike System or Alligator Alley.[24]

III. Effect of Proposed Changes:

Fire Station 63 on I-75/Alligator Alley

The bill amends s. 338.26(3)(a), F.S., to extend the date through which the FDOT is statutorily obligated to reimburse Collier County for the direct actual costs of operating the MM63 fire station to no later than June 30, 2021.

Toll Exemptions

The bill amends s. 338.155(1), F.S., exempting law enforcement officers while on official law enforcement business from paying tolls. "Official law enforcement business" includes, but is not limited to, patrol operations, investigative activities, crime prevention activities, or traffic operations. The bill also changes references to "handicapped persons" to "disabled persons" and makes other technical changes.

The bill takes effect on 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:

Art. I, s. 10 of the State Constitution prohibits any law that would impair a contract. If a court determines that this bill impairs the master bond resolution of the Turnpike or Alligator Alley by exempting for law enforcement officers while on official law enforcement business from the payment of tolls, then such provisions of the bill may be found unconstitutional.

[24] Department of Transportation, *2018 Agency Legislative Bill Analysis: SB 356*, Oct. 8, 2017.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Fire Station 63 on I-75/Alligator Alley

The bill requires the FDOT to continue funding the County's direct actual costs of operating the MM63 fire station from the fees generated from tolls collected on the Alley through July 1, 2021. Under current law, the FDOT is authorized to use the fees for the other required or authorized uses described in the statute. The impact on toll bonds or other agreements is unknown at this time because the FDOT has not provided an analysis of the bill.

Collier County will receive funding for an additional three years for actual operating and capital costs related to the fire station, and thus will only have to expend county funds for expenses above the costs agreed to in the interlocal agreement. The exact amount of such funding is unknown but will likely be based on an agreed-upon estimated schedule of expenses incorporated into a new interlocal agreement or extension of the current interlocal agreement.

Toll Exemptions

On November 3, 2017, the Revenue Estimating Conference reviewed the effect of a similar exemption from tolls for law enforcement vehicles (marked and unmarked vehicles) and estimated that the fiscal impact of the provision would be negative, but indeterminate, to the State Transportation Trust Fund, Turnpike trust funds, and local trust funds.[25]

The Florida Department of Law Enforcement estimated that a similar bill could save the department about $80,000 annually in toll expenditures.[26] The Department of Highway Safety and Motor Vehicles estimated that a similar bill would have a minimal impact to the department.[27] Local law enforcement and other law enforcement agencies will likely experience similar reduced annual expenditures for tolls.

[25] Office of Economic and Demographic Research, Revenue Estimating Conference, *Law Enforcement Exemption, HB 141*, November 3, 2017, available at http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2018/_pdf/page82.pdf (last visited Feb. 8, 2018). The conference methodology assumed that "[c]hanging the toll exemption from 'handicapped person' to 'person with a disability' will have no effect on eligibility."
[26] Florida Department of Law Enforcement, *2018 FDLE Legislative Bill Analysis: SB 356*, Sept. 28, 2017.
[27] Department of Highway Safety and Motor Vehicles, *2018 Agency Legislative Bill Analysis: HB 141*, Nov. 17, 2017.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The DOT has stated that any risk of violating bondholder rights associated with the statutory change to the toll exemptions could be avoided by limiting the exemption to toll facilities managed by the DOT, the revenues of which are not pledged to the repayment of bonds.[28]

VIII. Statutes Affected:

This bill amends sections 338.26 and 338.155 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 Transportation, Tourism, and Economic Development on February 8, 2018:
The committee substitute:

- Exempts law enforcement officers on official law enforcement business from paying tolls on toll facilities.
- Defines "official law enforcement business," and changes references to "handicapped persons" in the toll exemption statute to "disabled persons," along with other technical changes.
- Restores current law which limits the I-75/Alligator Alley fire station's services to Alligator Alley.

B. Amendments:

None.

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

[28] Department of Transportation, *2018 Agency Legislative Bill Analysis: SB 356*, Oct. 8, 2017.

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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/02/2018	.	
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	.	
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The Committee on Appropriations (Passidomo) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsections (1) and (3) of section 338.155, Florida Statutes, are amended to read:

338.155 Payment of toll on toll facilities required; exemptions.—

(1)(a) A person may not use a ~~any~~ toll facility without payment of tolls, except:

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1. An employee ~~employees~~ of the agency operating the toll project when using the toll facility on official state business.~~,~~

2. State military personnel while on official military business.

3. A person with a disability~~, handicapped persons~~ as provided in subsection (3).

4. A person ~~this section, persons~~ exempt from toll payment by the authorizing resolution for bonds issued to finance the facility.

5. A person~~, and persons~~ exempt on a temporary basis where use of such toll facility is required as a detour route.

6. A ~~Any~~ law enforcement officer operating a marked or unmarked official vehicle while ~~is exempt from toll payment when~~ on official law enforcement business. For purposes of this subparagraph, the term "official law enforcement business" includes, but is not limited to, patrol operations, investigative activities, crime prevention operations, and traffic operations.

7. A ~~Any~~ person operating a fire vehicle while ~~when~~ on official business or a rescue vehicle while ~~when~~ on official business ~~is exempt from toll payment~~.

8. A ~~Any~~ person participating in the funeral procession of a law enforcement officer or firefighter killed in the line of duty ~~is exempt from toll payment~~.

(b) The secretary or the secretary's designee may suspend the payment of tolls on a toll facility when necessary to assist in emergency evacuation.

(c) The failure to pay a prescribed toll constitutes a

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noncriminal traffic infraction, punishable as a moving violation as provided in s. 318.18. The department may adopt rules relating to the payment, collection, and enforcement of tolls, as authorized in this chapter and chapters 316, 318, 320, and 322, including, but not limited to, rules for the implementation of video or other image billing and variable pricing.

(d) With respect to toll facilities managed by the department~~,~~ the revenues of which are not pledged to repayment of bonds, the department may by rule allow the use of such facilities by public transit vehicles or by vehicles participating in a funeral procession for an active-duty military service member without the payment of tolls.

(3) A ~~Any handicapped~~ person with a disability who has a valid driver license, who operates a vehicle specially equipped for use by persons with disabilities ~~the handicapped~~, and who is certified by a physician licensed under chapter 458 or chapter 459 or by comparable licensing in another state or by the Adjudication Office of the United States Department of Veterans Affairs or its predecessor as being severely physically disabled and having permanent upper limb mobility or dexterity impairments that ~~which~~ substantially impair the person's ability to deposit coins in toll baskets~~,~~ shall be allowed to pass free through all tollgates and over all toll bridges and ferries in this state. Such ~~A~~ person ~~who meets the requirements of this subsection~~ shall, upon application, be issued a vehicle window sticker by the Department of Transportation.

Section 2. Paragraph (a) of subsection (3) of section 338.26, Florida Statutes, is amended to read:

338.26 Alligator Alley toll road.—

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(3)(a) Fees generated from tolls shall be deposited in the State Transportation Trust Fund and shall be used:

1. To reimburse outstanding contractual obligations;

2. To operate and maintain the highway and toll facilities, including reconstruction and restoration;

3. To pay for those projects that are funded with Alligator Alley toll revenues and that are contained in the 1993-1994 adopted work program or the 1994-1995 tentative work program submitted to the Legislature on February 22, 1994; and

4. By interlocal agreement effective July 1, 2014, through no later than June 30, 2019, to reimburse a county or another local governmental entity for the direct actual costs of operating the ~~To design and construct a~~ fire station at mile marker 63 on Alligator Alley, which may be used by a county or another local governmental entity to provide fire, rescue, and emergency management services to the public on Alligator Alley~~;~~ ~~and~~

~~5. By interlocal agreement effective July 1, 2014, through no later than June 30, 2018, to reimburse a county or another local governmental entity for the direct actual costs of operating such fire station~~.

Section 3. Subsection (6) of section 348.0004, Florida Statutes, is amended to read:

348.0004 Purposes and powers.—

(6)(a) ~~Subject to compliance with any covenants made with the holders of any bonds issued pursuant to the Florida Expressway Authority Act,~~ An authority in any county as defined in s. 125.011(1) shall, at the time that any toll is incurred, reduce the toll charged on any of the authority's toll

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facilities by at least 5 percent, but not more than 10 percent, for each SunPass registrant having an account in good standing and having the license plate of the vehicle or vehicles incurring the toll registered to the SunPass account at the time the toll is incurred. The authority may not impose additional requirements for receipt of the reduced toll amount.

(b) There is hereby created a cause of action for the imposition of excess toll charges. Any person eligible for a toll reduction as specified in paragraph (a) may bring a civil action in a court of competent jurisdiction against a toll authority for the value of toll credits that the person was to have been credited. The court may award court costs and reasonable attorney fees to any person bringing an action under this paragraph.

Section 4. 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 toll operations; amending s. 338.155, F.S.; exempting a law enforcement officer from paying a toll on a toll facility when operating a marked or unmarked official vehicle while on official law enforcement business; defining the term "official law enforcement business"; amending s. 338.26, F.S.; requiring fees generated from tolls to be used to reimburse, by interlocal agreement within a specified

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timeframe, a county or another local governmental entity for the direct actual costs of operating a specified fire station; providing services to the public on Alligator Alley; deleting obsolete language; amending s. 348.0004, F.S.; deleting provisions subjecting a specified toll rate reduction to certain covenants; creating a cause of action for the imposition of excess toll charges; providing for award of court costs and attorney fees; providing an effective date.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/02/2018	.	
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The Committee on Appropriations (Passidomo) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsections (1) and (3) of section 338.155, Florida Statutes, are amended to read:

338.155 Payment of toll on toll facilities required; exemptions.—

(1)(a) A person may not use a ~~any~~ toll facility without payment of tolls, except:

1. An employee ~~employees~~ of the agency operating the toll project when using the toll facility on official state business.~~,~~

2. State military personnel while on official military business.

3. A person with a disability~~, handicapped persons~~ as provided in subsection (3).

4. A person ~~this section, persons~~ exempt from toll payment by the authorizing resolution for bonds issued to finance the facility.

5. A person~~, and persons~~ exempt on a temporary basis where use of such toll facility is required as a detour route.

6. A ~~Any~~ law enforcement officer operating a marked or unmarked official vehicle while ~~is exempt from toll payment when~~ on official law enforcement business. For purposes of this subparagraph, the term "official law enforcement business" includes, but is not limited to, patrol operations, investigative activities, crime prevention operations, and traffic operations.

7. A ~~Any~~ person operating a fire vehicle while ~~when~~ on official business or a rescue vehicle while ~~when~~ on official business ~~is exempt from toll payment~~.

8. A ~~Any~~ person participating in the funeral procession of a law enforcement officer or firefighter killed in the line of duty ~~is exempt from toll payment~~.

(b) The secretary or the secretary's designee may suspend the payment of tolls on a toll facility when necessary to assist in emergency evacuation.

(c) The failure to pay a prescribed toll constitutes a

noncriminal traffic infraction, punishable as a moving violation as provided in s. 318.18. The department may adopt rules relating to the payment, collection, and enforcement of tolls, as authorized in this chapter and chapters 316, 318, 320, and 322, including, but not limited to, rules for the implementation of video or other image billing and variable pricing.

(d) With respect to toll facilities managed by the department~~,~~ the revenues of which are not pledged to repayment of bonds, the department may by rule allow the use of such facilities by public transit vehicles or by vehicles participating in a funeral procession for an active-duty military service member without the payment of tolls.

(3) A ~~Any handicapped~~ person with a disability who has a valid driver license, who operates a vehicle specially equipped for use by persons with disabilities ~~the handicapped~~, and who is certified by a physician licensed under chapter 458 or chapter 459 or by comparable licensing in another state or by the Adjudication Office of the United States Department of Veterans Affairs or its predecessor as being severely physically disabled and having permanent upper limb mobility or dexterity impairments that ~~which~~ substantially impair the person's ability to deposit coins in toll baskets~~,~~ shall be allowed to pass free through all tollgates and over all toll bridges and ferries in this state. Such ~~A~~ person ~~who meets the requirements of this subsection~~ shall, upon application, be issued a vehicle window sticker by the Department of Transportation.

Section 2. Paragraph (a) of subsection (3) of section 338.26, Florida Statutes, is amended to read:

338.26 Alligator Alley toll road.—

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(3)(a) Fees generated from tolls shall be deposited in the State Transportation Trust Fund and shall be used:

1. To reimburse outstanding contractual obligations;

2. To operate and maintain the highway and toll facilities, including reconstruction and restoration;

3. To pay for those projects that are funded with Alligator Alley toll revenues and that are contained in the 1993-1994 adopted work program or the 1994-1995 tentative work program submitted to the Legislature on February 22, 1994; and

4. By interlocal agreement effective July 1, 2014, through no later than June 30, 2019, to reimburse a county or another local governmental entity for the direct actual costs of operating the ~~To design and construct a~~ fire station at mile marker 63 on Alligator Alley, which may be used by a county or another local governmental entity to provide fire, rescue, and emergency management services to the public on Alligator Alley~~;~~ ~~and~~

~~5. By interlocal agreement effective July 1, 2014, through no later than June 30, 2018, to reimburse a county or another local governmental entity for the direct actual costs of operating such fire station~~.

Section 3. Paragraph (d) of subsection (2) of section 348.0003, Florida Statutes, is amended to read:

348.0003 Expressway authority; formation; membership.—

(2) The governing body of an authority shall consist of not fewer than five nor more than nine voting members. The district secretary of the affected department district shall serve as a nonvoting member of the governing body of each authority located within the district. Each member of the governing body must at

all times during his or her term of office be a permanent resident of the county which he or she is appointed to represent.

(d)1. Notwithstanding any provision to the contrary in this subsection, in any county as defined in s. 125.011(1), the governing body of an authority shall consist of up to nine members, and the following provisions of this paragraph shall apply specifically to such authority. Except for the district secretary of the department, the members must be residents of the county. Five voting members shall be appointed by the governing body of the county. At the discretion of the governing body of the county, up to two of the members appointed by the governing body of the county may be elected officials residing in the county. Three voting members of the authority shall be appointed by the Governor. One member shall be the district secretary of the department serving in the district that contains such county. This member shall be an ex officio voting member of the authority. If the governing body of an authority includes any member originally appointed by the governing body of the county as a nonvoting member, when the term of such member expires, that member shall be replaced by a member appointed by the Governor until the governing body of the authority is composed of five members appointed by the governing body of the county and three members appointed by the Governor. Except as provided in subparagraph 2., a member of the authority serving as of July 1, 2016, may serve the remainder of his or her term. However, upon the conclusion of the term or upon vacancy, such expired term or vacancy may not be filled except if such appointment meets the requirements of this section. When

the term of a member expires or a vacancy occurs, the member may ~~shall~~ not be replaced by the appointing entity until the governing body of the authority is composed of five voting members appointed by the governing body of the county and three voting members appointed by the Governor, which three members shall not include the district secretary serving as an ex officio member. Except as provided in subsection (5), the qualifications, terms of office, and obligations and rights of members of the authority shall be determined by resolution or ordinance of the governing body of the county in a manner that is consistent with subsections (3) and (4).

2. Notwithstanding subparagraph 1., in any county as defined in s. 125.011(1), the governing body of the authority shall, by October 1, 2018, submit to the Governor information regarding its compliance with the minimum 5 percent toll reduction prescribed in s. 348.0004(6). If the required toll reduction has not taken place, the existing board shall be dissolved effective October 31, 2018, and, except for the district secretary of the department, a new board shall be appointed by that date. Other than the district secretary of the department, a member of the board on October 1, 2018, may not be appointed to the new board. Except for the district secretary of the department, the members must be residents of the county. Five voting members shall be appointed by the governing body of the county. At the discretion of the governing body of the county, up to two of the members appointed by the governing body of the county may be elected officials residing in the county. Three voting members of the authority shall be appointed by the Governor. One member shall be the district secretary of the

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department serving in the district that contains such county. This member shall be an ex officio voting member of the authority.

Section 4. 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 toll operations; amending s. 338.155, F.S.; exempting a law enforcement officer from paying a toll on a toll facility when operating a marked or unmarked official vehicle while on official law enforcement business; defining the term "official law enforcement business"; amending s. 338.26, F.S.; requiring fees generated from tolls to be used to reimburse, by interlocal agreement within a specified timeframe, a county or another local governmental entity for the direct actual costs of operating a specified fire station; providing services to the public on Alligator Alley; deleting obsolete language; amending s. 348.0003, F.S.; requiring the governing body of the authority in certain counties to, by a specified date, submit to the Governor information regarding its compliance with a specified minimum percent toll reduction; requiring, effective on a specified date, the existing board to be dissolved and, except for the district secretary of the

Department of Transportation, a new board to be appointed by that date if the required toll reduction has not taken place; prohibiting a member of the board on a specified date to be appointed to the new board, except for the district secretary of the department; requiring the members to be residents of the county, except for the district secretary of the department; requiring a specified number of voting members to be appointed by the governing body of the county; authorizing, at the discretion of the governing body of the county, up to a specified amount of the members appointed by the governing body of the county to be elected officials residing in the county; requiring a specified amount of voting members of the authority to be appointed by the Governor; requiring that the district secretary of the department from the appropriate district be an ex officio voting member; providing an effective date.

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576-03008-18

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 tolls; amending s. 338.155, F.S.; updating terms; exempting a law enforcement officer from paying a toll on a toll facility while on official law enforcement business; defining the term "official law enforcement business"; making technical changes; amending s. 338.26, F.S.; requiring fees generated from tolls to be used to reimburse, by interlocal agreement effective for a specified period of time, a county or another local governmental entity for the direct actual costs of operating a specified fire station, which may be used by a county or another local governmental entity to provide fire, rescue, and emergency management services to the public on Alligator Alley; deleting obsolete language; providing an effective date.

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

Section 1. Subsections (1) and (3) of section 338.155, Florida Statutes, are amended to read:

338.155 Payment of toll on toll facilities required; exemptions.—

(1)(a) A person may not use a ~~any~~ toll facility without payment of tolls, except:

1. An employee ~~Employees~~ of the agency operating the toll

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576-03008-18

project when using the toll facility on official state business.~~,~~

2. State military personnel while on official military business.~~,~~

3. A person with a disability ~~Handicapped persons~~ as provided in subsection (3). ~~this section,~~

4. A person ~~Persons~~ exempt from toll payment by the authorizing resolution for bonds issued to finance the facility.~~, and~~

5. A person ~~Persons~~ exempt on a temporary basis where use of such toll facility is required as a detour route.

6. A ~~Any~~ law enforcement officer while ~~operating a marked official vehicle is exempt from toll payment when~~ on official law enforcement business. For purposes of this subparagraph, the term "official law enforcement business" includes, but is not limited to, patrol operations, investigative activities, crime prevention operations, and traffic operations.

7. A ~~Any~~ person operating a fire vehicle while ~~when~~ on official business or a rescue vehicle while ~~when~~ on official business ~~is exempt from toll payment~~.

8. A ~~Any~~ person participating in the funeral procession of a law enforcement officer or firefighter killed in the line of duty ~~is exempt from toll payment~~.

(b) The secretary or the secretary's designee may suspend the payment of tolls on a toll facility when necessary to assist in emergency evacuation.

(c) The failure to pay a prescribed toll constitutes a noncriminal traffic infraction, punishable as a moving violation as provided in s. 318.18. The department may adopt rules

relating to the payment, collection, and enforcement of tolls, as authorized in this chapter and chapters 316, 318, 320, and 322, including, but not limited to, rules for the implementation of video or other image billing and variable pricing.

(d) With respect to toll facilities managed by the department~~,~~ the revenues of which are not pledged to repayment of bonds, the department may by rule allow the use of such facilities by public transit vehicles or by vehicles participating in a funeral procession for an active-duty military service member without the payment of tolls.

(3) A ~~Any handicapped~~ person with a disability who has a valid driver license, who operates a vehicle specially equipped for use by persons with disabilities ~~the handicapped~~, and who is certified by a physician licensed under chapter 458 or chapter 459 or by comparable licensing in another state or by the Adjudication Office of the United States Department of Veterans Affairs or its predecessor as being severely physically disabled and having permanent upper limb mobility or dexterity impairments that ~~which~~ substantially impair the person's ability to deposit coins in toll baskets~~,~~ shall be allowed to pass free through all tollgates and over all toll bridges and ferries in this state. Such ~~A~~ person ~~who meets the requirements of this subsection~~ shall, upon application, be issued a vehicle window sticker by the Department of Transportation.

Section 2. Paragraph (a) of subsection (3) of section 338.26, Florida Statutes, is amended to read:

338.26 Alligator Alley toll road.—

(3)(a) Fees generated from tolls shall be deposited in the State Transportation Trust Fund and shall be used:

1. To reimburse outstanding contractual obligations;

2. To operate and maintain the highway and toll facilities, including reconstruction and restoration;

3. To pay for those projects that are funded with Alligator Alley toll revenues and that are contained in the 1993-1994 adopted work program or the 1994-1995 tentative work program submitted to the Legislature on February 22, 1994; and

4. By interlocal agreement effective July 1, 2014, through no later than June 30, 2021, to reimburse a county or another local governmental entity for the direct actual costs of operating the ~~To design and construct a~~ fire station at mile marker 63 on Alligator Alley, which may be used by a county or another local governmental entity to provide fire, rescue, and emergency management services to the public on Alligator Alley~~;~~ ~~and~~

~~5. By interlocal agreement effective July 1, 2014, through no later than June 30, 2018, to reimburse a county or another local governmental entity for the direct actual costs of operating such fire station~~.

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/SB 1012
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Transportation, Tourism, and Economic Development); and Senators Passidomo and Young
SUBJECT:	Toll Operations
DATE:	March 5, 2018
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Miller	TR	**Favorable**
2.	McAuliffe	Hrdlicka	ATD	**Recommend: Fav/CS**
3.	McAuliffe	Hansen	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1012 extends the statutory obligation of the Florida Department of Transportation (FDOT) to reimburse a county or another local governmental entity for the direct actual costs of operating the fire station at mile marker 63 on I-75/Alligator Alley (the Alley), currently set to expire on June 30, 2018. The bill requires the FDOT to make such reimbursement by interlocal agreement through June 30, 2019.

The bill also provides that a law enforcement officer operating an unmarked vehicle while on official law enforcement business is exempt from paying tolls on toll facilities. The bill defines "official law enforcement business."

The Miami-Dade Expressway Authority (MDX) is created pursuant to the Florida Expressway Authority Act. In 2017, the Legislature required MDX, subject to bond covenants, to reduce its tolls for qualifying SunPass users. The bill requires the MDX to submit to the Governor, by October 1, 2018, information regarding the toll reduction required in s. 348.0004, F.S. If the reduction has not taken place, then the existing board is dissolved effective October 31, 2018, and a new board must be appointed by that date

The fiscal impact regarding the reimbursement by the FDOT for the costs of operating the fire station is indeterminate, but any FDOT expenditures will be based on an agreed-upon estimated

schedule of such operational expenses incorporated into the required extended interlocal agreement.

The Revenue Estimating Conference reviewed the effect of a similar exemption from tolls for law enforcement vehicles (marked and unmarked vehicles) and estimated that revenues would be reduced by an indeterminate amount for the State Transportation Trust Fund, Turnpike trust funds, and local trust funds. State and local agencies with law enforcement traveling through toll facilities will have less expenditures.

The bill takes effect July 1, 2018.

II. Present Situation:

Fire Station 63 on I-75/Alligator Alley

Collier County provides fire, rescue, and emergency management services along the Alley through its dependent fire district, the Ochopee Fire Control and Rescue District, and the county's emergency medical services. These services are provided at a facility located at the FDOT's rest area on the Alley at mile marker 63 (MM63).[1]

Use of Alley Tolls to Fund Fire Station 63

Section 338.26, F.S., establishes the Alley as a toll road, because the construction of the road "contributed to the alteration of water flows in the Everglades and affected ecological patterns of the historical southern Everglades." The statute sets forth required uses of the fees generated from tolls for use of the Alley, which are deposited into the State Transportation Trust Fund. Fees must be used to reimburse outstanding contractual obligations and to operate and maintain the highway and toll facilities, including reconstruction and restoration.

Currently, related to the fire station on the Alley, the statute requires the fees to be used:

- To design and construct the fire station, which may be used by a county or other local governmental entity to provide the services to the public on the Alley; and
- To reimburse a county or other local governmental entity for the direct actual costs of operating the fire station, through an interlocal agreement effective July 1, 2014, to no later than June 30, 2018.[2]

Fees may also be transferred to the Everglades Trust Fund for certain environmental projects or may be pledged for revenue bonds or notes issued to pay for environmental projects in the area.

Upon termination of the interlocal agreement for the fire station, the FDOT would be authorized to use the fees for the other required or authorized uses described above.

[1] National Park Service, *Big Cypress: I-75, Mile Marker 63*, available at https://www.nps.gov/bicy/planyourvisit/i-75-mm-63.htm (last visited February 2, 2018). Greater Naples Fire Rescue District, *Station 63*, available at https://www.greaternaplesfire.org/gnfrd-location/station-63/ (last visited February 2, 2018).
[2] Chapter 2014-223, Laws of Florida.

Toll Revenues and Expenses

According to the FDOT's 2016 Annual Report for its Enterprise Toll Operations,[3] for Fiscal Year 2016-17 through 2020-21 the Alligator Alley will average $34.5 million in gross toll revenue each year with annual operating and maintenance expenses averaging $8.9 million and annual debt service payments averaging $3.45 million. The maintenance expenses include funding for rest area improvements, fire station operations, and interchange lighting projects.

The Interlocal Agreement for Fire Station 63

On May 9, 2014, the FDOT and the Board of Commissioners of Collier County entered into an interlocal agreement to provide the terms and conditions under which the FDOT would "provide funding to the County for the County's expenses in purchasing equipment, compensating County employees, and otherwise providing fire, rescue and emergency services utilizing the Fire Station."[4]

The FDOT included the fire station in its construction project when it rebuilt the rest area at MM63 and the fire station opened in early 2015.[5] The fire station was built "for the exclusive use of the County for the duration of this Agreement."[6] The FDOT owns the fire station and leases it to the County.[7] However, under the agreement, "all equipment, personal property, vehicles, apparatus and supplies acquired by County with funding provided by DEPARTMENT…shall remain the property of County, notwithstanding any termination of this Agreement."[8]

Funding in the Interlocal Agreement

For the term of the agreement, the FDOT agreed to provide a maximum of $1,761,235 for direct actual capital costs and a maximum of $1,498,100 for the county's direct actual costs of operating the fire station.[9] The county agreed to bear all expenses in excess of the FDOT's specified participation.[10] The agreed-upon funding includes various annual operating items such as hired paramedics and fire fighters; expenses for administrative and building maintenance; expenses for bulk fuel and various types of search and rescue equipment. Capital costs include items such as vehicles, radios, vehicles, and breathing air compressors.[11]

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[3] The 2016 report is the latest posted to the FDOT's Turnpike Enterprise webpage and is available at http://www.floridasturnpike.com/documents/reports/Toll%20Operations%20Annual%20Report/2016/2016%20OTO_Department%20Owned.pdf (last visited February 2, 2018.)

[4] Department-Collier County Interlocal Agreement, CSFA No. 55.036, May 9, 2014, at pp. 2-3.

[5] Department-Collier County Interlocal Agreement at p. 2 and 3. Marco Eagle, *New fire/EMS station opens on Alligator Alley*, April 5, 2015, available at http://www.marconews.com/story/news/2015/04/03/new-fully-staffed-fireems-station-opens-alligator-alley/25238329/ (last visited February 2, 2018).

[6] Department-Collier County Interlocal Agreement at p. 3. The agreement provides that state or local law enforcement may station officers, agents, or response teams at the fire station, based on space and availability.

[7] Department-Collier County Interlocal Agreement at p. 12.

[8] Department-Collier County Interlocal Agreement at p. 13.

[9] The Agreement also authorizes the County to request a Consumer Price Index adjustment of the total operating amount 30 days prior to July 1 for each year after the first covered by the Agreement. Department-Collier County Interlocal Agreement at p. 10.

[10] Department-Collier County Interlocal Agreement at p. 11.

[11] Department-Collier County Interlocal Agreement at Exhibit B.

Information regarding the FDOT's Adopted Five-Year Work Program for 2014-2018 reflects the following funding for the MM63 fire station:[12]

Fiscal Year	Amount
2014	$1,761,235
2015	$1,498,100
2016	$1,522,070
2017	$1,522,070
2018	$1,498,100

Toll Exemptions

Section 338.155, F.S., requires the payment of tolls on toll facilities. However, the DOT may suspend tolls when necessary to assist in an emergency evacuation and the law provides the following exemptions:

- Employees of the agency operating the toll facility on official state business.
- State military personnel while on official military business.
- Certain disabled persons.
- Persons exempt from toll payment by the authorizing resolution for bonds issued to finance the toll facility.
- Persons exempt on a temporary basis when a toll facility is part of a detour route.
- Any law enforcement officer operating a marked official vehicle when on official law enforcement business.
- Any person operating a fire or rescue vehicle when on official business.
- Any person participating in the funeral procession of a law enforcement officer or firefighter killed in the line of duty.
- Any person driving a Department of Military Affairs automobile or other vehicle used for transporting military personnel, stores, and property that is properly identified.

For toll facilities managed by the DOT, the revenues of which are not pledged to repayment of bonds, the DOT is authorized to allow certain vehicles exemptions from the payment of tolls:[13]

- Public transit vehicles.[14]
- Vehicles participating in a funeral procession for an active-duty military service member.[15]
- Registered hybrid vehicles using high-occupancy-vehicle or express lanes.[16]

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[12] FDOT, Web Application, Office of Work Program and Budget, *Five Year Work Program – Project Summary for Transportation System: Intrastate Interstate, Description: Alligator Alley Fire Station @ MM63*, updated January 10, 2018, available at http://www2.dot.state.fl.us/fmsupportapps/workprogram/Support/WPItemRept.ASPX?RF=HIS&CD=03&SD=FIRE%20STATION&FY=FALSE|FALSE|FALSE|FALSE|FALSE|FALSE&ITM=435389~1&RP=ITEM and http://www2.dot.state.fl.us/fmsupportapps/workprogram/Support/WPItemRept.ASPX?RF=WP&CD=03&SD=FIRE%20STATION&FY=FALSE|FALSE|FALSE|FALSE|FALSE|FALSE&ITM=435389~1&RP=ITEM (last visited February 2, 2018.)

[13] See Rules 14-100.006 and 14-100.004, F.A.C. Respectively the rules exempt public transit vehicles, certain carpools, motorcycles, and hybrid vehicles registered and operating on I-95 in Miami-Dade, Broward and Palm Beach Counties; and for public transit vehicles operating on express lanes.

[14] Section 338.155, F.S.

[15] Section 338.155, F.S.

[16] Section 316.0741, F.S.

Toll Exemptions for Law Enforcement Marked Vehicles

According to the DOT, law enforcement agencies with marked vehicles submit a "SunPass Non-Revenue Account Application," in which the agency lists each marked vehicle that will have a non-revenue SunPass transponder along with certain identifying information regarding each vehicle. The agency representative attests that the vehicles listed on the application qualify for the toll exemption for marked law enforcement vehicles.[17]

Turnpike Bonds

Section 338.227, F.S., authorizes the DOT to borrow money as provided in the State Bond Act[18] to pay all or any part of the cost of any one or more legislatively approved turnpike projects. The principal of, and the interest on, these bonds is paid solely from revenues pledged for their payment.

In s. 338.229, F.S., in connection with the issuance of Turnpike bonds, the state agrees not to limit or restrict the rights vested in the DOT to establish and collect tolls for the use of the Turnpike System and to fulfill the terms of any agreements made with bondholders. The agreement includes not impairing the rights or remedies of the bondholders until the bonds, together with interest on the bonds, are fully paid and discharged.[19]

The DOT provided information about the Turnpike's master bond resolution under which the current Turnpike bonds were issued. The resolution contains the DOT's commitments regarding the funding and operation of the Turnpike System. The resolution is a contract with the bondholders and "may not be amended in any way that affects 'the unconditional promises of the Department to fix, maintain and collect tolls for the use of the Turnpike System' without consent of all the holders of outstanding Turnpike bonds."[20]

Additionally, the DOT states that the resolution includes a section in which the DOT agreed that it "shall not allow or permit any free use of the Toll roads of the Florida Turnpike, except to officials or employees of the Department whose official duties in connection with the Florida Turnpike require them to travel over the Florida Turnpike, or except as may be provided by laws in effect on the date of the adoption of this Resolution."[21]

Toll Exemptions under the Turnpike Bonds

The Turnpike bond resolution was adopted and restated on May 17, 2005. At that time, state law authorized the DOT to suspend tolls in the event of emergencies and included the enumerated exemptions discussed above in s. 338.155, F.S.[22]

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[17] Department of Transportation, *2018 Agency Legislative Bill Analysis: SB 356*, Oct. 8, 2017.
[18] Sections 215.57 – 215.83, F.S. Statutes creating the state's expressway and bridge authorities contain similar provisions. See ss. 348.0010, 348.64, 348.761, and 348.974, F.S.
[19] Statutes creating the state's expressway and bridge authorities contain similar provisions. See ss. 348.0010, 348.64, 348.761, and 348.974, F.S.
[20] Department of Transportation, *2018 Agency Legislative Bill Analysis: SB 356*, Oct. 8, 2017.
[21] Department of Transportation, *2018 Agency Legislative Bill Analysis: SB 356*, Oct. 8, 2017.
[22] Department of Transportation, *2018 Agency Legislative Bill Analysis: SB 356*, Oct. 8, 2017.

Such provisions were also in place when bonds were sold for Alligator Alley in 2007.[23]

In 2008 and 2012, when additional toll exemptions were created they were limited to DOT managed toll facilities, whose revenues were not pledged to repayment of bonds. As discussed above, the DOT is authorized to exempt public transit vehicles, vehicles participating in a funeral procession for an active-duty military service member, and hybrid vehicles from paying tolls. Because the revenues of the Turnpike System are pledged to repayment of bonds, these provisions do not apply to the Turnpike System or Alligator Alley.[24]

Miami-Dade County Expressway Authority

The Florida Expressway Authority Act (act), codified in part I of ch. 348, F.S.,[25] authorizes any county or two or more contiguous counties within a single DOT district to, by resolution adopted by the board of county commissioners, form an expressway authority, which must be an agency of the state.[26] The Miami-Dade Expressway Authority (MDX) was created in 1994, when the Miami-Dade County Commission adopted ordinance 94-215.[27] MDX is the only expressway authority created under the act. MDX's system consists of the following roadways in Miami-Dade County:

- Airport Expressway (SR 112);
- Dolphin Expressway (SR 836);
- Don Shula Expressway (SR 874);
- Snapper Creek Expressway (SR 878); and
- Gratigny Parkway (SR 924).

Section 348.0003, F.S., requires the governing body of the MDX to consist of 9 members:

- The district secretary of the affected DOT district as a voting member;
- Five voting members, two of which may be elected officials, appointed by the county commission; and
- Three voting members appointed by the Governor.

Section 348.0004, F.S., provides the purposes and powers of expressway authorities created under the act. Section 348.0004(2)(e), F.S., authorizes expressway authorities to fix, alter, charge, establish, and collect tolls, rates, fees, rentals, and other charges for the services and facilities system. The tolls, rates, fees, rentals, and other charges must always be sufficient to comply with any covenants made with the holders of any bonds issued pursuant to the act. However, such right and power may be assigned or delegated by the authority to the DOT.

2017 Legislation For MDX Toll Reduction

In 2017, the legislature amended s. 348.0004, F.S., to require the MDX, subject to compliance with any of its bond covenants, to reduce the toll charged on any of its toll facilities by at least 5

[23] Department of Transportation, *2018 Agency Legislative Bill Analysis: SB 356*, Oct. 8, 2017.
[24] Department of Transportation, *2018 Agency Legislative Bill Analysis: SB 356*, Oct. 8, 2017.
[25] Part I of ch. 348, F.S., is comprised of ss. 348.0001 through 348.0012, F.S.
[26] Section 348.0003(1), F.S.
[27] Art. XVIII, Code of Miami-Dade County.

percent, but not more than 10 percent for each SunPass user having an account in good standing and the license plate of the vehicle incurring the toll registered to the SunPass account at the time the toll is incurred.[28] The MDX may not impose any additional conditions on a SunPass user to receive the reduced toll amount. Under s. 348.0010, F.S., the state agreed not to alter or limit the rights vested in an expressway authority and the rights of bondholders until all bonds are fully paid and discharged.

III. Effect of Proposed Changes:

Fire Station 63 on I-75/Alligator Alley

The bill amends s. 338.26(3)(a), F.S., to extend the date through which the FDOT is statutorily obligated to reimburse Collier County for the direct actual costs of operating the MM63 fire station to no later than June 30, 2019.

Toll Exemptions

The bill amends s. 338.155(1), F.S., exempting law enforcement officers while on official law enforcement business from paying tolls. "Official law enforcement business" includes, but is not limited to, patrol operations, investigative activities, crime prevention activities, or traffic operations. The bill also changes references to "handicapped persons" to "disabled persons" and makes other technical changes.

Miami-Dade County Expressway Authority

The bill amends s. 348.0004(6), F.S., to require the MDX to submit to the Governor, by October 1, 2018, information regarding the toll reduction required in s. 348.0004, F.S. If the reduction has not taken place, then the existing board is dissolved effective October 31, 2018, and a new board must be appointed by that date.

The requirements for the appointment of members to the new board are the same as current requirements. However, except for the DOT district secretary, a person who was a member of the board as of October 1, 2018, may not be appointed to the new board.
The bill takes effect on July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

[28] Chapter 2017-182, L.O.F. Section 348.0004(6), F.S.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Article I, s. 10 of the State Constitution prohibits any law that would impair a contract. If a court determines that this bill impairs the master bond resolution of the Turnpike or Alligator Alley by exempting for law enforcement officers operating unmarked vehicles while on official law enforcement business from the payment of tolls, then such provisions of the bill may be found unconstitutional.

If a court determines that this bill impairs the rights of any bondholders of an expressway authority created under part I of ch. 348, F.S., by requiring the reduction of tolls for certain users of the road, then such provision of the bill may be found unconstitutional.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Fire Station 63 on I-75/Alligator Alley

The bill requires the FDOT to continue funding the County's direct actual costs of operating the MM63 fire station from the fees generated from tolls collected on the Alley through July 1, 2019. Under current law, the FDOT is authorized to use the fees for the other required or authorized uses described in the statute. The impact on toll bonds or other agreements is unknown at this time because the FDOT has not provided an analysis of the bill.

Collier County will receive funding for an additional year for actual operating and capital costs related to the fire station, and thus will only have to expend county funds for expenses above the costs agreed to in the interlocal agreement. The exact amount of such funding is unknown but will likely be based on an agreed-upon estimated schedule of expenses incorporated into a new interlocal agreement or extension of the current interlocal agreement.

Toll Exemptions

On November 3, 2017, the Revenue Estimating Conference reviewed the effect of the exemption from tolls for law enforcement vehicles (marked and unmarked vehicles) and

estimated that revenues would be reduced by an indeterminate amount for the State Transportation Trust Fund, Turnpike trust funds, and local trust funds.[29]

The Florida Department of Law Enforcement estimated that a similar bill could save the department about $80,000 annually in toll expenditures.[30] The Department of Highway Safety and Motor Vehicles estimated that a similar bill would have a minimal impact to the department.[31] Local law enforcement and other law enforcement agencies will likely experience similar reduced annual expenditures for tolls.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The DOT has stated that any risk of violating bondholder rights associated with the statutory change to the toll exemptions could be avoided by limiting the exemption to toll facilities managed by the DOT, the revenues of which are not pledged to the repayment of bonds.[32]

VIII. Statutes Affected:

This bill amends the following sections of the Florida Statutes: 338.26, 338.155, and 348.0003.

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 March 2, 2018:
The committee substitute exempts law enforcement officers operating unmarked vehciles while on official law enforcement business from paying tolls on toll facilities. The CS defines "official law enforcement business" and changes references to "handicapped persons" in the toll exemption statute to "disabled persons," along with other technical changes.

The CS removes the provision providing that toll reductions for SunPass users are subject to MDX's bond covenants. The CS instead requires the MDX to submit to the Governor, by October 1, 2018, information regarding the toll reduction required in s. 348.0004, F.S. If the reduction has not taken place, then the existing board is dissolved effective October 31, 2018, and a new board must be appointed by that date.

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[29] Office of Economic and Demographic Research, Revenue Estimating Conference, *Law Enforcement Exemption, HB 141*, November 3, 2017, available at http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2018/_pdf/page82.pdf (last visited Feb. 8, 2018). The conference methodology assumed that "[c]hanging the toll exemption from 'handicapped person' to 'person with a disability' will have no effect on eligibility."
[30] Florida Department of Law Enforcement, *2018 FDLE Legislative Bill Analysis: SB 356*, Sept. 28, 2017.
[31] Department of Highway Safety and Motor Vehicles, *2018 Agency Legislative Bill Analysis: HB 141*, Nov. 17, 2017.
[32] Department of Transportation, *2018 Agency Legislative Bill Analysis: SB 356*, Oct. 8, 2017.

Lastly, the CS extends the MM63 fire station interlocal agreement for an additional year, instead of three years.

B. Amendments:

None.

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

By Senator Passidomo

28-01580A-18 20181012__

A bill to be entitled

An act relating to the Alligator Alley toll road; amending s. 338.26, F.S.; requiring fees generated from tolls to be used to reimburse, by interlocal agreement effective for a specified period of time, a county or another local governmental entity for the direct actual costs of operating a specified fire station, which may be used by a county or another local governmental entity to provide fire, rescue, and emergency management services to the public; deleting obsolete language; providing an effective date.

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

Section 1. Paragraph (a) of subsection (3) of section 338.26, Florida Statutes, is amended to read:

338.26 Alligator Alley toll road.—

(3)(a) Fees generated from tolls shall be deposited in the State Transportation Trust Fund and shall be used:

1. To reimburse outstanding contractual obligations;

2. To operate and maintain the highway and toll facilities, including reconstruction and restoration;

3. To pay for those projects that are funded with Alligator Alley toll revenues and that are contained in the 1993-1994 adopted work program or the 1994-1995 tentative work program submitted to the Legislature on February 22, 1994; and

4. By interlocal agreement effective July 1, 2014, through no later than June 30, 2021, to reimburse a county or another local governmental entity for the direct actual costs of

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

28-01580A-18 20181012__

operating the ~~To design and construct a~~ fire station at mile marker 63 on Alligator Alley, which may be used by a county or another local governmental entity to provide fire, rescue, and emergency management services to the public ~~on Alligator Alley; and~~

~~5. By interlocal agreement effective July 1, 2014, through no later than June 30, 2018, to reimburse a county or another local governmental entity for the direct actual costs of operating such fire station~~.

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

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

Duplicate

THE FLORIDA SENATE

APPEARANCE RECORD

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

SB 1012

Meeting Date

Bill Number (if applicable)

Topic Amendment Affecting Miami Dade Expressway

494290 DE

Amendment Barcode (if applicable)

Name Claudia Davant

Job Title

Address *Street*

Phone

City *State* *Zip*

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing MDX

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

Meeting Date	Bill Number (if applicable)
	SB 1012

Amendment Barcode (if applicable): 494290 DE

Topic: Amendment Affecting MDX

Name: Fausto Gomez

Job Title:

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: MDX

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

S-001 (10/14/14)

Duplicate

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

SB 1012
Bill Number (if applicable)

Topic MM63 Fire Station - Toll Road

Amendment Barcode (if applicable)

Name Kingman Schultz

Job Title Fire Chief

Address 14575 Collier Blvd.
Street

Phone 239 348-7540

Naples, FL 33314
City *State* *Zip*

Email KSchultz@gnfire.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Greater Naples Fire Rescue District

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

Duplicate

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/27/2018
Meeting Date

1012
Bill Number (if applicable)

Topic Alligator Alley Toll Road

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)

2/27/18
Meeting Date

1012
Bill Number (if applicable)

Topic ALLIGATOR ALLEY TOLL ROAD

Amendment Barcode (if applicable)

Name LISA HURLEY

Job Title

Address 211 D. Park Ave.
Street

Tallahassee, FL
City *State* *Zip*

Phone 850.224.5081

Email

Speaking: ☑ For ☐ Against ☐ Information

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

Representing COLLIER 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:	PCS/CS/SB 1056 (293960)
INTRODUCER:	Appropriations Subcommittee on Pre-K-12 Education; Education Committee; and Senator Passidomo
SUBJECT:	Computer Science Instruction
DATE:	March 1, 2018
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bouck	Graf	ED	**Fav/CS**
2.	Sikes	Elwell	AED	**Recommend: Fav/CS**
3.	Sikes	Hansen	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 1056 promotes opportunities for public middle and high school students to learn computer science taught by qualified teachers. Specifically, the bill:

- Expands access to computer science courses by:
  - Requiring middle schools and high schools to offer computer science courses.
  - Phasing in a requirement for school districts to offer computer science courses in a specified number of traditional public middle, high, and combination schools within a specified timeframe.
  - Requiring computer science courses that meet the specified definition to be identified in the Course Code Directory and on the Department of Education's (DOE) website.
- Creates opportunities for teachers to be certified and trained to teach computer science courses, and requires the DOE to award funding, subject to legislative appropriation, to a school district or consortium of school districts to deliver or facilitate training for educators to earn a certificate in computer science or specified industry certification, or to pay fees for examinations that lead to a credential.
- Provides, subject to legislative appropriation, the following bonuses to a public school educator evaluated as effective or highly effective, or is newly hired:
  - $1,000 after each year teaching a computer science course, for up to three years, if the educator holds a certificate in computer science or has passed the computer science subject area examination and holds an adjunct certificate.

  - $500 after each year teaching a specified course, for up to three years, if the educator holds an industry certification.
- Requires the DOE to provide, subject to legislative appropriation, high-need district technology grants to school districts for which the Florida digital classrooms allocation and the district's instructional materials fund are insufficient to meet the need.

The bill does not affect state revenues or expenditures. SB 2500, the Senate General Appropriations Act for Fiscal Year 2018-2019, does not provide an appropriation to the DOE for the components of the bill subject to legislative appropriations. These components include:

- Teacher bonuses.
- Funding for a school district or a consortium of school districts to deliver or facilitate training to enable teachers to earn certificates in computer science or applicable industry certifications.
- High-need technology grants to eligible school districts.

The bill takes effect upon becoming a law.

II. Present Situation:

Computing occupations are the primary source of all new wages in the United States and make up two-thirds of all projected new jobs in science, technology, engineering, and mathematics (STEM) fields.[1] In Florida, employment in computer occupations is projected to grow by 15.2 percent between 2017 to 2025.[2] In 2017, the estimated average annual wage for such occupations was $79,518.[3]

Access to Computer Science Courses

Public schools are required to provide students in kindergarten through grade 12 opportunities to learn computer science including, but not limited to, computer coding and computer programming.[4] Such opportunities may include:[5]

- Coding instruction in elementary and middle school;
- Instruction to develop students' computer usage and digital literacy skills in middle school; and

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[1] Code.org, *Support K-12 Computer Science Education in Florida*, *available at* https://code.org/advocacy/state-facts/FL.pdf, at 1.

[2] Computer Occupations include Computer and Information Research Scientists, Computer Systems Analysts, Information Security Analysts, Computer Programmers, Software Developers, Applications, Software Developers, Systems Software Web Developers, Database Administrators, Network and Computer Systems Administrators, Computer Network Architects, Computer User Support Specialists, Computer Network Support Specialists, and Computer Occupations, All Other. Department of Economic Opportunity, *2017-2025 Statewide Projections*, *available at* http://lmsresources.labormarketinfo.com/library/ep/2017_2025/F25stw.xls.

[3] The Florida Senate staff analysis of Department of Economic Opportunity, *2017 Wage Estimates, Florida*, *available at* http://www.floridajobs.org/labor-market-information/data-center/statistical-programs/occupational-employment-statistics-and-wages.

[4] Section 1007.2616(1), F.S.

[5] *Id.*

- Courses in computer science, computer coding, and computer programming in high school, including earning-related industry certifications.

Computer Science Courses and Industry Certifications

Currently, academic courses in computer science listed in the grades 9-12 section of the Course Code Directory (CCD)[6] are limited to acceleration courses under the Advanced Placement, Advanced International Certificate of Education, and International Baccalaureate programs.[7] Courses in computer science are also listed in the Career and Technical Education Program and Course Listing section of the CCD.[8]

In 2016, the State Board of Education revised the Next Generation Sunshine State Standards to include K-12 computer science standards.[9] The Florida Department of Education (DOE) has identified general education courses that will incorporate the newly adopted computer science standards. At the secondary level, such course is "Meteorology Honors for Grade 9-12."[10]

The DOE has also identified career and technical education courses and programs that contain the new computer science standards.[11] However, such courses or programs are not linked to any specified industry certifications.[12]

Teacher Qualifications

Educator Certification in Computer Science

The standard specialization requirements for an educator to be certified to teach K-12 academic computer science courses include:[13]

- A bachelor's or higher degree with an undergraduate or graduate major in computer science or computer science education, or
- A bachelor's or higher degree with 30 semester hours in computer science or computer science education to include credit in:
  - Computer applications and
  - Computer programming.

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[6] The Course Code Directory (CCD) lists all public preK-12 and postsecondary career and technical education courses available for use by school districts. Programs and courses 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. Rule 6A-1.09441, F.A.C.. The CCD also includes details regarding appropriate teacher certification levels. Section 1012.55(1)(c), F.S.

[7] Florida Department of Education, *2017-2018 Course Code Directory, Grades 9 to 12 and Adult Education Course Listing,* http://www.fldoe.org/core/fileparse.php/7746/urlt/1718CCD-Basic9-12.pdf, at 8-9.

[8] Florida Department of Education, *2017-2018 Course Code Directory*, Career and Technical Education, http://www.fldoe.org/core/fileparse.php/7746/urlt/1718-CCD-CTE.pdf, at 129-162.

[9] *See* rule 6A-1.09401(1)(n), F.A.C.

[10] Florida Department of Education, *Course and CTE Programs that Include the New Computer Science Standards for the 2017-2018 School Year*, Memorandum DPS: 2017-26 (Mar. 3, 2017).

[11] *Id.*

[12] Email, Florida Department of Education (Jan. 11, 2018).

[13] Rule 6A-4.0121, F.A.C.

The standard requirements for an educator to be certified to teach career and technical education courses and programs in information technology[14] are specified in the appropriate secondary and postsecondary adult vocational program curriculum framework.[15]

General Requirements for Educator Certification

The Legislature has established certification requirements to assure that educational personnel in public schools possess appropriate skills in reading, writing, and mathematics, and adequate pedagogical knowledge, including the use of technology to enhance student learning, and relevant subject matter competence to demonstrate an acceptable level of professional performance.[16]

Each person employed as a teacher in a public school must hold a certificate required by law and rules of the State Board of Education.[17] Educator certificates include the:

- Professional certificate, which is the standard, renewable type of certificate.[18] The professional certificate is valid for up to five years.[19]
- Temporary certificate, for employment in full-time positions for which a Florida educator certificate is required.[20] The temporary certificate is valid for three school fiscal years and is nonrenewable.[21]

In addition, school districts are authorized to issue adjunct teaching certificates to part-time teachers who have expertise in the subject area to be taught.[22]

[14] The Information Technology Career Cluster incorporates four pathways. Network Systems; Information Support & Services; Programming & Software Development; and Interactive Media. Florida Department of Education, *Information Technology*, http://www.fldoe.org/academics/career-adult-edu/career-tech-edu/info-technology.stml (last visited Jan. 12, 2018).
[15] Florida Department of Education, *Information Technology*, http://www.fldoe.org/academics/career-adult-edu/career-tech-edu/curriculum-frameworks/2017-18-frameworks/info-technology.stml (last visited Jan. 12, 2018).
[16] Section 1012.54, F.S.
[17] Sections 1012.55(1)(b) and 1002.33(12)(f), F.S. Teacher certification is administered and implemented by the DOE. Rule 6A-4.001, F.A.C.
[18] Rule 6A-4.004(2)(a), F.A.C.
[19] Section 1012.56(7)(a), F.S. The validity period is expressed as 5 years from July 1 of the school fiscal year. Rule 6A-4.0051(3)(c), F.A.C.
[20] Rule 6A-4.004(1)(a)2., F.A.C.
[21] Section 1012.56(7), F.S. The validity period is expressed in school fiscal years. Rule 6A-4.004(1)(a), F.A.C.
[22] Section 1012.57(1), F.S.

Educator Performance Evaluations

Instructional personnel[23] employed by Florida's public school districts must undergo an annual performance evaluation.[24]
The evaluation system for instructional personnel must differentiate among four levels of performance as follows: [25]

- Highly effective.
- Effective.
- Needs improvement or, for instructional personnel in the first 3 years of employment who need improvement, developing.
- Unsatisfactory.

Support for Technology in the Classroom

The DOE is responsible for developing a 5-year strategic plan for establishing Florida digital classrooms. The plan must:[26]

- Describe how technology will be integrated into classroom teaching and learning to improve student performance outcomes.
- Identify minimum technology requirements that include specifications for hardware, software, devices, networking, security, and bandwidth capacity.
- Establish minimum requirements for professional development opportunities and training to assist district instructional personnel and staff with the integration of technology into classroom teaching.
- Identify the types of digital tools and resources that can assist district instructional personnel and staff in the management, assessment, and monitoring of student learning and performance.

The Florida digital classrooms allocation supports the efforts of school districts and schools, including charter schools, to integrate technology in classroom teaching and learning to ensure students have access to high-quality electronic and digital instructional materials and resources, and empower classroom teachers to help their students succeed.[27]

[23] Instructor personnel means any K-12 staff member who provides direct instructional services to students or provide direct support in the learning process of students. Section 1012.01(2), F.S. Instructional personnel includes classroom teachers, student personnel services, librarians and media specialists, education paraprofessionals, and other instructional staff. *Id.*
[24] Section 1012.34(3), F.S. Newly hired classroom teachers are evaluated twice in their first year of teaching in a school district. *Id*.
[25] Section 1012.34(2)(e), F.S.
[26] Section 1001.20(4)(a), F.S.
[27] Section 1011.62(12)(a), F.S. The General Appropriations Act allocates $80,000,000 for the Digital Classrooms allocation. Specific Appropriation 91, ch. 2017-18. The minimum amount allocated to each district is $500,000. *Id.*

Florida Virtual School

The FLVS is intended to develop and deliver online and distance learning education.[28] The mission of the FLVS is to provide students with technology-based educational opportunities to gain the knowledge and skills necessary to succeed.[29] The school must serve any student in the state who meets the profile for success[30] in the online educational environment.[31]

III. Effect of Proposed Changes:

The bill amends s. 1007.2616, F.S., to promote opportunities for public middle and high school students to learn computer science taught by qualified teachers. Specifically, the bill:

- Expands access to computer science courses by:
  - Requiring middle schools and high schools to offer computer science courses.
  - Phasing in a requirement for school districts to offer computer science courses in a specified number of traditional public middle, high, and combination schools within a specified timeframe.
  - Requiring computer science courses that meet the specified definition to be identified in the Course Code Directory (CCD) and on the Department of Education's (DOE or department) website.
- Creates opportunities for teachers to be certified and trained to teach computer science courses, and requires the DOE to award funding, subject to legislative appropriation, to a school district or consortium of school districts to deliver or facilitate training for educators to earn a certificate in computer science or specified industry certification, or to pay fees for examinations that lead to a credential.
- Provides, subject to legislative appropriation, the following bonuses to a public school educator evaluated as effective or highly effective, or is newly hired, subject to legislative appropriation:
  - $1,000 after each year teaching a computer science course, for up to three years, if the educator holds a certificate in computer science or has passed the computer science subject area examination and holds an adjunct certificate.
  - $500 after each year teaching a specified course, for up to three years, if the educator holds an industry certification.
- Requires the DOE to provide, subject to legislative appropriation, high-need district technology grants to school districts for which the Florida digital classrooms allocation and the district's instructional materials fund are insufficient to meet the need.

Access to Computer Science Courses

The bill requires that high school students must be provided opportunities to take computer science courses to satisfy high school graduation requirements and phases in a requirement that

[28] Section 1002.37(1)(a), F.S.
[29] *Id.* at (b).
[30] The FLVS has identified hard and soft skills and other requirements that facilitate student success in online instruction. Such skills include written and oral communication, academic honesty, self-motivation, computer literacy, time management, reading competency, personal commitment, and access to technology. Email, Florida Virtual School (Jan. 9, 2018).
[31] Section 1002.37(1)(b), F.S.

school districts provide students with access to computer science courses.[32] Specifically, a school district with:

- More than 10 public middle, high, and combination schools[33] must provide computer science courses as follows:
  - Beginning in the 2018-2019 school year, at least one computer science course in no less than 4 percent of the school district's total number of middle, high, and combination schools.
  - Beginning in the 2019-2020 school year, at least one computer science course in no less than 7 percent of the school district's total number of middle, high, and combination schools.
  - Beginning in the 2020-2021 school year, at least one computer science course in no less than 10 percent of the school district's total number of middle, high, and combination schools.
- Ten or fewer public middle, high, and combination schools must provide at least one computer science course in at least one middle, high, or combination school by the 2020-2021 school year.

In 2016-2017, 31 school districts had more than 10 public middle, high, and combination schools, and 36 school districts had 10 or fewer such schools.[34]

The bill specifies that a charter school is not required to offer a computer science course. However, enrollment of a charter school's students in a computer science course that meets the specified definition may be included in the school district's threshold associated with the number of public schools in the district that must providing computer science courses.

Computer Science Instruction through the Florida Virtual School

The bill requires the Florida Virtual School (FLVS) to offer computer science courses identified in the CCD. If a school district does not offer an identified computer science course, the district must provide students access to the course through the FLVS or through other means.

Student enrollment in computer science courses offered by the FLVS may also be used to satisfy the school district's threshold associated with the number of public schools in the district that must provide computer science courses.

Accordingly, school districts that do not provide computer science courses in the required number of schools, based on thresholds specified in the bill, may be required to add qualifying computer science courses to the courses offered by the district secondary schools. In addition, the school district may need to hire qualified teachers to teach such courses.

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[32] CS/SB 1056 defines "computer science" as the study of computers and algorithmic processes, including their principles, hardware and software designs, applications, and their impact on society, and includes computer coding and computer programming.

[33] The bill defines a combination school as a public school in which any of grades 6-12 are taught.

[34] Florida Department of Education, *Regular Elementary, Middle/Junior High, Senior High, and Combination Schools, 2016-17, Survey 2-FINAL, available at* http://www.fldoe.org/core/fileparse.php/7588/urlt/RegElemMiddleHighCombo.xls.

Computer Science Course Identification

The bill also requires that computer science courses that meet the specified requirements must be identified on the Department of Education's website and in the CCD no later than July 1, 2018. The State Board of Education must develop rules so that additional computer science courses may also be subsequently identified and posted. Accordingly, the DOE may need to update the CCD to accommodate the identification of computer science courses.

Teacher Qualifications

The bill provides that, subject to legislative appropriation, after the DOE has identified courses in the CCD, a school district or consortium of school districts may apply, in a format prescribed by the DOE, for funding to deliver or facilitate training for classroom teachers to earn an educator certificate in computer science or an industry certification associated with a course identified in the CCD. The funds must be awarded to school districts in a manner that allows equitable distribution of funding statewide based on the student population. The school district or consortium of school districts that apply for such funding may use the funds to:

- Provide training for classroom teachers, and
- Pay fees for examinations that lead to an educator certificate in computer science.

Such efforts may increase the number of teachers who possess a computer science credential or an applicable industry certification. In 2014-2015, the number of Florida teacher certificates in computer science was 593, which represented 0.15 percent of all certificates.[35]

Teacher Bonus

The bill creates, subject to legislative appropriation, a bonus for educators who:

- Were evaluated as effective or highly effective in the prior school year, unless such teachers are newly hired and have not been evaluated.
- Teach a computer science course that meets the specified requirements at a public middle, high, or combination school.

In addition to meeting the specified criteria, the educators must:

- Hold an educator certificate in computer science or has passed the computer science subject are examination and holds an adjunct certificate to receive a bonus of $1,000 after each year of teaching a specified computer course, for up to 3 years.
- Hold an industry certification associated with a course in the CCD to receive a bonus of $500 after each year teaching the specified course, for up to 3 years.

The bill requires the school district to report qualifying classroom teachers to the DOE by a format established by the department. The bill requires the bonus to be disbursed upon completion of the school year in which the eligible classroom teacher taught the course. The bill clarifies that a teacher may not receive more than one type of bonus. Such bonus may provide incentive to teachers to seek a credential in computer science, industry certifications to teach computer science courses.

[35] Florida Department of Education, *Identification of Critical Teacher Shortage Areas*, http://www.fldoe.org/core/fileparse.php/7766/urlt/CTSA1617.pdf , at 4.

Support for Technology in the Classroom

Subject to legislative appropriation and as determined by the DOE, a school district is eligible to receive a high-need district technology grant if the funds provided in the digital classrooms allocation are insufficient to meet the required costs and if the district has no remaining instructional materials funds.[36] The bill requires the DOE to establish an application process and eligibility criteria for the high-need district technology grants. The DOE must provide such grants based on a school district's technology needs, but must also consider an equitable distribution of funding based on geographic distribution of the student population among the districts determined to have a high need for technology. The additional funding may help school districts in providing students access to computer science courses taught by qualified teachers.

The bill requires the State Board of Education to adopt rules to administer the provisions related to computer science and technology instruction.

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 may impact certain teachers. Specifically, the bill:

- Provides a bonus, for up to 3 years, to a public school educator of:
  - $1,000 if the educator holds an educator certificate in computer science or an adjunct certificate, and meets other specified criteria.

[36] Each school district receives an allocation for instructional materials for students in grades K-12, which provides for growth and maintenance needs. Section 1011.67(1), F.S. In 2017-2018, the Legislature appropriated $230,743,258 for instructional materials, of which $165,000,000 was specified for school district purchases of instructional content, as well as electronic devices and technology equipment and infrastructure. Specific appropriations 7 and 91, ch. 2017-18, L.O.F.

- $500 if the educator holds an applicable industry certification, and meets other specified criteria.

C. Government Sector Impact:

The total cost to provide a bonus to teachers who hold a certificate in computer science or applicable industry certifications is currently indeterminate. According to the Department of Education (DOE), approximately 460 teachers hold a state-issued computer science teaching certificate. If each of these teachers received the bonus authorized under this bill, the estimated cost would be $1,380,000. The DOE does not collect industry certification data at the teacher level. Therefore, the cost of those bonuses is indeterminate.[37]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 1007.2616 of the Florida Statutes.

IX. Additional Information:

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

Recommended CS/CS by the Appropriations Subcommittee on Pre-K-12 Education on February 8, 2018:
The committee substitute requires the State Board of Education to develop rules so that additional computer science courses may be identified in the Course Code Directory and posted on the Department of Education's website.

CS by Education on January 16, 2018:
The committee substitute:

- Shifts the focus of the bill from computer coding courses to computer science courses;
- Makes adjustments to teacher bonus amounts and disbursements;
- Makes adjustments to the award of high-need technology grants to school districts (based on whether digital classroom funds or instructional materials funds are insufficient to meet the costs), and
- Removes from the bill the $15 million appropriation.

[37] Florida Department of Education, *2018 Legislative Bill Analysis for SB 1056* (Dec. 11, 2017), at 5 and 6.

B. Amendments:

None.

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

234318

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/02/2018	.	
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	.	
	.	

The Committee on Appropriations (Passidomo) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 1007.2616, Florida Statutes, is amended to read:

1007.2616 Computer science and technology instruction.—

(1) For the purposes of this section, the term "computer science" means the study of computers and algorithmic processes, including their principles, hardware and software designs,

234318

applications, and their impact on society, and includes computer coding and computer programming.

(2)(a) ~~(1)~~ Public schools shall provide students in grades K-12 opportunities for learning computer science, including, but not limited to, computer coding and computer programming. Such opportunities may include coding instruction in elementary school and middle school and~~,~~ instruction to develop students' computer usage and digital literacy skills in middle school, and must include courses in computer science~~, computer coding, and computer programming~~ in middle school and high school, including earning-related industry certifications. Such courses must be integrated into each school district's middle and high schools, including combination schools in which any of grades 6 through 12 are taught.

(b) Computer science courses must be identified in the Course Code Directory and published on the Department of Education's website no later than July 1, 2018. Additional computer science courses may be subsequently identified and posted on the department's website.

(3) The Florida Virtual School shall offer computer science courses identified in the Course Code Directory pursuant to paragraph (2)(b). If a school district does not offer an identified course, the district must provide students access to the course through the Florida Virtual School or through other means.

(4)(a) Subject to legislative appropriation, a school district or a consortium of school districts may apply to the department, in a format prescribed by the department, for funding to deliver or facilitate training for classroom teachers

to earn an educator certificate in computer science pursuant to s. 1012.56 or an industry certification associated with a course identified in the Course Code Directory pursuant to paragraph (2)(b). Such funding shall only be used to provide training for classroom teachers and to pay fees for examinations that lead to a credential pursuant to this paragraph.

(b) Once the department has identified courses in the Course Code Directory pursuant to paragraph (2)(b), the department shall establish a deadline for submitting applications. The department shall award funding to school districts in a manner that allows for an equitable distribution of funding statewide based on student population.

(5) ~~(2)~~ Elementary schools and middle schools may establish digital classrooms in which students are provided opportunities to improve digital literacy and competency; to learn digital skills, such as coding, multiple media presentation, and the manipulation of multiple digital graphic images; and to earn digital tool certificates and certifications pursuant to s. 1003.4203 and grade-appropriate, technology-related industry certifications.

(6) ~~(3)~~ High school students must be provided ~~schools may provide students~~ opportunities to take computer science courses to satisfy high school graduation requirements, including, but not limited to, the following:

(a) High school computer science courses of sufficient rigor, as identified by the commissioner, such that one credit in computer science and the earning of related industry certifications constitute the equivalent of up to one credit of the mathematics requirement, with the exception of Algebra I or

higher-level mathematics, or up to one credit of the science requirement, with the exception of Biology I or higher-level science, for high school graduation. Computer science courses and technology-related industry certifications that are identified as eligible for meeting mathematics or science requirements for high school graduation shall be included in the Course Code Directory.

(b) High school computer technology courses in 3D rapid prototype printing of sufficient rigor, as identified by the commissioner, such that one or more credits in such courses and related industry certifications earned may satisfy up to two credits of mathematics required for high school graduation with the exception of Algebra I. Computer technology courses in 3D rapid prototype printing and related industry certifications that are identified as eligible for meeting mathematics requirements for high school graduation shall be included in the Course Code Directory.

(7) Subject to legislative appropriation, a classroom teacher who was evaluated as effective or highly effective pursuant to s. 1012.34 in the previous school year or who is newly hired by the district school board and has not been evaluated pursuant to s. 1012.34 must receive a bonus as follows:

(a) If the classroom teacher holds an educator certificate in computer science pursuant to s. 1012.56 or if he or she has passed the computer science subject area examination and holds an adjunct certificate issued by a school district pursuant to s. 1012.57, he or she shall receive a bonus of $1,000 after each year the individual completes teaching a computer science course

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identified in the Course Code Directory pursuant to paragraph (2)(b) at a public middle, high, or combination school in the state, for up to 3 years.

(b) If the classroom teacher holds an industry certification associated with a course identified in the Course Code Directory pursuant to paragraph (2)(b), he or she shall receive a bonus of $500 after each year the individual completes teaching the identified course at a public middle, high, or combination school in the state, for up to 3 years.

A school district shall report a qualifying classroom teacher to the department by a date and in a format established by the department. An eligible classroom teacher shall receive his or her bonus upon completion of the school year in which he or she taught the course. A teacher may not receive more than one bonus per year under this subsection.

(8) ~~(4)~~ The State Board of Education shall ~~may~~ adopt rules to administer this section.

Section 2. 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 computer science instruction; amending s. 1007.2616, F.S.; providing a definition; providing requirements for specified instruction relating to computer science; requiring certain

computer science courses to be included in the Course Code Directory and published on the Department of Education's website by a specified date; requiring the Florida Virtual School to offer certain computer science courses; requiring school districts to provide access to computer science courses offered by the Florida Virtual school or by other means under certain circumstances; providing funds for school districts to provide professional development for classroom teachers; providing Department of Education responsibilities for the distribution of such funds; requiring that high school students be provided opportunities to take certain courses to meet certain graduation requirements; providing funds for bonuses for certain classroom teachers; requiring, rather than authorizing, the State Board of Education to adopt rules; providing an effective date.

293960

576-03007-18

Proposed Committee Substitute by the Committee on Appropriations
(Appropriations Subcommittee on Pre-K - 12 Education)

A bill to be entitled

An act relating to computer science instruction; amending s. 1007.2616, F.S.; defining the term "computer science"; providing requirements for specified instruction relating to computer science; requiring school districts to provide computer science courses in a specified number of schools by certain dates; requiring certain computer science courses to be included in the Course Code Directory and published on the Department of Education's website by a specified date; providing that student enrollment in certain courses offered by the Florida Virtual School meet specified requirements; providing that a charter school is not required to offer computer science courses; providing that charter schools that offer such courses may be used in meeting a school district's percentage thresholds; requiring the Florida Virtual School to offer certain computer science courses; requiring school districts to provide access to computer science courses offered by the Florida Virtual School or by other means under certain circumstances; providing funds for school districts to provide professional development for classroom teachers, subject to legislative appropriation; providing Department of Education responsibilities for the distribution of such funds; requiring that high school students be provided opportunities to take

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576-03007-18

counter science courses to meet certain graduation requirements; providing funds for bonuses for certain classroom teachers, subject to legislative appropriation; providing funding for high-need technology grants for school districts, subject to legislative appropriation; requiring, rather than authorizing, the State Board of Education to adopt rules; providing an effective date.

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

Section 1. Section 1007.2616, Florida Statutes, is amended to read:

1007.2616 Computer science and technology instruction.—

(1) For the purposes of this section, the term "computer science" means the study of computers and algorithmic processes, including their principles, hardware and software designs, applications, and their impact on society, and includes computer coding and computer programming.

(2)(a) ~~(1)~~ Public schools shall provide students in grades K-12 opportunities for learning computer science, including, but not limited to, computer coding and computer programming. Such opportunities may include coding instruction in elementary school and middle school and~~,~~ instruction to develop students' computer usage and digital literacy skills in middle school, and must include courses in computer science~~, computer coding, and computer programming~~ in middle school and high school, including, but not limited to, earning-related industry certifications. Such courses must be integrated into each school

district's middle and high schools, including combination schools in which any of grades 6 through 12 are taught, as follows:

1. Beginning with the 2018-2019 school year, a school district shall provide at least one computer science course in no less than 4 percent of the district's total number of middle, high, and combination schools.

2. Beginning with the 2019-2020 school year, a school district shall provide at least one computer science course in no less than 7 percent of the district's total number of middle, high, and combination schools.

3. Beginning with the 2020-2021 school year, a school district shall provide at least one computer science course in no less than 10 percent of the district's total number of middle, high, and combination schools.

4. Notwithstanding subparagraphs 1.-3., a school district with 10 or fewer public middle, high, and combination schools shall provide at least one computer science course in at least one middle, high, or combination school no later than the 2020-2021 school year.

(b) Computer science courses that count toward the percentage thresholds in paragraph (a) must be identified in the Course Code Directory and published on the Department of Education's website no later than July 1, 2018. The State Board of Education shall develop rules so that additional computer science courses may be subsequently identified and posted on the department's website.

(c) Student enrollment in computer science courses offered by the Florida Virtual School pursuant to subsection (3) may be

used to satisfy the requirements of subparagraphs (a)1.-3.

(d) A charter school is not required to offer a computer science course; however, enrollment of a charter school's students in a computer science course under this section may be included in the school district's percentage calculation.

(3) The Florida Virtual School shall offer computer science courses identified in the Course Code Directory pursuant to paragraph (2)(b). If a school district does not offer an identified course, the district must provide students access to the course through the Florida Virtual School or through other means.

(4)(a) Subject to legislative appropriation, a school district or a consortium of school districts may apply to the department, in a format prescribed by the department, for funding to deliver or facilitate training for classroom teachers to earn an educator certificate in computer science pursuant to s. 1012.56 or an industry certification associated with a course identified in the Course Code Directory pursuant to paragraph (2)(b). Such funding may only be used to provide training for classroom teachers and to pay fees for examinations that lead to a credential pursuant to this paragraph.

(b) Once the department has identified courses in the Course Code Directory pursuant to paragraph (2)(b), the department shall establish a deadline for submitting applications. The department shall award funding to school districts in a manner that allows for an equitable distribution of funding statewide based on student population.

(5) ~~(2)~~ Elementary schools and middle schools may establish digital classrooms in which students are provided opportunities

to improve digital literacy and competency; to learn digital skills, such as coding, multiple media presentation, and the manipulation of multiple digital graphic images; and to earn digital tool certificates and certifications pursuant to s. 1003.4203 and grade-appropriate, technology-related industry certifications.

(6)~~(3)~~ High school students must be provided ~~schools may provide students~~ opportunities to take computer science courses to satisfy high school graduation requirements, including, but not limited to, the following:

(a) High school computer science courses of sufficient rigor, as identified by the commissioner, such that one credit in computer science and the earning of related industry certifications constitute the equivalent of up to one credit of the mathematics requirement, with the exception of Algebra I or higher-level mathematics, or up to one credit of the science requirement, with the exception of Biology I or higher-level science, for high school graduation. Computer science courses and technology-related industry certifications that are identified as eligible for meeting mathematics or science requirements for high school graduation shall be included in the Course Code Directory.

(b) High school computer technology courses in 3D rapid prototype printing of sufficient rigor, as identified by the commissioner, such that one or more credits in such courses and related industry certifications earned may satisfy up to two credits of mathematics required for high school graduation with the exception of Algebra I. Computer technology courses in 3D rapid prototype printing and related industry certifications

that are identified as eligible for meeting mathematics requirements for high school graduation shall be included in the Course Code Directory.

(7) Subject to legislative appropriation, a classroom teacher who was evaluated as effective or highly effective pursuant to s. 1012.34 in the previous school year or who is newly hired by the district school board and has not been evaluated pursuant to s. 1012.34 must receive a bonus as follows:

(a) If the classroom teacher holds an educator certificate in computer science pursuant to s. 1012.56 or if he or she has passed the computer science subject area examination and holds an adjunct certificate issued by a school district pursuant to s. 1012.57, he or she shall receive a bonus of $1,000 after each year the individual completes teaching a computer science course identified in the Course Code Directory pursuant to paragraph (2)(b) at a public middle, high, or combination school in the state, for up to 3 years.

(b) If the classroom teacher holds an industry certification associated with a course identified in the Course Code Directory pursuant to paragraph (2)(b), he or she shall receive a bonus of $500 after each year the individual completes teaching the identified course at a public middle, high, or combination school in the state, for up to 3 years.

A school district shall report a qualifying classroom teacher to the department by a date and in a format established by the department. An eligible classroom teacher shall receive his or her bonus upon completion of the school year in which he or she

taught the course. A teacher may not receive more than one bonus per year under this subsection.

(8) Subject to legislative appropriation, the department shall award high-need technology grants to eligible school districts if the funds provided in the Florida digital classrooms allocation pursuant to s. 1011.62(12) are insufficient to meet the costs specified in that subsection and the district has no remaining instructional materials funds under s. 1011.67. The department shall establish an application process and eligibility criteria. Such criteria must be based on a school district's technology needs and must provide for an equitable distribution of funding based on the geographic distribution of the student population among school districts determined to have a high need for technology.

(9)~~(4)~~ The State Board of Education shall ~~may~~ adopt rules to administer this section.

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 1056
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Pre-K-12 Education); Education Committee; and Senator Passidomo
SUBJECT:	Computer Science Instruction
DATE:	March 5, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bouck	Graf	ED	**Fav/CS**
2.	Sikes	Elwell	AED	**Recommend: Fav/CS**
3.	Sikes	Hansen	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1056 promotes opportunities for public middle and high school students to learn computer science taught by qualified teachers. Specifically, the bill:

- Expands access to computer science courses by:
  - Requiring middle schools and high schools to offer computer science courses.
  - Requiring computer science courses that meet the specified definition to be identified in the Course Code Directory and on the Department of Education's (DOE) website.
- Creates opportunities for teachers to be certified and trained to teach computer science courses, and requires the DOE to award funding, subject to legislative appropriation, to a school district or consortium of school districts to deliver or facilitate training for educators to earn a certificate in computer science or specified industry certification, or to pay fees for examinations that lead to a credential.
- Provides, subject to legislative appropriation, the following bonuses to a public school educator evaluated as effective or highly effective, or is newly hired:
  - $1,000 after each year teaching a computer science course, for up to three years, if the educator holds an educator certificate in computer science or has passed the computer science subject area examination and holds an adjunct certificate.
  - $500 after each year teaching a specified course, for up to three years, if the educator holds an industry certification associated with a computer science course.

The bill does not affect state revenues or expenditures. SB 2500, the Senate General Appropriations Act for Fiscal Year 2018-2019, does not provide an appropriation to the DOE for the components of the bill subject to legislative appropriations. These components include:

- Teacher bonuses.
- Funding for a school district or a consortium of school districts to deliver or facilitate training to enable teachers to earn certificates in computer science or applicable industry certifications.

The bill takes effect upon becoming a law.

II. Present Situation:

Computing occupations are the primary source of all new wages in the United States and make up two-thirds of all projected new jobs in science, technology, engineering, and mathematics (STEM) fields.[1] In Florida, employment in computer occupations is projected to grow by 15.2 percent between 2017 to 2025.[2] In 2017, the estimated average annual wage for such occupations was $79,518.[3]

Access to Computer Science Courses

Public schools are required to provide students in kindergarten through grade 12 opportunities to learn computer science including, but not limited to, computer coding and computer programming.[4] Such opportunities may include:[5]

- Coding instruction in elementary and middle school;
- Instruction to develop students' computer usage and digital literacy skills in middle school; and
- Courses in computer science, computer coding, and computer programming in high school, including earning-related industry certifications.

Computer Science Courses and Industry Certifications

Currently, academic courses in computer science listed in the grades 9-12 section of the Course Code Directory (CCD)[6] are limited to acceleration courses under the Advanced Placement,

[1] Code.org, *Support K-12 Computer Science Education in Florida*, *available at* https://code.org/advocacy/state-facts/FL.pdf, at 1.
[2] Computer Occupations include Computer and Information Research Scientists, Computer Systems Analysts, Information Security Analysts, Computer Programmers, Software Developers, Applications, Software Developers, Systems Software Web Developers, Database Administrators, Network and Computer Systems Administrators, Computer Network Architects, Computer User Support Specialists, Computer Network Support Specialists, and Computer Occupations, All Other. Department of Economic Opportunity, *2017-2025 Statewide Projections*, *available at* http://lmsresources.labormarketinfo.com/library/ep/2017_2025/F25stw.xls.
[3] The Florida Senate staff analysis of Department of Economic Opportunity, *2017 Wage Estimates, Florida*, *available at* http://www.floridajobs.org/labor-market-information/data-center/statistical-programs/occupational-employment-statistics-and-wages.
[4] Section 1007.2616(1), F.S.
[5] *Id.*
[6] The Course Code Directory (CCD) lists all public preK-12 and postsecondary career and technical education courses available for use by school districts. Programs and courses funded through the Florida Education Finance

Advanced International Certificate of Education, and International Baccalaureate programs.[7] Courses in computer science are also listed in the Career and Technical Education Program and Course Listing section of the CCD.[8]

In 2016, the State Board of Education revised the Next Generation Sunshine State Standards to include K-12 computer science standards.[9] The Florida Department of Education (DOE) has identified general education courses that will incorporate the newly adopted computer science standards. At the secondary level, such course is "Meteorology Honors for Grade 9-12."[10]

The DOE has also identified career and technical education courses and programs that contain the new computer science standards.[11] However, such courses or programs are not linked to any specified industry certifications.[12]

Teacher Qualifications

Educator Certification in Computer Science

The standard specialization requirements for an educator to be certified to teach K-12 academic computer science courses include:[13]

- A bachelor's or higher degree with an undergraduate or graduate major in computer science or computer science education, or
- A bachelor's or higher degree with 30 semester hours in computer science or computer science education to include credit in:
  - Computer applications and
  - Computer programming.

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. Rule 6A-1.09441, F.A.C.. The CCD also includes details regarding appropriate teacher certification levels. Section 1012.55(1)(c), F.S.

[7] Florida Department of Education, *2017-2018 Course Code Directory, Grades 9 to 12 and Adult Education Course Listing,* http://www.fldoe.org/core/fileparse.php/7746/urlt/1718CCD-Basic9-12.pdf, at 8-9.

[8] Florida Department of Education, *2017-2018 Course Code Directory*, Career and Technical Education, http://www.fldoe.org/core/fileparse.php/7746/urlt/1718-CCD-CTE.pdf, at 129-162.

[9] *See* rule 6A-1.09401(1)(n), F.A.C.

[10] Florida Department of Education, *Course and CTE Programs that Include the New Computer Science Standards for the 2017-2018 School Year*, Memorandum DPS: 2017-26 (Mar. 3, 2017).

[11] *Id.*

[12] Email, Florida Department of Education (Jan. 11, 2018).

[13] Rule 6A-4.0121, F.A.C.

The standard requirements for an educator to be certified to teach career and technical education courses and programs in information technology[14] are specified in the appropriate secondary and postsecondary adult vocational program curriculum framework.[15]

General Requirements for Educator Certification

The Legislature has established certification requirements to assure that educational personnel in public schools possess appropriate skills in reading, writing, and mathematics, and adequate pedagogical knowledge, including the use of technology to enhance student learning, and relevant subject matter competence to demonstrate an acceptable level of professional performance.[16]

Each person employed as a teacher in a public school must hold a certificate required by law and rules of the State Board of Education.[17] Educator certificates include the:

- Professional certificate, which is the standard, renewable type of certificate.[18] The professional certificate is valid for up to five years.[19]
- Temporary certificate, for employment in full-time positions for which a Florida educator certificate is required.[20] The temporary certificate is valid for three school fiscal years and is nonrenewable.[21]

In addition, school districts are authorized to issue adjunct teaching certificates to part-time teachers who have expertise in the subject area to be taught.[22]

Educator Performance Evaluations

Instructional personnel[23] employed by Florida's public school districts must undergo an annual performance evaluation.[24]

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[14] The Information Technology Career Cluster incorporates four pathways. Network Systems; Information Support & Services; Programming & Software Development; and Interactive Media. Florida Department of Education, *Information Technology*, http://www.fldoe.org/academics/career-adult-edu/career-tech-edu/info-technology.stml (last visited Jan. 12, 2018).

[15] Florida Department of Education, *Information Technology*, http://www.fldoe.org/academics/career-adult-edu/career-tech-edu/curriculum-frameworks/2017-18-frameworks/info-technology.stml (last visited Jan. 12, 2018).

[16] Section 1012.54, F.S.

[17] Sections 1012.55(1)(b) and 1002.33(12)(f), F.S. Teacher certification is administered and implemented by the DOE. Rule 6A-4.001, F.A.C.

[18] Rule 6A-4.004(2)(a), F.A.C.

[19] Section 1012.56(7)(a), F.S. The validity period is expressed as 5 years from July 1 of the school fiscal year. Rule 6A-4.0051(3)(c), F.A.C.

[20] Rule 6A-4.004(1)(a)2., F.A.C.

[21] Section 1012.56(7), F.S. The validity period is expressed in school fiscal years. Rule 6A-4.004(1)(a), F.A.C.

[22] Section 1012.57(1), F.S.

[23] Instructor personnel means any K-12 staff member who provides direct instructional services to students or provide direct support in the learning process of students. Section 1012.01(2), F.S. Instructional personnel includes classroom teachers, student personnel services, librarians and media specialists, education paraprofessionals, and other instructional staff. *Id.*

[24] Section 1012.34(3), F.S. Newly hired classroom teachers are evaluated twice in their first year of teaching in a school district. *Id*.

The evaluation system for instructional personnel must differentiate among four levels of performance as follows: [25]

- Highly effective.
- Effective.
- Needs improvement or, for instructional personnel in the first 3 years of employment who need improvement, developing.
- Unsatisfactory.

Florida Virtual School

The FLVS is intended to develop and deliver online and distance learning education.[26] The mission of the FLVS is to provide students with technology-based educational opportunities to gain the knowledge and skills necessary to succeed.[27] The school must serve any student in the state who meets the profile for success[28] in the online educational environment.[29]

III. Effect of Proposed Changes:

The bill amends s. 1007.2616, F.S., to promote opportunities for public middle and high school students to learn computer science taught by qualified teachers. Specifically, the bill:

- Expands access to computer science courses by:
  - Requiring middle schools and high schools to offer computer science courses.
  - Requiring computer science courses that meet the specified definition to be identified in the Course Code Directory (CCD) and on the Department of Education's (DOE or department) website.
- Creates opportunities for teachers to be certified and trained to teach computer science courses, and requires the DOE to award funding, subject to legislative appropriation, to a school district or consortium of school districts to deliver or facilitate training for educators to earn a certificate in computer science or specified industry certification, or to pay fees for examinations that lead to a credential.
- Provides, subject to legislative appropriation, the following bonuses to a public school educator evaluated as effective or highly effective, or is newly hired, subject to legislative appropriation:
  - $1,000 after each year teaching a computer science course, for up to three years, if the educator holds a certificate in computer science or has passed the computer science subject area examination and holds an adjunct certificate.
  - $500 after each year teaching a specified course, for up to three years, if the educator holds an industry certification.

[25] Section 1012.34(2)(e), F.S.
[26] Section 1002.37(1)(a), F.S.
[27] *Id.* at (b).
[28] The FLVS has identified hard and soft skills and other requirements that facilitate student success in online instruction. Such skills include written and oral communication, academic honesty, self-motivation, computer literacy, time management, reading competency, personal commitment, and access to technology. Email, Florida Virtual School (Jan. 9, 2018).
[29] Section 1002.37(1)(b), F.S.

Access to Computer Science Courses

The bill requires that middle school and high school students must be provided opportunities to take computer science courses. Such courses must be integrated into each school districts middle and high schools, including combination schools in which any of grades 6 through 12 are taught. Additionally, high school students must be provided opportunities to take computer science courses to satisfy high school graduation requirements

Computer Science Instruction through the Florida Virtual School

The bill requires the Florida Virtual School (FLVS) to offer computer science courses identified in the CCD. If a school district does not offer an identified computer science course, the district must provide students access to the course through the FLVS or through other means.

Computer Science Course Identification

The bill also requires that computer science courses that meet the specified requirements must be identified on the department's website and in the CCD no later than July 1, 2018. The State Board of Education must develop rules so that additional computer science courses may also be subsequently identified and posted on the department's website. Accordingly, the DOE may need to update the CCD to accommodate the identification of computer science courses.

Teacher Qualifications

The bill provides that, subject to legislative appropriation, after the DOE has identified courses in the CCD, a school district or consortium of school districts may apply, in a format prescribed by the DOE, for funding to deliver or facilitate training for classroom teachers to earn an educator certificate in computer science or an industry certification associated with a course identified in the CCD. The funds must be awarded to school districts in a manner that allows equitable distribution of funding statewide based on the student population. The school district or consortium of school districts that apply for such funding may use the funds to:

- Provide training for classroom teachers, and
- Pay fees for examinations that lead to an educator certificate in computer science.

Such efforts may increase the number of teachers who possess a computer science credential or an applicable industry certification. In 2014-2015, the number of Florida teacher certificates in computer science was 593, which represented 0.15 percent of all certificates.[30]

Teacher Bonus

The bill creates, subject to legislative appropriation, a bonus for educators who:

- Were evaluated as effective or highly effective in the prior school year, unless such teachers are newly hired and have not been evaluated.
- Teach a computer science course that meets the specified requirements at a public middle, high, or combination school.

[30] Florida Department of Education, *Identification of Critical Teacher Shortage Areas*, http://www.fldoe.org/core/fileparse.php/7766/urlt/CTSA1617.pdf , at 4.

In addition to meeting the specified criteria, the educators must:

- Hold an educator certificate in computer science or has passed the computer science subject are examination and holds an adjunct certificate to receive a bonus of $1,000 after each year of teaching a specified computer course, for up to 3 years.
- Hold an industry certification associated with a computer science course identified in the CCD to receive a bonus of $500 after each year teaching the specified course, for up to 3 years.

The bill requires the school district to report qualifying classroom teachers to the DOE by a format established by the department. The bill requires the bonus to be disbursed upon completion of the school year in which the eligible classroom teacher taught the course. The bill clarifies that a teacher may not receive more than one type of bonus. Such bonus may provide incentive to teachers to seek a credential in computer science or an industry certification associated with computer science courses.

The bill requires the State Board of Education to adopt rules to administer the provisions related to computer science and technology instruction.

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 may impact certain teachers. Specifically, the bill provides a bonus, for up to 3 years, to a public school educator of:

- $1,000 if the educator holds an educator certificate in computer science or an adjunct certificate, and meets other specified criteria.
- $500 if the educator holds an applicable industry certification, and meets other specified criteria.

C. Government Sector Impact:

The total cost to provide a bonus to teachers who hold a certificate in computer science or applicable industry certifications is currently indeterminate. According to the Department of Education (DOE), approximately 460 teachers hold a state-issued computer science teaching certificate. If each of these teachers received the bonus authorized under this bill, the estimated cost would be $1,380,000. The DOE does not collect industry certification data at the teacher level. Therefore, the cost of those bonuses is indeterminate.[31]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 1007.2616 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 March 2, 2018:
The committee substitute:
- Removes the phased-in requirement for school districts to offer computer science courses in a specified percentage of the district's total number of traditional, public, middle, high, and combination schools within a specified timeframe.
- Removes the requirement for the Department of Education to provide, subject to legislative appropriation, high-need district technology grants to school, districts for which the Florida digital classrooms allocation and instructional materials funds are insufficient to meet the district's technology needs.

CS by Education on January 16, 2018:
The committee substitute:
- Shifts the focus of the bill from computer coding courses to computer science courses;
- Makes adjustments to teacher bonus amounts and disbursements;
- Makes adjustments to the award of high-need technology grants to school districts (based on whether digital classroom funds or instructional materials funds are insufficient to meet the costs), and
- Removes from the bill the $15 million appropriation.

[31] Florida Department of Education, *2018 Legislative Bill Analysis for SB 1056* (Dec. 11, 2017), at 5 and 6.

B. Amendments:

None.

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

By the Committee on Education; and Senator Passidomo

581-02140-18 20181056c1

A bill to be entitled

An act relating to computer science instruction; amending s. 1007.2616, F.S.; providing a definition; providing requirements for specified instruction relating to computer science; requiring school districts to provide computer science courses in a specified number of schools by certain dates; requiring certain computer science courses to be included in the Course Code Directory and published on the Department of Education's website by a specified date; providing that student enrollment in certain courses offered by the Florida Virtual School meet specified requirements; providing that a charter school is not required to offer computer science courses; providing that charter schools that offer such courses may be used in meeting a school district's percentage thresholds; requiring the Florida Virtual School to offer certain computer science courses; requiring school districts to provide access to computer science courses offered by the Florida Virtual School or by other means under certain circumstances; providing funds for school districts to provide professional development for classroom teachers; providing Department of Education responsibilities for the distribution of such funds; requiring high school students to be provided opportunities to take certain courses to meet certain graduation requirements; providing funds for bonuses for certain classroom teachers; providing funding for

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

581-02140-18 20181056c1

high-need technology grants for school districts; requiring, rather than authorizing, the State Board of Education to adopt rules; providing an effective date.

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

Section 1. Section 1007.2616, Florida Statutes, is amended to read:

1007.2616 Computer science and technology instruction.—

(1) For the purposes of this section, the term "computer science" means the study of computers and algorithmic processes, including their principles, hardware and software designs, applications, and their impact on society, and includes computer coding and computer programming.

(2)(a) ~~(1)~~ Public schools shall provide students in grades K-12 opportunities for learning computer science, including, but not limited to, computer coding and computer programming. Such opportunities may include coding instruction in elementary school and middle school and~~,~~ instruction to develop students' computer usage and digital literacy skills in middle school, and must include courses in computer science~~, computer coding, and computer programming~~ in middle school and high school, including earning-related industry certifications. Such courses must be integrated into each school district's middle and high schools, including combination schools in which any of grades 6 through 12 are taught, as follows:

1. Beginning with the 2018-2019 school year, a school district shall provide at least one computer science course in no less than 4 percent of the district's total number of middle,

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

high, and combination schools.

2. Beginning with the 2019-2020 school year, a school district shall provide at least one computer science course in no less than 7 percent of the district's total number of middle, high, and combination schools.

3. Beginning with the 2020-2021 school year, a school district shall provide at least one computer science course in no less than 10 percent of the district's total number of middle, high, and combination schools.

4. Notwithstanding subparagraphs 1.-3., a school district with 10 or fewer public middle, high, and combination schools shall provide at least one computer science course in at least one middle, high, or combination school no later than the 2020-2021 school year.

(b) Computer science courses that count toward the percentage thresholds in paragraph (a) must be identified in the Course Code Directory and published on the Department of Education's website no later than July 1, 2018. Additional computer science courses may be subsequently identified and posted on the department's website.

(c) Student enrollment in computer science courses offered by the Florida Virtual School pursuant to subsection (3) may be used to satisfy the requirements of subparagraphs (a)1.-3.

(d) A charter school is not required to offer a computer science course; however, enrollment of a charter school's students in a computer science course under this section may be included in the school district's percentage calculation.

(3) The Florida Virtual School shall offer computer science courses identified in the Course Code Directory pursuant to

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

paragraph (2)(b). If a school district does not offer an identified course, the district must provide students access to the course through the Florida Virtual School or through other means.

(4)(a) Subject to legislative appropriation, a school district or a consortium of school districts may apply to the department, in a format prescribed by the department, for funding to deliver or facilitate training for classroom teachers to earn an educator certificate in computer science pursuant to s. 1012.56 or an industry certification associated with a course identified in the Course Code Directory pursuant to paragraph (2)(b). Such funding shall only be used to provide training for classroom teachers and to pay fees for examinations that lead to a credential pursuant to this paragraph.

(b) Once the department has identified courses in the Course Code Directory pursuant to paragraph (2)(b), the department shall establish a deadline for submitting applications. The department shall award funding to school districts in a manner that allows for an equitable distribution of funding statewide based on student population.

(5) ~~(2)~~ Elementary schools and middle schools may establish digital classrooms in which students are provided opportunities to improve digital literacy and competency; to learn digital skills, such as coding, multiple media presentation, and the manipulation of multiple digital graphic images; and to earn digital tool certificates and certifications pursuant to s. 1003.4203 and grade-appropriate, technology-related industry certifications.

(6) ~~(3)~~ High school students must be provided ~~schools may~~

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

~~provide students~~ opportunities to take computer science courses to satisfy high school graduation requirements, including, but not limited to, the following:

(a) High school computer science courses of sufficient rigor, as identified by the commissioner, such that one credit in computer science and the earning of related industry certifications constitute the equivalent of up to one credit of the mathematics requirement, with the exception of Algebra I or higher-level mathematics, or up to one credit of the science requirement, with the exception of Biology I or higher-level science, for high school graduation. Computer science courses and technology-related industry certifications that are identified as eligible for meeting mathematics or science requirements for high school graduation shall be included in the Course Code Directory.

(b) High school computer technology courses in 3D rapid prototype printing of sufficient rigor, as identified by the commissioner, such that one or more credits in such courses and related industry certifications earned may satisfy up to two credits of mathematics required for high school graduation with the exception of Algebra I. Computer technology courses in 3D rapid prototype printing and related industry certifications that are identified as eligible for meeting mathematics requirements for high school graduation shall be included in the Course Code Directory.

(7) Subject to legislative appropriation, a classroom teacher who was evaluated as effective or highly effective pursuant to s. 1012.34 in the previous school year or who is newly hired by the district school board and has not been

evaluated pursuant to s. 1012.34 must receive a bonus as follows:

(a) If the classroom teacher holds an educator certificate in computer science pursuant to s. 1012.56 or if he or she has passed the computer science subject area examination and holds an adjunct certificate issued by a school district pursuant to s. 1012.57, he or she shall receive a bonus of $1,000 after each year the individual completes teaching a computer science course identified in the Course Code Directory pursuant to paragraph (2)(b) at a public middle, high, or combination school in the state, for up to 3 years.

(b) If the classroom teacher holds an industry certification associated with a course identified in the Course Code Directory pursuant to paragraph (2)(b), he or she shall receive a bonus of $500 after each year the individual completes teaching the identified course at a public middle, high, or combination school in the state, for up to 3 years.

A school district shall report a qualifying classroom teacher to the department by a date and in a format established by the department. An eligible classroom teacher shall receive his or her bonus upon completion of the school year in which he or she taught the course. A teacher may not receive more than one bonus per year under this subsection.

(8) Subject to legislative appropriation, the department shall award high-need technology grants to eligible school districts if the funds provided in the Florida digital classrooms allocation pursuant to s. 1011.62(12) are insufficient to meet the costs specified in that subsection and

the district has no remaining instructional materials funds under s. 1011.67. The department shall establish an application process and eligibility criteria. Such criteria must be based on a school district's technology needs and must provide for an equitable distribution of funding based on the geographic distribution of the student population among school districts determined to have a high need for technology.

(9) ~~(4)~~ The State Board of Education shall ~~may~~ adopt rules to administer this section.

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

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 9, 2018

I respectfully request that **Senate Bill #1056**, relating to Computer Science Instruction, 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)

3/2/18
Meeting Date

1056
Bill Number (if applicable)

Topic Computer Science

Amendment Barcode (if applicable)

Name Brittney Hunt

Job Title Policy Director

Address 136 S. Bronough St.
Street

Tall. FL 32301
City *State* *Zip*

Phone (850) 521-1200

Email bhunt@flchamber.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Chamber of Commerce

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/2/18
Meeting Date

1056
Bill Number (if applicable)

Topic Computer Science

Amendment Barcode (if applicable)

Name COREY STANISCIA ("Stuh-knee-see-ah")

Job Title Government Affairs

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Street

Phone 954-806-7352

Tallahassee FL 32301
City *State* *Zip*

Email corey@tsecgov.com

Speaking: ~~For~~ ☐ Against ☐ Information

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

Representing Code.org

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

03/02/2018
Meeting Date

1056
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic COMPUTER SCIENCE INSTRUCTION

Name CAROL BRACY

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City *State* *Zip*

Phone 850.577.0444

Email carol@ballardfl.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing AMAZON.COM

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

3-2-18
Meeting Date

1056
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Computer Science Instruction

Name Leah Courtney

Job Title Communications Coordinator

Address 106 N. Bronough
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Email lcourtney@floridataxwatch,org

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

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on 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 1066
INTRODUCER:	Appropriations Committee and Senator Baxley
SUBJECT:	Transportation Facility Designations/Nelle W. Needham Memorial Highway
DATE:	March 5, 2018
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Miller	TR	**Favorable**
2.	McAuliffe	Hrdlicka	ATD	**Recommend: Favorable**
3.	McAuliffe	Hansen	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/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 the portion of S.R. 19 between Lane Park Cutoff Road and U.S. 441 in Lake County as "Sheriff Chris Daniels Memorial Highway." The bill 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 $2,000.

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]

[1] Section 334.071(1), F.S.

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]

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]

Sheriff Chris Daniels

Sheriff Chris Daniels began his law enforcement career in 1977 as a dispatcher with the Lake County Sheriff's Office and progressed through the ranks until 2004, when he was elected Lake County Sheriff. Sheriff Daniels was involved in a fatal accident on October 14, 2006, during a charity fund raising event.[5]

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 the portion of S.R. 19 between Lane Park Cutoff Road and U.S. 441 in Lake County as "Sheriff Chris Daniels Memorial Highway." The bill directs the Florida Department of Transportation (FDOT) to erect suitable markers.

The bill takes effect July 1, 2018.

[2] Section 334.071(2), F.S.
[3] Section 334.071(3), F.S.
[4] Information on file in the Senate Transportation Committee.
[5] *See* Lake County Sheriff's Office, Fallen officers Page, *Sheriff Chris Daniels - October 14, 2006*, available at https://www.lcso.org/memorial/index.php (last visited Feb. 27, 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 estimated cost to erect the designation markers required by the bill is $2,000, based on the assumptions that four 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 Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Appropriations on March 2, 2018:
The committee substitute adds the designation "Sheriff Chris Daniels Memorial Highway" at the portion of S.R. 19 between Lane Park Cutoff Road and U.S. 441 in Lake County.

B. Amendments:

None.

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

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.

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/CS/SB 1104 (472918)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Transportation, Tourism, and Economic Development); Transportation Committee; and Senator Brandes
SUBJECT:	Commercial Motor Vehicles
DATE:	March 1, 2018 REVISED:

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 1104 makes numerous changes relating to transportation. The bill:

- Defines "mobile carriers" and provides regulations for such devices;
- Increases the allowable weight of a personal delivery device to less than 100 pounds, instead of less than 80 pounds;
- Repeals s. 316.0895(2), F.S., which prohibits trucks and vehicles towing other vehicles or trailers from following one another within 300 feet on roadways outside of a business or residence district;
- Updates various commercial motor vehicle regulations to address compatibility issues with federal law and the International Registration Plan;
- Authorizes the Florida Turnpike Enterprise to fund, construct, and operate test facilities for the advancement of autonomous and connected transportation technology solutions for improving safety and congestion;
- Extends the Pilot Rebuilt Motor Vehicle Inspection Program to July 1, 2020, requires the Department of Highway Safety and Motor Vehicles (DHSMV) to submit a report evaluating the program by January 1, 2019, and provides additional requirements for the program;
- Prohibits the DHSMV or tax collectors from charging title transfer fees when transferring a motor vehicle title from a deceased owner to the deceased's spouse, parent, child, or sibling;

- Expands businesses that may be authorized to use the DHSMV's electronic filing system to an entity that, in the normal course of its business, process title transactions, derelict motor vehicle certificates, or certificates of destruction for derelict or salvage motor vehicles;
- Increases the time-frame apportionable vehicles must replace their license plates from annually to every five years;
- Authorizes an electronic copy of a motor vehicle certificate of registration or motor vehicle rental or lease documentation be accepted by law enforcement or agents of the DHSMV as proof of possession of such documentation, and provides restrictions and liability regarding the electronic device displaying such documentation;
- Allows motor vehicle dealers and fleet companies to purchase specialty license plates for use on dealer and fleet vehicles directly from the DHSMV upon approval by the specialty license plate's sponsoring organization;
- Creates a Fleet Vehicle Temporary Tag pilot program, which allows the DHSMV to partner with a county tax collector to establish an agreement with up to three companies allowing the issuance of up to 50 temporary tags at a time for use by the company's fleet vehicles;
- Removes reference in Florida Statutes to "digital proof of driver license" and replaces such term with "electronic credentials;"
- Requires the DHSMV implement protocols for issuing an optional electronic credential, provides requirements for the procurement of electronic credential and verification solution providers (including technological requirements), and authorizes the issuance and use of electronic credentials;
- Provides that a motor vehicle rental company is deemed to have met the requirements of inspecting a driver license and prohibiting the rental of a motor vehicle to a person required to be licensed who is not, if the renter verifies he or she holds a valid driver license and the vehicle is rented from the company through digital, electronic, or other means not requiring direct contact with an employee of the rental company;
- Removes a requirement that a person who rents a vehicle to another person compare the signature of the renter with the renter's driver license signature; instead the person must verify that the renter's driver license is unexpired;
- Creates a first degree grand theft crime for an offender who commits cargo theft and, in the course of committing the offense, uses a device that interferes with a global positioning system or similar system used to identify the location of the cargo or vehicle; and
- Makes technical and cross-reference changes to conform to changes made by the bill.

The bill also makes changes regarding motor vehicle platooning. Specifically, it:

- Repeals s. 316.0896, F.S., related to the assistive truck platooning technology pilot program, which has been conducted by the Florida Department of Transportation (FDOT) in consultation with the DHSMV;
- Defines the term "platoon" for purposes of the State Uniform Traffic Control Law;
- Authorizes motor vehicle platoons to be operated upon Florida roadways after an operator provides notification to the FDOT and DHSMV;
- Exempts non-lead platooning vehicles from the state's "following too closely" law; and
- Provides that s. 316.303, F.S., concerning television receivers, does not prohibit use of an electronic display by an operator of a platoon.

The bill may have a negative, but indeterminate fiscal impact to the DHSMV, the Highway Safety Operating Trust Fund, the State Transportation Trust Fund, the General Revenue Fund, and local tax collectors.
The bill makes changes to address compliance issues with federal laws relating to commercial motor vehicles. The state could experience a reduction of Federal-aid highway funds if the state remains non-compliant with such federal laws.

The Criminal Justice Impact Conference, which provides the final, official prison bed impact, if any, of legislation has not yet reviewed the bill to determine the overall prison bed impact of the bill. A preliminary estimate by conference staff indicates that the bill would have a positive indeterminate impact on prison beds, meaning the bill will result in an unquantifiable increase in prison beds.

The bill takes effect October 1, 2018.

II. Present Situation:

Due to the disparate issues in the bill, the present situation for each section is discussed below in conjunction with the effect of the proposed changes.

III. Effect of Proposed Changes:

Platoons (Sections 1, 4, 5, and 8)

Present Situation

Platooning is an emerging automated driving technology that allows vehicles to communicate with one another in order to electronically "link" to each other in a line at close proximity, where the lead vehicle controls the speed and braking of the following vehicles.[1] Each vehicle platoons by using an onboard computer connected to a vehicle-to-vehicle (V2V) communications device that receives and transmits data using Dedicated Short-Range Communications (DSRC), a two-way wireless communications capability permitting very high data transmission.[2] DSRC is used by both V2V communications as well as vehicle-to-infrastructure (V2I) communications to provide connectivity among vehicles and between infrastructure to prevent crashes and enable safety, mobility, and environmental sustainability.[3]

The National Highway Traffic Safety Administration (NHTSA) published a Notice of Proposed Rulemaking in January 2017, proposing to mandate V2V communications for new light vehicles and standardize the message and format of V2V transmissions to create a standard system, both of which would enable vehicle manufacturers to develop safety applications using V2V

[1] U.S. Department of Transportation, Volpe Center, *How an Automated Car Platoon Works* (July 31, 2017), https://www.volpe.dot.gov/news/how-automated-car-platoon-works (last visited Feb. 5, 2018).
[2] *Id.*
[3] U.S. Department of Transportation, Intelligent Transportation Systems Joint Program Office, *DSRC: The Future of Safer Driving*, https://www.its.dot.gov/factsheets/dsrc_factsheet.htm (last visited Feb. 5, 2018).

communications.[4] These V2V communication device requirements would use DSRC devices to transmit basic information on the road, such as a vehicle's speed, heading, brake status and path predictions, that can be used to provide drivers timely warnings of impending crash situations that drivers may not otherwise be capable of seeing.[5] NHTSA has expressed that V2V communication "shows great promise in helping to avoid crashes, ease traffic congestion, and improve the environment."[6]

Driver-Assistive Truck Platooning

One form of V2V technology is driver-assistive truck platooning (DATP), which allows trucks to communicate with one another and to travel as close as 30 feet apart with automatic acceleration and braking. A draft is created, reducing wind resistance and cutting down on fuel consumption.[7]

In 2016, s. 316.0896, F.S., was created to require the Florida Department of Transportation (FDOT), in consultation with the Department of Highway Safety and Motor Vehicles (DHSMV), to study the use and safe operation of DATP technology,[8] develop and conduct a pilot project to test the use and safe operation of vehicles equipped to operate using DATP, and submit results of the study and any findings or recommendations from the pilot project to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The FDOT developed the pilot project as a demonstration and operational phase to:

- Evaluate impacts of DATP on surrounding traffic and infrastructure;
- Evaluate feasibility of conducting enforcement responsibilities when DATP trucks are operating; and
- Evaluate administrative aspects of permitting DATP systems.[9]

The pilot project was conducted with Peloton Technology, one developer of DATP vehicle systems. Peloton's DATP is a cloud-based system that uses integrated sensors, controls, and wireless communications to determine in real time whether conditions are appropriate to allow specific trucks to engage in platooning operations.[10] Using V2V communications, the system synchronizes acceleration and braking between tractor-trailers, leaving steering to the drivers, but eliminating braking distance otherwise caused by lags in the front or rear driver's response

[4] Federal Motor Vehicle Safety Standards; V2V Communications, 82 Fed. Reg. 3854 (Jan. 12, 2017), https://www.federalregister.gov/documents/2017/01/12/2016-31059/federal-motor-vehicle-safety-standards-v2v-communications (last visited Feb. 5, 2018).
[5] *Id.*
[6] NHTSA, *Vehicle-to-Vehicle Communication*, https://www.nhtsa.gov/technology-innovation/vehicle-vehicle-communication (last visited Feb. 5, 2018).
[7] Go by Truck Global News, *Driver Survey: Platooning* (Nov. 18, 2014), http://www.gobytrucknews.com/driver-survey-platooning/123 (last visited Feb. 5, 2018).
[8] Section 316.003(20), F.S., defines "driver-assistive truck platooning technology" as "[v]ehicle automation and safety technology that integrates sensor array, wireless vehicle-to-vehicle communications, active safety systems, and specialized software to link safety systems and synchronize acceleration and braking between two vehicles while leaving each vehicle's steering control and systems command in the control of the vehicle's driver in compliance with the National Highway Safety Administration rules regarding vehicle-to-vehicle communications."
[9] *See* Florida Vender Bid System, *Request for Information from the FDOT – Driver Assistive Truck Platooning Pilot Project* (July 6, 2017), http://www.myflorida.com/apps/vbs/vbs_www.ad_r2.view_ad?advertisement_key_num=134408 (last visited Feb. 5, 2018).
[10] Peloton, How It Works, *The Platooning Experience*, https://peloton-tech.com/how-it-works/ (last visited Feb. 5, 2018).

time.[11] According to Peloton Technology, Peloton's demonstration of its DATP technology occurred on the Florida Turnpike and covered over 1,000 miles using two trucks traveling at a separation distance of approximately 65 feet.[12] At this time, FDOT has not submitted its report of the results of the study and any findings or recommendations from the pilot project.[13]

State Platoon Laws

According to Peloton, nine states have confirmed allowance for commercial deployment of DATP.[14] At least ten states with "following too closely" laws, including Florida,[15] exempt vehicles equipped with a DATP system or a platooning system from such state law.[16] Additionally, Arkansas, Michigan, Nevada, and Tennessee passed laws expressly allowing a person to operate DATP or platooning systems; however, Arkansas, Michigan, and Tennessee only allow operation upon state approval of a submitted operations plan or following a certain number of days after submission of such plan, if the plan is not rejected by the overseeing agency.[17] Several states and the federal government are continuing testing of DATP and other platooning systems.

Following Too Closely and TV Receiver Prohibitions

Section 316.0895, F.S., prohibits a driver of a motor vehicle to follow another vehicle more closely than is reasonable and prudent. It is unlawful, when traveling upon a roadway outside a business or residence district, for a motor truck or vehicle towing another vehicle or trailer to follow within 300 feet of a similar vehicle. The law exempts the vehicles operating as part of the FDOT's pilot project in a manner and at locations determined by the FDOT.[18]

Section 316.303, F.S., prohibits a motor vehicle operated on the highways of this state to be equipped with television-type receiving equipment that is visible from the driver's seat; however, this prohibition does not apply to an electronic display:

- Used in conjunction with a vehicle navigation system;
- Used in a vehicle equipped with autonomous technology in autonomous mode; or
- Used in a vehicle equipped and operating with DATP technology.

Effect of Proposed Changes

The bill repeals the pilot projects for DATP and permits platooning on Florida roadways.

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[11] *Id.*

[12] Peloton, *Peloton Technology demonstrates driver-assistive truck platooning system to Florida transportation leaders in connection with Florida Pilot Project* (Dec. 20, 2017), https://peloton-tech.com/driver-assistive-truck-platooning-demonstration-florida-transportation-leaders-connection-florida-pilot-project/ (last visited Feb. 5, 2018).

[13] DHSMV staff has indicated to the staff of the Senate Transportation Committee that the report is in the process of being finalized.

[14] Peloton *supra* note 12.

[15] See ss. 316.0895 and 316.0896(2), F.S.

[16] The other states are Arkansas, California (only for testing), Georgia, Michigan, Nevada, North Carolina, South Carolina, Tennessee, and Texas. *See* National Conference of State Legislatures, *Autonomous Vehicles – Self-Driving Enacted Legislation*, *Enacted Autonomous Vehicles Legislation* (Jan. 2, 2018), http://www.ncsl.org/research/transportation/autonomous-vehicles-self-driving-vehicles-enacted-legislation.aspx (last visited Feb. 5, 2018).

[17] *Id.*

[18] Section 316.0896, F.S.

Section 1 amends s. 316.003, F.S., to repeal the definition of "driver-assistive truck platooning technology," and add a definition for the term "platoon." The bill defines "platoon" as "a group of individual motor vehicles traveling in a unified manner at electronically coordinated speeds and following distances."

Section 4 repeals s. 316.0896, F.S., which created the assistive truck platooning technology pilot project conducted by the FDOT in consultation with the DHSMV.

Section 5 creates s. 316.0897, F.S., to provide that a platoon may be operated on Florida roadways after an operator provides notification to the FDOT and DHSMV. Additionally, Florida's "following too closely" law[19] does not apply to the operator of a non-lead vehicle in a platoon.

Section 8 amends s. 316.303, F.S., to remove reference to DATP technology and add that the prohibition on television receivers does not apply to an electronic display used by an operator of a platoon.

The bill does not specify how notification to the departments is required to be made or what information is required from the operator. It is unclear how law enforcement will be able to identify that a vehicle is operating in a platoon, thus exempt from certain traffic law requirements.

Personal Delivery Devices (Section 1)

Present Situation

Personal delivery devices (PDDs) are low-weight, low-speed devices that can carry roughly the equivalent of two grocery bags and resemble a box on wheels. PDDs can navigate around objects and people. Using a combination of mobile technology, the devices operate on integrated navigation and obstacle avoidance software that enable autonomous movement, but human operators may step in to ensure safety.[20] A PDD's cargo bay is locked when sent to make a delivery; only the delivery recipient can unlock the box with a code specific to that recipient. PDD locations are tracked, and delivery recipients can monitor the PDD's progress on a smartphone.[21]

In 2017, the Legislature established a regulatory framework for PDDs, creating definitions and approved operating parameters in ch. 316, F.S., the Florida Uniform Traffic Control Law. With certain exceptions,[22] and in the absence of a local prohibition, PDD operation on sidewalks and crosswalks within a county or municipality is authorized[23] when such use is permissible under

[19] Section 316.0895, F.S.
[20] *See* Starship Technologies Business, https://www.starship.xyz/business/ (last visited Feb. 16, 2018).
[21] *Id.*
[22] PDD operation on the Florida Shared-Use Nonmotorized Trail Network created under s. 339.81, F.S., or on components of the Florida Greenways and Trails System created under ch. 260, F.S., is prohibited. Section 316.008(7)(b)2., F.S.
[23] Section 316.2071, F.S.

federal law.[24] However, the law does not restrict a county or municipality from otherwise adopting regulations for the safe operation of PDDs.[25]

Section 316.003(51), F.S., currently defines "personal delivery device" to mean an electrically powered device[26] that:

- Is operated on sidewalks and crosswalks and intended primarily for transportation of property;
- Weighs less than 80 pounds, excluding cargo;
- Has a maximum speed of ten miles per hour; and
- Is equipped with technology to allow for operation of the device with or without the active control or monitoring of a natural person.

Effect of Proposed Changes

Section 1 amends s. 316.003(51), F.S., the definition of "personal delivery device," to increase the currently allowable PDD weight, excluding cargo, from less than 80 pounds to less than 100 pounds.

Mobile Carriers (Sections 1, 2, 6, 12, 13, and 29)

Present Situation

Mobile carriers are electronic devices designed to carry cargo and follow its operator through an electronic connection. For example, Piaggio Fast Forward has created a mobile carrier named Gita,[27] which is capable of hauling up to 44 pounds of goods while following a human operator or moving autonomously through an environment that has been previously mapped by the device.[28] The device does this by "linking" up to a belt with cameras worn by the user or by the device referring back to a specific map of a path it has already traveled. The device utilizes cameras and an ultrasonic range-finding system to avoid obstacles in its way.[29]

Currently, a mobile carrier is not defined in Florida law and Florida law does not contain any provisions regarding the operation of mobile carriers.

Effect of Proposed Changes

Section 1 amends s. 316.003, F.S., to define "mobile carrier" as an electrically powered device that weighs less than 80 pounds (excluding cargo), has a maximum speed of 12.5 miles per hour,

[24] Federal law, specifically 23 U.S.C. s. 217(h), prohibits any motorized vehicle on pedestrian walkways funded in whole or in part with federal dollars, except for maintenance purposes, snowmobiles when snow conditions and state or local regulations permit, motorized wheelchairs, electric bicycles when state or local regulations permit, and such other circumstances as the U.S. Department of Transportation secretary deems appropriate.
[25] Section 316.008(7)(b), F.S.
[26] A PDD is not considered a vehicle unless expressly defined by law as a vehicle. PDDs are also excluded from registration and insurance requirements under s. 320.02(19), F.S.; but the owner or operator of a PDD must maintain an insurance policy providing general liability coverage of at least $100,000 for damages arising from PDD operation.
[27] Gita means a trip or outing in Italian.
[28] *See* Piaggio Fast Forward, *Introducing Gita*, https://www.piaggiofastforward.com/gita (last visited Feb. 16, 2018).
[29] Wired, *The Cute Robot That Follows You Around and Schleps All Your Stuff* (Feb. 16, 2017), https://www.wired.com/2017/02/piaggio-gita-drone/ (last visited Feb. 16, 2018).

is operated on sidewalks and crosswalks, is intended primarily for transporting property, is primarily designed to remain within 25 feet of the property owner, and is equipped with technology to transport personal property with active monitoring of the property owner.

This section also provides that a mobile carrier is not considered a vehicle, motor vehicle, or a personal delivery device.

Section 2 amends s. 316.008, F.S., to authorize a mobile carrier to be operated on sidewalks and crosswalks within a county or municipality when such use is permissible under federal law,[30] but does not restrict a county or municipality from adopting regulations for the safe operation of mobile carriers.

Section 6 amends s. 316.2071, F.S., relating to personal delivery devices (PDDs), to provide regulation of mobile carriers similar to the state's regulation of PDDs. Specifically, the bill provides that a mobile carrier:

- Operating on a sidewalk or crosswalk has all the rights and duties applicable to a pedestrian under the same circumstances, except that the mobile carrier may not unreasonably interfere with pedestrians or traffic and must yield the right-of-way to pedestrians;
- Must obey all official traffic and pedestrian control signals and devices;
- Must be equipped with a braking system that, when active or engaged, enables the mobile carrier to come to a controlled stop;
- May not operate on a public highway except to cross a crosswalk;
- May not operate on a sidewalk or crosswalk unless the property owner remains within 25 feet of the mobile carrier; and
- May not transport hazardous materials.[31]

Sections 12 and 29 amend ss. 320.01 and 324.021, F.S., respectively, to provide that the term "motor vehicle" does not include mobile carriers.

Additionally, **section 13**, amends s. 320.02(19), F.S., to provide that a mobile carrier is not required to be registered or insured to be operated within the state.

Following Too Closely Law (Section 3)

Present Situation

Section 316.0895(1), F.S., prohibits a driver of a motor vehicle to follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of vehicles and traffic upon, and the condition of, the highway. Section 316.0895(2), F.S., prohibits a motor truck, motor truck drawing another vehicle, or vehicle towing another vehicle or trailer, when traveling

[30] Federal law, specifically 23 U.S.C. s. 217(h), prohibits any motorized vehicle on pedestrian walkways funded in whole or in part with federal dollars, except for maintenance purposes, snowmobiles when snow conditions and state or local regulations permit, motorized wheelchairs, electric bicycles when state or local regulations permit, and such other circumstances as the U.S. Department of Transportation secretary deems appropriate.

[31] As defined in s. 316.003(28), F.S., a hazardous material is any substance or material determined by U.S. Department of Transportation Secretary to be capable of imposing an unreasonable risk to health, safety, and property. This includes hazardous waste as defined in s. 403.703, F.S.

upon a roadway outside a business or residence district, to follow within 300 feet of another motor truck, motor truck drawing another vehicle, or vehicle towing another vehicle or trailer.

"Following-too-closely" (FTC) laws vary by state and can differ based on specific classes of vehicles. Among the states, the most common FTC law for cars require vehicle operators to follow vehicles in a manner that is "reasonable and prudent;" the most common FTC law for heavy trucks specifies required distances or distance intervals, or requires sufficient space for vehicles to enter and occupy without danger; and the least common FTC law requires specified time intervals between vehicles.[32] Additionally, some U.S. jurisdictions lack explicit FTC laws.[33]

Effect of Proposed Changes

Section 3 repeals s. 316.0895(2), F.S., to remove the 300 feet requirement for trucks or vehicles towing another vehicle or trailer when following a similar vehicle.

Federal Motor Carrier Safety Administration Compatibility (Section 7)

Present Situation

The Federal Motor Carrier Safety Administration (FMCSA) was established within the United States Department of Transportation on January 1, 2000. Its primary mission is to prevent commercial motor vehicle (CMV)-related fatalities and injuries.[34]

Section 316.302, F.S., provides that all owners and drivers of CMVs[35] operated on the public highways of this state while engaged in *interstate* commerce are subject to the rules and regulations contained in the following parts of the Federal Motor Carrier Safety Regulations:[36]

- Part 382, Controlled Substance and Alcohol Use and Testing;
- Part 385, Safety Fitness Procedures;
- Part 390, General Federal Motor Carrier Safety Regulations;
- Part 391, Qualifications of Drivers;
- Part 392, Driving of Commercial Motor Vehicles;
- Part 393, Parts and Accessories Necessary for Safe Operation;
- Part 395, Hours of Service of Drivers;
- Part 396, Inspection, Repair, and Maintenance; and
- Part 397, Transportation of Hazardous Materials; Driving and Parking Rules.

[32] Competitive Enterprise Institute, *Authorizing Automated Vehicle Platooning* (July 18, 2017), https://cei.org/sites/default/files/Marc%20Scribner%20-%20Authorizing%20Automated%20Vehicle%20Platooning%202017.pdf (last visited Feb. 16, 2018).
[33] *Id.*
[34] FMCSA website, *About Us* (Mar. 31, 2014), https://www.fmcsa.dot.gov/mission/about-us (last visited Feb. 16, 2018).
[35] Section 316.003(12), F.S., defines "commercial motor vehicle" as "any self-propelled or towed vehicle used on the public highways in commerce to transport passengers or cargo, if such vehicle: (a) Has a gross vehicle weight rating of 10,000 pounds or more; (b) Is designed to transport more than 15 passengers, including the driver; or (c) Is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act, as amended (49 U.S.C. ss. 1801 et seq.)."
[36] 49 C.F.R. ch. III, subchapter B.

Owners and drivers of CMVs engaged in *intrastate* commerce are subject to the same rules and regulations, unless otherwise provided in s. 316.302, F.S., as such rules and regulations existed on December 31, 2012.[37] To remain compatible with the Federal Motor Carrier Safety Regulations, states generally have up to three years from the effective date of new federal requirements to adopt and enforce such requirements.[38] States that remain incompatible risk losing federal funding. A 2007 Florida State Motor Carrier Safety Assistance Program (MCSAP) review found that the Florida Statutes contain multiple compatibility issues.[39]

2007 Florida State MCSAP Review Findings

Section 316.302(1)(b), F.S., provides an exception from 49 C.F.R. s. 390.5 as it relates to the definition of a bus, defined as "any motor vehicle designed, constructed, and/or used for the transportation of passengers, including taxicabs." Florida law excludes taxicabs from the definition of a bus.[40] The MCSAP Review noted that Florida Statutes "exempting, from the definition of a bus, taxicabs as it applies to the intrastate private transportation of passengers, is not compatible" with federal law.[41]

Federal law prohibits certain lamps and reflective devices from being obscured on CMVs.[42] However, s. 316.215(5), F.S., provides an exception from this requirement for front-end loading collection vehicles that are engaged in collecting solid waste or recyclable or recovered materials and are being operated at less than 20 miles per hour with hazard-warning lights activated. According to the MCSAP review, federal law provides no such exemption.[43]

Section 316.302(2)(d), F.S., provides an exemption from compliance with 49 C.F.R. s. 395.8, requiring record of a driver's duty status, for a driver of a CMV if the driver:

- Is operating solely in intrastate commerce;
- Is not transporting any hazardous materials in amounts that require placarding;[44]
- Is within 150-air miles of the vehicle's base location; and
- Complies with specific federal requirements relating to hours of service.[45]

Additionally, state law provides that if a driver is not released from duty within 12 hours of arriving on duty, the motor carrier must maintain documentation of the driver's driving times throughout the duty period. The MCSAP review found that the exemption and alternate records requirement contained in s. 316.302(2)(d), F.S., does not comply with federal regulations because the federal exemption for such drivers also requires that the driver return to the work reporting location and is released from work within 12 consecutive hours.[46]

[37] Section 316.302(1)(b), F.S.
[38] 49 C.F.R. *Appendix A to Part 355 – Guidelines for the Regulatory Review – State Determinations* (2016).
[39] 2007 Florida State MCSAP Review, *Summary Findings, Recommendations, and Noteworthy Practices* (June 2007) (on file with the Senate Committee on Transportation).
[40] Section 316.003(6), F.S.
[41] 2007 Florida State MCSAP Review, at p. 2, *FL/FI-1*.
[42] 49 C.F.R. s. 393.9(b)
[43] 2007 Florida State MCSAP Review, at p. 4, *FL/FI-7*.
[44] Pursuant to 49 C.F.R. part 172
[45] As provided in 49 C.F.R. s. 395.1(e)(1)(iii) and (v).
[46] 2007 Florida State MCSAP Review, at p. 5, *FL/FI-8*.

Federal law allows a state to exempt a CMV from all or part of its laws or regulations relating to intrastate commerce if the vehicle's gross vehicle weight, gross vehicle weight rating, gross combined weight, or gross combined weight rating is less than 26,001 pounds and the vehicle is not:

- Transporting hazardous materials requiring a placard; or
- Designed or used to transport 16 or more people, including the driver.[47]

However, s. 316.302(2)(f), F.S., provides exemptions from federal laws or regulations for a person who operates a CMV solely in intrastate commerce, having a *declared* gross vehicle weight of less than 26,001 pounds, and who is not transporting hazardous materials in an amount that requires placarding or who is transporting petroleum products. According to the MCSAP Review, the state interprets this statute as exempting such vehicles transporting petroleum products even if a hazardous materials placard is required, which is not in compliance with federal regulations.[48]

Maximum Driving Time

Section 316.302(2), F.S., provides prohibitions to the length of time CMV drivers may drive, as well as exemptions from federal requirements for specified vehicles. Section 316.302(2)(b), F.S., provides that a person who operates a CMV solely in intrastate commerce without any hazardous materials in amounts requiring placarding may not drive:

- More than 12 hours following 10 consecutive hours off duty; or
- For any period after the end of the 16th hour after coming on duty following 10 consecutive hours off duty.

Except as provided in the federal hours of service rules,[49] a person operating a CMV solely in intrastate commerce not transporting any hazardous material may not drive after having been on duty more than 70 hours in any period of seven consecutive days or more than 80 hours in any period of eight consecutive days if the motor carrier operates every day of the week.[50] Upon request of DHSMV, motor carriers are required to furnish time records or other written verification so that DHSMV can determine compliance with the hours of service requirements. Falsification of time records is subject to a civil penalty not to exceed $100.[51]

Effect of Proposed Changes

Section 7 amends multiple provisions in s. 316.302, F.S., to address federal compatibility issues.

This section amends s. 316.302(1), F.S., to clarify that the section applies to all CMVs and buses, except as provided in s. 316.302(3), F.S., relating to covered farm vehicles.

[47] 49 C.F.R. s. 350.341(a)
[48] 2007 Florida State MCSAP Review, at p. 5, *FL/FI-3*.
[49] 49 C.F.R. s. 395.1
[50] Section 316.302(2)(c), F.S.
[51] This penalty is found in s. 316.302(2)(c), F.S. However, s. 316.3025, F.S., relating to CMV penalties, provides that a penalty of $100 may be assessed for a violation of s. 316.302(2)(b) or (c), F.S.

This section adopts federal laws that intrastate CMV owners and drivers are required to comply with as such federal rules and regulations existed on December 31, 2017.[52] However, s. 316.302(1)(e), F.S., is created to delay the requirement for electronic logging devices and hours of service support documents[53] for intrastate motor carriers not carrying hazardous materials in amounts requiring placarding until December 31, 2018.

This section amends s. 316.302(1)(d), F.S., to repeal an exemption from federal law allowing specified CMVs to obscure certain lighting or reflective devices.

Due to changes in federal law, the section amends s. 316.302(2)(a), F.S., to provide clarity that drivers of intrastate CMVs that are not transporting hazardous materials requiring placarding are exempt from 49 C.F.R. s. 395.3, which provides maximum driving times for property-carrying vehicles. These drivers continue to be subject to the maximum driving times required by state law.

Section 316.302(2)(c), F.S., is amended to remove a duplicate penalty for falsifying hours of service records.

Section 316.302(2)(d), F.S., is amended to refer to the correct federal regulations that allow a motor carrier to be exempt from being required to maintain records of duty status for short-haul drivers. In order to be exempt, the driver must also return to the work reporting location and be released from work within 12 consecutive hours and have either 10 or 8 hours off (property-carrying and passenger-carrying CMVs).

Lastly, the section amends s. 316.302(2)(f), F.S., to remove specified exemptions from federal law or regulations for drivers transporting petroleum products. The paragraph is also amended to refer to the federal criteria for the exemption: CMVs having a *gross vehicle weight, gross vehicle weight rating, and gross combined weight rating* of less than 26,001 pounds, instead of a *declared* gross vehicle weight.

Innovative Technology/Turnpike Funding (Section 9)

Present Situation

Section 338.2215, F.S., expresses Legislative intent that the Florida Turnpike Enterprise (FTE) within the FDOT maximize the advantages obtainable through fully leveraging the turnpike system asset, and that the additional powers and authority granted to the FTE will provide it with the autonomy and flexibility to enable it to more easily pursue innovations and best practices found in the private sector in, among other items, operations. Section 338.2216(1)(d), F.S., directs the FTE in part to "pursue and implement new technologies and processes in its operations."

[52] A list of Final Rules adopted as of December 31, 2016, that affect FMCSA rules and regulations are available on the FMCSA website, *Rulemaking Documents,* https://www.fmcsa.dot.gov/regulations/search/rulemaking?keyword=&dt=final&topic (last visited Feb. 5, 2018).
[53] Electronic Logging Devices and Hours of Service Supporting Documents, 80 Fed. Reg. 78291 (Dec. 16, 2015), https://www.federalregister.gov/documents/2015/12/16/2015-31336/electronic-logging-devices-and-hours-of-service-supporting-documents (last visited Feb. 5, 2018).

As an example of such efforts, the FTE and other entities are participating in a project called SunTrax. According to the project website, "located off I-4 between Orlando and Tampa, SunTrax is a large-scale, cutting-edge facility dedicated to the research, development and testing of emerging transportation technologies in safe and controlled environments."[54] Site construction began in June2017. The site covers 400 acres containing a multi-lane 2.25-mile long oval track and a 200-acre infield designed specifically for development and testing of automated driving systems.[55]

Effect of Proposed Changes

Section 9 amends s. 316.85, F.S., to authorize the FTE to fund, construct, and operate test facilities for the advancement of autonomous, connected, and innovative transportation technology solutions for the purposes of improving safety and decreasing congestion for the traveling public and to otherwise advance the FTE's objectives under ch. 338, F.S.

Pilot Rebuilt Motor Vehicle Inspection Program (Section 10)

Present Situation

A person may not sell a rebuilt vehicle until the vehicle's title labels that vehicle as rebuilt, which requires the motor vehicle go through a physical rebuilt motor vehicle inspection conducted by the DHSMV.[56] The purpose of the rebuilt inspection is to assure the identity of the vehicle and all major component parts that have been repaired or replaced. After an approved rebuilt inspection, the DHSMV affixes a decal to the vehicle that identifies the vehicle as a rebuilt vehicle.

The 2013 Florida Legislature created s. 319.141, F.S., for the implementation of a Pilot Rebuilt Vehicle Inspection Program (PRVIP) conducted in Miami-Dade and Hillsborough counties. The DHSMV set standards for the program and certified private sector inspection facilities in Miami-Dade County.[57] The program's purpose is to evaluate private sector alternatives for rebuilt inspection services, including the feasibility of using private facilities, the cost impact to consumers, and the potential savings to the DHSMV. The DHSMV is required to establish a memorandum of understanding (MOU) that allows private parties participating in the pilot program to conduct rebuilt vehicle inspections and specifies requirements for oversight, bonding and insurance, procedure, and forms, and requires the electronic submission of documents.

To be approved to conduct rebuilt vehicle inspections under the program, s. 319.141, F.S., requires an applicant:

- Have and maintain a surety bond or irrevocable letter of credit in the amount of $100,000, executed by the applicant;
- Secure and maintain a facility at a permanent structure at an address recognized by the United States Postal Service where the only services provided are rebuilt inspection services;

[54] For more information, see the SunTrax website at http://www.suntraxfl.com/#about-us (last visited Feb. 16, 2018).
[55] *See* SunTrax Brochure, http://www.suntraxfl.com/wp-content/uploads/2017/11/SunTrax-Brochure-.pdf. (last visited Feb. 16, 2018).
[56] Section 319.14(1)(b), F.S. A rebuilt vehicle is one that has been built from salvage or junk.
[57] No entities from Hillsborough County applied to participate in the program.

- Annually attest that he or she is not employed by or does not have an ownership interest in or financial arrangement with a motor vehicle repair shop, motor vehicle dealer, towing company, storage company, vehicle auction, insurance company, salvage yard, metal retailer, or metal rebuilder, from which he or she receives remuneration for the referral of customers for rebuilt inspection services;
- Have and maintain garage liability and other insurance required by the DHSMV;
- Have completed criminal background checks of the owners, partners, and corporate officers and the inspectors employed by the facility; and
- Meet any additional criteria the DHSMV determines necessary to conduct proper inspections.

As required by law, the DHSMV submitted a report[58] in 2015, which summarized the implementation of the pilot program and program results. Since October 1, 2013, the DHSMV has certified eight private businesses in the Miami area to conduct rebuilt vehicle inspections.[59] During Fiscal Year 2016-2017, a total of 71,342 rebuilt vehicle inspections were conducted in the state, of which 35,325 were by the PRVIP businesses.[60]

Currently, the DHSMV employees in Miami-Dade County are still responsible for conducting rebuilt vehicle inspections at the DHSMV Regional Office and at various off-site locations, and for monitoring the PRVIP businesses to ensure inspections are conducted in accordance with program standards.[61]

According to the DHSMV, each of the eight pilot program participants have met, and continue to meet, all of the statutory requirements and the MOU executed with DHSMV. Statutorily authorized state rebuilt inspection fees ($40) and re-inspection fees ($20) have been collected and remitted to the state as required. In addition, each pilot program participant is allowed to assess customers a service fee for each inspection. Service fees range from $50 to $85 and are not regulated in any manner by the DHSMV.[62]

The pilot rebuilt motor vehicle inspection program is repealed on July 1, 2018, unless saved from repeal through reenactment by the Legislature.

Effect of Proposed Changes

Section 10 amends s. 319.141, F.S., to require PRVIP business operators to:

- As part of the rebuilt inspection services, photograph the interior driver and passenger sides of the vehicle if the airbags were previously deployed and replaced;
- Secure and maintain a facility that is a permanent fixed structure which has an address identified by a county-issued tax folio number;

[58] DHSMV, *Florida's Private Rebuilt Vehicle Inspection Program – Pilot Program Report* (Jan. 30, 2015), http://www.flhsmv.gov/pdf/cabinetreports/privaterebuiltreport.pdf (last visited Feb. 16, 2018).
[59] DHSMV, Office of Inspector General, *Rebuilt Vehicle Inspection Program Audit Report 201617-24* (Dec. 5, 2017), https://www.flhsmv.gov/pdf/igoffice/20161724.pdf (last visited Feb. 16, 2018).
[60] *Id.*
[61] DHSMV, *Pilot Program Report*.
[62] DHSMV, *Pilot Program Report*.

- Annually attest that there have been no changes in the ownership structure of the facility and that the only services being provided at the property are rebuilt vehicle inspection services approved by the DHSMV;
- Have a designated office and customer waiting area that is separate from and not within view of the vehicle inspection area;
- Have a vehicle inspection area capable of accommodating all vehicle types and equipped with cameras allowing the DHSMV to view and monitor inspections.

This section prohibits program participants from conducting an inspection of a vehicle to be purchased by the current program applicant. Such vehicles must be inspected by the DHSMV.

This section also:
- Requires an applicant for a rebuilt title that fails an initial rebuilt inspection to have that vehicle re-inspected only by the DHSMV or the facility that conducted the original inspection;
- Prohibits a person or business authorized by the DHSMV to train, certify, or recertify operators and inspectors of private rebuilt inspection facilities from certifying or recertifying themselves or their employees;
- Requires the DHSMV to conduct onsite facility inspections at least twice a year;
- Requires the current facility operator to give the DHSMV a 45 day written notice of the intended transfer of ownership of the facility, and requires the transferee to meet all eligibility requirements of the program;
- Reenacts the pilot program, which saves the program from repeal on July 1, 2018, and provides for the repeal of the program on July 1, 2020, unless saved from repeal through reenactment by the Legislature; and
- Requires the DHSMV to submit a written report to the Governor and Cabinet on or before January 1, 2019, evaluating the current program and its benefits to consumers and the DHSMV.

Motor Vehicle Title Transfer Fee (Section 11)

Present Situation

Section 319.32(1), F.S., provides for a $70 fee for each original and duplicate certificate of title, except for motor vehicles for hire,[63] which are $49, and $2 for each salvage certificate of title. The DHSMV also charges $2 to note a lien on the certificate, $1 to cover the cost of materials, and $2.50 for shipping and handling. Additionally, s. 319.32(2), F.S., provides that there is a $4.25 service charge for each certificate of title application, a $10 additional fee for an original certificate of title issued for a vehicle registered outside of Florida, and a $7 additional fee for each lien placed on a vehicle by the state child support enforcement program.

The $70 fee is distributed between the State Transportation Trust Fund and the General Revenue Fund, excluding $1 that is deposited into the Highway Safety Operating Trust Fund (HSOTF) to fund the DHSMV's efforts to prevent and detect odometer fraud.[64] The DHSMV or the tax

[63] Vehicles registered under s. 320.08(6), F.S.

[64] Sections 319.32(5) and 319.324, F.S.; Section 319.32(5), F.S., provides that $47 of each fee collected for an original or duplicate certificate of title is deposited into the State Transportation Trust Fund, which may receive up to $200 million in

collector who processes the application retains the $4.25 service charge.[65] Additionally, expedited service for title transfers, issuances, duplicates, and recordation of liens is an option available for a $10 fee. If requested, expedited service ensures the title is issued within five working days after receipt of the application.[66]

In the event of the death of a motor vehicle owner, upon inheritance of the motor vehicle, a surviving spouse may dispose of a deceased spouse's vehicle without being required to transfer the certificate of title in his or her name.[67] Co-owners of a vehicle with names appearing conjoined by an "or" on the title are not required to apply for a new title when the other co-owner dies, as he or she already has absolute rights to the vehicle. As of July 1, 2017, the DHSMV and tax collector are prohibited from charging fees or service charges (excluding an expedited title fee, if applicable) for issuance of a motor vehicle certificate of title when the title is being issued solely to remove a deceased spouse as a co-owner of the vehicle when the other co-owner is the surviving spouse.[68] In any other situation when a person inherits a vehicle that he or she wishes to operate or sell, such person is required to transfer the certificate of title into his or her name and pay the applicable title fees.

Effect of Proposed Changes

Section 11 amends s. 319.32(7), F.S., to prohibit the DHSMV and tax collector from charging any fee or service charge, other than the expedited title fee, if applicable, for issuing a certificate of title to transfer a Florida-titled vehicle from a deceased owner to a surviving spouse or next of kin who is a resident of this state. For this purpose, the term "next of kin" includes the deceased's child, sibling, or parent.

International Registration Plan – Charter Buses (Section 12)

Present Situation

The International Registration Plan (IRP) is a registration reciprocity agreement among all states in the contiguous United States, the District of Columbia, and several Canadian provinces. It provides for the payment of license fees based on fleet operation in various member jurisdictions.[69] This allows carriers to operate inter-jurisdictionally while only needing to register its vehicles in its base jurisdiction, which is the state or province where the registrant has an established place of business.[70]

All "apportionable vehicles" domiciled in the state are required to be registered in accordance with the IRP and display "Apportioned" license plates.[71]

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any fiscal year. The remainder of the fee and any fees in excess of the $200 million are deposited into the General Revenue Fund.

[65] Section 319.32(2)(b), F.S.

[66] Section 319.323, F.S.

[67] Section 319.28(1)(c), F.S.

[68] Section 319.32(7), F.S., created by ch. 2017-89, Laws of Florida.

[69] International Registration Plan, Inc., *About IRP*, http://www.irponline.org/?page=AboutIRP (last visited Feb. 16, 2018).

[70] As defined by the IRP. IRP, *International Registration Plan with Official Commentary* (Jan. 1, 2017), http://c.ymcdn.com/sites/www.irponline.org/resource/resmgr/publications/IRP_agreement_eff_january_1_.pdf at p. 16 (last visited Feb. 16, 2018).

[71] Sections 320.0715(1) and 320.06(3)(a), F.S.

Apportionable vehicles that do not regularly operate in a particular jurisdiction also have the option to register for trip permits in order to operate in IRP member jurisdictions for limited periods where they do not pay license taxes.[72]

An "apportionable vehicle" is any vehicle that is used or intended for use in two or more member jurisdictions and that is used for the transportation of persons for hire or designed, used, or maintained primarily for the transportation of property, and:[73]

- Is a power unit having a gross vehicle weight in excess of 26,000 pounds;
- Is a power unit having three or more axles, regardless of weight; or
- Is used in combination, when the weight of such combination exceeds 26,000 pounds gross vehicle weight.

The Florida definition excludes recreational vehicles, vehicles displaying restricted plates, city pickup and delivery vehicles, government-owned vehicles, and buses used in transportation of chartered parties. The IRP definition excludes a recreational vehicle, a vehicle displaying restricted plates, or a government-owned vehicle. Excluded vehicles may voluntarily register.

Prior to January 1, 2016, charter buses were excluded from having to register under the IRP. The IRP was amended to remove charter buses from the exemption, requiring charter bus operations to register under the IRP. This registration ensures that a charter bus operation will pay license fees to each jurisdiction it operates in, and prevents or suspends the registration of unsafe carriers.[74]

Effect of Proposed Changes

Section 12 amends s. 320.01(24), F.S., to remove the exclusion of charter buses from the definition of apportionable vehicle. This change is necessary to align with the requirements of the IRP. All charter buses operating interstate are required to obtain an IRP registration or purchase trip permits.

DHSMV's Electronic Filing System (Section 14)

Present Situation

Section 320.03, F.S., provides the duties of tax collectors as it relates to motor vehicle licensing. It provides that jurisdiction over the electronic filing system (EFS) for use by authorized EFS agents for certain purposes is expressly preempted to the state, and the DHSMV has regulatory authority over the system. Specifically, the EFS is used to:

- Electronically title or register motor vehicles, vessels, mobile homes, or off-highway vehicles;

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[72] *Id*. *See also* IRP, *Trip Permits-Cost/Duration* (May 2016), http://www.irponline.org/resource/resmgr/Jurisdiction_Info_2/Trip_Permits_5.19.2016.xlsx (last visited Feb. 16, 2018).
[73] Section 320.01(24), F.S. IRP http://c.ymcdn.com/sites/www.irponline.org/resource/resmgr/publications/IRP_agreement_eff_january_1_.pdf, at p. 12-13 (last visited Feb. 16, 2018)
[74] *See* IRP, *Official Amendment to the International Registration Plan* (June 2014) http://c.ymcdn.com/sites/www.irponline.org/resource/resmgr/irp_ballots/ballot_391.pdf (last visited Feb. 16, 2018).

- Issue or transfer registration license plates or decals;
- Electronically transfer fees due for the title and registration process; and
- Perform inquiries for title, registration, and lienholder verification and certification of service providers.

The section provides that an entity that, in the normal course of its business, sells products that must be titled or registered, provides title and registration services on behalf of its consumers, *and* meets the requirements established by the DHSMV shall not be precluded from participating in the EFS upon request from the qualified entity.[75] The EFS must be available for use statewide and applied uniformly throughout the state. Additionally, the EFS agents may charge a fee to the customer for use of the EFS.

The EFS is primarily used by Florida's motor vehicle dealers to acquire access to the DHSMV registration and title information and to process title and registration transactions.[76]

Effect of Proposed Changes

Section 14 amends s. 320.03(10), F.S., to provide that the EFS system can be used to process title transactions, derelict motor vehicle certificates, and certificates of destruction for derelict and salvage motor vehicles. The bill adds that an entity that, in the normal course of its business, processes title transactions, derelict motor vehicle certificates, or certificates of destruction for derelict or salvage motor vehicles and meets the requirements established by the DHSMV may be an authorized EFS agent.

This section also reauthorizes DHSMV to adopt rules to administer the section, including, but not limited to, rules establishing participation requirements, certification of service providers, EFS requirements, disclosures, and enforcement authority for noncompliance.

This section is effective January 1, 2019.

Issuance of Apportionable Vehicle Plates (Sections 15 and 17)

Present Situation

Section 320.06, F.S., provides for motor vehicle registration certificates, license plates, and validation stickers. Registration license plates, which bear a graphic symbol and alphanumeric system of identification, are issued for a 10-year period. However, "Apportioned" license plates issued to vehicles registered under the IRP are issued annually.[77] Each original license plate costs $28, which is deposited into the Highway Safety Operating Trust Fund (HSOTF). Apportioned vehicles are also issued an annual cab card that denotes the declared gross vehicle weight for each apportioned jurisdiction where the vehicle is authorized to operate.[78]

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[75] Rule 15C-16.010 sets forth the DHSMV's requirements to be an EFS agent.
[76] For more information, see DHSMV website, *Electronic Filing System (EFS)*, https://www.flhsmv.gov/motor-vehicles-tags-titles/electronic-lien-titles/electronic-filing-system-efs/ (last visited Feb. 16, 2018).
[77] Section 320.06(1)(b)1., F.S.
[78] *See* IRP, *State of Florida Apportioned Cab Card Sample*, http://c.ymcdn.com/sites/www.irponline.org/resource/resmgr/cab_cards/fl_cc_sample.pdf (last visited Feb. 16, 2018).

Effect of Proposed Changes

Sections 15 and 17 amend ss. 320.06 and 320.0607, F.S., respectively, to provide that beginning October 1, 2019, apportioned vehicles will be issued license plates valid for a 5-year period, instead of annually. If the license plate is damaged or worn prior to the end of the 5-year period, the DHSMV may replace it at no charge upon application and surrender of the current plate. Cab cards and validation stickers will continue to be issued annually. The $28 annual fee will apply to the issuance of an original or renewal validation sticker, instead of for the cost of the plate.

Electronic Motor Vehicle Registrations and Rental Agreements (Section 16)

Present Situation

Section 320.0605, F.S., requires certificates of registration for motor vehicles. The registration certificate or an official copy, a true copy of rental or lease documentation issued for a motor vehicle or issued for a replacement vehicle in the same registration period, a temporary receipt printed upon self-initiated electronic renewal of a registration via the Internet, or a cab card issued for a vehicle registered under the IRP must, at all times while the vehicle is being used or operated on the roads of this state, be in the possession of the operator of the vehicle, or be carried in the vehicle for which it was issued. The certificate must be exhibited upon demand of any authorized law enforcement officer or an agent of the DHSMV, except for a registered fleet vehicle.[79] This provision does not apply during the first 30 days after purchase of a replacement vehicle. A violation is a noncriminal traffic infraction, punishable as a nonmoving violation as provided in ch. 318, F.S.[80]

Section 320.0605, F.S., requires that a person who rents or leases a vehicle is required to possess a true copy of rental or lease documentation for the motor vehicle at all times while the vehicle is being operated.[81] The documentation must include certain information including the date of rental and time of exit from rental facility.

Effect of Proposed Changes

Section 16 amends s. 320.0605, F.S., to authorize a person to possess an *electronic copy* of the motor vehicle registration or rental or lease documentation to be displayed upon the request of a law enforcement officer or an agent of the DHSMV. The bill provides that displaying the electronic copy does not constitute consent for the officer or agent to access any information on the device other than the displayed documentation. The person who presents the device to the officer assumes liability for any resulting damage to the device.

This section also repeals the requirement that the rental or lease documentation must include the time of exit from the rental facility.

[79] A fleet vehicle registered under s. 320.0657, F.S., provides for the permanent registration of fleet license plates.
[80] Chapter 318, F.S., relates to the disposition of traffic infractions.
[81] A person who cannot display such documentation upon request from an officer or agent of the DHSMV is guilty of a noncriminal traffic infraction, punishable as a nonmoving violation.

Specialty License Plates for Motor Vehicle Dealers and Fleets (Sections 15, 18, 19, and 20)

Present Situation

A franchised motor vehicle dealer, independent motor vehicle dealer, marine boat trailer dealer, or mobile home dealer and manufacturer license plate is subject to an annual license tax of $17.[82] These license plates are imprinted with the word "Dealer" at the bottom of the plate.[83] Dealers may, upon payment of the dealer plate license tax, secure one or more dealer license plates. These plates are valid while the motor vehicles are in the dealer's inventory and for sale, or while being operated in connection with the dealer's business, except when used as for-hire vehicles.[84]

Fleet license plates are available for companies that own or lease a minimum number of nonapportioned motor vehicles used for business purposes.[85] Such permanent plates are available upon approval by the DHSMV and payment of license taxes prescribed under s. 320.08, F.S. Fleet vehicle license plates have the word "Fleet" imprinted at the bottom of the plate.[86]

There are over 120 specialty license plates available for purchase in Florida.[87] However, neither dealer license plates nor fleet license plates are eligible to be specialty license plates. Specialty license plates require payment of an annual use fee, ranging from $15 to $25, paid in addition to required license taxes and service fees.[88] These annual use fees are distributed to an organization or organizations in support of a particular cause or charity signified in the plate's design and designated in statute.[89]

Effect of Proposed Changes

Sections 15, 18, 19, and 20 amend ss. 320.06, 320.0657, 320.08, and 320.08056, F.S., respectively, to allow a dealer or fleet company, with the permission of the specialty license plate organization, to purchase specialty license plates directly through the DHSMV to be used on dealer or fleet vehicles. The dealer or fleet company that orders specialty license plates for its vehicles must pay the annual use fee of the specialty license plate and any other applicable license taxes or fees. The specialty license plate will include the letters "DLR" for dealer license plates and "FLT" for fleet license plate embossed on the right side of the plate.

Fleet Vehicle Temporary Tag Pilot Program (Section 21)

Present Situation

Section 320.131, F.S., authorizes the DHSMV to design, issue, and regulate the use of temporary tags for use in certain cases provided in law when a permanent plate may not be immediately

[82] Section 320.08(12), F.S.
[83] Section 320.06(3), F.S.
[84] Section 320.13, F.S.
[85] Section 320.0657. DHSMV, Division of Motorist Services, Procedure RS-55, *Fleet Registration Program* (Feb. 8, 2013), http://www3.flhsmv.gov/dmv/Proc/RS/RS-55.pdf (last visited Feb. 16, 2018), provides that the fleet company must have a minimum of 200 vehicles or 25 trailers or semitrailers used exclusively to haul agricultural products.
[86] *Id.*
[87] A list of Florida's specialty license plates is available on the DHSMV website at http://www.flhsmv.gov/dmv/specialtytags/ (last visited Feb. 16, 2018).
[88] Section 320.08056, F.S.
[89] Section 320.08058, F.S.

available, and provides penalties for the misuse of temporary tags. Generally, a temporary tag is valid for 30 days.[90] Temporary tags cost $2 each, of which $1 is deposited into the Brain and Spinal Cord Injury Program Trust Fund and $1 into the Highway Safety Operating Trust Fund. DHSMV uses a print-on-demand electronic temporary tag registration, record retention, and issue system that is required to be used by every department-authorized issuer of temporary tags.[91] These issuers include motor vehicle dealers and tax collectors who frequently issue temporary tags on behalf of the DHSMV.

Effect of Proposed Changes

Section 21 amends s. 320.131, F.S., to create a Fleet Vehicle Temporary Tag Pilot Program. Beginning October 1, 2018, the DHSMV may partner with a county tax collector to conduct a pilot program that provides up to 50 temporary tags at a time to fleet companies who have at least 3,500 fleet vehicles registered in Florida. The DHSMV shall establish a memorandum of understanding (MOU) that allows a maximum of three companies to participate in the pilot program.

Under the pilot program:

- The temporary tags must be used exclusively on the company's fleet vehicles and may not be used on any other vehicle;
- Each temporary plate must be used on only one vehicle, and each vehicle may only use one temporary plate;
- Upon issuance of the vehicle's permanent license plate and registration, the temporary tag becomes invalid and must be removed from the vehicle and destroyed;
- Upon a finding by the DHSMV that a temporary tag has been misused under this program, the DHSMV may terminate the MOU with the company, invalidate all temporary tags issued to the company, and require the company to return any unused temporary tags.

This program is repealed on October 1, 2021, unless saved from repeal through reenactment by the Legislature.

Digital Driver Licenses and Electronic Credentials (Sections 22-26)

Present Situation

Section 322.032, F.S.,[92] provides for the establishment of a digital proof of driver license. This section requires the DHSMV to begin to review and prepare for the development of a secure and uniform system for issuing an optional digital proof of driver license. DHSMV is authorized to contract with one or more private entities to develop a digital proof of driver license system.

The digital proof of driver license developed by the DHSMV or by an entity contracted by the DHSMV is required to be in such a format as to allow law enforcement to verify the authenticity

[90] However, a temporary tag issued to a vehicle required to be weighed or emission tested prior to registration or required to have the vehicle identification number verified is valid for 10 days, and a temporary tag issued for a vehicle waiting for manufacturing of a purchased specialty or personalized prestige plate is valid for 90 days. *See* ss. 320.131(1)(f) and (j), F.S.
[91] Section 320.131(9), F.S.
[92] This section was created in 2014. *See* ch. 2014-216, Laws of Fla.

of the digital proof of driver license. The DHSMV may adopt rules to ensure valid authentication of digital driver licenses by law enforcement.

This section also establishes certain penalties for a person who manufacturers or possesses a false digital proof of driver license. Specifically, a person who:

- Manufactures a false digital proof of driver license commits a third degree felony, punishable by up to five years in prison[93] and a fine not to exceed $5,000.[94]
- Possesses a false digital proof of driver license commits a second degree misdemeanor, punishable by up to 60 days in jail.[95]

Currently, there are six states who are piloting or have completed pilot projects testing digital driver license applications with limited populations; however, no state has implemented use of a statewide digital driver license.[96] The American Association of Motor Vehicle Administrators (AAMVA) represents state and provincial officials who administer and enforce motor vehicle laws in the United States and Canada, and develops programs to encourage uniformity and reciprocity among the states and provinces, including developing driver license and identification card design standards.[97] The AAMVA has brought together its Card Design Standard Committee and an Electronic Identity Working Group to recommend standards regarding the use of mobile or electronic driver licenses and identification cards.[98]

At this time, AAMVA has not released its standards for electronic identification, but has produced a continuously updated white paper discussing the functional needs for and practical considerations associated with a mobile driver license solution.[99]

Effect of Proposed Changes

The bill replaces references in the Florida Statutes to a "digital proof of driver license" with the term "electronic credential," which refers to an electronic driver license or identification card which is viewable on an electronic credential system capable of being verified and authenticated. The bill provides requirements to implement the creation and use of statewide electronic credentials.

Section 22 amends s. 322.01, F.S., to define terms as used in ch. 322, F.S., relating to driver licenses. Specifically, the bill defines the terms "electronic",[100] "electronic credential,"

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[93] Section 775.082, F.S.,
[94] Section 775.083, F.S.
[95] Section 775.082, F.S.
[96] Iowa plans to develop an app-based mobile driver's license for statewide deployment this year. See Government Technology, *Iowa, Five Other States Will Try Digital Driver's License Projects in 2018* (Oct. 20, 2017), http://www.govtech.com/transportation/Iowa-Five-Other-States-Will-Try-Digital-Drivers-License-Projects-in-2018.html (last visited Feb. 16, 2018).
[97] *See* AAMVA, *About AAMVA*, https://www.aamva.org/about-aamva/ and *DL/ID Standards*, https://www.aamva.org/dl-id-card-design-standard/ (last visited Feb. 16, 2018).
[98] AAMVA, *Mobile Driver's License (mDL)*, https://www.aamva.org/Mobile-Drivers-License/ (last visited Feb. 16, 2018).
[99] AAMVA, *Mobile Driver's License – Functional Needs White Paper 0.8 Document Version* (revised Sept. 5, 2017), https://www.aamva.org/mDLFunctionalNeedsRequirements-08/ (last visited Feb. 16, 2018).
[100] This definition is identical to the definition of "electronic" as used in Florida's Uniform Electronic Transaction Act. See s. 668.50(2)(e), F.S.

"electronic credential holder," "electronic credential provider," "electronic credential system," "electronic device," and "electronic record."[101]

Section 23 amends s. 322.032(1), F.S. to require the DHSMV to develop and implement secure and uniform protocols that comply with national standards for issuing an optional electronic credential. The bill also requires the DHSMV to:

- Procure[102] a related technology solution that uses a revenue-sharing model;
- Procure one or more electronic credential providers to develop and implement a secure electronic credential system;
- Maintain the protocols and national standards necessary for an electronic credential provider to request authorized access to an application programming interface, or an appropriate technological tool, necessary for such private entity to consume an electronic credential;
- Timely review requests for authorized access and approve all requests by electronic credential providers which meet the DHSMV's requirements; and
- Enter into an agreement with electronic credential providers which describe the permitted uses, terms and conditions, privacy policy, and uniform remittance terms relating to the consumption of an electronic credential.

The electronic credential and verification solution must:

- Have the necessary technological capabilities to execute the authentication of an electronic credential across all states, jurisdictions, federal and state agencies, and municipalities; and
- Provide system integration:
  - For qualified and authorized entities to securely consume the electronic credential;
  - For the production of a fully compliant electronic credential by qualified and authorized providers; and
  - To successfully ensure secure authentication and validation of data from disparate sources.

This section authorizes the DHSMV to issue electronic credentials to persons who hold a Florida driver license or identification card. Additionally, the DHSMV may assess a fee for use of the electronic credential and verification solution. Any revenue generated from the electronic credential system must be collected by the DHSMV and distributed pursuant to a legislative appropriation and the DHSMV agreements with the electronic credential provider. Any revenue shared between the state and the provider must be based solely on revenues derived from the purchase of the optional, electronic credential.

This section requires the DHSMV to provide access to a standardized digital transaction process for use by the approved provider to enable the financial transaction be completed in such a manner that the proceeds are accepted by the DHSMV at the point of sale. This process must enable the providers of the credential to direct through their electronic commerce workflow to a standardized checkout process and be able to document the providers involved.

[101] This definition is identical to the definition of "electronic record" as used in Florida's Uniform Electronic Transaction Act. See s. 668.50(2)(g), F.S.
[102] Through a competitive solicitation process pursuant to s. 287.057, F.S.

This section also amends s. 322.032(2), F.S. to require the electronic credential to be in a format that allows law enforcement or an authorized consumer to verify the authenticity of the credential, identify the identity of the holder, and to validate the status of the holder's driving privilege associated with the credential. It provides that the act of presenting the electronic credential to a law enforcement officer does not constitute consent for inspection of any information on the device other than the displayed credential, and the person who presents the device assumes liability for any resulting damage to the device.

Finally, the bill amends various sections of statute to replace the term "digital proof of driver license" or add the term "electronic credential." Specifically:

- **Section 23** amends s. 322.032(3), F.S., to prohibit a person from being issued an electronic credential until he or she has satisfied all requirements of ch. 322, F.S., to be issued a physical driver license or identification card;
- **Section 23** amends s. 322.032(4), F.S., to penalize a person who manufactures or possesses a false electronic credential;
- **Section 24** amends s. 322.059, F.S., to require the DHSMV invalidate the electronic credential if the person's driver license has been suspended;
- **Section 25** amends s. 322.143, F.S., to add that the term "swipe" used in reference to the use of a driver license or identification card includes consuming an electronic credential; and
- **Section 26** amends s. 322.15, F.S., to authorize a licensee to present or submit the electronic credential upon request of a law enforcement officer or an authorized representative of the DHSMV in lieu of a physical driver license.

Renting a Motor Vehicle to Another (Section 27)

Present Situation

Section 322.38, F.S., sets the requirements for an individual who wishes to rent a motor vehicle to another. These include that the individual inspects the

- Driver license of the person to whom the vehicle is to be rented, and compares and verifies the signature thereon with the signature of such person written in his or her presence before the vehicle can be rented.
- Further, the individual must keep a record of the registration number of the motor vehicle rented, the name and address of the person renting and the number, date, and place of issue.

Effect of Proposed Changes

Section 27 amends s. 322.38, F.S., to eliminate the requirement that a person renting a motor vehicle to another verify the latter individual's signature on his or her driver license, and adds the requirement that the individual renting the vehicle to another verify that the renter's driver license is unexpired. The bill also eliminates the requirement that the individual renting the vehicle to another record the date on which the driver license was issued.

This section creates s. 322.38(4), F.S., to provide that a rental car company that rents a motor vehicle to a person through digital, electronic, or other means which allows the renter to obtain possession of the vehicle without direct contact with an agent or employee of the rental car company, or where the renter does not execute a rental contract at the time he or she takes possession of the vehicle, is deemed to have met the license inspection requirements if the renter

verifies that he or she is duly licensed and the license is unexpired. Such verification *may* occur when the renter enrolls in a rental company's membership program, master agreement, or other means of establishing use of the company's services or at any time thereafter.

Cargo Theft (Section 31)

Present Situation

First degree grand theft, a first degree felony, is theft of:
- Property valued at $100,000 or more.
- A semitrailer deployed by a law enforcement officer.
- Cargo valued at $50,000 or more in specified circumstances.

First degree grand theft also includes any grand theft in which, in the course of committing the offense, a motor vehicle is used as specified or the offender causes damage to the real or personal property of another in excess of $1,000.[103]

A first degree felony is punishable by up to 30 years in state prison and a fine of up to $10,000.[104]

Currently, it is a second degree misdemeanor[105] to, without authority, willfully, maliciously, or intentionally tamper with, attempt to tamper with, or otherwise interfere with any motor vehicle or trailer of another which results in the:
- Cargo or contents of such motor vehicle or trailer becoming unloaded or damaged; or
- Mechanical functions of such motor vehicle or trailer becoming inoperative or impaired.[106]

Global positioning system (GPS) jammers are devices using radio frequency transmitters in order to intentionally block, jam, or interfere with GPS systems. It is illegal to market, sell, or use GPS jammers in the United States.[107] Such devices have been linked to cargo thefts throughout the United States.[108]

Effect of Proposed Changes

Section 31 amends s. 812.014(2), F.S., to create a new first degree grand theft crime. A person commits first degree grand theft if he or she commits cargo theft and uses a device in the course of committing the offense to defeat, block, disable, jam, or interfere with a GPS or similar system designed to identify the location of the cargo or the vehicle or trailer carrying the cargo.

[103] Section 812.014(2)(a), F.S.
[104] Sections 775.082 and 775.083, F.S.
[105] A second degree misdemeanor is punishable by up to 60 days imprisonment in county jail and a fine of up to $500. Id.
[106] Section 860.17, F.S.
[107] See GPS.gov, *Information About GPS Jamming*, http://www.gps.gov/spectrum/jamming/ (last visited Feb. 16, 2018).
[108] Federal Bureau of Investigation, Private Industry Notification 141002-001, *Cargo Thieves use GPS Jammers to Mask GPS Trackers* (Oct. 2, 2014), https://info.publicintelligence.net/FBI-CargoThievesGPS.pdf (last visited Feb. 16, 2018).

"Cargo" is "partial or entire shipments, containers, or cartons of property which are contained in or on a trailer, motortruck, aircraft, vessel, warehouse, freight station, freight consolidation facility, or air navigation facility."[109]

Conforming Changes (Sections 28 and 30)

The bill amends ss. 322.61 and 655.960, F.S., to make conforming changes to cross-references.

Effective Date (Section 32)

Except as otherwise provided, 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:

The bill exempts Florida resident from certificate of title fees when he or she is transferring a Florida-titled vehicle into his or her name from a deceased owner who is his or her spouse, parent, child, or sibling. The DHSMV estimated[110] that exempting surviving "next of kin" from title fees would have a recurring negative impact of approximately $10.3 million (and projected to increase $200,000 every year). Of which, an estimated $600,000 would be to the local government, $3.1 million to the State Transportation Trust Fund and the HSOTF, and $6.6 million to the General Revenue Fund.

B. Private Sector Impact:

The bill may have a positive fiscal impact on:

- Manufacturers of PDDs and mobile carriers that will be authorized to be operated on sidewalks and crosswalks in the state;

[109] Section 812.012(1), F.S.
[110] Email from the DHSMV (Feb. 16, 2018) on file with the Appropriations Subcommittee on Transportation, Tourism, and Economic Development.

- Residents of the state who will not have to pay fees to transfer a Florida-registered motor vehicle title into their name upon inheritance of the vehicle from their spouses, childs, parents, or siblings;
- Entities that will be authorized to use the DHSMV's EFS system;
- Operators of motor vehicle platoons and manufacturers of platooning technology that will be authorized to operate on Florida roadways;
- Specialty license plate organizations if motor vehicle dealers or fleet companies choose to purchase the organization's specialty license plate; and
- Fleet companies who qualify to be part of the Fleet Vehicle Temporary Tag pilot program and will be able to receive up to 50 temporary tags at a time, which can reduce the amount of time a replacement fleet vehicle is inoperable while awaiting permanent registration and title.

The bill creates a new crime for persons who commit grand theft while using a device to interfere with a GPS or similar system that is designed to identify the location of the cargo or the vehicle or trailer carrying the cargo. This provision may deter cargo theft. A first degree felony is generally punishable by up to 30 years in state prison and a fine of up to $10,000.

There is a potential fiscal impact to the CMV industry associated with changes to the CMV regulations contained in the bill; however, the impact is indeterminate at this time.

C. Government Sector Impact:

The bill may have a negative, but indeterminate impact on the DHSMV, the HSOTF, the State Transportation Trust Fund, the General Revenue Fund, and local tax collectors. DHSMV will incur programming and implementation costs associated with changes made by the bill.

The bill makes changes to address compliance issues with federal laws relating to commercial motor vehicles. According to the DHSMV, if Florida fails to comply with FMCSA compatibility requirements, Florida may experience a reduction of up to four percent of Federal-aid highway funds following the first year of noncompliance and up to eight percent for subsequent years.[111] Noncompliance may also affect the potential award of future grants.

The Criminal Justice Impact Conference, which provides the final, official prison bed impact, if any, of legislation has not yet reviewed the bill to determine the overall prison bed impact of the bill. A preliminary estimate by conference staff indicates that the bill would have a positive indeterminate impact on prison beds, meaning the bill will result in an unquantifiable increase in prison beds.

VI. Technical Deficiencies:

None.

[111] Email from the DHSMV (Feb. 17, 2017) (on file with the Senate Committee on Transportation).

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 316.003, 316.008, 316.0895, 316.2071, 316.302, 316.303, 316.85, 319.141, 319.32, 320.01, 320.02, 320.03, 320.06, 320.0605, 320.0607, 320.0657, 320.08, 320.08056, 320.131, 322.01, 322.032, 322.059, 322.143, 322.15, 322.38, 324.021, and 812.014.

This bill creates section 316.0897 of the Florida Statutes.

This bill repeals section 316.0896 of the Florida Statutes.

This bill amends the following sections of the Florida Statutes to conform cross-references: 322.61 and 655.960.

IX. Additional Information:

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

Recommended CS/CS by Appropriations Subcommittee on Transportation, Tourism, and Economic Development on February 14, 2018:
The CS changes the "relating to" clause of the bill to "[a]n act relating to transportation" and adds several new provisions to the bill. The CS:

- Defines "mobile carriers" and provides regulations for such devices;
- Increases the allowable weight of PDDs to less than 100 pounds, instead of less than 80 pounds;
- Repeals s. 316.0895(2), F.S., which prohibits trucks and vehicles towing other vehicles or trailers from following one another within 300 feet on roadways outside of a business or residence district;
- Revises s. 316.302(1)(e), F.S., created by the bill, to exempt certain intrastate motor carriers from federal electronic logging device and hours of service support document requirements until December 31, 2018, instead of 2019, to remain compliant with federal law;
- Authorizes the Florida Turnpike Enterprise to fund, construct, and operate test facilities for the advancement of autonomous and connected transportation technology solutions for improving safety and congestion;
- Extends the Pilot Rebuilt Motor Vehicle Inspection Program to July 1, 2020, requires the DHSMV submit a report evaluating the program by January 1, 2019, and provides additional requirements for the program;
- Prohibits the DHSMV or tax collectors from charging title transfer fees when transferring a motor vehicle title from a deceased owner to the deceased's spouse, parent, child, or sibling;

- Expands businesses that may be authorized to use the DHSMV's electronic filing system to an entity that, in the normal course of its business, process title transactions, derelict motor vehicle certificates, or certificates of destruction for derelict or salvage motor vehicles;
- Authorizes an electronic copy of a motor vehicle certificate of registration or motor vehicle rental or lease documentation be accepted by law enforcement or agents of the DHSMV as proof of possession of such documentation, and provides restrictions and liability regarding the electronic device displaying such documentation;
- Removes reference in Florida Statutes to "digital proof of driver license" and replaces such term with "electronic credentials";
- Requires the DHSMV implement protocols for issuing an optional electronic credential, provides requirements for the procurement of electronic credential and verification solution providers (including technological requirements), and authorizes the issuance and use of electronic credentials;
- Provides that a motor vehicle rental company is deemed to have met the requirements of inspecting a driver license and prohibiting the rental of a motor vehicle to a person required to be licensed who is not, if the renter verifies he or she holds a valid driver license and the vehicle is rented from the company through digital, electronic, or other means not requiring direct contact with an employee of the rental company;
- Removes a requirement that a person who rents a vehicle to another person compare the signature of the renter with the renter's driver license signature; instead the person must verify that the renter's driver license is unexpired; and
- Makes technical and cross-reference changes to the bill.

CS by Transportation on January 18, 2018:
The CS changes the "relating to" clause of the bill to "[a]n act relating to commercial motor vehicles," and adds numerous provisions to the bill. The CS:

- Repeals s. 316.0896, F.S., creating the Assistive Truck Platooning Technology Pilot Program, which has been conducted by the FDOT in consultation with the DHSMV;
- Removes the definition of "driver-assistive truck platooning technology" and reference to the term in the Florida Statues;
- Authorizes a motor vehicle platoon to be operated on Florida roadways after an operator provides notification to the FDOT and DHSMV;
- Defines the term "platoon" for purposes of ch. 316, F.S., and exempts certain operators of platoons from state laws relating to "following too closely" and television receiver prohibitions;
- Updates various commercial motor vehicle regulations to address compatibility issues with federal law and the International Registration Plan;
- Allows motor vehicle dealers and fleet companies to purchase specialty license plates;
- Creates a Fleet Vehicle Temporary Tag pilot program; and
- Provides enhanced penalties for persons who commit grand theft while using any device to interfere with a GPS or similar system.

B. Amendments:

None.

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

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/02/2018	.	
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	.	

The Committee on Appropriations (Brandes) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (1) of section 20.23, Florida Statutes, is amended to read:

20.23 Department of Transportation.—There is created a Department of Transportation which shall be a decentralized agency.

(1)(a) The Department of Transportation shall consist of:

1. A central office, which establishes policies and procedures; and

2. Districts, which carry out projects as authorized or required under the policies and procedures of the central office established pursuant to paragraph (3)(a).

(b) ~~(a)~~ The head of the Department of Transportation is the Secretary of Transportation. The secretary shall be appointed by the Governor, ~~from among three persons nominated by the Florida Transportation Commission and shall be~~ subject to confirmation by the Senate. The secretary shall serve at the pleasure of the Governor.

(c) ~~(b)~~ The secretary shall be a proven, effective administrator who, by a combination of education and experience, clearly possesses ~~shall clearly possess~~ a broad knowledge of the administrative, financial, and technical aspects of the development, operation, and regulation of transportation systems and facilities or comparable systems and facilities.

(d) ~~(c)~~ The secretary shall provide to the Florida Transportation Commission or its staff~~,~~ such assistance, information, and documents as are requested by the commission or its staff to enable the commission to fulfill its duties and responsibilities.

(e) ~~(d)~~ The secretary may appoint up to three assistant secretaries who shall be directly responsible to the secretary and who shall perform such duties as are assigned by the secretary. The secretary shall designate to an assistant secretary the duties related to enhancing economic prosperity, including, but not limited to, the responsibility of liaison with the head of economic development in the Executive Office of

the Governor. Such assistant secretary shall be directly responsible for providing the Executive Office of the Governor with investment opportunities and transportation projects that expand the state's role as a global hub for trade and investment and enhance the supply chain system in the state to process, assemble, and ship goods to markets throughout the eastern United States, Canada, the Caribbean, and Latin America. The secretary may delegate to any assistant secretary the authority to act in the absence of the secretary.

(f) ~~(e)~~ Any secretary appointed after July 5, 1989, and the assistant secretaries shall be exempt from the provisions of part III of chapter 110 and shall receive compensation commensurate with their qualifications and competitive with compensation for comparable responsibility in the private sector.

Section 2. Subsection (20) of section 316.003, Florida Statutes, is amended, present subsections (21) through (37) of that section are redesignated as subsections (20) through (36), respectively, new subsections (37) and (52) are added to that section, present subsections (52) through (99) of that section are redesignated as subsections (53) through (100), respectively, and subsections (40) and (51) and present subsections (57) and (97) of that section are amended, to read:

316.003 Definitions.—The following words and phrases, when used in this chapter, shall have the meanings respectively ascribed to them in this section, except where the context otherwise requires:

~~(20) DRIVER-ASSISTIVE TRUCK PLATOONING TECHNOLOGY.—Vehicle automation and safety technology that integrates sensor array,~~

~~wireless vehicle-to-vehicle communications, active safety systems, and specialized software to link safety systems and synchronize acceleration and braking between two vehicles while leaving each vehicle's steering control and systems command in the control of the vehicle's driver in compliance with the National Highway Traffic Safety Administration rules regarding vehicle-to-vehicle communications.~~

(37) MOBILE CARRIER.—An electrically powered device that:

(a) Is operated on sidewalks and crosswalks and is intended primarily for transporting property;

(b) Weighs less than 80 pounds, excluding cargo;

(c) Has a maximum speed of 12.5 mph; and

(d) Is equipped with a technology to transport personal property with the active monitoring of a property owner, and primarily designed to remain within 25 feet of the property owner.

A mobile carrier is not considered a vehicle or personal delivery device unless expressly defined by law as a vehicle or personal delivery device.

(40) MOTOR VEHICLE.—Except when used in s. 316.1001, a self-propelled vehicle not operated upon rails or guideway, but not including any bicycle, motorized scooter, electric personal assistive mobility device, mobile carrier, personal delivery device, swamp buggy, or moped. For purposes of s. 316.1001, "motor vehicle" has the same meaning as provided in s. 320.01(1)(a).

(51) PERSONAL DELIVERY DEVICE.—An electrically powered device that:

(a) Is operated on sidewalks and crosswalks and intended primarily for transporting property;

(b) Weighs less than 100 ~~80~~ pounds, excluding cargo;

(c) Has a maximum speed of 10 miles per hour; and

(d) Is equipped with technology to allow for operation of the device with or without the active control or monitoring of a natural person.

A personal delivery device is not considered a vehicle unless expressly defined by law as a vehicle. A mobile carrier is not considered a personal delivery device.

(52) PLATOON.—A group of individual truck-tractor semi-trailer combinations which do not require placards traveling in a unified manner via wireless communications at electronically coordinated speeds and following distances.

(58) ~~(57)~~ PRIVATE ROAD OR DRIVEWAY.—Except as otherwise provided in paragraph (80)(b) ~~(79)(b)~~, any privately owned way or place used for vehicular travel by the owner and those having express or implied permission from the owner, but not by other persons.

(98) ~~(97)~~ VEHICLE.—Every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except personal delivery devices, mobile carriers, and devices used exclusively upon stationary rails or tracks.

Section 3. Paragraph (b) of subsection (7) of section 316.008, Florida Statutes, is amended to read:

316.008 Powers of local authorities.—

(7)

(b)1. Except as provided in subparagraph 2., a personal

delivery device and a mobile carrier may be operated on sidewalks and crosswalks within a county or municipality when such use is permissible under federal law. This paragraph does not restrict a county or municipality from otherwise adopting regulations for the safe operation of personal delivery devices and mobile carriers.

2. A personal delivery device may not be operated on the Florida Shared-Use Nonmotorized Trail Network created under s. 339.81 or components of the Florida Greenways and Trails System created under chapter 260.

Section 4. Section 316.0895, Florida Statutes, is amended to read:

316.0895 Following too closely.—

(1) The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon, and the condition of, the highway. This section may not be construed to prevent overtaking and passing.

~~(2) It is unlawful for the driver of any motor truck, motor truck drawing another vehicle, or vehicle towing another vehicle or trailer, when traveling upon a roadway outside of a business or residence district, to follow within 300 feet of another motor truck, motor truck drawing another vehicle, or vehicle towing another vehicle or trailer. The provisions of this subsection shall not be construed to prevent overtaking and passing nor shall the same apply upon any lane specially designated for use by motor trucks or other slow-moving vehicles.~~

(2)~~(3)~~ Motor vehicles being driven upon any roadway outside

of a business or residence district in a caravan or motorcade, whether or not towing other vehicles, shall be so operated as to allow sufficient space between each such vehicle or combination of vehicles as to enable any other vehicle to enter and occupy such space without danger. This provision shall not apply to funeral processions.

(3)~~(4)~~ A violation of this section is a noncriminal traffic infraction, punishable as a moving violation as provided in chapter 318.

Section 5. Section 316.0896, Florida Statutes, is repealed.

Section 6. Section 316.0897, Florida Statutes, is created to read:

316.0897 Platoons.—

(1) A platoon may be operated on a roadway in this state after an operator does all of the following:

(a) Provides notification to the Department of Highway Safety and Motor Vehicles.

(b) Obtains a permit for such operation from the Department of Transportation.

(2) The Department of Transportation shall adopt rules for the issuance of permits for the operation of platoons. Such rules shall be adopted in consultation with all interested parties and must address all of the following:

(a) The safety of the traveling public.

(b) The preservation of infrastructure.

(c) Platooning technology.

(3) This section is repealed effective October 1, 2023, unless reviewed and saved from repeal by the Legislature.

Section 7. Section 316.2071, Florida Statutes, is amended

to read:

316.2071 Personal delivery devices and mobile carriers.—

(1) Notwithstanding any provision of law to the contrary, a personal delivery device or mobile carrier may operate on sidewalks and crosswalks, subject to s. 316.008(7)(b). A personal delivery device or mobile carrier operating on a sidewalk or crosswalk has all the rights and duties applicable to a pedestrian under the same circumstances, except that the personal delivery device or mobile carrier must not unreasonably interfere with pedestrians or traffic and must yield the right-of-way to pedestrians on the sidewalk or crosswalk.

(2) A personal delivery device and a mobile carrier must:

(a) Obey all official traffic and pedestrian control signals and devices.

(b) For personal delivery devices, include a plate or marker that has a unique identifying device number and identifies the name and contact information of the personal delivery device operator.

(c) Be equipped with a braking system that, when active or engaged, enables the personal delivery device or mobile carrier to come to a controlled stop.

(3) A personal delivery device and a mobile carrier may not:

(a) Operate on a public highway except to the extent necessary to cross a crosswalk.

(b) Operate on a sidewalk or crosswalk unless the personal delivery device operator is actively controlling or monitoring the navigation and operation of the personal delivery device or a property owner remains within 25 feet of the mobile carrier.

(c) Transport hazardous materials as defined in s. 316.003.

(4) A person who owns and operates a personal delivery device in this state must maintain an insurance policy, on behalf of himself or herself and his or her agents, which provides general liability coverage of at least $100,000 for damages arising from the combined operations of personal delivery devices under the entity’s or agent’s control.

Section 8. Subsection (1) and paragraphs (a), (c), (d), and (f) of subsection (2) of section 316.302, Florida Statutes, are amended to read:

316.302 Commercial motor vehicles; safety regulations; transporters and shippers of hazardous materials; enforcement.—

(1) Except as otherwise provided in subsection (3):

(a) All owners and drivers of commercial motor vehicles that are operated on the public highways of this state while engaged in interstate commerce are subject to the rules and regulations contained in 49 C.F.R. parts 382, 385, and 390-397.

(b) Except as otherwise provided in this section, all owners or drivers of commercial motor vehicles that are engaged in intrastate commerce are subject to the rules and regulations contained in 49 C.F.R. parts 382, 383, 385, and 390-397~~, with the exception of 49 C.F.R. s. 390.5 as it relates to the definition of bus,~~ as such rules and regulations existed on December 31, 2017 ~~2012~~.

(c) The emergency exceptions provided by 49 C.F.R. s. 392.82 also apply to communications by utility drivers and utility contractor drivers during a Level 1 activation of the State Emergency Operations Center, as provided in the Florida Comprehensive Emergency Management plan, or during a state of

emergency declared by executive order or proclamation of the Governor.

(d) Except as provided in ~~s. 316.215(5), and except as provided in~~ s. 316.228 for rear overhang lighting and flagging requirements for intrastate operations, the requirements of this section supersede all other safety requirements of this chapter for commercial motor vehicles.

(e) For motor carriers engaged in intrastate commerce who are not carrying hazardous materials in amounts that require placards, the requirement for electronic logging devices and hours of service support documents shall take effect December 31, 2018.

(2)(a) A person who operates a commercial motor vehicle solely in intrastate commerce not transporting any hazardous material in amounts that require placarding pursuant to 49 C.F.R. part 172 need not comply with 49 C.F.R. ss. 391.11(b)(1) and 395.3 ~~395.3(a) and (b)~~.

(c) Except as provided in 49 C.F.R. s. 395.1, a person who operates a commercial motor vehicle solely in intrastate commerce not transporting any hazardous material in amounts that require placarding pursuant to 49 C.F.R. part 172 may not drive after having been on duty more than 70 hours in any period of 7 consecutive days or more than 80 hours in any period of 8 consecutive days if the motor carrier operates every day of the week. Thirty-four consecutive hours off duty shall constitute the end of any such period of 7 or 8 consecutive days. This weekly limit does not apply to a person who operates a commercial motor vehicle solely within this state while transporting, during harvest periods, any unprocessed

agricultural products or unprocessed food or fiber that is subject to seasonal harvesting from place of harvest to the first place of processing or storage or from place of harvest directly to market or while transporting livestock, livestock feed, or farm supplies directly related to growing or harvesting agricultural products. Upon request of the Department of Highway Safety and Motor Vehicles, motor carriers shall furnish time records or other written verification to that department so that the Department of Highway Safety and Motor Vehicles can determine compliance with this subsection. These time records must be furnished to the Department of Highway Safety and Motor Vehicles within 2 days after receipt of that department's request. Falsification of such information is subject to a civil penalty ~~not to exceed $100~~. ~~The provisions of~~ This paragraph does ~~do~~ not apply to operators of farm labor vehicles operated during a state of emergency declared by the Governor or operated pursuant to s. 570.07(21)~~,~~ and does ~~do~~ not apply to drivers of utility service vehicles as defined in 49 C.F.R. s. 395.2.

(d) A person who operates a commercial motor vehicle solely in intrastate commerce not transporting any hazardous material in amounts that require placarding pursuant to 49 C.F.R. part 172 within a 150 air-mile radius of the location where the vehicle is based need not comply with 49 C.F.R. s. 395.8~~,~~ if the requirements of 49 C.F.R. s. 395.1(e)(1)(ii), (iii)(A) and (C), ~~395.1(e)(1)(iii)~~ and (v) are met. ~~If a driver is not released from duty within 12 hours after the driver arrives for duty, the motor carrier must maintain documentation of the driver's driving times throughout the duty period.~~

(f) A person who operates a commercial motor vehicle having

a ~~declared~~ gross vehicle weight, gross vehicle weight rating, and gross combined weight rating of less than 26,001 pounds solely in intrastate commerce and who is not transporting hazardous materials in amounts that require placarding pursuant to 49 C.F.R. part 172~~, or who is transporting petroleum products as defined in s. 376.301,~~ is exempt from subsection (1). However, such person must comply with 49 C.F.R. parts 382, 392, and 393~~,~~ and with 49 C.F.R. ss. 396.3(a)(1) and 396.9.

Section 9. Subsection (3) of section 316.303, Florida Statutes, is amended to read:

316.303 Television receivers.—

(3) This section does not prohibit the use of an electronic display used in conjunction with a vehicle navigation system; an electronic display used by an operator of a vehicle equipped with autonomous technology, as defined in s. 316.003; or an electronic display used by an operator of a platoon ~~vehicle equipped and operating with driver-assistive truck platooning technology~~, as defined in s. 316.003.

Section 10. Subsection (3) is added to section 316.85, Florida Statutes, to read:

316.85 Autonomous vehicles; operation.—

(3) The Florida Turnpike Enterprise may fund, construct, and operate test facilities for the advancement of autonomous and connected innovative transportation technology solutions for the purposes of improving safety and decreasing congestion for the traveling public and to otherwise advance the enterprise's objectives as set forth under the Florida Transportation Code.

Section 11. Section 319.141, Florida Statutes, is amended to read:

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319.141 Pilot rebuilt motor vehicle inspection program.—

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

(a) "Facility" means a rebuilt motor vehicle inspection facility authorized and operating under this section.

(b) "Rebuilt inspection services" means an examination of a rebuilt vehicle and a properly endorsed certificate of title, salvage certificate of title, or manufacturer's statement of origin and an application for a rebuilt certificate of title, a rebuilder's affidavit, a photograph of the junk or salvage vehicle taken before repairs began, a photograph of the interior driver and passenger sides of the vehicle if airbags were previously deployed and replaced, receipts or invoices for all major component parts, as defined in s. 319.30, and repairs which were changed, and proof that notice of rebuilding of the vehicle has been reported to the National Motor Vehicle Title Information System.

(2) ~~By July 1, 2015,~~ The department shall oversee a pilot program in Miami-Dade County to evaluate alternatives for rebuilt inspection services offered by existing private sector operators, including the continued use of private facilities, the cost impact to consumers, and the potential savings to the department.

(3) The department shall establish a memorandum of understanding that allows private parties participating in the pilot program to conduct rebuilt motor vehicle inspections and specifies requirements for oversight, bonding and insurance, procedures, and forms and requires the electronic transmission of documents.

(4) Before an applicant is approved or renewed, the

department shall ensure that the applicant meets basic criteria designed to protect the public. At a minimum, the applicant shall meet all of the following requirements:

(a) Have and maintain a surety bond or irrevocable letter of credit in the amount of $100,000 executed by the applicant.

(b) Secure and maintain a facility at a permanent fixed structure which has ~~at~~ an address identified by a county-issued tax folio number and recognized by the United States Postal Service where the only services provided on such property are rebuilt inspection services. The operator of a facility shall annually attest that:

1. He or she is not employed by or does not have an ownership interest in or other financial arrangement with the owner, operator, manager, or employee of a motor vehicle repair shop as defined in s. 559.903, a motor vehicle dealer as defined in s. 320.27(1)(c), a towing company, a vehicle storage company, a vehicle auction, an insurance company, a salvage yard, a metal retailer, or a metal rebuilder, from which he or she receives remuneration, directly or indirectly, for the referral of customers for rebuilt inspection services;

2. There have been no changes to the ownership structure of the approved facility; and

3. The only services being provided by the operator of the facility at the property are rebuilt vehicle inspection services approved by the department.

(c) Have and maintain garage liability and other insurance required by the department.

(d) Have completed criminal background checks of the owners, partners, and corporate officers and the inspectors

employed by the facility.

(e) Have a designated office and customer waiting area that is separate from and not within view of the vehicle inspection area. The vehicle inspection area must be capable of accommodating all vehicle types and must be equipped with cameras allowing the department to view and monitor every inspection.

(f) ~~(e)~~ Meet any additional criteria the department determines necessary to conduct proper inspections.

(5) A participant in the program shall access vehicle and title information and enter inspection results through an electronic filing system authorized by the department and shall maintain records of each rebuilt vehicle inspection processed at such facility for at least 5 years.

(6) A participant in the program may not conduct an inspection of a vehicle rebuilt before its purchase by the current applicant. Such vehicles must be inspected by the department.

(7) Any applicant for a rebuilt title that fails an initial rebuilt inspection may have that vehicle reinspected only by the department or the facility that conducted the original inspection.

(8) Any person or business authorized by the department to train, certify, or recertify operators and inspectors of private rebuilt motor vehicle inspection facilities may not certify or recertify themselves or any of their employees.

(9) ~~(6)~~ The department shall conduct an onsite facility inspection at least twice a year and shall immediately terminate any operator from the program who fails to meet the minimum

eligibility requirements specified in subsection (4). Before any ~~a~~ change in ownership or transfer of a rebuilt inspection facility, the current operator must give the department 45 days' written notice of the intended sale or transfer. The prospective owner or transferee must meet the eligibility requirements of this section and execute a new memorandum of understanding with the department before operating the facility.

(10) ~~(7)~~ This section is repealed on July 1, 2020 ~~2018~~, unless saved from repeal through reenactment by the Legislature. On or before January 1, 2019, the department shall submit a written report to President of the Senate and Speaker of the House of Representatives evaluating the current program and the benefits to the consumer and the department.

Section 12. Subsection (7) of section 319.32, Florida Statutes, is amended to read:

319.32 Fees; service charges; disposition.—

(7) Notwithstanding any other provision of this section, the department and tax collector may not charge any fee or service charge, except for the expedited title fee, if applicable, for a certificate of title issued for a motor vehicle ~~solely~~ to:

(a) Remove a deceased coowner from a title registered in the names of two persons if the other coowner is the surviving spouse; or

(b) Transfer the title from a deceased owner to a surviving parent or any surviving child, if the parent or child is a resident of this state, the vehicle is titled in this state before the transfer, and the parent or child applies for the title transfer within 30 days after the death of the owner.

Section 13. Paragraph (a) of subsection (1) and subsection (24) of section 320.01, Florida Statutes, are amended to read:

320.01 Definitions, general.—As used in the Florida Statutes, except as otherwise provided, the term:

(1) "Motor vehicle" means:

(a) An automobile, motorcycle, truck, trailer, semitrailer, truck tractor and semitrailer combination, or any other vehicle operated on the roads of this state, used to transport persons or property, and propelled by power other than muscular power, but the term does not include traction engines, road rollers, personal delivery devices and mobile carriers as defined in s. 316.003, special mobile equipment as defined in s. 316.003, vehicles that run only upon a track, bicycles, swamp buggies, or mopeds.

(24) "Apportionable vehicle" means any vehicle, except recreational vehicles, vehicles displaying restricted plates, city pickup and delivery vehicles, ~~buses used in transportation of chartered parties,~~ and government-owned vehicles, which is used or intended for use in two or more member jurisdictions that allocate or proportionally register vehicles and which is used for the transportation of persons for hire or is designed, used, or maintained primarily for the transportation of property and:

(a) Is a power unit having a gross vehicle weight in excess of 26,000 pounds;

(b) Is a power unit having three or more axles, regardless of weight; or

(c) Is used in combination, when the weight of such combination exceeds 26,000 pounds gross vehicle weight.

Vehicles, or combinations thereof, having a gross vehicle weight of 26,000 pounds or less and two-axle vehicles may be proportionally registered.

Section 14. Paragraph (v) is added to subsection (15) of section 320.02, Florida Statutes, and subsection (19) of that section is amended, to read:

320.02 Registration required; application for registration; forms.—

(15)

(v) Notwithstanding s. 320.023, the application form for motor vehicle registration and renewal of registration must include language permitting a voluntary contribution of $1 per applicant to aid in Alzheimer's and other related dementia research. Contributions made pursuant to this paragraph shall be distributed to the Alzheimer's Association, Inc., for the purpose of supporting research conducted in this state.

For the purpose of applying the service charge provided in s. 215.20, contributions received under this subsection are not income of a revenue nature.

(19) A personal delivery device and a mobile carrier as defined in s. 316.003 are ~~is~~ not required to satisfy the registration and insurance requirements of this section.

Section 15. Effective January 1, 2019, subsection (10) of section 320.03, Florida Statutes, is amended to read:

320.03 Registration; duties of tax collectors; International Registration Plan.—

(10) Jurisdiction over the electronic filing system for use

by authorized electronic filing system agents to electronically title or register motor vehicles, vessels, mobile homes, or off-highway vehicles; process title transactions, derelict motor vehicle certificates, and certificates of destruction for derelict and salvage motor vehicles pursuant to s. 319.30(2), (3), (7), and (8); issue or transfer registration license plates or decals; electronically transfer fees due for the title and registration process; and perform inquiries for title, registration, and lienholder verification and certification of service providers is expressly preempted to the state, and the department shall have regulatory authority over the system. The electronic filing system shall be available for use statewide and applied uniformly throughout the state. An entity that, in the normal course of its business, sells products that must be titled or registered; ~~,~~ provides title and registration services on behalf of its consumers; or processes title transactions, derelict motor vehicle certificates, or certificates of destruction for derelict or salvage motor vehicles pursuant to s. 319.30(2), (3), (7), or (8); and meets all established requirements may be an authorized electronic filing system agent and shall not be precluded from participating in the electronic filing system in any county. Upon request from a qualified entity, the tax collector shall appoint the entity as an authorized electronic filing system agent for that county. ~~The department shall adopt rules in accordance with chapter 120 to replace the December 10, 2009, program standards and to administer the provisions of this section, including, but not limited to, establishing participation requirements, certification of service providers, electronic filing system~~

~~requirements, and enforcement authority for noncompliance. The December 10, 2009, program standards, excluding any standards which conflict with this subsection, shall remain in effect until the rules are adopted.~~ An authorized electronic filing system agent may charge a fee to the customer for use of the electronic filing system. The department may adopt rules to administer this subsection, including, but not limited to, rules establishing participation requirements, certification of service providers, electronic filing system requirements, disclosures, and enforcement authority for noncompliance.

Section 16. Paragraph (b) of subsection (1) and paragraph (a) of subsection (3) of section 320.06, Florida Statutes, are amended to read:

320.06 Registration certificates, license plates, and validation stickers generally.—

(1)

(b)1. Registration license plates bearing a graphic symbol and the alphanumeric system of identification shall be issued for a 10-year period. At the end of the 10-year period, upon renewal, the plate shall be replaced. The department shall extend the scheduled license plate replacement date from a 6-year period to a 10-year period. The fee for such replacement is $28, $2.80 of which shall be paid each year before the plate is replaced, to be credited toward the next $28 replacement fee. The fees shall be deposited into the Highway Safety Operating Trust Fund. A credit or refund may not be given for any prior years' payments of the prorated replacement fee if the plate is replaced or surrendered before the end of the 10-year period, except that a credit may be given if a registrant is required by

the department to replace a license plate under s. 320.08056(8)(a). With each license plate, a validation sticker shall be issued showing the owner's birth month, license plate number, and the year of expiration or the appropriate renewal period if the owner is not a natural person. The validation sticker shall be placed on the upper right corner of the license plate. The license plate and validation sticker shall be issued based on the applicant's appropriate renewal period. The registration period is 12 months, the extended registration period is 24 months, and all expirations occur based on the applicant's appropriate registration period.

2. Before October 1, 2019, a vehicle that has an apportioned registration shall be issued an annual license plate and a cab card denoting ~~that denote~~ the declared gross vehicle weight ~~for each apportioned jurisdiction in which the vehicle is authorized to operate~~.

3. Beginning October 1, 2019, a vehicle registered in accordance with the International Registration Plan shall be issued a license plate for a 5-year period, an annual cab card denoting the declared gross vehicle weight, and an annual validation sticker showing the month and year of expiration. The validation sticker shall be placed in the center of the license plate. The license plate and validation sticker shall be issued based on the applicant's appropriate renewal period. The fee for the initial validation sticker and any renewed validation sticker is $28. This fee shall be deposited into the Highway Safety Operating Trust Fund. A damaged or worn license plate may be replaced at no charge by applying to the department and surrendering the current license plate.

4.~~2.~~ In order to retain the efficient administration of the taxes and fees imposed by this chapter, the 80-cent fee increase in the replacement fee imposed by chapter 2009-71, Laws of Florida, is negated as provided in s. 320.0804.

(3)(a) Registration license plates must be made of metal specially treated with a retroreflection material, as specified by the department. The registration license plate is designed to increase nighttime visibility and legibility and must be at least 6 inches wide and not less than 12 inches in length, unless a plate with reduced dimensions is deemed necessary by the department to accommodate motorcycles, mopeds, or similar smaller vehicles. Validation stickers must also be treated with a retroreflection material, must be of such size as specified by the department, and must adhere to the license plate. The registration license plate must be imprinted with a combination of bold letters and numerals or numerals, not to exceed seven digits, to identify the registration license plate number. The license plate must be imprinted with the word "Florida" at the top and the name of the county in which it is sold, the state motto, or the words "Sunshine State" at the bottom. Apportioned license plates must have the word "Apportioned" at the bottom and license plates issued for vehicles taxed under s. 320.08(3)(d), (4)(m) or (n), (5)(b) or (c), or (14) must have the word "Restricted" at the bottom. License plates issued for vehicles taxed under s. 320.08(12) must be imprinted with the word "Florida" at the top and the word "Dealer" at the bottom unless the license plate is a specialty license plate as authorized in s. 320.08056. Manufacturer license plates issued for vehicles taxed under s. 320.08(12) must be imprinted with

the word "Florida" at the top and the word "Manufacturer" at the bottom. License plates issued for vehicles taxed under s. 320.08(5)(d) or (e) must be imprinted with the word "Wrecker" at the bottom. Any county may, upon majority vote of the county commission, elect to have the county name removed from the license plates sold in that county. The state motto or the words "Sunshine State" shall be printed in lieu thereof. A license plate issued for a vehicle taxed under s. 320.08(6) may not be assigned a registration license number, or be issued with any other distinctive character or designation, that distinguishes the motor vehicle as a for-hire motor vehicle.

Section 17. Section 320.0605, Florida Statutes, is amended to read:

320.0605 Certificate of registration; possession required; exception.—

(1)(a) The department-authorized paper or electronic registration certificate or an official copy thereof, a true copy or an electronic copy of rental or lease documentation issued for a motor vehicle or issued for a replacement vehicle in the same registration period, a temporary receipt printed upon self-initiated electronic renewal of a registration via the Internet, or a cab card issued for a vehicle registered under the International Registration Plan shall, at all times while the vehicle is being used or operated on the roads of this state, be in the possession of the operator thereof or be carried in the vehicle for which issued and shall be exhibited upon demand of any authorized law enforcement officer or any agent of the department, except for a vehicle registered under s. 320.0657. ~~The provisions of~~ This section does ~~do~~ not apply

during the first 30 days after purchase of a replacement vehicle. A violation of this section is a noncriminal traffic infraction, punishable as a nonmoving violation as provided in chapter 318.

(b)1. The act of presenting to a law enforcement officer or agent of the department an electronic device displaying an electronic copy of the registration certificate or the rental or lease documentation does not constitute consent for the officer or agent to access any information on the device other than the displayed rental or lease documentation.

2. The person who presents the device to the officer or agent assumes the liability for any resulting damage to the device.

(2) Rental or lease documentation that is sufficient to satisfy the requirement in subsection (1) includes the following:

(a) Date ~~of rental~~ and time of ~~exit from~~ rental ~~facility~~;

(b) Rental station identification;

(c) Rental agreement number;

(d) Rental vehicle identification number;

(e) Rental vehicle license plate number and state of registration;

(f) Vehicle’s make, model, and color;

(g) Vehicle’s mileage; and

(h) Authorized renter’s name.

Section 18. Subsection (5) of section 320.0607, Florida Statutes, is amended to read:

320.0607 Replacement license plates, validation decal, or mobile home sticker.—

(5) Upon the issuance of an original license plate, the applicant shall pay a fee of $28 to be deposited in the Highway Safety Operating Trust Fund. Beginning October 1, 2019, this subsection does not apply to a vehicle registered under the International Registration Plan.

Section 19. Paragraph (b) of subsection (2) of section 320.0657, Florida Statutes, is amended to read:

320.0657 Permanent registration; fleet license plates.—

(2)

(b) The plates, which shall be of a distinctive color, shall have the word "Fleet" appearing at the bottom and the word "Florida" appearing at the top unless the license plate is a specialty license plate as authorized in s. 320.08056. The plates shall conform in all respects to the provisions of this chapter, except as specified herein. For additional fees as set forth in s. 320.08056, fleet companies may purchase specialty license plates in lieu of the standard fleet license plates. Fleet companies shall be responsible for all costs associated with the specialty license plate, including all annual use fees, processing fees, fees associated with switching license plate types, and any other applicable fees.

Section 20. Subsection (12) of section 320.08, Florida Statutes, is amended to read:

320.08 License taxes.—Except as otherwise provided herein, there are hereby levied and imposed annual license taxes for the operation of motor vehicles, mopeds, motorized bicycles as defined in s. 316.003(3), tri-vehicles as defined in s. 316.003, and mobile homes as defined in s. 320.01, which shall be paid to and collected by the department or its agent upon the

registration or renewal of registration of the following:

(12) DEALER AND MANUFACTURER LICENSE PLATES.—A franchised motor vehicle dealer, independent motor vehicle dealer, marine boat trailer dealer, or mobile home dealer and manufacturer license plate: $17 flat, of which $4.50 shall be deposited into the General Revenue Fund. For additional fees as set forth in s. 320.08056, dealers may purchase specialty license plates in lieu of the standard graphic dealer license plates. Dealers shall be responsible for all costs associated with the specialty license plate, including all annual use fees, processing fees, fees associated with switching license plate types, and any other applicable fees.

Section 21. Subsection (2) of section 320.08056, Florida Statutes, is amended to read:

320.08056 Specialty license plates.—

(2)(a) The department shall issue a specialty license plate to the owner or lessee of any motor vehicle, except a vehicle registered under the International Registration Plan, a commercial truck required to display two license plates pursuant to s. 320.0706, or a truck tractor, upon request and payment of the appropriate license tax and fees.

(b) The department may authorize dealer and fleet specialty license plates. With the permission of the sponsoring specialty license plate organization, a dealer or fleet company may purchase specialty license plates to be used on dealer and fleet vehicles.

(c) Notwithstanding s. 320.08058, a dealer or fleet specialty license plate must include the letters “DLR” or “FLT” on the right side of the license plate. Dealer and fleet

specialty license plates must be ordered directly through the department.

Section 22. Subsection (10) is added to section 320.131, Florida Statutes, to read:

320.131 Temporary tags.—

(10) Beginning October 1, 2018, the department may partner with a county tax collector to conduct a Fleet Vehicle Temporary Tag pilot program to provide temporary tags to fleet companies to allow them to operate fleet vehicles awaiting a permanent registration and title.

(a) The department shall establish a memorandum of understanding that allows a maximum of three companies to participate in the pilot program and receive multiple temporary tags for company fleet vehicles.

(b) To participate in the program, a fleet company must have a minimum of 3,500 fleet vehicles registered in this state which qualify to be registered as fleet vehicles pursuant to s. 320.0657.

(c) The department may issue up to 50 temporary tags at a time to an eligible fleet company, if requested by such company.

(d) The temporary tags are for exclusive use on a vehicle purchased for the company’s fleet, and may not be used on any other vehicle.

(e) Each temporary plate may be used on only one vehicle and each vehicle may only use one temporary plate.

(f) Upon issuance of the vehicle’s permanent license plate and registration, the temporary tag becomes invalid and must be removed from the vehicle and destroyed.

(g) Upon a finding by the department that a temporary tag

has been misused by a fleet company under this program, the department may terminate the memorandum of understanding with the company, invalidate all temporary tags issued to the company under the program, and require such company to return any unused temporary tags.

(h) This subsection is repealed on October 1, 2021, unless saved from repeal through reenactment by the Legislature.

Section 23. Subsection (3) is added to section 320.95, Florida Statutes, to read:

320.95 Transactions by electronic or telephonic means.—

(3) The department may authorize the format of an electronic certificate of registration in addition to printing a paper registration certificate. If the paper certificate of registration is not available for inspection or is damaged or otherwise illegible, the operator may present for inspection an electronic device displaying a department-issued electronic certificate or registration issued pursuant to this section. Such presentation does not constitute consent for inspection of any information on the device other than the displayed certificate of registration. The person who presents the device to the officer assumes the liability for any resulting damage to the device.

Section 24. Section 322.01, Florida Statutes, is amended to read:

322.01 Definitions.—As used in this chapter:

(1) "Actual weight" means the weight of a motor vehicle or motor vehicle combination plus the weight of the load carried on it, as determined at a fixed scale operated by the state or as determined by use of a portable scale operated by a law

enforcement officer.

(2) "Alcohol" means any substance containing any form of alcohol including, but not limited to, ethanol, methanol, propanol, and isopropanol.

(3) "Alcohol concentration" means:

(a) The number of grams of alcohol per 100 milliliters of blood;

(b) The number of grams of alcohol per 210 liters of breath; or

(c) The number of grams of alcohol per 67 milliliters of urine.

(4) "Authorized emergency vehicle" means a vehicle that is equipped with extraordinary audible and visual warning devices, that is authorized by s. 316.2397 to display red or blue lights, and that is on call to respond to emergencies. The term includes, but is not limited to, ambulances, law enforcement vehicles, fire trucks, and other rescue vehicles. The term does not include wreckers, utility trucks, or other vehicles that are used only incidentally for emergency purposes.

(5) "Cancellation" means the act of declaring a driver license void and terminated.

(6) "Color photographic driver license" means a color photograph of a completed driver license form meeting the requirements prescribed in s. 322.14.

(7) "Commercial driver license" means a Class A, Class B, or Class C driver license issued in accordance with the requirements of this chapter.

(8) "Commercial motor vehicle" means any motor vehicle or motor vehicle combination used on the streets or highways,

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which:

(a) Has a gross vehicle weight rating of 26,001 pounds or more;

(b) Is designed to transport more than 15 persons, including the driver; or

(c) Is transporting hazardous materials and is required to be placarded in accordance with 49 C.F.R. part 172, subpart F.

A vehicle that occasionally transports personal property to and from a closed-course motorsport facility, as defined in s. 549.09(1)(a), is not a commercial motor vehicle if the use is not for profit and corporate sponsorship is not involved. As used in this subsection, the term "corporate sponsorship" means a payment, donation, gratuity, in-kind service, or other benefit provided to or derived by a person in relation to the underlying activity, other than the display of product or corporate names, logos, or other graphic information on the property being transported.

(9) "Controlled substance" means any substance classified as such under 21 U.S.C. s. 802(6), Schedules I-V of 21 C.F.R. part 1308, or chapter 893.

(10) "Convenience service" means any means whereby an individual conducts a transaction with the department other than in person.

(11)(a) "Conviction" means a conviction of an offense relating to the operation of motor vehicles on highways which is a violation of this chapter or any other such law of this state or any other state, including an admission or determination of a noncriminal traffic infraction pursuant to s. 318.14, or a

judicial disposition of an offense committed under any federal law substantially conforming to the aforesaid state statutory provisions.

(b) Notwithstanding any other provisions of this chapter, the definition of "conviction" provided in 49 C.F.R. s. 383.5 applies to offenses committed in a commercial motor vehicle or by a person holding a commercial driver license.

(12) "Court" means any tribunal in this state or any other state, or any federal tribunal, which has jurisdiction over any civil, criminal, traffic, or administrative action.

(13) "Credential service provider" means an electronic credential provider competitively procured by the department to supply secure credential services based on open standards for identity management and verification to qualified entities.

(14) "Declared weight" means the maximum loaded weight declared for purposes of registration, pursuant to chapter 320.

(15) ~~(14)~~ "Department" means the Department of Highway Safety and Motor Vehicles acting directly or through its duly authorized representatives.

(16) "Digital identity verifier" means a public or private entity that consumes the identity management services provided by the credential service provider.

(17) ~~(15)~~ "Disqualification" means a prohibition, other than an out-of-service order, that precludes a person from driving a commercial motor vehicle.

(18) ~~(16)~~ "Drive" means to operate or be in actual physical control of a motor vehicle in any place open to the general public for purposes of vehicular traffic.

(19) ~~(17)~~ "Driver license" means a certificate that, subject

881 to all other requirements of law, authorizes an individual to
882 drive a motor vehicle and denotes an operator's license as
883 defined in 49 U.S.C. s. 30301.
884 (20) "Electronic" means relating to technology having
885 electrical, digital, magnetic, wireless, optical,
886 electromagnetic, or similar capabilities.
887 (21) "Electronic credential" means an electronic
888 representation of a physical driver license or identification
889 card which is viewable on an electronic credential system and
890 capable of being verified and authenticated.
891 (22) "Electronic credential holder" means a person to whom
892 an electronic credential has been issued.
893 (23) "Electronic credential provider" means a qualified
894 entity contracted with the department to provide electronic
895 credentials to electronic credential holders.
896 (24) "Electronic credential system" means a computer system
897 used to display or transmit electronic credentials to a person
898 or verification system and that may be accessed using an
899 electronic device.
900 (25) "Electronic device" means a device or a portion of a
901 device that is designed for and capable of communicating across
902 a computer network with other computers or devices for the
903 purpose of transmitting, receiving, or storing data, including,
904 but not limited to, a cellular telephone, tablet, or other
905 portable device designed for and capable of communicating with
906 or across a computer network, and is used to render an
907 electronic credential.
908 (26) "Electronic ID" means a technology solution by which a
909 qualified entity authenticates the identity of an individual

receiving goods or services.

(27)~~(18)~~ "Endorsement" means a special authorization which permits a driver to drive certain types of vehicles or to transport certain types of property or a certain number of passengers.

(28)~~(19)~~ "Farmer" means a person who grows agricultural products, including aquacultural, horticultural, and forestry products, and, except as provided herein, employees of such persons. The term does not include employees whose primary purpose of employment is the operation of motor vehicles.

(29)~~(20)~~ "Farm tractor" means a motor vehicle that is:

(a) Operated principally on a farm, grove, or orchard in agricultural or horticultural pursuits and that is operated on the roads of this state only incidentally for transportation between the owner's or operator's headquarters and the farm, grove, or orchard or between one farm, grove, or orchard and another; or

(b) Designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.

(30)~~(21)~~ "Felony" means any offense under state or federal law that is punishable by death or by a term of imprisonment exceeding 1 year.

(31)~~(22)~~ "Foreign jurisdiction" means any jurisdiction other than a state of the United States.

(32)~~(23)~~ "Gross vehicle weight rating" means the value specified by the manufacturer as the maximum loaded weight of a single, combination, or articulated vehicle.

(33)~~(24)~~ "Hazardous materials" means any material that has

been designated as hazardous under 49 U.S.C. s. 5103 and is required to be placarded under subpart F of 49 C.F.R. part 172 or any quantity of a material listed as a select agent or toxin in 42 C.F.R. part 73.

(34) ~~(25)~~ "Medical examiner's certificate" means a document substantially in accordance with the requirements of 49 C.F.R. s. 391.43.

(35) ~~(26)~~ "Motorcycle" means a motor vehicle powered by a motor with a displacement of more than 50 cubic centimeters, having a seat or saddle for the use of the rider, and designed to travel on not more than three wheels in contact with the ground, but excluding a tractor, tri-vehicle, or moped.

(36) ~~(27)~~ "Motor vehicle" means any self-propelled vehicle, including a motor vehicle combination, not operated upon rails or guideway, excluding vehicles moved solely by human power, motorized wheelchairs, and motorized bicycles as defined in s. 316.003.

(37) ~~(28)~~ "Motor vehicle combination" means a motor vehicle operated in conjunction with one or more other vehicles.

(38) ~~(29)~~ "Narcotic drugs" means coca leaves, opium, isonipecaine, cannabis, and every substance neither chemically nor physically distinguishable from them, and any and all derivatives of same, and any other drug to which the narcotics laws of the United States apply, and includes all drugs and derivatives thereof known as barbiturates.

(39) ~~(30)~~ "Out-of-service order" means a prohibition issued by an authorized local, state, or Federal Government official which precludes a person from driving a commercial motor vehicle.

(40)~~(31)~~ "Owner" means the person who holds the legal title to a vehicle. However, if a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or if a mortgagor of a vehicle is entitled to possession, such conditional vendee, lessee, or mortgagor is the owner for the purpose of this chapter.

(41)~~(32)~~ "Passenger vehicle" means a motor vehicle designed to transport more than 15 persons, including the driver, or a school bus designed to transport more than 15 persons, including the driver.

(42)~~(33)~~ "Permit" means a document authorizing the temporary operation of a motor vehicle within this state subject to conditions established in this chapter.

(43) "Qualified entity" means a public or private entity which enters into a contract with the department, meets usage criteria, agrees to terms and conditions, and is authorized by the department to use the credential service provider for authentication and identification verification services.

(44)~~(34)~~ "Resident" means a person who has his or her principal place of domicile in this state for a period of more than 6 consecutive months, has registered to vote, has made a statement of domicile pursuant to s. 222.17, or has filed for homestead tax exemption on property in this state.

(45)~~(35)~~ "Restriction" means a prohibition against operating certain types of motor vehicles or a requirement that a driver comply with certain conditions when driving a motor

vehicle.

(46)~~(36)~~ "Revocation" means the termination of a licensee's privilege to drive.

(47)~~(37)~~ "School bus" means a motor vehicle that is designed to transport more than 15 persons, including the driver, and that is used to transport students to and from a public or private school or in connection with school activities, but does not include a bus operated by a common carrier in the urban transportation of school children. The term "school" includes all preelementary, elementary, secondary, and postsecondary schools.

(48)~~(38)~~ "State" means a state or possession of the United States, and, for the purposes of this chapter, includes the District of Columbia.

(49)~~(39)~~ "Street or highway" means the entire width between the boundary lines of a way or place if any part of that way or place is open to public use for purposes of vehicular traffic.

(50)~~(40)~~ "Suspension" means the temporary withdrawal of a licensee's privilege to drive a motor vehicle.

(51)~~(41)~~ "Tank vehicle" means a vehicle that is designed to transport any liquid or gaseous material within a tank either permanently or temporarily attached to the vehicle, if such tank has a designed capacity of 1,000 gallons or more.

(52)~~(42)~~ "United States" means the 50 states and the District of Columbia.

(53)~~(43)~~ "Vehicle" means every device in, upon, or by which any person or property is or may be transported or drawn upon a public highway or operated upon rails or guideway, except a bicycle, motorized wheelchair, or motorized bicycle.

(54)~~(44)~~ "Identification card" means a personal identification card issued by the department which conforms to the definition in 18 U.S.C. s. 1028(d).

(55)~~(45)~~ "Temporary driver license" or "temporary identification card" means a certificate issued by the department which, subject to all other requirements of law, authorizes an individual to drive a motor vehicle and denotes an operator's license, as defined in 49 U.S.C. s. 30301, or a personal identification card issued by the department which conforms to the definition in 18 U.S.C. s. 1028(d) and denotes that the holder is permitted to stay for a short duration of time, as specified on the temporary identification card, and is not a permanent resident of the United States.

(56)~~(46)~~ "Tri-vehicle" means an enclosed three-wheeled passenger vehicle that:

(a) Is designed to operate with three wheels in contact with the ground;

(b) Has a minimum unladen weight of 900 pounds;

(c) Has a single, completely enclosed, occupant compartment;

(d) Is produced in a minimum quantity of 300 in any calendar year;

(e) Is capable of a speed greater than 60 miles per hour on level ground; and

(f) Is equipped with:

1. Seats that are certified by the vehicle manufacturer to meet the requirements of Federal Motor Vehicle Safety Standard No. 207, "Seating systems" (49 C.F.R. s. 571.207);

2. A steering wheel used to maneuver the vehicle;

3. A propulsion unit located forward or aft of the enclosed occupant compartment;

4. A seat belt for each vehicle occupant certified to meet the requirements of Federal Motor Vehicle Safety Standard No. 209, "Seat belt assemblies" (49 C.F.R. s. 571.209);

5. A windshield and an appropriate windshield wiper and washer system that are certified by the vehicle manufacturer to meet the requirements of Federal Motor Vehicle Safety Standard No. 205, "Glazing Materials" (49 C.F.R. s. 571.205) and Federal Motor Vehicle Safety Standard No. 104, "Windshield Wiping and Washing Systems" (49 C.F.R. s. 571.104); and

6. A vehicle structure certified by the vehicle manufacturer to meet the requirements of Federal Motor Vehicle Safety Standard No. 216, "Rollover crush resistance" (49 C.F.R. s. 571.216).

Section 25. Section 322.032, Florida Statutes, is amended to read:

322.032 Electronic credential ~~Digital proof of driver license~~.—

(1)(a) The department shall develop and implement ~~begin to review and prepare for the development of a~~ secure and uniform protocols which comply with national standards ~~system~~ for issuing an optional electronic credential. The department shall procure the related technology solution from the credential service provider that uses a revenue sharing model through a competitive solicitation process pursuant to s. 287.057 ~~digital proof of driver license~~. The department may issue electronic credentials to persons who hold a Florida driver license or identification card.

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(b) Qualified entities must have the technological capabilities necessary to integrate with the credential service provider. The department shall maintain the protocols and national standards necessary for a digital verifier or an electronic credential provider to request authorized access to an application programming interface, or appropriate technological tool of at least the same capabilities, necessary for such qualified entity to consume an electronic ID. The department shall timely review requests for authorized access and approve all requests by digital verifiers that meet the department's requirements.

(c) The electronic credential provider must have the necessary technological capabilities to execute the authentication of an electronic credential across all states, jurisdictions, federal and state agencies, and municipalities. The electronic credential and verification solution must provide the standardized system integration necessary:

1. For qualified entities to securely consume an electronic credential.

2. For the production of a fully compliant electronic credential by electronic credential providers.

3. To successfully ensure secure authentication and validation of data from disparate sources.

(d) The department shall competitively procure at least two but no more than five ~~contract with one or more~~ electronic credential providers ~~private entities~~ to develop and implement an initial phase to provide a secure electronic credential ~~a digital proof of driver license~~ system. The department shall enter into agreements with electronic credential providers that

provide the permitted uses, terms and conditions, privacy policy, and uniform remittance terms relating to the consumption of an electronic credential. The department must competitively procure the credential service provider before the initial phase may begin. Upon completion of the initial phase, the department shall submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives regarding the continued implementation and tools necessary to scale future phases.

(2)(a) The department shall provide electronic credential providers access to a standardized digital transaction process that provides the proceeds of a completed financial transaction to the department at the point of sale. The standardized digital transaction process must enable electronic credential providers to direct through their electronic commerce workflow to a standardized checkout process and enable documentation of the electronic credential providers participating in a transaction. Revenue generated from use of the electronic credential system shall be deposited into the Motor Vehicle License Clearing Trust Fund for distribution pursuant to a legislative appropriation and department agreements with electronic credential providers. Electronic credential revenue shall be shared between the state and electronic credential providers.

(b) The department may assess a competitive market rate fee structure for use of the credential service provider for any qualified entity to obtain an electronic ID. Revenue generated from use of the credential service provider by digital identity verifiers shall be shared between the state and the credential service provider. Revenues shall be deposited into the Motor

Vehicle License Clearing Trust Fund for distribution pursuant to department agreements with digital identity verifiers. Fees may not be charged to any state court, state governmental entity, or law enforcement agency.

(3)(a) ~~(2)~~ The electronic credential ~~digital proof of driver license~~ developed by the department or by an electronic credential provider ~~an entity~~ contracted by the department must be in such a format as to allow law enforcement or an authorized consumer to verify the authenticity of the electronic credential and the identity of the credential holder and to validate the status of any driving privileges associated with the electronic credential ~~digital proof of driver license~~. The department shall adhere to protocols and national standards ~~may adopt rules~~ to ensure valid authentication of electronic credentials ~~digital driver licenses~~ by law enforcement.

(b) The act of presenting to a law enforcement officer an electronic device displaying an electronic credential does not constitute consent for the officer to access any information on the device other than the electronic credential.

(c) The person who presents the device to the officer assumes liability for any resulting damage to the device.

(4) ~~(3)~~ A person may not be issued an electronic credential ~~a digital proof of driver license~~ until he or she has satisfied all of the requirements of this chapter for issuance of a physical driver license or identification card as provided in this chapter.

(5) ~~(4)~~ A person who:

(a) Manufactures a false electronic credential ~~digital proof of driver license~~ commits a felony of the third degree,

punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) Possesses a false electronic credential ~~digital proof of driver license~~ commits a misdemeanor of the second degree, punishable as provided in s. 775.082.

Section 26. Section 322.059, Florida Statutes, is amended to read:

322.059 Mandatory surrender of suspended driver license and registration.—A person whose driver license or registration has been suspended as provided in s. 322.058 must immediately return his or her driver license and registration to the Department of Highway Safety and Motor Vehicles. The department shall invalidate the electronic credential ~~digital proof of driver license~~ issued pursuant to s. 322.032 for such person. If such person fails to return his or her driver license or registration, a law enforcement agent may seize the license or registration while the driver license or registration is suspended.

Section 27. Subsection (4) of section 322.09, Florida Statutes, is amended to read:

322.09 Application of minors; responsibility for negligence or misconduct of minor.—

(4) Notwithstanding subsections (1) and (2), if a foster parent or caregiver of a minor who is under the age of 18 years and is in foster care as defined in s. 39.01, an authorized representative of a residential group home at which such a minor resides, the caseworker at the agency at which the state has placed the minor, or a guardian ad litem specifically authorized by the minor's caregiver to sign for a learner's driver license signs the minor's application for a learner's driver license,

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that foster parent, caregiver, group home representative, caseworker, or guardian ad litem does not assume any obligation or become liable for any damages caused by the negligence or willful misconduct of the minor by reason of having signed the application. Before signing the application, the caseworker shall notify the foster parent, caregiver, or other responsible party of his or her intent to sign and verify the application.

Section 28. Paragraph (c) of subsection (1) of section 322.143, Florida Statutes, is amended to read:

322.143 Use of a driver license or identification card.—

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

(c) "Swipe" means the act of passing a driver license or identification card through a device that is capable of deciphering, in an electronically readable format, the information electronically encoded in a magnetic strip or bar code on the driver license or identification card or consuming an electronic credential.

Section 29. Subsection (1) of section 322.15, Florida Statutes, is amended to read:

322.15 License to be carried and exhibited on demand; fingerprint to be imprinted upon a citation.—

(1) Every licensee shall have his or her driver license, which must be fully legible with no portion of such license faded, altered, mutilated, or defaced, in his or her immediate possession at all times when operating a motor vehicle and shall present or submit the same upon the demand of a law enforcement officer or an authorized representative of the department. A licensee may present or submit an electronic credential ~~a digital proof of driver license~~ as provided in s. 322.032 in

lieu of a physical driver license.

Section 30. Section 322.38, Florida Statutes, is amended to read:

322.38 Renting motor vehicle to another.—

(1) A ~~No~~ person may not ~~shall~~ rent a motor vehicle to any other person unless the other ~~latter~~ person is ~~then~~ duly licensed~~,~~ or, if a nonresident, ~~he or she shall be~~ licensed under the laws of the state or country of his or her residence, except a nonresident whose home state or country does not require that an operator be licensed.

(2) A ~~No~~ person may not ~~shall~~ rent a motor vehicle to another until he or she has inspected the driver license of the person to whom the vehicle is to be rented~~,~~ and has ~~compared and~~ verified that the driver license is unexpired ~~signature thereon with the signature of such person written in his or her presence~~.

(3) Every person renting a motor vehicle to another shall keep a record of the registration number of the motor vehicle so rented, the name, ~~and~~ address, and license number of the person to whom the vehicle is rented, ~~the number of the license of said latter person,~~ and the ~~date and~~ place ~~when and~~ where the ~~said~~ license was issued. Such record shall be open to inspection by any police officer~~,~~ or officer or employee of the department.

(4) If a rental car company rents a motor vehicle to a person through digital, electronic, or other means that allows the renter to obtain possession of the motor vehicle without direct contact with an agent or employee of the rental car company, or if through use of such means the renter does not execute a rental contract at the time he or she takes possession

of the vehicle, the rental car company is deemed to have met the requirements of subsections (1) and (2) when the rental car company requires the renter to verify that he or she is duly licensed and that the license is unexpired. Such verification may occur at the time the renter enrolls in a membership program, master agreement, or other means of establishing use of the rental car company's services or at any time thereafter.

Section 31. Subsection (4) of section 322.61, Florida Statutes, is amended to read:

322.61 Disqualification from operating a commercial motor vehicle.—

(4) Any person who is transporting hazardous materials as defined in s. 322.01(33) ~~s. 322.01(24)~~ shall, upon conviction of an offense specified in subsection (3), be disqualified from operating a commercial motor vehicle for a period of 3 years. The penalty provided in this subsection shall be in addition to any other applicable penalty.

Section 32. Subsection (1) of section 324.021, Florida Statutes, is amended to read:

324.021 Definitions; minimum insurance required.—The following words and phrases when used in this chapter shall, for the purpose of this chapter, have the meanings respectively ascribed to them in this section, except in those instances where the context clearly indicates a different meaning:

(1) MOTOR VEHICLE.—Every self-propelled vehicle that is designed and required to be licensed for use upon a highway, including trailers and semitrailers designed for use with such vehicles, except traction engines, road rollers, farm tractors, power shovels, and well drillers, and every vehicle that is

propelled by electric power obtained from overhead wires but not operated upon rails, but not including any personal delivery device or mobile carrier as defined in s. 316.003, bicycle, or moped. However, the term "motor vehicle" does not include a motor vehicle as defined in s. 627.732(3) when the owner of such vehicle has complied with the requirements of ss. 627.730-627.7405, inclusive, unless the provisions of s. 324.051 apply; and, in such case, the applicable proof of insurance provisions of s. 320.02 apply.

Section 33. Section 324.031, Florida Statutes, is amended to read:

324.031 Manner of proving financial responsibility.—The owner or operator of a taxicab, limousine, jitney, or any other for-hire passenger transportation vehicle may prove financial responsibility by providing satisfactory evidence of holding a motor vehicle liability policy as defined in s. 324.021(8) or s. 324.151, which policy is provided by an insurer authorized to do business in this state ~~issued by an insurance carrier~~ which is a member of the Florida Insurance Guaranty Association or an eligible nonadmitted insurer that has a superior, excellent, exceptional, or equivalent financial strength rating by a rating agency acceptable to the Office of Insurance Regulation of the Financial Services Commission. The operator or owner of any other vehicle may prove his or her financial responsibility by:

(1) Furnishing satisfactory evidence of holding a motor vehicle liability policy as defined in ss. 324.021(8) and 324.151;

(2) Furnishing a certificate of self-insurance showing a deposit of cash in accordance with s. 324.161; or

(3) Furnishing a certificate of self-insurance issued by the department in accordance with s. 324.171.

Any person, including any firm, partnership, association, corporation, or other person, other than a natural person, electing to use the method of proof specified in subsection (2) shall furnish a certificate of deposit equal to the number of vehicles owned times $30,000, to a maximum of $120,000; in addition, any such person, other than a natural person, shall maintain insurance providing coverage in excess of limits of $10,000/20,000/10,000 or $30,000 combined single limits, and such excess insurance shall provide minimum limits of $125,000/250,000/50,000 or $300,000 combined single limits. These increased limits shall not affect the requirements for proving financial responsibility under s. 324.032(1).

Section 34. Subsection (2) of section 324.032, Florida Statutes, is amended to read:

324.032 Manner of proving financial responsibility; for-hire passenger transportation vehicles.—Notwithstanding the provisions of s. 324.031:

(2) An owner or a lessee who is required to maintain insurance under s. 324.021(9)(b) and who operates at least 150 ~~300~~ taxicabs, limousines, jitneys, or any other for-hire passenger transportation vehicles may provide financial responsibility by complying with the provisions of s. 324.171, such compliance to be demonstrated by maintaining at its principal place of business an audited financial statement, prepared in accordance with generally accepted accounting principles, and providing to the department a certification

issued by a certified public accountant that the applicant's net worth is at least equal to the requirements of s. 324.171 as determined by the Office of Insurance Regulation of the Financial Services Commission, including claims liabilities in an amount certified as adequate by a Fellow of the Casualty Actuarial Society.

Upon request by the department, the applicant must provide the department at the applicant's principal place of business in this state access to the applicant's underlying financial information and financial statements that provide the basis of the certified public accountant's certification. The applicant shall reimburse the requesting department for all reasonable costs incurred by it in reviewing the supporting information. The maximum amount of self-insurance permissible under this subsection is $300,000 and must be stated on a per-occurrence basis, and the applicant shall maintain adequate excess insurance issued by an authorized or eligible insurer licensed or approved by the Office of Insurance Regulation. All risks self-insured shall remain with the owner or lessee providing it, and the risks are not transferable to any other person, unless a policy complying with subsection (1) is obtained.

Section 35. Subsection (5) of section 338.166, Florida Statutes, is amended to read:

338.166 High-occupancy toll lanes or express lanes.—

(5) ~~Effective July 1, 2018,~~ If the ~~a customer's~~ average travel speed for a segment of ~~trip in~~ an express lane falls below 40 miles per hour, the toll ~~customer must be~~ charged shall be the segment's minimum ~~express lane~~ toll amount. An express

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lane segment is the distance between the customer's point of entry to the first available exit. Additional segments are defined by the distance between subsequent exits. ~~A customer's express lane average travel speed is his or her average travel speed from the customer's entry point to the customer's exit point.~~

Section 36. Paragraphs (d) and (e) of subsection (1) of section 338.2216, Florida Statutes, are amended to read:

338.2216 Florida Turnpike Enterprise; powers and authority.—

(1)

(d) The Florida Turnpike Enterprise shall pursue and implement new technologies and processes in its operations and collection of tolls and the collection of other amounts associated with road and infrastructure usage. Such technologies and processes must include, without limitation, video billing and variable pricing. The Florida Turnpike Enterprise may require the use of an electronic transponder interoperable with the department's electronic toll collection system for the use of express lanes on the turnpike system. Variable pricing may not be implemented in express lanes when the level of service in the express lane, determined in accordance with the criteria established by the Transportation Research Board Highway Capacity Manual (5th Edition, HCM 2010), as amended from time to time, is equal to level of service A. Variable pricing in express lanes when the level of service in the express lane is level of service B may only be implemented by charging the segment's general ~~toll lane~~ toll amount plus the segment's minimum toll ~~an~~ amount ~~set by department rule~~. An express lane

segment is the distance between the customer's point of entry to the first available exit. Additional segments are defined by the distance between subsequent exits. Except as otherwise provided in this subsection, pricing in express lanes when the level of service is other than level of service A or level of service B may vary in the manner established by the Florida Turnpike Enterprise to manage congestion in the express lanes.

~~(c) Effective July 1, 2018, if a customer's average travel speed for a trip in an express lane falls below 40 miles per hour, the customer must be charged the general toll lane toll amount plus an amount set by department rule. A customer's express lane average travel speed is his or her average travel speed from the customer's entry point to the customer's exit point.~~

Section 37. Section 334.352, Florida Statutes, is created to read:

334.352 State university ingress and egress.—A local governmental entity may not prevent public motor vehicle use on or access to an existing transportation facility or transportation corridor as defined in s. 334.03 if that transportation facility or transportation corridor is the only point, or one of only two points, of ingress to and egress from a state university as defined in s. 1000.21 and regulated by the Board of Governors of the State University System as provided in s. 20.155.

Section 38. Subsection (1) of section 655.960, Florida Statutes, is amended to read:

655.960 Definitions; ss. 655.960-655.965.—As used in this section and ss. 655.961-655.965, unless the context otherwise

requires:

(1) "Access area" means any paved walkway or sidewalk which is within 50 feet of any automated teller machine. The term does not include any street or highway open to the use of the public, as defined in s. 316.003(80)(a) or (b) ~~s. 316.003(79)(a) or (b)~~, including any adjacent sidewalk, as defined in s. 316.003.

Section 39. Paragraph (a) of subsection (2) of section 812.014, Florida Statutes, is amended to read:

812.014 Theft.—

(2)(a)1. If the property stolen is valued at $100,000 or more or is a semitrailer that was deployed by a law enforcement officer; or

2. If the property stolen is cargo valued at $50,000 or more that has entered the stream of interstate or intrastate commerce from the shipper's loading platform to the consignee's receiving dock; or

3. If the offender commits any grand theft and:

a. In the course of committing the offense the offender uses a motor vehicle as an instrumentality, other than merely as a getaway vehicle, to assist in committing the offense and thereby damages the real property of another; or

b. In the course of committing the offense the offender causes damage to the real or personal property of another in excess of $1,000; or

4. If the property stolen is cargo and in the course of committing the offense the offender uses any type of device to defeat, block, disable, jam, or interfere with a global positioning system or similar system designed to identify the location of the cargo or the vehicle or trailer carrying the

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cargo,

the offender commits grand theft in the first degree, punishable as a felony of the first degree, as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 40. Except as otherwise expressly provided in this act, this act shall take effect October 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 transportation; amending s. 20.23, F.S.; requiring the Department of Transportation to consist of a central office that establishes policies and procedures and districts that carry out projects as authorized or required under the policies and procedures of the central office; deleting the requirement that the Secretary of Transportation be appointed from among three persons nominated by the Florida Transportation Commission; amending s. 316.003, F.S.; adding, deleting, and revising definitions; amending s. 316.008, F.S.; authorizing a mobile carrier to be operated on sidewalks and crosswalks within a county or municipality when such use is permissible under federal law; providing construction; amending s. 316.0895, F.S.; providing construction; deleting a provision relating to

prohibitions on certain vehicles following other vehicles within 300 feet; repealing s. 316.0896, F.S., relating to the assistive truck platooning technology pilot project; creating s. 316.0897, F.S.; authorizing a platoon to be operated on a roadway in this state after an operator takes specified actions; requiring the Department of Transportation to adopt rules for the issuance of permits for the operation of platoons, subject to certain requirements; providing for the future repeal of this section; amending s. 316.2071, F.S.; authorizing a mobile carrier to operate on sidewalks and crosswalks; providing that a mobile carrier operating on a sidewalk or crosswalk has all the rights and duties applicable to a pedestrian under the same circumstances, except that the mobile carrier must not unreasonably interfere with pedestrians or traffic and must yield the right-of-way to pedestrians on the sidewalk or crosswalk; specifying requirements for a mobile carrier; prohibiting a mobile carrier from taking specified actions; amending s. 316.302, F.S.; revising regulations to which owners and drivers of commercial motor vehicles are subject; delaying the requirement for electronic logging devices and support documents for certain intrastate motor carriers; deleting a limitation on a civil penalty for falsification of certain time records; deleting a requirement that a motor carrier maintain certain documentation of driving times; providing an exemption from specified provisions for a person who operates a

commercial motor vehicle having a certain gross vehicle weight, gross vehicle weight rating, and gross combined weight rating; deleting the exemption from such provisions for a person transporting petroleum products; amending s. 316.303, F.S.; conforming a provision to changes made by the act; amending s. 316.85, F.S.; authorizing the Florida Turnpike Enterprise to fund, construct, and operate test facilities for the advancement of autonomous and connected innovative transportation technology solutions for specified purposes; amending s. 319.141, F.S.; redefining the term "rebuilt inspection services"; deleting obsolete language; requiring the Department of Highway Safety and Motor Vehicles to ensure that an applicant of the pilot rebuilt motor vehicle inspection program meets basic criteria designed to protect the public before the applicant is renewed; revising requirements for the applicant; requiring the operator of a facility to annually make certain attestations; prohibiting a program participant from conducting an inspection of a vehicle rebuilt before its purchase by the current applicant; requiring that such vehicles be inspected by the department; requiring any applicant that fails an initial rebuilt inspection to have that vehicle reinspected only by the department or the facility that conducted the original inspection; prohibiting any person or business authorized by the department to train, certify, or recertify operators and inspectors

of private rebuilt motor vehicle inspection facilities from certifying or recertifying themselves or any of their employees; requiring the department to conduct an onsite facility inspection at least twice a year; requiring a current operator to give the department certain notice of a transfer before any transfer of a rebuilt inspection facility; requiring a transferee to meet certain eligibility requirements and execute a new memorandum of understanding with the department before operating the facility; extending the date for future repeal of this section; requiring the department to submit a certain written report to the Legislature on or before a specified date; amending s. 319.32, F.S.; prohibiting the department and the tax collector from charging any fee or service charge, except for the expedited title fee, if applicable, for a certificate of title issued for a motor vehicle to transfer the title from a deceased owner to a surviving parent or any surviving child, if the parent or child is a resident of this state, the vehicle is titled in this state before the transfer, and the parent or child applies for the title transfer within a specified period after the death of the owner; amending s. 320.01, F.S.; revising definitions; amending s. 320.02, F.S.; requiring the application form for motor vehicle registration and renewal of registration to include language permitting a voluntary contribution of a specified amount per applicant to aid in Alzheimer’s and other related

dementia research; requiring such contributions to be distributed to the Alzheimer's Association, Inc., for the purpose of supporting research conducted in this state; providing that a mobile carrier is not required to satisfy specified registration and insurance requirements; amending s. 320.03, F.S.; preempting to the state jurisdiction over the electronic filing system for use by authorized electronic filing system agents to process title transactions, derelict motor vehicle certificates, and certain certificates of destruction for derelict and salvage motor vehicles; authorizing an entity that, in the normal course of its business, processes title transactions, derelict motor vehicle certificates, or certain certificates of destruction for derelict or salvage motor vehicles and meets all established requirements, to be an authorized electronic filing system agent; prohibiting such an entity from being precluded from participating in the electronic filing system in any county; deleting provisions requiring the department to adopt certain rules to replace specified program standards; authorizing the department to adopt certain rules; amending s. 320.06, F.S.; requiring a vehicle that has an apportioned registration to be issued, before a specified date, an annual license plate and a cab card denoting the declared gross vehicle weight; providing requirements, beginning on a specified date, for license plates, cab cards, and validation stickers for vehicles registered in accordance with the

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International Registration Plan; providing a specified fee for initial and renewed validation stickers; requiring the fee to be deposited into the Highway Safety Operating Trust Fund; authorizing a damaged or worn license plate to be replaced at no charge under certain circumstances; providing an exception to the design of dealer license plates for specialty license plates; amending s. 320.0605, F.S.; requiring that the department-authorized paper or electronic registration certificate or an official copy and a true copy or an electronic copy of rental or lease documentation issued for a motor vehicle or issued for a replacement vehicle in the same registration period be in the possession of the operator thereof or be carried in the vehicle for which issued and be exhibited upon demand of any authorized law enforcement officer or any agent of the department; specifying that the act of presenting to a law enforcement officer or agent of the department an electronic device displaying an electronic copy of rental or lease documentation does not constitute consent for the officer or agent to access any information on the device other than the displayed rental or lease documentation; requiring the person who presents the device to the officer or agent to assume the liability for any resulting damage to the device; providing that rental or lease documentation that includes the date and time of rental is sufficient to satisfy a specified requirement; amending s. 320.0607, F.S.; providing an

exemption, beginning on a specified date, from a certain fee for vehicles registered under the International Registration Plan; amending s. 320.0657, F.S.; providing an exception to the design of fleet license plates for specialty license plates; authorizing fleet companies to purchase specialty license plates in lieu of the standard fleet license plates for additional specified fees; requiring fleet companies to be responsible for all costs associated with the specialty license plate; amending s. 320.08, F.S.; authorizing dealers to purchase specialty license plates in lieu of the standard graphic dealer license plates for additional specified fees; requiring dealers to be responsible for all costs associated with the specialty license plate; amending s. 320.08056, F.S.; allowing the department to authorize dealer and fleet specialty license plates; authorizing a dealer or fleet company to purchase specialty license plates to be used on dealer and fleet vehicles with the permission of the sponsoring specialty license plate organization; requiring a dealer or fleet specialty license plate to include specified letters on the right side of the license plate; requiring dealer and fleet specialty license plates to be ordered directly through the department; amending s. 320.131, F.S.; authorizing, beginning on a specified date, the department to partner with a county tax collector to conduct a Fleet Vehicle Temporary Tag pilot program, subject to certain

requirements; providing for future repeal; amending s. 320.95, F.S.; authorizing the department to authorize the format of an electronic certificate of registration in addition to printing a paper registration certificate; authorizing the operator to present for inspection an electronic device displaying a department-issued electronic certificate or registration issued under certain circumstances; providing that such presentation does not constitute consent for inspection of any information on the device other than the displayed certificate of registration; providing that the person who presents the device to the officer assumes the liability for any resulting damage to the device; amending s. 322.01, F.S.; providing definitions; amending s. 322.032, F.S.; directing the department to implement protocols for issuing an optional electronic credential and procure a related technology solution; providing requirements for qualified entities; requiring the department to maintain certain protocols and national standards; requiring the department to timely review and approve all electronic credential provider requests for authorized access to certain interfaces that meet the agency's requirements; providing requirements for an electronic credential provider and the electronic credential and verification solution; requiring the department to procure electronic credential providers and a credential service provider; requiring the department

to enter into specified agreements with electronic credential providers; requiring a report to the Legislature and the Governor; requiring that the department provide electronic credential providers access to a standardized digital transaction process that has specified capabilities; requiring that certain revenue be deposited into the Motor Vehicle License Clearing Trust Fund for distribution; authorizing the department to assess a competitive market rate fee structure; prohibiting certain fees; requiring that an electronic credential be in a format that allows certain entities to verify the authenticity of such electronic credential and to validate certain privileges; providing that presenting an electronic device displaying an electronic credential does not constitute consent for a law enforcement officer to access any other information on such device; providing for the assumption of liability; amending s. 322.059, F.S.; conforming a provision to changes made by the act; amending s. 322.09, F.S.; providing that a caregiver of a minor who is under a specified age and is in foster care does not assume any obligation or become liable for any damages caused by the negligence or willful misconduct of the minor by reason of having signed the minor’s application for a learner’s driver license; requiring a caseworker to notify the caregiver of his or her intent to sign and verify such application before signing the application; amending s. 322.143,

F.S.; revising a definition; amending s. 322.15, F.S.; conforming a provision to changes made by the act; amending s. 322.38, F.S.; prohibiting a person from renting a motor vehicle to another until he or she has verified that the driver license of the person to whom the vehicle is rented is unexpired; deleting the requirement that a person renting a motor vehicle to another keep a record of the date when the license of the person to whom the vehicle is rented was issued; specifying that a rental car company is deemed to have met specified requirements when the rental car company requires the renter to verify that he or she is duly licensed and that the license is unexpired if the rental car company rents a motor vehicle to a person through certain digital, electronic, or other means; specifying when such verification may occur; amending s. 322.61, F.S.; conforming a cross-reference; amending s. 324.021, F.S.; revising the definition of the term "motor vehicle"; amending s. 324.031, F.S.; authorizing the owner or operator of a taxicab, limousine, jitney, or any other for-hire passenger transportation vehicle to prove financial responsibility by providing satisfactory evidence of holding a motor vehicle liability policy that is provided by an insurer that is authorized to do business in this state and a member of the Florida Insurance Guaranty Association or an eligible nonadmitted insurer that has a certain financial strength rating by a rating agency acceptable to the

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Office of Insurance Regulation of the Financial Services Commission; amending s. 324.032, F.S.; decreasing the minimum amount of taxicabs, limousines, jitneys, or any other for-hire passenger transportation vehicles that an owner or a lessee operates in order to be able to provide financial responsibility by complying with specified provisions, subject to certain requirements; amending s. 338.166, F.S.; revising provisions relating to express lane toll amounts charged according to average travel speed; providing that an express lane segment is the distance between the customer’s point of entry to the first available exit; providing that additional segments are defined by the distance between subsequent exits; amending s. 338.2216, F.S.; revising provisions relating to express lane toll amounts charged according to level of service; providing that an express lane segment is the distance between the customer’s point of entry to the first available exit; providing that additional segments are defined by the distance between subsequent exits; deleting a provision requiring a customer to be charged the general toll lane toll amount plus an amount set by department rule under certain circumstances; creating s. 334.352, F.S.; prohibiting a local governmental entity from preventing motor vehicle access to a transportation facility or transportation corridor under certain circumstances; amending s. 655.960, F.S.; conforming a cross-reference; amending s.

812.014, F.S.; providing a criminal penalty for an offender committing grand theft who uses a device to interfere with a global positioning or similar system; providing effective dates.

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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/02/2018	.	
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	.	
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The Committee on Appropriations (Brandes) recommended the following:

Senate Amendment to Amendment (419998) (with title amendment)

Between lines 327 and 328
insert:

Section 11. Section 316.87, Florida Statutes, is amended to read:

316.87 Nonemergency medical transportation services.—

(1) To ensure the availability of nonemergency medical transportation services throughout the state, a provider

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licensed by the county or operating under a permit issued by the county may not be required to use a vehicle that is larger than needed to transport the number of persons being transported or that is inconsistent with the medical condition of the individuals receiving the nonemergency medical transportation services. This section does not apply to the procurement, contracting, or provision of paratransit transportation services, directly or indirectly, by a county or an authority, pursuant to the Americans with Disabilities Act of 1990, as amended.

(2)(a) Notwithstanding any other provision of law, Medicaid nonemergency medical transportation services may be provided to a Medicaid beneficiary by a transportation network company. A Medicaid beneficiary shall have the option to use the transportation network company in the fulfillment of the beneficiary's Medicaid nonemergency transportation benefit, unless a licensed medical professional determines that use of a transportation network company to fulfill such benefit would be contrary to a beneficiary's health and safety.

(b) In providing such Medicaid nonemergency transportation services, transportation network companies shall be governed by s. 627.748.

(c) This subsection may not be construed to expand or limit the existing transportation benefit provided to Medicaid beneficiaries.

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

And the title is amended as follows:

Delete line 1529

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and insert:

solutions for specified purposes; amending s. 316.87, F.S.; authorizing Medicaid nonemergency medical transportation services to be provided to a Medicaid beneficiary by a transportation network company; requiring a Medicaid beneficiary to have the option to use the transportation network company in the fulfillment of the beneficiary's Medicaid nonemergency transportation benefit under certain circumstances; requiring the transportation network companies to be governed by a specified provision in providing such Medicaid nonemergency transportation services; providing construction; amending s. 319.141,

576-03255-18

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

A bill to be entitled

An act relating to transportation; amending s. 316.003, F.S.; adding, deleting, and revising definitions; amending s. 316.008, F.S.; authorizing a mobile carrier to be operated on sidewalks and crosswalks within a county or municipality when such use is permissible under federal law; providing construction; repealing s. 316.0895(2), F.S., relating to prohibitions on certain vehicles following another vehicles within 300 feet; repealing s. 316.0896, F.S., relating to the assistive truck platooning technology pilot project; creating s. 316.0897, F.S.; exempting the operator of a nonlead vehicle in a platoon from a specified provision; authorizing a platoon to be operated on a roadway in this state after an operator provides notification to the Department of Transportation and the Department of Highway Safety and Motor Vehicles; amending s. 316.2071, F.S.; authorizing a mobile carrier to operate on sidewalks and crosswalks; providing that a mobile carrier operating on a sidewalk or crosswalk has all the rights and duties applicable to a pedestrian under the same circumstances, except that the mobile carrier must not unreasonably interfere with pedestrians or traffic and must yield the right-of-way to pedestrians on the sidewalk or crosswalk; specifying requirements

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for a mobile carrier; prohibiting a mobile carrier from taking specified actions; amending s. 316.302, F.S.; revising regulations to which owners and drivers of commercial motor vehicles are subject; delaying the requirement for electronic logging devices and support documents for certain intrastate motor carriers; deleting a limitation on a civil penalty for falsification of certain time records; deleting a requirement that a motor carrier maintain certain documentation of driving times; providing an exemption from specified provisions for a person who operates a commercial motor vehicle having a certain gross vehicle weight, gross vehicle weight rating, and gross combined weight rating; deleting the exemption from such provisions for a person transporting petroleum products; amending s. 316.303, F.S.; conforming a provision to changes made by the act; amending s. 316.85, F.S.; authorizing the Florida Turnpike Enterprise to fund, construct, and operate test facilities for the advancement of autonomous and connected innovative transportation technology solutions for specified purposes; amending s. 319.141, F.S.; redefining the term "rebuilt inspection services"; deleting obsolete language; requiring the Department of Highway Safety and Motor Vehicles to ensure that an applicant of the pilot rebuilt motor vehicle inspection program meets basic criteria designed to protect the public before the applicant is renewed; revising requirements for the applicant;

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requiring the operator of a facility to annually make certain attestations; prohibiting a program participant from conducting an inspection of a vehicle rebuilt before its purchase by the current applicant; requiring that such vehicles be inspected by the department; requiring any applicant that fails an initial rebuilt inspection to have that vehicle reinspected only by the department or the facility that conducted the original inspection; prohibiting any person or business authorized by the department to train, certify, or recertify operators and inspectors of private rebuilt motor vehicle inspection facilities from certifying or recertifying themselves or any of their employees; requiring the department to conduct an onsite facility inspection at least twice a year; requiring a current operator to give the department certain notice of a transfer before any transfer of a rebuilt inspection facility; requiring a transferee to meet certain eligibility requirements and execute a new memorandum of understanding with the department before operating the facility; extending the date for future repeal of this section; requiring the department to submit a certain written report to the Governor and Cabinet on or before a specified date; amending s. 319.32, F.S.; prohibiting the department and the tax collector from charging any fee or service charge, except for the expedited title fee, if applicable, for a certificate of title issued for a motor vehicle to transfer the title from a deceased

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owner to a surviving spouse or any surviving next of kin under certain circumstances; defining the term "next of kin"; amending s. 320.01, F.S.; revising definitions; amending s. 320.02, F.S.; providing that a mobile carrier is not required to satisfy specified registration and insurance requirements; amending s. 320.03, F.S.; preempting to the state jurisdiction over the electronic filing system for use by authorized electronic filing system agents to process title transactions, derelict motor vehicle certificates, and certain certificates of destruction for derelict and salvage motor vehicles; authorizing an entity that, in the normal course of its business, processes title transactions, derelict motor vehicle certificates, or certain certificates of destruction for derelict or salvage motor vehicles and meets all established requirements to be an authorized electronic filing system agent; prohibiting such an entity from being precluded from participating in the electronic filing system in any county; deleting provisions requiring the department to adopt certain rules to replace specified program standards; requiring the department to adopt certain rules; amending s. 320.06, F.S.; requiring a vehicle that has an apportioned registration to be issued, before a specified date, an annual license plate and a cab card denoting the declared gross vehicle weight; providing requirements, beginning on a specified date, for license plates, cab cards, and validation stickers for

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vehicles registered in accordance with the International Registration Plan; providing a specified fee for initial and renewed validation stickers; requiring the fee to be deposited into the Highway Safety Operating Trust Fund; authorizing a damaged or worn license plate to be replaced at no charge under certain circumstances; providing an exception to the design of dealer license plates for specialty license plates; amending s. 320.0605, F.S.; authorizing an official copy of a registration certificate to be in an electronic format and authorizing an electronic copy of certain rental or lease documentation to be in the possession of the operator or to be carried in the vehicle for which issued and to be exhibited upon demand of any authorized law enforcement officer or any agent of the department; specifying that the act of presenting to a law enforcement officer or agent of the department an electronic device displaying an electronic copy of rental or lease documentation does not constitute consent for the officer or agent to access any information on the device other than the displayed rental or lease documentation; requiring the person who presents the device to the officer or agent to assume the liability for any resulting damage to the device; providing that rental or lease documentation that includes the date and time of rental is sufficient to satisfy a specified requirement; amending s. 320.0607, F.S.; providing an exemption, beginning on a specified date, from a

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certain fee for vehicles registered under the International Registration Plan; amending s. 320.0657, F.S.; providing an exception to the design of fleet license plates for specialty license plates; authorizing fleet companies to purchase specialty license plates in lieu of the standard fleet license plates for additional specified fees; requiring fleet companies to be responsible for all costs associated with the specialty license plate; amending s. 320.08, F.S.; authorizing dealers to purchase specialty license plates in lieu of the standard graphic dealer license plates for additional specified fees; requiring dealers to be responsible for all costs associated with the specialty license plate; amending s. 320.08056, F.S.; allowing the department to authorize dealer and fleet specialty license plates; authorizing a dealer or fleet company to purchase specialty license plates to be used on dealer and fleet vehicles with the permission of the sponsoring specialty license plate organization; requiring a dealer or fleet specialty license plate to include specified letters on the right side of the license plate; requiring dealer and fleet specialty license plates to be ordered directly through the department; amending s. 320.131, F.S.; authorizing, beginning on a specified date, the department to partner with a county tax collector to conduct a Fleet Vehicle Temporary Tag pilot program, subject to certain requirements; providing for future repeal; amending s.

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322.01, F.S.; providing definitions; amending s. 322.032, F.S.; directing the department to implement protocols for issuing an optional electronic credential and to procure a certain related technology solution, subject to certain requirements; providing requirements for the electronic credential and verification solution; directing the department to procure one or more electronic credential providers through a competitive solicitation process to develop and implement a secure electronic credential system; requiring the department to maintain certain protocols and national standards; requiring the department to timely review and approve all electronic credential provider requests for authorized access to certain interfaces which meet the agency's requirements; authorizing the department to assess a fee; requiring the department to provide access to a certain standardized digital transaction process for use by the approved electronic credential providers of compliant electronic credentials, subject to certain requirements; requiring any revenue generated from the electronic credential system to be collected by the department and distributed pursuant to a legislative appropriation and department agreements with the electronic credential providers of the electronic credential; providing that any revenues shared between the state and electronic credential providers is based solely on revenues derived from the purchase of the optional electronic credential and no other

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transaction; requiring the department to enter into certain agreements with electronic credential providers; requiring that an electronic credential be in a format that allows certain entities to verify its authenticity and the identity of the credential holder and to validate certain privileges; providing that presenting an electronic device displaying an electronic credential does not constitute consent for a law enforcement officer to access any other information on such device; providing that the person who presents the device to the officer assumes liability for any resulting damage to the device; conforming provisions to changes made by the act; amending s. 322.059, F.S.; conforming a provision to changes made by the act; amending s. 322.143, F.S.; revising a definition; amending s. 322.15, F.S.; conforming a provision to changes made by the act; amending s. 322.38, F.S.; prohibiting a person from renting a motor vehicle to another until he or she has verified that the driver license of the person to whom the vehicle is rented is unexpired; deleting the requirement that a person renting a motor vehicle to another keep a record of the date when the license of the person to whom the vehicle is rented was issued; specifying that a rental car company is deemed to have met specified requirements when the rental car company requires the renter to verify that he or she is duly licensed and that the license is unexpired if the rental car company rents a motor vehicle to a person

through certain digital, electronic, or other means; specifying when such verification may occur; amending s. 322.61, F.S.; conforming a cross-reference; amending s. 324.021, F.S.; revising the definition of the term "motor vehicle"; amending s. 655.960, F.S.; conforming a cross-reference; amending s. 812.014, F.S.; providing a criminal penalty for an offender committing grand theft who uses a device to interfere with a global positioning or similar system; providing effective dates.

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

Section 1. Subsection (20) of section 316.003, Florida Statutes, is amended, present subsections (21) through (37) of that section are redesignated as subsections (20) through (36), respectively, new subsections (37) and (52) are added to that section, present subsections (52) through (99) of that section are redesignated as subsections (53) through (100), respectively, and subsections (40) and (51) and present subsections (57) and (97) of that section are amended, to read:

316.003 Definitions.—The following words and phrases, when used in this chapter, shall have the meanings respectively ascribed to them in this section, except where the context otherwise requires:

~~(20) DRIVER-ASSISTIVE TRUCK PLATOONING TECHNOLOGY.—Vehicle automation and safety technology that integrates sensor array, wireless vehicle-to-vehicle communications, active safety systems, and specialized software to link safety systems and~~

~~synchronize acceleration and braking between two vehicles while leaving each vehicle's steering control and systems command in the control of the vehicle's driver in compliance with the National Highway Traffic Safety Administration rules regarding vehicle-to-vehicle communications.~~

(37) MOBILE CARRIER.—An electrically powered device that:

(a) Is operated on sidewalks and crosswalks and is intended primarily for transporting property;

(b) Weighs less than 80 pounds, excluding cargo;

(c) Has a maximum speed of 12.5 mph; and

(d) Is equipped with a technology to transport personal property with the active monitoring of a property owner, and primarily designed to remain within 25 feet of the property owner.

A mobile carrier is not considered a vehicle or personal delivery device unless expressly defined by law as a vehicle or personal delivery device.

(40) MOTOR VEHICLE.—Except when used in s. 316.1001, a self-propelled vehicle not operated upon rails or guideway, but not including any bicycle, motorized scooter, electric personal assistive mobility device, mobile carrier, personal delivery device, swamp buggy, or moped. For purposes of s. 316.1001, "motor vehicle" has the same meaning as provided in s. 320.01(1)(a).

(51) PERSONAL DELIVERY DEVICE.—An electrically powered device that:

(a) Is operated on sidewalks and crosswalks and intended primarily for transporting property;

(b) Weighs less than 100 ~~80~~ pounds, excluding cargo;

(c) Has a maximum speed of 10 miles per hour; and

(d) Is equipped with technology to allow for operation of the device with or without the active control or monitoring of a natural person.

A personal delivery device is not considered a vehicle unless expressly defined by law as a vehicle. A mobile carrier is not considered a personal delivery device.

(52) PLATOON.—A group of individual motor vehicles traveling in a unified manner at electronically coordinated speeds and following distances.

(58) ~~(57)~~ PRIVATE ROAD OR DRIVEWAY.—Except as otherwise provided in paragraph (80)(b) ~~(79)(b)~~, any privately owned way or place used for vehicular travel by the owner and those having express or implied permission from the owner, but not by other persons.

(98) ~~(97)~~ VEHICLE.—Every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except personal delivery devices, mobile carriers, and devices used exclusively upon stationary rails or tracks.

Section 2. Paragraph (b) of subsection (7) of section 316.008, Florida Statutes, is amended to read:

316.008 Powers of local authorities.—

(7)

(b)1. Except as provided in subparagraph 2., a personal delivery device and a mobile carrier may be operated on sidewalks and crosswalks within a county or municipality when such use is permissible under federal law. This paragraph does

not restrict a county or municipality from otherwise adopting regulations for the safe operation of personal delivery devices and mobile carriers.

2. A personal delivery device may not be operated on the Florida Shared-Use Nonmotorized Trail Network created under s. 339.81 or components of the Florida Greenways and Trails System created under chapter 260.

Section 3. Subsection (2) of section 316.0895, Florida Statutes, is repealed.

Section 4. Section 316.0896, Florida Statutes, is repealed.

Section 5. Section 316.0897, Florida Statutes, is created to read:

316.0897 Platoons.—

(1) Section 316.0895 does not apply to the operator of a nonlead vehicle in a platoon, as defined in s. 316.003.

(2) A platoon may be operated on a roadway in this state after an operator provides notification to the Department of Transportation and the Department of Highway Safety and Motor Vehicles.

Section 6. Section 316.2071, Florida Statutes, is amended to read:

316.2071 Personal delivery devices and mobile carriers.—

(1) Notwithstanding any provision of law to the contrary, a personal delivery device or mobile carrier may operate on sidewalks and crosswalks, subject to s. 316.008(7)(b). A personal delivery device or mobile carrier operating on a sidewalk or crosswalk has all the rights and duties applicable to a pedestrian under the same circumstances, except that the personal delivery device or mobile carrier must not unreasonably

interfere with pedestrians or traffic and must yield the right-of-way to pedestrians on the sidewalk or crosswalk.

(2) A personal delivery device and a mobile carrier must:

(a) Obey all official traffic and pedestrian control signals and devices.

(b) For personal delivery devices, include a plate or marker that has a unique identifying device number and identifies the name and contact information of the personal delivery device operator.

(c) Be equipped with a braking system that, when active or engaged, enables the personal delivery device or mobile carrier to come to a controlled stop.

(3) A personal delivery device and a mobile carrier may not:

(a) Operate on a public highway except to the extent necessary to cross a crosswalk.

(b) Operate on a sidewalk or crosswalk unless the personal delivery device operator is actively controlling or monitoring the navigation and operation of the personal delivery device or a property owner remains within 25 feet of the mobile carrier.

(c) Transport hazardous materials as defined in s. 316.003.

(4) A person who owns and operates a personal delivery device in this state must maintain an insurance policy, on behalf of himself or herself and his or her agents, which provides general liability coverage of at least $100,000 for damages arising from the combined operations of personal delivery devices under the entity's or agent's control.

Section 7. Subsection (1) and paragraphs (a), (c), (d), and (f) of subsection (2) of section 316.302, Florida Statutes, are

amended to read:

316.302 Commercial motor vehicles; safety regulations; transporters and shippers of hazardous materials; enforcement.—

(1) Except as otherwise provided in subsection (3):

(a) All owners and drivers of commercial motor vehicles that are operated on the public highways of this state while engaged in interstate commerce are subject to the rules and regulations contained in 49 C.F.R. parts 382, 385, and 390-397.

(b) Except as otherwise provided in this section, all owners or drivers of commercial motor vehicles that are engaged in intrastate commerce are subject to the rules and regulations contained in 49 C.F.R. parts 382, 383, 385, and 390-397~~, with the exception of 49 C.F.R. s. 390.5 as it relates to the definition of bus,~~ as such rules and regulations existed on December 31, 2017 ~~2012~~.

(c) The emergency exceptions provided by 49 C.F.R. s. 392.82 also apply to communications by utility drivers and utility contractor drivers during a Level 1 activation of the State Emergency Operations Center, as provided in the Florida Comprehensive Emergency Management plan, or during a state of emergency declared by executive order or proclamation of the Governor.

(d) Except as provided in ~~s. 316.215(5), and except as provided in~~ s. 316.228 for rear overhang lighting and flagging requirements for intrastate operations, the requirements of this section supersede all other safety requirements of this chapter for commercial motor vehicles.

(e) For motor carriers engaged in intrastate commerce who are not carrying hazardous materials in amounts that require

placards, the requirement for electronic logging devices and hours of service support documents shall take effect December 31, 2018.

(2)(a) A person who operates a commercial motor vehicle solely in intrastate commerce not transporting any hazardous material in amounts that require placarding pursuant to 49 C.F.R. part 172 need not comply with 49 C.F.R. ss. 391.11(b)(1) and 395.3 ~~395.3(a) and (b)~~.

(c) Except as provided in 49 C.F.R. s. 395.1, a person who operates a commercial motor vehicle solely in intrastate commerce not transporting any hazardous material in amounts that require placarding pursuant to 49 C.F.R. part 172 may not drive after having been on duty more than 70 hours in any period of 7 consecutive days or more than 80 hours in any period of 8 consecutive days if the motor carrier operates every day of the week. Thirty-four consecutive hours off duty shall constitute the end of any such period of 7 or 8 consecutive days. This weekly limit does not apply to a person who operates a commercial motor vehicle solely within this state while transporting, during harvest periods, any unprocessed agricultural products or unprocessed food or fiber that is subject to seasonal harvesting from place of harvest to the first place of processing or storage or from place of harvest directly to market or while transporting livestock, livestock feed, or farm supplies directly related to growing or harvesting agricultural products. Upon request of the Department of Highway Safety and Motor Vehicles, motor carriers shall furnish time records or other written verification to that department so that the Department of Highway Safety and Motor Vehicles can

determine compliance with this subsection. These time records must be furnished to the Department of Highway Safety and Motor Vehicles within 2 days after receipt of that department's request. Falsification of such information is subject to a civil penalty ~~not to exceed $100~~. ~~The provisions of~~ This paragraph does ~~do~~ not apply to operators of farm labor vehicles operated during a state of emergency declared by the Governor or operated pursuant to s. 570.07(21)~~,~~ and does ~~do~~ not apply to drivers of utility service vehicles as defined in 49 C.F.R. s. 395.2.

(d) A person who operates a commercial motor vehicle solely in intrastate commerce not transporting any hazardous material in amounts that require placarding pursuant to 49 C.F.R. part 172 within a 150 air-mile radius of the location where the vehicle is based need not comply with 49 C.F.R. s. 395.8~~,~~ if the requirements of 49 C.F.R. s. 395.1(e)(1)(ii), (iii)(A) and (C), ~~395.1(e)(1)(iii)~~ and (v) are met. ~~If a driver is not released from duty within 12 hours after the driver arrives for duty, the motor carrier must maintain documentation of the driver's driving times throughout the duty period.~~

(f) A person who operates a commercial motor vehicle having a ~~declared~~ gross vehicle weight, gross vehicle weight rating, and gross combined weight rating of less than 26,001 pounds solely in intrastate commerce and who is not transporting hazardous materials in amounts that require placarding pursuant to 49 C.F.R. part 172~~, or who is transporting petroleum products as defined in s. 376.301,~~ is exempt from subsection (1). However, such person must comply with 49 C.F.R. parts 382, 392, and 393~~,~~ and with 49 C.F.R. ss. 396.3(a)(1) and 396.9.

Section 8. Subsection (3) of section 316.303, Florida

Statutes, is amended to read:

316.303 Television receivers.—

(3) This section does not prohibit the use of an electronic display used in conjunction with a vehicle navigation system; an electronic display used by an operator of a vehicle equipped with autonomous technology, as defined in s. 316.003; or an electronic display used by an operator of a platoon ~~vehicle equipped and operating with driver-assistive truck platooning technology~~, as defined in s. 316.003.

Section 9. Subsection (3) is added to section 316.85, Florida Statutes, to read:

316.85 Autonomous vehicles; operation.—

(3) The Florida Turnpike Enterprise may fund, construct, and operate test facilities for the advancement of autonomous and connected innovative transportation technology solutions for the purposes of improving safety and decreasing congestion for the traveling public and to otherwise advance the enterprise's objectives as set forth under the Florida Transportation Code.

Section 10. Section 319.141, Florida Statutes, is amended to read:

319.141 Pilot rebuilt motor vehicle inspection program.—

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

(a) "Facility" means a rebuilt motor vehicle inspection facility authorized and operating under this section.

(b) "Rebuilt inspection services" means an examination of a rebuilt vehicle and a properly endorsed certificate of title, salvage certificate of title, or manufacturer's statement of origin and an application for a rebuilt certificate of title, a rebuilder's affidavit, a photograph of the junk or salvage

vehicle taken before repairs began, a photograph of the interior driver and passenger sides of the vehicle if airbags were previously deployed and replaced, receipts or invoices for all major component parts, as defined in s. 319.30, and repairs which were changed, and proof that notice of rebuilding of the vehicle has been reported to the National Motor Vehicle Title Information System.

(2) ~~By July 1, 2015,~~ The department shall oversee a pilot program in Miami-Dade County to evaluate alternatives for rebuilt inspection services offered by existing private sector operators, including the continued use of private facilities, the cost impact to consumers, and the potential savings to the department.

(3) The department shall establish a memorandum of understanding that allows private parties participating in the pilot program to conduct rebuilt motor vehicle inspections and specifies requirements for oversight, bonding and insurance, procedures, and forms and requires the electronic transmission of documents.

(4) Before an applicant is approved or renewed, the department shall ensure that the applicant meets basic criteria designed to protect the public. At a minimum, the applicant shall meet all of the following requirements:

(a) Have and maintain a surety bond or irrevocable letter of credit in the amount of $100,000 executed by the applicant.

(b) Secure and maintain a facility at a permanent fixed structure which has ~~at~~ an address identified by a county-issued tax folio number and recognized by the United States Postal Service where the only services provided on such property are

rebuilt inspection services. The operator of a facility shall annually attest that:

1. He or she is not employed by or does not have an ownership interest in or other financial arrangement with the owner, operator, manager, or employee of a motor vehicle repair shop as defined in s. 559.903, a motor vehicle dealer as defined in s. 320.27(1)(c), a towing company, a vehicle storage company, a vehicle auction, an insurance company, a salvage yard, a metal retailer, or a metal rebuilder, from which he or she receives remuneration, directly or indirectly, for the referral of customers for rebuilt inspection services;

2. There have been no changes to the ownership structure of the approved facility; and

3. The only services being provided by the operator of the facility at the property are rebuilt vehicle inspection services approved by the department.

(c) Have and maintain garage liability and other insurance required by the department.

(d) Have completed criminal background checks of the owners, partners, and corporate officers and the inspectors employed by the facility.

(e) Have a designated office and customer waiting area that is separate from and not within view of the vehicle inspection area. The vehicle inspection area must be capable of accommodating all vehicle types and must be equipped with cameras allowing the department to view and monitor every inspection.

(f) ~~(c)~~ Meet any additional criteria the department determines necessary to conduct proper inspections.

(5) A participant in the program shall access vehicle and title information and enter inspection results through an electronic filing system authorized by the department and shall maintain records of each rebuilt vehicle inspection processed at such facility for at least 5 years.

(6) A participant in the program may not conduct an inspection of a vehicle rebuilt before its purchase by the current applicant. Such vehicles must be inspected by the department.

(7) Any applicant for a rebuilt title that fails an initial rebuilt inspection may have that vehicle reinspected only by the department or the facility that conducted the original inspection.

(8) Any person or business authorized by the department to train, certify, or recertify operators and inspectors of private rebuilt motor vehicle inspection facilities may not certify or recertify themselves or any of their employees.

(9) ~~(6)~~ The department shall conduct an onsite facility inspection at least twice a year and shall immediately terminate any operator from the program who fails to meet the minimum eligibility requirements specified in subsection (4). Before any ~~a~~ change in ownership or transfer of a rebuilt inspection facility, the current operator must give the department 45 days' written notice of the intended sale or transfer. The prospective owner or transferee must meet the eligibility requirements of this section and execute a new memorandum of understanding with the department before operating the facility.

(10) ~~(7)~~ This section is repealed on July 1, 2020 ~~2018~~, unless saved from repeal through reenactment by the Legislature.

On or before January 1, 2019, the department shall submit a written report to the Governor and Cabinet evaluating the current program and the benefits to the consumer and the department.

Section 11. Subsection (7) of section 319.32, Florida Statutes, is amended to read:

319.32 Fees; service charges; disposition.—

(7) Notwithstanding any other provision of this section, the department and tax collector may not charge any fee or service charge, except for the expedited title fee, if applicable, for a certificate of title issued for a motor vehicle ~~solely~~ to:

(a) Remove a deceased coowner from a title registered in the names of two persons if the other coowner is the surviving spouse; or

(b) Transfer the title from a deceased owner to a surviving spouse or any surviving next of kin, if the spouse or next of kin is a resident of this state and if the vehicle is titled in this state before the transfer. For purposes of this paragraph, the term "next of kin" means the deceased's child, brother, sister, or parent.

Section 12. Paragraph (a) of subsection (1) and subsection (24) of section 320.01, Florida Statutes, are amended to read:

320.01 Definitions, general.—As used in the Florida Statutes, except as otherwise provided, the term:

(1) "Motor vehicle" means:

(a) An automobile, motorcycle, truck, trailer, semitrailer, truck tractor and semitrailer combination, or any other vehicle operated on the roads of this state, used to transport persons

or property, and propelled by power other than muscular power, but the term does not include traction engines, road rollers, personal delivery devices and mobile carriers as defined in s. 316.003, special mobile equipment as defined in s. 316.003, vehicles that run only upon a track, bicycles, swamp buggies, or mopeds.

(24) "Apportionable vehicle" means any vehicle, except recreational vehicles, vehicles displaying restricted plates, city pickup and delivery vehicles, ~~buses used in transportation of chartered parties,~~ and government-owned vehicles, which is used or intended for use in two or more member jurisdictions that allocate or proportionally register vehicles and which is used for the transportation of persons for hire or is designed, used, or maintained primarily for the transportation of property and:

(a) Is a power unit having a gross vehicle weight in excess of 26,000 pounds;

(b) Is a power unit having three or more axles, regardless of weight; or

(c) Is used in combination, when the weight of such combination exceeds 26,000 pounds gross vehicle weight.

Vehicles, or combinations thereof, having a gross vehicle weight of 26,000 pounds or less and two-axle vehicles may be proportionally registered.

Section 13. Subsection (19) of section 320.02, Florida Statutes, is amended to read:

320.02 Registration required; application for registration; forms.—

(19) A personal delivery device and a mobile carrier as defined in s. 316.003 are ~~is~~ not required to satisfy the registration and insurance requirements of this section.

Section 14. Effective January 1, 2019, subsection (10) of section 320.03, Florida Statutes, is amended to read:

320.03 Registration; duties of tax collectors; International Registration Plan.—

(10) Jurisdiction over the electronic filing system for use by authorized electronic filing system agents to electronically title or register motor vehicles, vessels, mobile homes, or off-highway vehicles; process title transactions, derelict motor vehicle certificates, and certificates of destruction for derelict and salvage motor vehicles pursuant to s. 319.30(2), (3), (7), and (8); issue or transfer registration license plates or decals; electronically transfer fees due for the title and registration process; and perform inquiries for title, registration, and lienholder verification and certification of service providers is expressly preempted to the state, and the department shall have regulatory authority over the system. The electronic filing system shall be available for use statewide and applied uniformly throughout the state. An entity that, in the normal course of its business, sells products that must be titled or registered; ~~,~~ provides title and registration services on behalf of its consumers; or processes title transactions, derelict motor vehicle certificates, or certificates of destruction for derelict or salvage motor vehicles pursuant to s. 319.30(2), (3), (7), or (8); and meets all established requirements may be an authorized electronic filing system agent and shall not be precluded from participating in the electronic

filing system in any county. Upon request from a qualified entity, the tax collector shall appoint the entity as an authorized electronic filing system agent for that county. ~~The department shall adopt rules in accordance with chapter 120 to replace the December 10, 2009, program standards and to administer the provisions of this section, including, but not limited to, establishing participation requirements, certification of service providers, electronic filing system requirements, and enforcement authority for noncompliance. The December 10, 2009, program standards, excluding any standards which conflict with this subsection, shall remain in effect until the rules are adopted.~~ An authorized electronic filing system agent may charge a fee to the customer for use of the electronic filing system. The department shall adopt rules to administer this subsection, including, but not limited to, rules establishing participation requirements, certification of service providers, electronic filing system requirements, disclosures, and enforcement authority for noncompliance.

Section 15. Paragraph (b) of subsection (1) and paragraph (a) of subsection (3) of section 320.06, Florida Statutes, are amended to read:

320.06 Registration certificates, license plates, and validation stickers generally.—

(1)

(b)1. Registration license plates bearing a graphic symbol and the alphanumeric system of identification shall be issued for a 10-year period. At the end of the 10-year period, upon renewal, the plate shall be replaced. The department shall extend the scheduled license plate replacement date from a 6-

year period to a 10-year period. The fee for such replacement is $28, $2.80 of which shall be paid each year before the plate is replaced, to be credited toward the next $28 replacement fee. The fees shall be deposited into the Highway Safety Operating Trust Fund. A credit or refund may not be given for any prior years' payments of the prorated replacement fee if the plate is replaced or surrendered before the end of the 10-year period, except that a credit may be given if a registrant is required by the department to replace a license plate under s. 320.08056(8)(a). With each license plate, a validation sticker shall be issued showing the owner's birth month, license plate number, and the year of expiration or the appropriate renewal period if the owner is not a natural person. The validation sticker shall be placed on the upper right corner of the license plate. The license plate and validation sticker shall be issued based on the applicant's appropriate renewal period. The registration period is 12 months, the extended registration period is 24 months, and all expirations occur based on the applicant's appropriate registration period.

2. Before October 1, 2019, a vehicle that has an apportioned registration shall be issued an annual license plate and a cab card denoting ~~that denote~~ the declared gross vehicle weight ~~for each apportioned jurisdiction in which the vehicle is authorized to operate~~.

3. Beginning October 1, 2019, a vehicle registered in accordance with the International Registration Plan shall be issued a license plate for a 5-year period, an annual cab card denoting the declared gross vehicle weight, and an annual validation sticker showing the month and year of expiration. The

validation sticker shall be placed in the center of the license plate. The license plate and validation sticker shall be issued based on the applicant's appropriate renewal period. The fee for the initial validation sticker and any renewed validation sticker is $28. This fee shall be deposited into the Highway Safety Operating Trust Fund. A damaged or worn license plate may be replaced at no charge by applying to the department and surrendering the current license plate.

4.~~2.~~ In order to retain the efficient administration of the taxes and fees imposed by this chapter, the 80-cent fee increase in the replacement fee imposed by chapter 2009-71, Laws of Florida, is negated as provided in s. 320.0804.

(3)(a) Registration license plates must be made of metal specially treated with a retroreflection material, as specified by the department. The registration license plate is designed to increase nighttime visibility and legibility and must be at least 6 inches wide and not less than 12 inches in length, unless a plate with reduced dimensions is deemed necessary by the department to accommodate motorcycles, mopeds, or similar smaller vehicles. Validation stickers must also be treated with a retroreflection material, must be of such size as specified by the department, and must adhere to the license plate. The registration license plate must be imprinted with a combination of bold letters and numerals or numerals, not to exceed seven digits, to identify the registration license plate number. The license plate must be imprinted with the word "Florida" at the top and the name of the county in which it is sold, the state motto, or the words "Sunshine State" at the bottom. Apportioned license plates must have the word "Apportioned" at the bottom

and license plates issued for vehicles taxed under s. 320.08(3)(d), (4)(m) or (n), (5)(b) or (c), or (14) must have the word "Restricted" at the bottom. License plates issued for vehicles taxed under s. 320.08(12) must be imprinted with the word "Florida" at the top and the word "Dealer" at the bottom unless the license plate is a specialty license plate as authorized in s. 320.08056. Manufacturer license plates issued for vehicles taxed under s. 320.08(12) must be imprinted with the word "Florida" at the top and the word "Manufacturer" at the bottom. License plates issued for vehicles taxed under s. 320.08(5)(d) or (e) must be imprinted with the word "Wrecker" at the bottom. Any county may, upon majority vote of the county commission, elect to have the county name removed from the license plates sold in that county. The state motto or the words "Sunshine State" shall be printed in lieu thereof. A license plate issued for a vehicle taxed under s. 320.08(6) may not be assigned a registration license number, or be issued with any other distinctive character or designation, that distinguishes the motor vehicle as a for-hire motor vehicle.

Section 16. Section 320.0605, Florida Statutes, is amended to read:

320.0605 Certificate of registration; possession required; exception.—

(1)(a) The registration certificate or an official copy thereof including in an electronic format, a true copy or an electronic copy of rental or lease documentation issued for a motor vehicle or issued for a replacement vehicle in the same registration period, a temporary receipt printed upon self-initiated electronic renewal of a registration via the Internet,

or a cab card issued for a vehicle registered under the International Registration Plan shall, at all times while the vehicle is being used or operated on the roads of this state, be in the possession of the operator thereof or be carried in the vehicle for which issued and shall be exhibited upon demand of any authorized law enforcement officer or any agent of the department, except for a vehicle registered under s. 320.0657. ~~The provisions of~~ This section does ~~do~~ not apply during the first 30 days after purchase of a replacement vehicle. A violation of this section is a noncriminal traffic infraction, punishable as a nonmoving violation as provided in chapter 318.

(b)1. The act of presenting to a law enforcement officer or agent of the department an electronic device displaying an electronic copy of the registration certificate or the rental or lease documentation does not constitute consent for the officer or agent to access any information on the device other than the displayed rental or lease documentation.

2. The person who presents the device to the officer or agent assumes the liability for any resulting damage to the device.

(2) Rental or lease documentation that is sufficient to satisfy the requirement in subsection (1) includes the following:

(a) Date ~~of rental~~ and time of ~~exit from~~ rental ~~facility~~;

(b) Rental station identification;

(c) Rental agreement number;

(d) Rental vehicle identification number;

(e) Rental vehicle license plate number and state of registration;

(f) Vehicle's make, model, and color;

(g) Vehicle's mileage; and

(h) Authorized renter's name.

Section 17. Subsection (5) of section 320.0607, Florida Statutes, is amended to read:

320.0607 Replacement license plates, validation decal, or mobile home sticker.—

(5) Upon the issuance of an original license plate, the applicant shall pay a fee of $28 to be deposited in the Highway Safety Operating Trust Fund. Beginning October 1, 2019, this subsection does not apply to a vehicle registered under the International Registration Plan.

Section 18. Paragraph (b) of subsection (2) of section 320.0657, Florida Statutes, is amended to read:

320.0657 Permanent registration; fleet license plates.—

(2)

(b) The plates, which shall be of a distinctive color, shall have the word "Fleet" appearing at the bottom and the word "Florida" appearing at the top unless the license plate is a specialty license plate as authorized in s. 320.08056. The plates shall conform in all respects to the provisions of this chapter, except as specified herein. For additional fees as set forth in s. 320.08056, fleet companies may purchase specialty license plates in lieu of the standard fleet license plates. Fleet companies shall be responsible for all costs associated with the specialty license plate, including all annual use fees, processing fees, fees associated with switching license plate types, and any other applicable fees.

Section 19. Subsection (12) of section 320.08, Florida

Statutes, is amended to read:

320.08 License taxes.—Except as otherwise provided herein, there are hereby levied and imposed annual license taxes for the operation of motor vehicles, mopeds, motorized bicycles as defined in s. 316.003(3), tri-vehicles as defined in s. 316.003, and mobile homes as defined in s. 320.01, which shall be paid to and collected by the department or its agent upon the registration or renewal of registration of the following:

(12) DEALER AND MANUFACTURER LICENSE PLATES.—A franchised motor vehicle dealer, independent motor vehicle dealer, marine boat trailer dealer, or mobile home dealer and manufacturer license plate: $17 flat, of which $4.50 shall be deposited into the General Revenue Fund. For additional fees as set forth in s. 320.08056, dealers may purchase specialty license plates in lieu of the standard graphic dealer license plates. Dealers shall be responsible for all costs associated with the specialty license plate, including all annual use fees, processing fees, fees associated with switching license plate types, and any other applicable fees.

Section 20. Subsection (2) of section 320.08056, Florida Statutes, is amended to read:

320.08056 Specialty license plates.—

(2)(a) The department shall issue a specialty license plate to the owner or lessee of any motor vehicle, except a vehicle registered under the International Registration Plan, a commercial truck required to display two license plates pursuant to s. 320.0706, or a truck tractor, upon request and payment of the appropriate license tax and fees.

(b) The department may authorize dealer and fleet specialty

license plates. With the permission of the sponsoring specialty license plate organization, a dealer or fleet company may purchase specialty license plates to be used on dealer and fleet vehicles.

(c) Notwithstanding s. 320.08058, a dealer or fleet specialty license plate must include the letters "DLR" or "FLT" on the right side of the license plate. Dealer and fleet specialty license plates must be ordered directly through the department.

Section 21. Subsection (10) is added to section 320.131, Florida Statutes, to read:

320.131 Temporary tags.—

(10) Beginning October 1, 2018, the department may partner with a county tax collector to conduct a Fleet Vehicle Temporary Tag pilot program to provide temporary tags to fleet companies to allow them to operate fleet vehicles awaiting a permanent registration and title.

(a) The department shall establish a memorandum of understanding that allows a maximum of three companies to participate in the pilot program and receive multiple temporary tags for company fleet vehicles.

(b) To participate in the program, a fleet company must have a minimum of 3,500 fleet vehicles registered in this state which qualify to be registered as fleet vehicles pursuant to s. 320.0657.

(c) The department may issue up to 50 temporary tags at a time to an eligible fleet company, if requested by such company.

(d) The temporary tags are for exclusive use on a vehicle purchased for the company's fleet, and may not be used on any

other vehicle.

(e) Each temporary plate may be used on only one vehicle and each vehicle may only use one temporary plate.

(f) Upon issuance of the vehicle's permanent license plate and registration, the temporary tag becomes invalid and must be removed from the vehicle and destroyed.

(g) Upon a finding by the department that a temporary tag has been misused by a fleet company under this program, the department may terminate the memorandum of understanding with the company, invalidate all temporary tags issued to the company under the program, and require such company to return any unused temporary tags.

(h) This subsection is repealed on October 1, 2021, unless saved from repeal through reenactment by the Legislature.

Section 22. Subsections (18) through (46) of section 322.01, Florida Statutes, are renumbered as subsections (25) through (53), respectively, and new subsections (18) through (24) are added to that section, to read:

322.01 Definitions.—As used in this chapter:

(18) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(19) "Electronic credential" means an electronic representation of a physical driver license or identification card which is viewable on an electronic credential system capable of being verified and authenticated.

(20) "Electronic credential holder" means a person to whom an electronic credential has been issued.

(21) "Electronic credential provider" means an entity

contracted with the department to provide the electronic credential to the electronic credential holder.

(22) "Electronic credential system" means a computer system used to display or transmit electronic credentials to a person or verification system which can be accessed using an electronic device.

(23) "Electronic device" means a device or a portion of a device that is designed for and capable of communicating across a computer network with other computers or devices for the purpose of transmitting, receiving, or storing data, including, but not limited to, a cellular telephone, tablet, or other portable device designed for and capable of communicating with or across a computer network, and is used to render an electronic credential.

(24) "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.

Section 23. Section 322.032, Florida Statutes, is amended to read:

322.032 Electronic credential ~~Digital proof of driver license~~.—

(1)(a) The department shall develop and implement ~~begin to review and prepare for the development of a~~ secure and uniform protocols that comply with national standards ~~system~~ for issuing an optional electronic credential. The department shall procure the related technology solution that uses a revenue-sharing model through a competitive solicitation process pursuant to s. 287.057 ~~digital proof of driver license~~. The department may issue electronic credentials to persons who hold a Florida driver license or identification card. The electronic credential

and verification solution must have the necessary technological capabilities to execute the authentication of an electronic credential across all states, jurisdictions, federal and state agencies, and municipalities. The electronic credential and verification solution must provide the system integration necessary:

1. For qualified and authorized entities to securely consume an electronic credential.

2. For the production of a fully compliant electronic credential by qualified and authorized electronic credential providers.

3. To successfully ensure secure authentication and validation of data from disparate sources.

(b) The department shall procure ~~contract with~~ one or more electronic credential providers through the competitive solicitation process ~~private entities~~ to develop and implement a secure electronic credential ~~a digital proof of driver license~~ system.

(c) The department shall maintain the protocols and national standards necessary for an electronic credential provider to request authorized access to an application programming interface, or an appropriate technological tool of at least the same capabilities, necessary for such private entity to consume an electronic credential. The department shall timely review requests for authorized access and must approve all requests by electronic credential providers which meet the department's requirements. The department may assess a fee for use of the electronic credential and verification solution.

(d) The department shall provide access to a standardized

digital transaction process for use by the approved electronic credential providers of compliant electronic credentials to enable the financial transaction to be completed in such a manner that the proceeds are accepted by the department at the point of sale. The standardized digital transaction process must enable the providers of an electronic credential to direct through their electronic commerce workflow to a standardized checkout process and be able to document the providers involved. Any revenue generated from the electronic credential system must be collected by the department and distributed pursuant to a legislative appropriation and department agreements with the electronic credential providers of the electronic credential. Any revenues shared between the state and electronic credential providers are based solely on revenues derived from the purchase of the optional, electronic credential and no other transaction. The department shall enter into an agreement with the electronic credential providers which describes the permitted uses, terms and conditions, privacy policy, and uniform remittance terms relating to the consumption of an electronic credential.

(2)(a) The electronic credential ~~digital proof of driver license~~ developed by the department or by an electronic credential provider ~~an entity~~ contracted by the department must be in such a format as to allow law enforcement or an authorized consumer to verify the authenticity of the electronic credential and the identity of the credential holder and to validate the status of any driving privileges associated with the electronic credential ~~digital proof of driver license~~. The department shall adhere to protocols and national standards ~~may adopt rules~~ to ensure valid authentication of electronic credentials ~~digital~~

~~driver licenses~~ by law enforcement.

(b) The act of presenting to a law enforcement officer an electronic device displaying an electronic credential does not constitute consent for the officer to access any information on the device other than the electronic credential.

(c) The person who presents the device to the officer assumes liability for any resulting damage to the device.

(3) A person may not be issued an electronic credential ~~a digital proof of driver license~~ until he or she has satisfied all of the requirements of this chapter for issuance of a physical driver license or identification card as provided in this chapter.

(4) A person who:

(a) Manufactures a false electronic credential ~~digital proof of driver license~~ commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) Possesses a false electronic credential ~~digital proof of driver license~~ commits a misdemeanor of the second degree, punishable as provided in s. 775.082.

Section 24. Section 322.059, Florida Statutes, is amended to read:

322.059 Mandatory surrender of suspended driver license and registration.—A person whose driver license or registration has been suspended as provided in s. 322.058 must immediately return his or her driver license and registration to the Department of Highway Safety and Motor Vehicles. The department shall invalidate the electronic credential ~~digital proof of driver license~~ issued pursuant to s. 322.032 for such person. If such person fails to return his or her driver license or

registration, a law enforcement agent may seize the license or registration while the driver license or registration is suspended.

Section 25. Paragraph (c) of subsection (1) of section 322.143, Florida Statutes, is amended to read:

322.143 Use of a driver license or identification card.—

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

(c) "Swipe" means the act of passing a driver license or identification card through a device that is capable of deciphering, in an electronically readable format, the information electronically encoded in a magnetic strip or bar code on the driver license or identification card or consuming an electronic credential.

Section 26. Subsection (1) of section 322.15, Florida Statutes, is amended to read:

322.15 License to be carried and exhibited on demand; fingerprint to be imprinted upon a citation.—

(1) Every licensee shall have his or her driver license, which must be fully legible with no portion of such license faded, altered, mutilated, or defaced, in his or her immediate possession at all times when operating a motor vehicle and shall present or submit the same upon the demand of a law enforcement officer or an authorized representative of the department. A licensee may present or submit an electronic credential ~~a digital proof of driver license~~ as provided in s. 322.032 in lieu of a physical driver license.

Section 27. Section 322.38, Florida Statutes, is amended to read:

322.38 Renting motor vehicle to another.—

(1) A ~~No~~ person may not ~~shall~~ rent a motor vehicle to any other person unless the other ~~latter~~ person is ~~then~~ duly licensed~~,~~ or, if a nonresident, ~~he or she shall be~~ licensed under the laws of the state or country of his or her residence, except a nonresident whose home state or country does not require that an operator be licensed.

(2) A ~~No~~ person may not ~~shall~~ rent a motor vehicle to another until he or she has inspected the driver license of the person to whom the vehicle is to be rented~~,~~ and has ~~compared and~~ verified that the driver license is unexpired ~~signature thereon with the signature of such person written in his or her presence~~.

(3) Every person renting a motor vehicle to another shall keep a record of the registration number of the motor vehicle so rented, the name, ~~and~~ address, and license number of the person to whom the vehicle is rented, ~~the number of the license of said latter person,~~ and the ~~date and~~ place ~~when and~~ where the ~~said~~ license was issued. Such record shall be open to inspection by any police officer~~,~~ or officer or employee of the department.

(4) If a rental car company rents a motor vehicle to a person through digital, electronic, or other means that allows the renter to obtain possession of the motor vehicle without direct contact with an agent or employee of the rental car company, or if through use of such means the renter does not execute a rental contract at the time he or she takes possession of the vehicle, the rental car company is deemed to have met the requirements of subsections (1) and (2) when the rental car company requires the renter to verify that he or she is duly licensed and that the license is unexpired. Such verification

may occur at the time the renter enrolls in a membership program, master agreement, or other means of establishing use of the rental car company's services or at any time thereafter.

Section 28. Subsection (4) of section 322.61, Florida Statutes, is amended to read:

322.61 Disqualification from operating a commercial motor vehicle.—

(4) Any person who is transporting hazardous materials as defined in s. 322.01(31) ~~s. 322.01(24)~~ shall, upon conviction of an offense specified in subsection (3), be disqualified from operating a commercial motor vehicle for a period of 3 years. The penalty provided in this subsection shall be in addition to any other applicable penalty.

Section 29. Subsection (1) of section 324.021, Florida Statutes, is amended to read:

324.021 Definitions; minimum insurance required.—The following words and phrases when used in this chapter shall, for the purpose of this chapter, have the meanings respectively ascribed to them in this section, except in those instances where the context clearly indicates a different meaning:

(1) MOTOR VEHICLE.—Every self-propelled vehicle that is designed and required to be licensed for use upon a highway, including trailers and semitrailers designed for use with such vehicles, except traction engines, road rollers, farm tractors, power shovels, and well drillers, and every vehicle that is propelled by electric power obtained from overhead wires but not operated upon rails, but not including any personal delivery device or mobile carrier as defined in s. 316.003, bicycle, or moped. However, the term "motor vehicle" does not include a

motor vehicle as defined in s. 627.732(3) when the owner of such vehicle has complied with the requirements of ss. 627.730-627.7405, inclusive, unless the provisions of s. 324.051 apply; and, in such case, the applicable proof of insurance provisions of s. 320.02 apply.

Section 30. Subsection (1) of section 655.960, Florida Statutes, is amended to read:

655.960 Definitions; ss. 655.960-655.965.—As used in this section and ss. 655.961-655.965, unless the context otherwise requires:

(1) "Access area" means any paved walkway or sidewalk which is within 50 feet of any automated teller machine. The term does not include any street or highway open to the use of the public, as defined in s. 316.003(80)(a) or (b) ~~s. 316.003(79)(a) or (b)~~, including any adjacent sidewalk, as defined in s. 316.003.

Section 31. Paragraph (a) of subsection (2) of section 812.014, Florida Statutes, is amended to read:

812.014 Theft.—

(2)(a)1. If the property stolen is valued at $100,000 or more or is a semitrailer that was deployed by a law enforcement officer; or

2. If the property stolen is cargo valued at $50,000 or more that has entered the stream of interstate or intrastate commerce from the shipper's loading platform to the consignee's receiving dock; or

3. If the offender commits any grand theft and:

a. In the course of committing the offense the offender uses a motor vehicle as an instrumentality, other than merely as a getaway vehicle, to assist in committing the offense and

thereby damages the real property of another; or

b. In the course of committing the offense the offender causes damage to the real or personal property of another in excess of $1,000; or

4. If the property stolen is cargo and in the course of committing the offense the offender uses any type of device to defeat, block, disable, jam, or interfere with a global positioning system or similar system designed to identify the location of the cargo or the vehicle or trailer carrying the cargo,

the offender commits grand theft in the first degree, punishable as a felony of the first degree, as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 32. Except as otherwise expressly provided in this act, this act shall take effect October 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 1104
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Transportation, Tourism, and Economic Development); Transportation Committee; and Senator Brandes
SUBJECT:	Transportation
DATE:	March 6, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Jones	Miller	TR	**Fav/CS**
2.	Wells	Hrdlicka	ATD	**Recommend: Fav/CS**
3.	Wells	Hansen	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1104 makes numerous changes relating to transportation. The bill:

- Clarifies the organization of the Florida Department of Transportation (FDOT) and removes the requirement that the Governor must pick an FDOT secretary from the Florida Transportation Commission's (FTC) nominated FDOT secretary candidates;
- Defines "mobile carriers" and provides regulations for such devices;
- Increases the allowable weight of a personal delivery device to less than 100 pounds, instead of less than 80 pounds;
- Repeals s. 316.0895(2), F.S., which prohibits trucks and vehicles towing other vehicles or trailers from following one another within 300 feet on roadways outside of a business or residence district;
- Updates various commercial motor vehicle regulations to address compatibility issues with federal law and the International Registration Plan;
- Authorizes the Florida Turnpike Enterprise to fund, construct, and operate test facilities for the advancement of autonomous and connected transportation technology solutions for improving safety and congestion;
- Extends the Pilot Rebuilt Motor Vehicle Inspection Program to July 1, 2020, requires the Department of Highway Safety and Motor Vehicles (DHSMV) to submit a report evaluating the program by January 1, 2019, and provides additional requirements for the program;

- Prohibits the DHSMV or tax collectors from charging a title transfer fee when transferring a Florida motor vehicle title from a deceased owner to the deceased's parent or child within 30 days of the death;
- Requires the motor vehicle registration application and renewal form include a voluntary checkoff to allow contributions of $1 per applicant to be distributed to the Alzheimer's Association, Inc.;
- Expands businesses that may be authorized to use the DHSMV's electronic filing system to an entity that, in the normal course of its business, process title transactions, derelict motor vehicle certificates, or certificates of destruction for derelict or salvage motor vehicles;
- Increases the time-frame apportionable vehicles must replace their license plates from annually to every five years;
- Allows the DHSMV to authorize the format of an electronic certificate of registration;
- Authorizes a DHSMV-approved electronic copy of a motor vehicle certificate of registration or motor vehicle rental or lease documentation be accepted by law enforcement or agents of the DHSMV as proof of possession of such documentation, and provides restrictions and liability regarding the electronic device displaying such documentation;
- Allows motor vehicle dealers and fleet companies to purchase specialty license plates for use on dealer and fleet vehicles directly from the DHSMV upon approval by the specialty license plate's sponsoring organization;
- Creates a Fleet Vehicle Temporary Tag pilot program, which allows the DHSMV to partner with a county tax collector to establish an agreement with up to three companies allowing the issuance of up to 50 temporary tags at a time for use by the company's fleet vehicles;
- Requires the DHSMV to competitively procure providers for an electronic driver license (electronic credential), provides requirements for the electronic credential and verification solution providers (including technological requirements), and authorizes the issuance and use of electronic credentials;
- Exempts a caregiver of a foster child, who signs the application for the minor's learner's driver license, from any obligation or liability for damages caused by the negligence or willful misconduct of the minor by reason of having signed the application;
- Provides that a motor vehicle rental company is deemed to have met the requirements of inspecting a driver license and prohibiting the rental of a motor vehicle to a person required to be licensed who is not, if the renter verifies he or she holds a valid driver license and the vehicle is rented from the company through digital, electronic, or other means not requiring direct contact with an employee of the rental company;
- Removes a requirement that a person who rents a vehicle to another person compare the signature of the renter with the renter's driver license signature; instead the person must verify that the renter's driver license is unexpired;
- Allows for-hire passenger vehicles to be insured by certain eligible nonadmitted insurers who are not members of the Florida Insurance Guaranty Association;
- Reduces the number of for-hire passenger vehicles an owner or lessee must operate to self-insure, from 300 to 150 for-hire vehicles;
- Requires the FDOT to charge a customer the minimum express lane toll for a *segment* of the express lane if the average travel speed of that *segment* falls below 40 miles per hour, rather than for the customer's entire trip;
- Provides that, when variable pricing in express lanes is allowed, the Florida Turnpike Enterprise (FTE) can charge a person for the *segment's* general toll amount plus the

segment's minimum toll amount, rather than the general toll lane amount plus an amount set by FDOT;
- Prohibits a local governmental entity from preventing public motor vehicle use or access to an existing transportation facility or corridor if it is the only point, or one of two points, of ingress to and egress from a state university;
- Creates a first degree grand theft crime for an offender who commits cargo theft and, in the course of committing the offense, uses a device that interferes with a global positioning system or similar system used to identify the location of the cargo or vehicle; and
- Makes technical and cross-reference changes to conform to changes made by the bill.

The bill also makes changes regarding motor vehicle platooning. Specifically, it:
- Repeals s. 316.0896, F.S., related to the assistive truck platooning technology pilot program, which has been conducted by the FDOT in consultation with the DHSMV;
- Defines the term "platoon" for purposes of the State Uniform Traffic Control Law;
- Authorizes motor vehicle platoons to be operated upon Florida roadways after an operator provides notification to the DHSMV and is issued a permit to operate such platoon by the FDOT;
- Requires the FDOT to adopt rules for the issuance of the permit and provides matters that must be addressed by such rules; and
- Provides that s. 316.303, F.S., concerning television receivers, does not prohibit use of an electronic display by an operator of a platoon.

The bill may reduce revenues to the DHSMV, the Highway Safety Operating Trust Fund, the State Transportation Trust Fund, the General Revenue Fund, and local tax collectors by an indeterminate amount. However, the provision allowing the use of electronic credentials may generate revenue to the Highway Safety Operating Trust Fund.

The bill may reduce expenses of the FTC. The bill will increase expenditures by the FDOT and DHSMV by an indeterminate amount.

The bill makes changes to address compliance issues with federal laws relating to commercial motor vehicles. The state could experience a reduction of Federal-aid highway funds if the state remains non-compliant with such federal laws.

The Criminal Justice Impact Conference has indicated that provisions of the bill may have a positive indeterminate impact on prison beds, meaning the bill will result in an unquantifiable increase in prison beds.

Except as otherwise expressly provided, the bill takes effect October 1, 2018.

II. Present Situation:

Due to the disparate issues in the bill, the present situation for each section is discussed below in conjunction with the effect of the proposed changes.

III. Effect of Proposed Changes:

FDOT Organization and Nomination of the FDOT Secretary (Section 1)

Present Situation

The FDOT is statutorily organized into seven districts, each of which is headed by a district secretary, as well as a turnpike enterprise and a rail enterprise, each of which is headed by an executive director.[1] The secretary, appointed by the Governor from among three persons nominated by the Florida Transportation Commission (FTC) and subject to confirmation, must be a proven, effective administrator who by education and experience clearly possesses broad knowledge of the administrative, financial and technical aspects of the development, operation, and regulation of transportation systems and facilities.[2]

The FDOT's central office is directed to establish departmental policies, rules, procedures, and standards and to monitor the implementation of such policies, etc., in order to ensure uniform compliance and quality performance by the districts and central office units.[3] Additionally, to provide for efficient operations and expedite the decision-making process, the FDOT is directed to provide for maximum decentralization to the districts.[4]

Effect of Proposed Changes

Section 1 of the bill amends s. 20.23(1), F.S., to restate current law by providing that the FDOT shall consist of:

- A central office, which establishes policies and procedures; and
- Districts, which carry out projects as authorized or required under the policies and procedures established by the central office pursuant to the existing statutory direction.

In addition, this section of the bill removes the provision requiring the Governor to appoint the FDOT secretary from among three persons nominated by the FTC. Under the bill, the FTC would no longer be required to undertake the process of reviewing and selecting candidates for the FDOT secretary nominations, and the Governor would not be restricted to appointing as the FDOT secretary one of the three persons nominated by the FTC.

Platoons (Sections 2, 5, 6 and 9)

Present Situation

Platooning is an emerging automated driving technology that allows vehicles to communicate with one another in order to electronically "link" to each other in a line at close proximity, where the lead vehicle controls the speed and braking of the following vehicles.[5] Each vehicle platoons by using an onboard computer connected to a vehicle-to-vehicle (V2V) communications device that receives and transmits data using Dedicated Short-Range Communications (DSRC), a two-

[1] Section 20.23(4)(a), F.S.
[2] Section 20.23(1), F.S.
[3] Section 20.23(3)(a), F.S.
[4] Section 20.23(4)(a), F.S.
[5] U.S. Department of Transportation, Volpe Center, *How an Automated Car Platoon Works* (July 31, 2017), https://www.volpe.dot.gov/news/how-automated-car-platoon-works (last visited Feb. 5, 2018).

way wireless communications capability permitting very high data transmission.[6] DSRC is used by both V2V communications as well as vehicle-to-infrastructure (V2I) communications to provide connectivity among vehicles and between infrastructure to prevent crashes and enable safety, mobility, and environmental sustainability.[7]

The National Highway Traffic Safety Administration (NHTSA) published a Notice of Proposed Rulemaking in January 2017, proposing to mandate V2V communications for new light vehicles and standardize the message and format of V2V transmissions to create a standard system, both of which would enable vehicle manufacturers to develop safety applications using V2V communications.[8] These V2V communication device requirements would use DSRC devices to transmit basic information on the road, such as a vehicle's speed, heading, brake status and path predictions, which can be used to provide drivers timely warnings of impending crash situations that drivers may not otherwise be capable of seeing.[9] NHTSA has expressed that V2V communication "shows great promise in helping to avoid crashes, ease traffic congestion, and improve the environment."[10]

Driver-Assistive Truck Platooning

One form of V2V technology is driver-assistive truck platooning (DATP), which allows trucks to communicate with one another and to travel as close as 30 feet apart with automatic acceleration and braking. A draft is created, reducing wind resistance and cutting down on fuel consumption.[11]

In 2016, s. 316.0896, F.S., was created to require the Florida Department of Transportation (FDOT), in consultation with the Department of Highway Safety and Motor Vehicles (DHSMV), to study the use and safe operation of DATP technology,[12] develop and conduct a pilot project to test the use and safe operation of vehicles equipped to operate using DATP, and submit results of the study and any findings or recommendations from the pilot project to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The FDOT developed the pilot project as a demonstration and operational phase to:

- Evaluate impacts of DATP on surrounding traffic and infrastructure;
- Evaluate feasibility of conducting enforcement responsibilities when DATP trucks are operating; and

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[6] *Id.*
[7] U.S. Department of Transportation, Intelligent Transportation Systems Joint Program Office, *DSRC: The Future of Safer Driving*, https://www.its.dot.gov/factsheets/dsrc_factsheet.htm (last visited Feb. 5, 2018).
[8] Federal Motor Vehicle Safety Standards; V2V Communications, 82 Fed. Reg. 3854 (Jan. 12, 2017), https://www.federalregister.gov/documents/2017/01/12/2016-31059/federal-motor-vehicle-safety-standards-v2v-communications (last visited Feb. 5, 2018).
[9] *Id.*
[10] NHTSA, *Vehicle-to-Vehicle Communication*, https://www.nhtsa.gov/technology-innovation/vehicle-vehicle-communication (last visited Feb. 5, 2018).
[11] Go by Truck Global News, *Driver Survey: Platooning* (Nov. 18, 2014), http://www.gobytrucknews.com/driver-survey-platooning/123 (last visited Feb. 5, 2018).
[12] Section 316.003(20), F.S., defines "driver-assistive truck platooning technology" as "[v]ehicle automation and safety technology that integrates sensor array, wireless vehicle-to-vehicle communications, active safety systems, and specialized software to link safety systems and synchronize acceleration and braking between two vehicles while leaving each vehicle's steering control and systems command in the control of the vehicle's driver in compliance with the National Highway Safety Administration rules regarding vehicle-to-vehicle communications."

- Evaluate administrative aspects of permitting DATP systems.[13]

The pilot project was conducted with Peloton Technology, one developer of DATP vehicle systems. Peloton's DATP is a cloud-based system that uses integrated sensors, controls, and wireless communications to determine in real time whether conditions are appropriate to allow specific trucks to engage in platooning operations.[14] Using V2V communications, the system synchronizes acceleration and braking between tractor-trailers, leaving steering to the drivers, but eliminating braking distance otherwise caused by lags in the front or rear driver's response time.[15] According to Peloton Technology, Peloton's demonstration of its DATP technology occurred on the Florida Turnpike and covered over 1,000 miles using two trucks traveling at a separation distance of approximately 65 feet.[16] At this time, FDOT has not submitted its report of the results of the study and any findings or recommendations from the pilot project.[17]

State Platoon Laws

According to Peloton, nine states have confirmed allowance for commercial deployment of DATP.[18] At least ten states with "following too closely" laws, including Florida,[19] exempt vehicles equipped with a DATP system or a platooning system from such state law.[20] Additionally, Arkansas, Michigan, Nevada, and Tennessee passed laws expressly allowing a person to operate DATP or platooning systems; however, Arkansas, Michigan, and Tennessee only allow operation upon state approval of a submitted operations plan or following a certain number of days after submission of such plan, if the plan is not rejected by the overseeing agency.[21] Several states and the federal government are continuing testing of DATP and other platooning systems.

Following Too Closely and TV Receiver Prohibitions

Section 316.0895, F.S., prohibits a driver of a motor vehicle to follow another vehicle more closely than is reasonable and prudent. It is unlawful, when traveling upon a roadway outside a business or residence district, for a motor truck or vehicle towing another vehicle or trailer to

[13] *See* Florida Vender Bid System, *Request for Information from the FDOT – Driver Assistive Truck Platooning Pilot Project* (July 6, 2017), http://www.myflorida.com/apps/vbs/vbs_www.ad_r2.view_ad?advertisement_key_num=134408 (last visited Feb. 5, 2018).
[14] Peloton, How It Works, *The Platooning Experience*, https://peloton-tech.com/how-it-works/ (last visited Feb. 5, 2018).
[15] *Id.*
[16] Peloton, *Peloton Technology demonstrates driver-assistive truck platooning system to Florida transportation leaders in connection with Florida Pilot Project* (Dec. 20, 2017), https://peloton-tech.com/driver-assistive-truck-platooning-demonstration-florida-transportation-leaders-connection-florida-pilot-project/ (last visited Feb. 5, 2018).
[17] DHSMV staff has indicated to the staff of the Senate Transportation Committee that the report is in the process of being finalized.
[18] Peloton *supra* note 14.
[19] See ss. 316.0895 and 316.0896(2), F.S.
[20] The other states are Arkansas, California (only for testing), Georgia, Michigan, Nevada, North Carolina, South Carolina, Tennessee, and Texas. *See* National Conference of State Legislatures, *Autonomous Vehicles – Self-Driving Enacted Legislation, Enacted Autonomous Vehicles Legislation* (Jan. 2, 2018), http://www.ncsl.org/research/transportation/autonomous-vehicles-self-driving-vehicles-enacted-legislation.aspx (last visited Feb. 5, 2018).
[21] *Id.*

follow within 300 feet of a similar vehicle. The law exempts the vehicles operating as part of the FDOT's pilot project in a manner and at locations determined by the FDOT.[22]

Section 316.303, F.S., prohibits a motor vehicle operated on the highways of this state to be equipped with television-type receiving equipment that is visible from the driver's seat; however, this prohibition does not apply to an electronic display:

- Used in conjunction with a vehicle navigation system;
- Used in a vehicle equipped with autonomous technology in autonomous mode; or
- Used in a vehicle equipped and operating with DATP technology.

Effect of Proposed Changes

The bill repeals the pilot projects for DATP and permits platooning on Florida roadways after an operator provides notification to the DHSMV and the FDOT and obtains a permit by the FDOT.

Section 2 amends s. 316.003, F.S., to repeal the definition of "driver-assistive truck platooning technology," and add a definition for the term "platoon." The bill defines "platoon" as "a group of individual truck-tractor semi-trailer combinations which do not require placards traveling in a unified manner via wireless communications at electronically coordinated speeds and following distances."

Section 5 repeals s. 316.0896, F.S., which created the assistive truck platooning technology pilot project conducted by the FDOT in consultation with the DHSMV.

Section 6 creates s. 316.0897, F.S., to allow an operator to operate in a platoon on Florida roadways after the operator provides notification to the DHSMV and obtains a permit to operate in a platoon from the FDOT. The FDOT is required to adopt rules for the issuance of such permits. Such rules must address:

- The safety of the traveling public;
- The preservation of infrastructure; and
- Platooning technology.

This section is repealed October 1, 2023, unless reviewed and saved from repeal by the Legislature.

Section 9 amends s. 316.303, F.S., to remove reference to DATP technology and adds that the prohibition on television receivers does not apply to an electronic display used by an operator of a platoon.

The bill does not specify how notification to the DHSMV is required to be made or what information is required from the operator. It is unclear how law enforcement will be able to identify that a vehicle is operating in a platoon and thus exempt from certain traffic law requirements.

[22] Section 316.0896, F.S.

Personal Delivery Devices (Section 2)

Present Situation

Personal delivery devices (PDDs) are low-weight, low-speed devices that can carry roughly the equivalent of two grocery bags and resemble a box on wheels. PDDs can navigate around objects and people. Using a combination of mobile technology, the devices operate on integrated navigation and obstacle avoidance software that enable autonomous movement, but human operators may step in to ensure safety.[23] A PDD's cargo bay is locked when sent to make a delivery; only the delivery recipient can unlock the box with a code specific to that recipient. PDD locations are tracked, and delivery recipients can monitor the PDD's progress on a smartphone.[24]

In 2017, the Legislature established a regulatory framework for PDDs, creating definitions and approved operating parameters in ch. 316, F.S., the Florida Uniform Traffic Control Law. With certain exceptions,[25] and in the absence of a local prohibition, PDD operation on sidewalks and crosswalks within a county or municipality is authorized[26] when such use is permissible under federal law.[27] However, the law does not restrict a county or municipality from otherwise adopting regulations for the safe operation of PDDs.[28]

Section 316.003(51), F.S., currently defines "personal delivery device" to mean an electrically powered device[29] that:

- Is operated on sidewalks and crosswalks and intended primarily for transportation of property;
- Weighs less than 80 pounds, excluding cargo;
- Has a maximum speed of ten miles per hour; and
- Is equipped with technology to allow for operation of the device with or without the active control or monitoring of a natural person.

Effect of Proposed Changes

Section 2 amends s. 316.003(51), F.S., the definition of "personal delivery device," to increase the currently allowable PDD weight, excluding cargo, from less than 80 pounds to less than 100 pounds.

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[23] *See* Starship Technologies Business, https://www.starship.xyz/business/ (last visited Feb. 16, 2018).
[24] *Id.*
[25] PDD operation on the Florida Shared-Use Nonmotorized Trail Network created under s. 339.81, F.S., or on components of the Florida Greenways and Trails System created under ch. 260, F.S., is prohibited. Section 316.008(7)(b)2., F.S.
[26] Section 316.2071, F.S.
[27] Federal law, specifically 23 U.S.C. s. 217(h), prohibits any motorized vehicle on pedestrian walkways funded in whole or in part with federal dollars, except for maintenance purposes, snowmobiles when snow conditions and state or local regulations permit, motorized wheelchairs, electric bicycles when state or local regulations permit, and such other circumstances as the U.S. Department of Transportation secretary deems appropriate.
[28] Section 316.008(7)(b), F.S.
[29] A PDD is not considered a vehicle unless expressly defined by law as a vehicle. PDDs are also excluded from registration and insurance requirements under s. 320.02(19), F.S.; but the owner or operator of a PDD must maintain an insurance policy providing general liability coverage of at least $100,000 for damages arising from PDD operation.

Mobile Carriers (Sections 2, 3, 7, 13, 14, and 32)

Present Situation

Mobile carriers are electronic devices designed to carry cargo and follow its operator through an electronic connection. For example, Piaggio Fast Forward has created a mobile carrier named Gita,[30] which is capable of hauling up to 44 pounds of goods while following a human operator or moving autonomously through an environment that has been previously mapped by the device.[31] The device does this by "linking" up to a belt with cameras worn by the user or by the device referring back to a specific map of a path it has already traveled. The device utilizes cameras and an ultrasonic range-finding system to avoid obstacles in its way.[32]

Currently, a mobile carrier is not defined in Florida law and Florida law does not contain any provisions regarding the operation of mobile carriers.

Effect of Proposed Changes

Section 2 amends s. 316.003, F.S., to define "mobile carrier" as an electrically powered device that weighs less than 80 pounds (excluding cargo), has a maximum speed of 12.5 miles per hour, is operated on sidewalks and crosswalks, is intended primarily for transporting property, is primarily designed to remain within 25 feet of the property owner, and is equipped with technology to transport personal property with active monitoring of the property owner.

This section also provides that a mobile carrier is not considered a vehicle, motor vehicle, or a personal delivery device.

Section 3 amends s. 316.008, F.S., to authorize a mobile carrier to be operated on sidewalks and crosswalks within a county or municipality when such use is permissible under federal law,[33] but does not restrict a county or municipality from adopting regulations for the safe operation of mobile carriers.

Section 7 amends s. 316.2071, F.S., relating to personal delivery devices (PDDs), to provide regulation of mobile carriers similar to the state's regulation of PDDs. Specifically, the bill provides that a mobile carrier:

- Operating on a sidewalk or crosswalk has all the rights and duties applicable to a pedestrian under the same circumstances, except that the mobile carrier may not unreasonably interfere with pedestrians or traffic and must yield the right-of-way to pedestrians;
- Must obey all official traffic and pedestrian control signals and devices;
- Must be equipped with a braking system that, when active or engaged, enables the mobile carrier to come to a controlled stop;

[30] Gita means a trip or outing in Italian.
[31] *See* Piaggio Fast Forward, *Introducing Gita*, https://www.piaggiofastforward.com/gita (last visited Feb. 16, 2018).
[32] Wired, *The Cute Robot That Follows You Around and Schleps All Your Stuff* (Feb. 16, 2017), https://www.wired.com/2017/02/piaggio-gita-drone/ (last visited Feb. 16, 2018).
[33] Federal law, specifically 23 U.S.C. s. 217(h), prohibits any motorized vehicle on pedestrian walkways funded in whole or in part with federal dollars, except for maintenance purposes, snowmobiles when snow conditions and state or local regulations permit, motorized wheelchairs, electric bicycles when state or local regulations permit, and such other circumstances as the U.S. Department of Transportation secretary deems appropriate.

- May not operate on a public highway except to cross a crosswalk;
- May not operate on a sidewalk or crosswalk unless the property owner remains within 25 feet of the mobile carrier; and
- May not transport hazardous materials.[34]

Sections 13 and 32 amend ss. 320.01 and 324.021, F.S., respectively, to provide that the term "motor vehicle" does not include mobile carriers.

Additionally, **section 14**, amends s. 320.02(19), F.S., to provide that a mobile carrier is not required to be registered or insured to be operated within the state.

Following Too Closely Law (Section 4)

Present Situation

Section 316.0895(1), F.S., prohibits a driver of a motor vehicle to follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of vehicles and traffic upon, and the condition of, the highway. Section 316.0895(2), F.S., prohibits a motor truck, motor truck drawing another vehicle, or vehicle towing another vehicle or trailer, when traveling upon a roadway outside a business or residence district, to follow within 300 feet of another motor truck, motor truck drawing another vehicle, or vehicle towing another vehicle or trailer.

"Following-too-closely" (FTC) laws vary by state and can differ based on specific classes of vehicles. Among the states, the most common FTC law for cars require vehicle operators to follow vehicles in a manner that is "reasonable and prudent;" the most common FTC law for heavy trucks specifies required distances or distance intervals, or requires sufficient space for vehicles to enter and occupy without danger; and the least common FTC law requires specified time intervals between vehicles.[35] Additionally, some U.S. jurisdictions lack explicit FTC laws.[36]

Effect of Proposed Changes

Section 4 repeals s. 316.0895(2), F.S., to remove the 300 feet requirement for trucks or vehicles towing another vehicle or trailer when following a similar vehicle. This section also amends s. 316.0895(1), F.S., to provide that the prohibition on following another vehicle more closely than is reasonable and prudent may not be construed to prevent overtaking and passing.

[34] As defined in s. 316.003(28), F.S., a hazardous material is any substance or material determined by U.S. Department of Transportation Secretary to be capable of imposing an unreasonable risk to health, safety, and property. This includes hazardous waste as defined in s. 403.703, F.S.
[35] Competitive Enterprise Institute, *Authorizing Automated Vehicle Platooning* (July 18, 2017), https://cei.org/sites/default/files/Marc%20Scribner%20-%20Authorizing%20Automated%20Vehicle%20Platooning%202017.pdf (last visited Feb. 16, 2018).
[36] *Id.*

Federal Motor Carrier Safety Administration Compatibility (Section 8)

Present Situation

The Federal Motor Carrier Safety Administration (FMCSA) was established within the United States Department of Transportation on January 1, 2000. Its primary mission is to prevent commercial motor vehicle (CMV)-related fatalities and injuries.[37]

Section 316.302, F.S., provides that all owners and drivers of CMVs[38] operated on the public highways of this state while engaged in *interstate* commerce are subject to the rules and regulations contained in the following parts of the Federal Motor Carrier Safety Regulations:[39]

- Part 382, Controlled Substance and Alcohol Use and Testing;
- Part 385, Safety Fitness Procedures;
- Part 390, General Federal Motor Carrier Safety Regulations;
- Part 391, Qualifications of Drivers;
- Part 392, Driving of Commercial Motor Vehicles;
- Part 393, Parts and Accessories Necessary for Safe Operation;
- Part 395, Hours of Service of Drivers;
- Part 396, Inspection, Repair, and Maintenance; and
- Part 397, Transportation of Hazardous Materials; Driving and Parking Rules.

Owners and drivers of CMVs engaged in *intrastate* commerce are subject to the same rules and regulations, unless otherwise provided in s. 316.302, F.S., as such rules and regulations existed on December 31, 2012.[40] To remain compatible with the Federal Motor Carrier Safety Regulations, states generally have up to three years from the effective date of new federal requirements to adopt and enforce such requirements.[41] States that remain incompatible risk losing federal funding. A 2007 Florida State Motor Carrier Safety Assistance Program (MCSAP) review found that the Florida Statutes contain multiple compatibility issues.[42]

2007 Florida State MCSAP Review Findings

Section 316.302(1)(b), F.S., provides an exception from 49 C.F.R. s. 390.5 as it relates to the definition of a bus, defined as "any motor vehicle designed, constructed, and/or used for the transportation of passengers, including taxicabs." Florida law excludes taxicabs from the definition of a bus.[43] The MCSAP Review noted that Florida Statutes "exempting, from the

[37] FMCSA website, *About Us* (Mar. 31, 2014), https://www.fmcsa.dot.gov/mission/about-us (last visited Feb. 16, 2018).
[38] Section 316.003(12), F.S., defines "commercial motor vehicle" as "any self-propelled or towed vehicle used on the public highways in commerce to transport passengers or cargo, if such vehicle: (a) Has a gross vehicle weight rating of 10,000 pounds or more; (b) Is designed to transport more than 15 passengers, including the driver; or (c) Is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act, as amended (49 U.S.C. ss. 1801 et seq.)."
[39] 49 C.F.R. ch. III, subchapter B.
[40] Section 316.302(1)(b), F.S.
[41] 49 C.F.R. *Appendix A to Part 355 – Guidelines for the Regulatory Review – State Determinations* (2016).
[42] 2007 Florida State MCSAP Review, *Summary Findings, Recommendations, and Noteworthy Practices* (June 2007) (on file with the Senate Committee on Transportation).
[43] Section 316.003(6), F.S.

definition of a bus, taxicabs as it applies to the intrastate private transportation of passengers, is not compatible" with federal law.[44]

Federal law prohibits certain lamps and reflective devices from being obscured on CMVs.[45] However, s. 316.215(5), F.S., provides an exception from this requirement for front-end loading collection vehicles that are engaged in collecting solid waste or recyclable or recovered materials and are being operated at less than 20 miles per hour with hazard-warning lights activated. According to the MCSAP review, federal law provides no such exemption.[46]

Section 316.302(2)(d), F.S., provides an exemption from compliance with 49 C.F.R. s. 395.8, requiring record of a driver's duty status, for a driver of a CMV if the driver:

- Is operating solely in intrastate commerce;
- Is not transporting any hazardous materials in amounts that require placarding;[47]
- Is within 150-air miles of the vehicle's base location; and
- Complies with specific federal requirements relating to hours of service.[48]

Additionally, state law provides that if a driver is not released from duty within 12 hours of arriving on duty, the motor carrier must maintain documentation of the driver's driving times throughout the duty period. The MCSAP review found that the exemption and alternate records requirement contained in s. 316.302(2)(d), F.S., does not comply with federal regulations because the federal exemption for such drivers also requires that the driver return to the work reporting location and is released from work within 12 consecutive hours.[49]

Federal law allows a state to exempt a CMV from all or part of its laws or regulations relating to intrastate commerce if the vehicle's gross vehicle weight, gross vehicle weight rating, gross combined weight, or gross combined weight rating is less than 26,001 pounds and the vehicle is not:

- Transporting hazardous materials requiring a placard; or
- Designed or used to transport 16 or more people, including the driver.[50]

However, s. 316.302(2)(f), F.S., provides exemptions from federal laws or regulations for a person who operates a CMV solely in intrastate commerce, having a *declared* gross vehicle weight of less than 26,001 pounds, and who is not transporting hazardous materials in an amount that requires placarding or who is transporting petroleum products. According to the MCSAP Review, the state interprets this statute as exempting such vehicles transporting petroleum products even if a hazardous materials placard is required, which is not in compliance with federal regulations.[51]

[44] 2007 Florida State MCSAP Review, at p. 2, *FL/FI-1*.
[45] 49 C.F.R. s. 393.9(b)
[46] 2007 Florida State MCSAP Review, at p. 4, *FL/FI-7*.
[47] Pursuant to 49 C.F.R. part 172
[48] As provided in 49 C.F.R. s. 395.1(e)(1)(iii) and (v).
[49] 2007 Florida State MCSAP Review, at p. 5, *FL/FI-8*.
[50] 49 C.F.R. s. 350.341(a)
[51] 2007 Florida State MCSAP Review, at p. 5, *FL/FI-3*.

Maximum Driving Time

Section 316.302(2), F.S., provides prohibitions to the length of time CMV drivers may drive, as well as exemptions from federal requirements for specified vehicles. Section 316.302(2)(b), F.S., provides that a person who operates a CMV solely in intrastate commerce without any hazardous materials in amounts requiring placarding may not drive:

- More than 12 hours following 10 consecutive hours off duty; or
- For any period after the end of the 16th hour after coming on duty following 10 consecutive hours off duty.

Except as provided in the federal hours of service rules,[52] a person operating a CMV solely in intrastate commerce not transporting any hazardous material may not drive after having been on duty more than 70 hours in any period of seven consecutive days or more than 80 hours in any period of eight consecutive days if the motor carrier operates every day of the week.[53] Upon request of DHSMV, motor carriers are required to furnish time records or other written verification so that DHSMV can determine compliance with the hours of service requirements. Falsification of time records is subject to a civil penalty not to exceed $100.[54]

Effect of Proposed Changes

Section 8 amends multiple provisions in s. 316.302, F.S., to address federal compatibility issues.

This section amends s. 316.302(1), F.S., to clarify that the section applies to all CMVs and buses, except as provided in s. 316.302(3), F.S., relating to covered farm vehicles.

This section adopts federal laws that intrastate CMV owners and drivers are required to comply with as such federal rules and regulations existed on December 31, 2017.[55] However, s. 316.302(1)(e), F.S., is created to delay the requirement for electronic logging devices and hours of service support documents[56] for intrastate motor carriers not carrying hazardous materials in amounts requiring placarding until December 31, 2018.

This section amends s. 316.302(1)(d), F.S., to repeal an exemption from federal law allowing specified CMVs to obscure certain lighting or reflective devices.

Due to changes in federal law, the section amends s. 316.302(2)(a), F.S., to provide clarity that drivers of intrastate CMVs that are not transporting hazardous materials requiring placarding are exempt from 49 C.F.R. s. 395.3, which provides maximum driving times for property-carrying vehicles. These drivers continue to be subject to the maximum driving times required by state law.

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[52] 49 C.F.R. s. 395.1
[53] Section 316.302(2)(c), F.S.
[54] This penalty is found in s. 316.302(2)(c), F.S. However, s. 316.3025, F.S., relating to CMV penalties, provides that a penalty of $100 may be assessed for a violation of s. 316.302(2)(b) or (c), F.S.
[55] A list of Final Rules adopted as of December 31, 2016, that affect FMCSA rules and regulations are available on the FMCSA website, *Rulemaking Documents,* https://www.fmcsa.dot.gov/regulations/search/rulemaking?keyword=&dt=final&topic (last visited Feb. 5, 2018).
[56] Electronic Logging Devices and Hours of Service Supporting Documents, 80 Fed. Reg. 78291 (Dec. 16, 2015), https://www.federalregister.gov/documents/2015/12/16/2015-31336/electronic-logging-devices-and-hours-of-service-supporting-documents (last visited Feb. 5, 2018).

Section 316.302(2)(c), F.S., is amended to remove a duplicate penalty for falsifying hours of service records.

Section 316.302(2)(d), F.S., is amended to refer to the correct federal regulations that allow a motor carrier to be exempt from being required to maintain records of duty status for short-haul drivers. In order to be exempt, the driver must also return to the work reporting location and be released from work within 12 consecutive hours and have either 10 or 8 hours off (property-carrying and passenger-carrying CMVs).

Lastly, the section amends s. 316.302(2)(f), F.S., to remove specified exemptions from federal law or regulations for drivers transporting petroleum products. The paragraph is also amended to refer to the federal criteria for the exemption: CMVs having a *gross vehicle weight, gross vehicle weight rating, and gross combined weight rating* of less than 26,001 pounds, instead of a *declared* gross vehicle weight.

Innovative Technology/Turnpike Funding (Section 10)

Present Situation

Section 338.2215, F.S., expresses Legislative intent that the Florida Turnpike Enterprise (FTE) within the FDOT maximize the advantages obtainable through fully leveraging the turnpike system asset, and that the additional powers and authority granted to the FTE will provide it with the autonomy and flexibility to enable it to more easily pursue innovations and best practices found in the private sector in, among other items, operations. Section 338.2216(1)(d), F.S., directs the FTE in part to "pursue and implement new technologies and processes in its operations."

As an example of such efforts, the FTE and other entities are participating in a project called SunTrax. According to the project website, "located off I-4 between Orlando and Tampa, SunTrax is a large-scale, cutting-edge facility dedicated to the research, development and testing of emerging transportation technologies in safe and controlled environments."[57] Site construction began in June 2017. The site covers 400 acres containing a multi-lane 2.25-mile long oval track and a 200-acre infield designed specifically for development and testing of automated driving systems.[58]

Effect of Proposed Changes

Section 10 amends s. 316.85, F.S., to authorize the FTE to fund, construct, and operate test facilities for the advancement of autonomous, connected, and innovative transportation technology solutions for the purposes of improving safety and decreasing congestion for the traveling public and to otherwise advance the FTE's objectives under ch. 338, F.S.

[57] For more information, see the SunTrax website at http://www.suntraxfl.com/#about-us (last visited Feb. 16, 2018).
[58] *See* SunTrax Brochure, http://www.suntraxfl.com/wp-content/uploads/2017/11/SunTrax-Brochure-.pdf. (last visited Feb. 16, 2018).

Pilot Rebuilt Motor Vehicle Inspection Program (Section 11)

Present Situation

A person may not sell a rebuilt vehicle until the vehicle's title labels that vehicle as rebuilt, which requires the motor vehicle go through a physical rebuilt motor vehicle inspection conducted by the DHSMV.[59] The purpose of the rebuilt inspection is to assure the identity of the vehicle and all major component parts that have been repaired or replaced. After an approved rebuilt inspection, the DHSMV affixes a decal to the vehicle that identifies the vehicle as a rebuilt vehicle.

The 2013 Florida Legislature created s. 319.141, F.S., for the implementation of a Pilot Rebuilt Vehicle Inspection Program (PRVIP) conducted in Miami-Dade and Hillsborough counties. The DHSMV set standards for the program and certified private sector inspection facilities in Miami-Dade County.[60] The program's purpose is to evaluate private sector alternatives for rebuilt inspection services, including the feasibility of using private facilities, the cost impact to consumers, and the potential savings to the DHSMV. The DHSMV is required to establish a memorandum of understanding (MOU) that allows private parties participating in the pilot program to conduct rebuilt vehicle inspections and specifies requirements for oversight, bonding and insurance, procedure, and forms, and requires the electronic submission of documents.

To be approved to conduct rebuilt vehicle inspections under the program, s. 319.141, F.S., requires an applicant:

- Have and maintain a surety bond or irrevocable letter of credit in the amount of $100,000, executed by the applicant;
- Secure and maintain a facility at a permanent structure at an address recognized by the United States Postal Service where the only services provided are rebuilt inspection services;
- Annually attest that he or she is not employed by or does not have an ownership interest in or financial arrangement with a motor vehicle repair shop, motor vehicle dealer, towing company, storage company, vehicle auction, insurance company, salvage yard, metal retailer, or metal rebuilder, from which he or she receives remuneration for the referral of customers for rebuilt inspection services;
- Have and maintain garage liability and other insurance required by the DHSMV;
- Have completed criminal background checks of the owners, partners, and corporate officers and the inspectors employed by the facility; and
- Meet any additional criteria the DHSMV determines necessary to conduct proper inspections.

As required by law, the DHSMV submitted a report[61] in 2015, which summarized the implementation of the pilot program and program results. Since October 1, 2013, the DHSMV has certified eight private businesses in the Miami area to conduct rebuilt vehicle inspections.[62]

[59] Section 319.14(1)(b), F.S. A rebuilt vehicle is one that has been built from salvage or junk.
[60] No entities from Hillsborough County applied to participate in the program.
[61] DHSMV, *Florida's Private Rebuilt Vehicle Inspection Program – Pilot Program Report* (Jan. 30, 2015), http://www.flhsmv.gov/pdf/cabinetreports/privaterebuiltreport.pdf (last visited Feb. 16, 2018).
[62] DHSMV, Office of Inspector General, *Rebuilt Vehicle Inspection Program Audit Report 201617-24* (Dec. 5, 2017), https://www.flhsmv.gov/pdf/igoffice/20161724.pdf (last visited Feb. 16, 2018).

During Fiscal Year 2016-2017, a total of 71,342 rebuilt vehicle inspections were conducted in the state, of which 35,325 were by the PRVIP businesses.[63]

Currently, the DHSMV employees in Miami-Dade County are still responsible for conducting rebuilt vehicle inspections at the DHSMV Regional Office and at various off-site locations, and for monitoring the PRVIP businesses to ensure inspections are conducted in accordance with program standards.[64]

According to the DHSMV, each of the eight pilot program participants have met, and continue to meet, all of the statutory requirements and the MOU executed with DHSMV. Statutorily authorized state rebuilt inspection fees ($40) and re-inspection fees ($20) have been collected and remitted to the state as required. In addition, each pilot program participant is allowed to assess customers a service fee for each inspection. Service fees range from $50 to $85 and are not regulated in any manner by the DHSMV.[65]

The pilot rebuilt motor vehicle inspection program is repealed on July 1, 2018, unless saved from repeal through reenactment by the Legislature.

Effect of Proposed Changes

Section 11 amends s. 319.141, F.S., to require PRVIP business operators to:

- As part of the rebuilt inspection services, photograph the interior driver and passenger sides of the vehicle if the airbags were previously deployed and replaced;
- Secure and maintain a facility that is a permanent fixed structure which has an address identified by a county-issued tax folio number;
- Annually attest that there have been no changes in the ownership structure of the facility and that the only services being provided at the property are rebuilt vehicle inspection services approved by the DHSMV;
- Have a designated office and customer waiting area that is separate from and not within view of the vehicle inspection area;
- Have a vehicle inspection area capable of accommodating all vehicle types and equipped with cameras allowing the DHSMV to view and monitor inspections.

This section prohibits program participants from conducting an inspection of a vehicle to be purchased by the current program applicant. Such vehicles must be inspected by the DHSMV.

This section also:

- Requires an applicant for a rebuilt title that fails an initial rebuilt inspection to have that vehicle re-inspected only by the DHSMV or the facility that conducted the original inspection;
- Prohibits a person or business authorized by the DHSMV to train, certify, or recertify operators and inspectors of private rebuilt inspection facilities from certifying or recertifying themselves or their employees;

[63] *Id.*
[64] DHSMV, *Pilot Program Report*.
[65] DHSMV, *Pilot Program Report*.

- Requires the DHSMV to conduct onsite facility inspections at least twice a year;
- Requires the current facility operator to give the DHSMV a 45 day written notice of the intended transfer of ownership of the facility, and requires the transferee to meet all eligibility requirements of the program;
- Reenacts the pilot program, which saves the program from repeal on July 1, 2018, and provides for the repeal of the program on July 1, 2020, unless saved from repeal through reenactment by the Legislature; and
- Requires the DHSMV to submit a written report to the President of the Senate and the Speaker of the House of Representatives on or before January 1, 2019, evaluating the current program and its benefits to consumers and the DHSMV.

Motor Vehicle Title Transfer Fee (Section 12)

Present Situation

Section 319.32(1), F.S., provides for a $70 fee for each original and duplicate certificate of title, except for motor vehicles for hire,[66] which are $49, and $2 for each salvage certificate of title. The DHSMV also charges $2 to note a lien on the certificate, $1 to cover the cost of materials, and $2.50 for shipping and handling. Additionally, s. 319.32(2), F.S., provides that there is a $4.25 service charge for each certificate of title application, a $10 additional fee for an original certificate of title issued for a vehicle registered outside of Florida, and a $7 additional fee for each lien placed on a vehicle by the state child support enforcement program.

The $70 fee is distributed between the State Transportation Trust Fund and the General Revenue Fund, excluding $1 that is deposited into the Highway Safety Operating Trust Fund (HSOTF) to fund the DHSMV's efforts to prevent and detect odometer fraud.[67] The DHSMV or the tax collector who processes the application retains the $4.25 service charge.[68] Additionally, expedited service for title transfers, issuances, duplicates, and recordation of liens is an option available for a $10 fee. If requested, expedited service ensures the title is issued within five working days after receipt of the application.[69]

In the event of the death of a motor vehicle owner, upon inheritance of the motor vehicle, a surviving spouse may dispose of a deceased spouse's vehicle without being required to transfer the certificate of title in his or her name.[70] Co-owners of a vehicle with names appearing conjoined by an "or" on the title are not required to apply for a new title when the other co-owner dies, as he or she already has absolute rights to the vehicle. As of July 1, 2017, the DHSMV and tax collector are prohibited from charging fees or service charges (excluding an expedited title fee, if applicable) for issuance of a motor vehicle certificate of title when the title is being issued solely to remove a deceased spouse as a co-owner of the vehicle when the other

[66] Vehicles registered under s. 320.08(6), F.S.
[67] Sections 319.32(5) and 319.324, F.S.; Section 319.32(5), F.S., provides that $47 of each fee collected for an original or duplicate certificate of title is deposited into the State Transportation Trust Fund, which may receive up to $200 million in any fiscal year. The remainder of the fee and any fees in excess of the $200 million are deposited into the General Revenue Fund.
[68] Section 319.32(2)(b), F.S.
[69] Section 319.323, F.S.
[70] Section 319.28(1)(c), F.S.

co-owner is the surviving spouse.[71] In any other situation when a person inherits a vehicle that he or she wishes to operate or sell, such person is required to transfer the certificate of title into his or her name and pay the applicable title fees.

Effect of Proposed Changes

Section 12 amends s. 319.32(7), F.S., to prohibit the DHSMV and tax collectors from charging any fee or service charge, other than the expedited title fee, if applicable, for issuing a certificate of title to transfer a Florida-titled vehicle from a deceased owner, who is a Florida resident, to the deceased's child or parent, who is also a Florida resident. The title transfer must be made within 30 days of the owner's death for the child or parent to receive the fee exemption.

International Registration Plan – Charter Buses (Section 13)

Present Situation

The International Registration Plan (IRP) is a registration reciprocity agreement among all states in the contiguous United States, the District of Columbia, and several Canadian provinces. It provides for the payment of license fees based on fleet operation in various member jurisdictions.[72] This allows carriers to operate inter-jurisdictionally while only needing to register its vehicles in its base jurisdiction, which is the state or province where the registrant has an established place of business.[73]

All "apportionable vehicles" domiciled in the state are required to be registered in accordance with the IRP and display "Apportioned" license plates.[74]

Apportionable vehicles that do not regularly operate in a particular jurisdiction also have the option to register for trip permits in order to operate in IRP member jurisdictions for limited periods where they do not pay license taxes.[75]

An "apportionable vehicle" is any vehicle that is used or intended for use in two or more member jurisdictions and that is used for the transportation of persons for hire or designed, used, or maintained primarily for the transportation of property, and:[76]

- Is a power unit having a gross vehicle weight in excess of 26,000 pounds;
- Is a power unit having three or more axles, regardless of weight; or
- Is used in combination, when the weight of such combination exceeds 26,000 pounds gross vehicle weight.

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[71] Section 319.32(7), F.S., created by ch. 2017-89, Laws of Florida.
[72] International Registration Plan, Inc., *About IRP*, http://www.irponline.org/?page=AboutIRP (last visited Feb. 16, 2018).
[73] As defined by the IRP. IRP, *International Registration Plan with Official Commentary* (Jan. 1, 2017), http://c.ymcdn.com/sites/www.irponline.org/resource/resmgr/publications/IRP_agreement_eff_january_1_.pdf at p. 16 (last visited Feb. 16, 2018).
[74] Sections 320.0715(1) and 320.06(3)(a), F.S.
[75] *Id*. *See also* IRP, *Trip Permits-Cost/Duration* (May 2016), http://www.irponline.org/resource/resmgr/Jurisdiction_Info_2/Trip_Permits_5.19.2016.xlsx (last visited Feb. 16, 2018).
[76] Section 320.01(24), F.S. IRP http://c.ymcdn.com/sites/www.irponline.org/resource/resmgr/publications/IRP_agreement_eff_january_1_.pdf, at p. 12-13 (last visited Feb. 16, 2018)

The Florida definition excludes recreational vehicles, vehicles displaying restricted plates, city pickup and delivery vehicles, government-owned vehicles, and buses used in transportation of chartered parties. The IRP definition excludes a recreational vehicle, a vehicle displaying restricted plates, or a government-owned vehicle. Excluded vehicles may voluntarily register.

Prior to January 1, 2016, charter buses were excluded from having to register under the IRP. The IRP was amended to remove charter buses from the exemption, requiring charter bus operations to register under the IRP. This registration ensures that a charter bus operation will pay license fees to each jurisdiction it operates in, and prevents or suspends the registration of unsafe carriers.[77]

Effect of Proposed Changes

Section 13 amends s. 320.01(24), F.S., to remove the exclusion of charter buses from the definition of apportionable vehicle. This change is necessary to align with the requirements of the IRP. All charter buses operating interstate are required to obtain an IRP registration or purchase trip permits.

Voluntary Contribution Checkoffs (Section 14)

Present Situation

An organization may seek a voluntary contribution checkoff to be placed on the motor vehicle registration application and renewal forms, which allows individuals the option to contribute $1 or more to such organizations.

An organization that seeks authorization to establish a voluntary contribution checkoff on a motor vehicle registration application is required to submit specified information to the DHSMV at least 90 days before the convening of the next regular session of the Legislature.[78] Specifically, the organization must submit:

- A request for the voluntary contribution checkoff being sought, including a description of the proposed voluntary contribution;
- An application fee, not to exceed $10,000, to defray departmental costs for reviewing the application and developing the checkoff (the fee is refunded if the checkoff is not approved by the Legislature); and
- A marketing strategy for the checkoff and financial analysis outlining anticipated revenues and planned expenditures of the revenues derived from the checkoff.[79]

Additionally, s. 320.023, F.S., provides general regulations for the use of contributions received from checkoffs, and provides that approved voluntary contribution checkoffs must be discontinued if less than $25,000 has been contributed during any 5-year period, if the organization no longer exists, if the organization stops providing services authorized to be funded with the contributions, or pursuant to an organizational recipient's request.

[77] *See* IRP, *Official Amendment to the International Registration Plan* (June 2014) http://c.ymcdn.com/sites/www.irponline.org/resource/resmgr/irp_ballots/ballot_391.pdf (last visited Feb. 16, 2018).
[78] Section 320.023(1), F.S.
[79] *Id.*

Effect of Proposed Changes

Section 14 amends s. 320.02, F.S., to add a voluntary contribution checkoff (notwithstanding the statutory requirements of s. 320.023, F.S.) to the motor vehicle registration application and renewal forms, which allows an applicant to contribute $1 to the Alzheimer's Association, Inc.

DHSMV's Electronic Filing System (Section 15)

Present Situation

Section 320.03, F.S., provides the duties of tax collectors as it relates to motor vehicle licensing. It provides that jurisdiction over the electronic filing system (EFS) for use by authorized EFS agents for certain purposes is expressly preempted to the state, and the DHSMV has regulatory authority over the system. Specifically, the EFS is used to:

- Electronically title or register motor vehicles, vessels, mobile homes, or off-highway vehicles;
- Issue or transfer registration license plates or decals;
- Electronically transfer fees due for the title and registration process; and
- Perform inquiries for title, registration, and lienholder verification and certification of service providers.

The section provides that an entity that, in the normal course of its business, sells products that must be titled or registered, provides title and registration services on behalf of its consumers, *and* meets the requirements established by the DHSMV shall not be precluded from participating in the EFS upon request from the qualified entity.[80] The EFS must be available for use statewide and applied uniformly throughout the state. Additionally, the EFS agents may charge a fee to the customer for use of the EFS.

The EFS is primarily used by Florida's motor vehicle dealers to acquire access to the DHSMV registration and title information and to process title and registration transactions.[81]

Effect of Proposed Changes

Section 15 amends s. 320.03(10), F.S., to provide that the EFS system can be used to process title transactions, derelict motor vehicle certificates, and certificates of destruction for derelict and salvage motor vehicles. The bill adds that an entity that, in the normal course of its business, processes title transactions, derelict motor vehicle certificates, or certificates of destruction for derelict or salvage motor vehicles and meets the requirements established by the DHSMV may be an authorized EFS agent.

This section also provides that DHSMV *may* adopt rules to administer the section, including, but not limited to, rules establishing participation requirements, certification of service providers, EFS requirements, disclosures, and enforcement authority for noncompliance. The current rulemaking authority related to the EFS is mandatory rather than permissive.

[80] Rule 15C-16.010 sets forth the DHSMV's requirements to be an EFS agent.
[81] For more information, see DHSMV website, *Electronic Filing System (EFS)*, https://www.flhsmv.gov/motor-vehicles-tags-titles/electronic-lien-titles/electronic-filing-system-efs/ (last visited Feb. 16, 2018).

This section is effective January 1, 2019.

Issuance of Apportionable Vehicle Plates (Sections 16 and 18)

Present Situation

Section 320.06, F.S., provides for motor vehicle registration certificates, license plates, and validation stickers. Registration license plates, which bear a graphic symbol and alphanumeric system of identification, are issued for a 10-year period. However, "Apportioned" license plates issued to vehicles registered under the IRP are issued annually.[82] Each original license plate costs $28, which is deposited into the Highway Safety Operating Trust Fund (HSOTF). Apportioned vehicles are also issued an annual cab card that denotes the declared gross vehicle weight for each apportioned jurisdiction where the vehicle is authorized to operate.[83]

Effect of Proposed Changes

Sections 16 and 18 amend ss. 320.06 and 320.0607, F.S., respectively, to provide that beginning October 1, 2019, apportioned vehicles will be issued license plates valid for a 5-year period, instead of annually. If the license plate is damaged or worn prior to the end of the 5-year period, the DHSMV may replace it at no charge upon application and surrender of the current plate. Cab cards and validation stickers will continue to be issued annually. The $28 annual fee will apply to the issuance of an original or renewal validation sticker, instead of for the cost of the plate.

Electronic Motor Vehicle Registrations and Rental Agreements (Sections 17 and 23)

Present Situation

Section 320.0605, F.S., requires certificates of registration for motor vehicles. The registration certificate or an official copy, a true copy of rental or lease documentation issued for a motor vehicle or issued for a replacement vehicle in the same registration period, a temporary receipt printed upon self-initiated electronic renewal of a registration via the Internet, or a cab card issued for a vehicle registered under the IRP must, at all times while the vehicle is being used or operated on the roads of this state, be in the possession of the operator of the vehicle, or be carried in the vehicle for which it was issued. The certificate must be exhibited upon demand of any authorized law enforcement officer or an agent of the DHSMV, except for a registered fleet vehicle.[84] This provision does not apply during the first 30 days after purchase of a replacement vehicle. A violation is a noncriminal traffic infraction, punishable as a nonmoving violation as provided in ch. 318, F.S.[85]

Section 320.0605, F.S., requires that a person who rents or leases a vehicle is required to possess a true copy of rental or lease documentation for the motor vehicle at all times while the vehicle is

[82] Section 320.06(1)(b)1., F.S.
[83] *See* IRP, *State of Florida Apportioned Cab Card Sample*, http://c.ymcdn.com/sites/www.irponline.org/resource/resmgr/cab_cards/fl_cc_sample.pdf (last visited Feb. 16, 2018).
[84] A fleet vehicle registered under s. 320.0657, F.S., provides for the permanent registration of fleet license plates.
[85] Chapter 318, F.S., relates to the disposition of traffic infractions.

being operated.[86] The documentation must include certain information including the date of the rental and the time of exit from the rental facility.

Effect of Proposed Changes

Section 17 amends s. 320.0605, F.S., to authorize a person to possess a DHSMV-authorized electronic copy of a motor vehicle registration or an electronic copy of a rental or lease documentation to be displayed upon the request of a law enforcement officer or an agent of the DHSMV.

This section also repeals the requirement that the rental or lease documentation must include the time of exit from the rental facility.

Section 23 amends s. 320.95, F.S., to allow the DHSMV to authorize the format of an electronic certificate of registration in addition to a paper certificate. The section also authorizes presentation of the department-issued electronic certificate if the paper certificate is not available for inspection, is damaged, or is otherwise illegible.

Both sections provide that displaying the electronic copy does not constitute consent for the officer or agent to access any information on the device other than the displayed documentation. Additionally, the person who presents the device to the officer or agent assumes liability for any resulting damage to the device.

Specialty License Plates for Motor Vehicle Dealers and Fleets (Sections 16, 19, 20 and 21)

Present Situation

A franchised motor vehicle dealer, independent motor vehicle dealer, marine boat trailer dealer, or mobile home dealer and manufacturer license plate is subject to an annual license tax of $17.[87] These license plates are imprinted with the word "Dealer" at the bottom of the plate.[88] Dealers may, upon payment of the dealer plate license tax, secure one or more dealer license plates. These plates are valid while the motor vehicles are in the dealer's inventory and for sale, or while being operated in connection with the dealer's business, except when used as for-hire vehicles.[89]

Fleet license plates are available for companies that own or lease a minimum number of nonapportioned motor vehicles used for business purposes.[90] Such permanent plates are available upon approval by the DHSMV and payment of license taxes prescribed under s. 320.08, F.S. Fleet vehicle license plates have the word "Fleet" imprinted at the bottom of the plate.[91]

[86] A person who cannot display such documentation upon request from an officer or agent of the DHSMV is guilty of a noncriminal traffic infraction, punishable as a nonmoving violation.
[87] Section 320.08(12), F.S.
[88] Section 320.06(3), F.S.
[89] Section 320.13, F.S.
[90] Section 320.0657. DHSMV, Division of Motorist Services, Procedure RS-55, *Fleet Registration Program* (Feb. 8, 2013), http://www3.flhsmv.gov/dmv/Proc/RS/RS-55.pdf (last visited Feb. 16, 2018), provides that the fleet company must have a minimum of 200 vehicles or 25 trailers or semitrailers used exclusively to haul agricultural products.
[91] *Id.*

There are over 120 specialty license plates available for purchase in Florida.[92] However, neither dealer license plates nor fleet license plates are eligible to be specialty license plates. Specialty license plates require payment of an annual use fee, ranging from $15 to $25, paid in addition to required license taxes and service fees.[93] These annual use fees are distributed to an organization or organizations in support of a particular cause or charity signified in the plate's design and designated in statute.[94]

Effect of Proposed Changes

Sections 16, 19, 20, and 21 amend ss. 320.06, 320.0657, 320.08, and 320.08056, F.S., respectively, to allow a dealer or fleet company, with the permission of the specialty license plate organization, to purchase specialty license plates directly through the DHSMV to be used on dealer or fleet vehicles. The dealer or fleet company that orders specialty license plates for its vehicles must pay the annual use fee of the specialty license plate and any other applicable license taxes or fees. The specialty license plate will include the letters "DLR" for dealer license plates and "FLT" for fleet license plate embossed on the right side of the plate.

Fleet Vehicle Temporary Tag Pilot Program (Section 22)

Present Situation

Section 320.131, F.S., authorizes the DHSMV to design, issue, and regulate the use of temporary tags for use in certain cases provided in law when a permanent plate may not be immediately available, and provides penalties for the misuse of temporary tags. Generally, a temporary tag is valid for 30 days.[95] Temporary tags cost $2 each, of which $1 is deposited into the Brain and Spinal Cord Injury Program Trust Fund and $1 into the Highway Safety Operating Trust Fund. DHSMV uses a print-on-demand electronic temporary tag registration, record retention, and issue system that is required to be used by every department-authorized issuer of temporary tags.[96] These issuers include motor vehicle dealers and tax collectors who frequently issue temporary tags on behalf of the DHSMV.

Effect of Proposed Changes

Section 22 amends s. 320.131, F.S., to create a Fleet Vehicle Temporary Tag Pilot Program. Beginning October 1, 2018, the DHSMV may partner with a county tax collector to conduct a pilot program that provides up to 50 temporary tags at a time to fleet companies who have at least 3,500 fleet vehicles registered in Florida. The DHSMV shall establish a memorandum of understanding (MOU) that allows a maximum of three companies to participate in the pilot program.

Under the pilot program:

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[92] A list of Florida's specialty license plates is available on the DHSMV website at http://www.flhsmv.gov/dmv/specialtytags/ (last visited Feb. 16, 2018).
[93] Section 320.08056, F.S.
[94] Section 320.08058, F.S.
[95] However, a temporary tag issued to a vehicle required to be weighed or emission tested prior to registration or required to have the vehicle identification number verified is valid for 10 days, and a temporary tag issued for a vehicle waiting for manufacturing of a purchased specialty or personalized prestige plate is valid for 90 days. *See* ss. 320.131(1)(f) and (j), F.S.
[96] Section 320.131(9), F.S.

- The temporary tags must be used exclusively on the company's fleet vehicles and may not be used on any other vehicle;
- Each temporary plate must be used on only one vehicle, and each vehicle may only use one temporary plate;
- Upon issuance of the vehicle's permanent license plate and registration, the temporary tag becomes invalid and must be removed from the vehicle and destroyed;
- Upon a finding by the DHSMV that a temporary tag has been misused under this program, the DHSMV may terminate the MOU with the company, invalidate all temporary tags issued to the company, and require the company to return any unused temporary tags.

This program is repealed on October 1, 2021, unless saved from repeal through reenactment by the Legislature.

Digital Driver Licenses and Electronic Credentials (Sections 24-26, 28, and 29)

Present Situation

Section 322.032, F.S.,[97] provides for the establishment of a digital proof of driver license. This section requires the DHSMV to begin to review and prepare for the development of a secure and uniform system for issuing an optional digital proof of driver license. DHSMV is authorized to contract with one or more private entities to develop a digital proof of driver license system.

The digital proof of driver license developed by the DHSMV or by an entity contracted by the DHSMV is required to be in such a format as to allow law enforcement to verify the authenticity of the digital proof of driver license. The DHSMV may adopt rules to ensure valid authentication of digital driver licenses by law enforcement.

This section also establishes certain penalties for a person who manufacturers or possesses a false digital proof of driver license. Specifically, a person who:

- Manufactures a false digital proof of driver license commits a third degree felony, punishable by up to five years in prison[98] and a fine not to exceed $5,000.[99]
- Possesses a false digital proof of driver license commits a second degree misdemeanor, punishable by up to 60 days in jail.[100]

Currently, there are six states who are piloting or have completed pilot projects testing digital driver license applications with limited populations; however, no state has implemented use of a statewide digital driver license.[101] The American Association of Motor Vehicle Administrators (AAMVA) represents state and provincial officials who administer and enforce motor vehicle laws in the United States and Canada, and develops programs to encourage uniformity and reciprocity among the states and provinces, including developing driver license and identification

[97] This section was created in 2014. *See* ch. 2014-216, Laws of Fla.
[98] Section 775.082, F.S.,
[99] Section 775.083, F.S.
[100] Section 775.082, F.S.
[101] Iowa plans to develop an app-based mobile driver's license for statewide deployment this year. See Government Technology, *Iowa, Five Other States Will Try Digital Driver's License Projects in 2018* (Oct. 20, 2017), http://www.govtech.com/transportation/Iowa-Five-Other-States-Will-Try-Digital-Drivers-License-Projects-in-2018.html (last visited Feb. 16, 2018).

card design standards.[102] The AAMVA has brought together its Card Design Standard Committee and an Electronic Identity Working Group to recommend standards regarding the use of mobile or electronic driver licenses and identification cards.[103]

At this time, AAMVA has not released its standards for electronic identification, but has produced a continuously updated white paper discussing the functional needs for and practical considerations associated with a mobile driver license solution.[104]

Effect of Proposed Changes

The bill replaces references in the Florida Statutes to a "digital proof of driver license" with the term "electronic credential," which refers to an "electronic representation of a physical driver license or identification card which is viewable on an electronic credential system and capable of being verified and authenticated." The bill provides requirements to implement the creation and use of statewide electronic credentials.

Section 24 amends s. 322.01, F.S., to define terms as used in ch. 322, F.S., relating to driver licenses. Specifically, the bill defines the terms "credential service provider," "digital identity verifier," "electronic,"[105] "electronic credential," "electronic credential holder," "electronic credential provider," "electronic credential system," "electronic device," "electronic ID,"[106] and "qualified entity."

Section 25 amends s. 322.032(1), F.S., to require the DHSMV to develop and implement secure and uniform protocols that comply with national standards for issuing an optional electronic credential. The bill also requires the DHSMV to:

- Competitively procure a related technology solution that uses a revenue-sharing model;
- Procure at least two but no more than five electronic credential providers to develop and implement an *initial phase* to provide a secure electronic credential system;
- Maintain the protocols and national standards necessary for a digital verifier or an electronic credential provider to request authorized access to an application programming interface, or an appropriate technological tool, necessary for such private entity to consume an electronic ID;[107]
- Timely review requests for authorized access and approve all requests by digital identify verifiers which meet the DHSMV's requirements;
- Enter into agreements with electronic credential providers which describe the permitted uses, terms and conditions, privacy policy, and uniform remittance terms relating to the consumption of an electronic credential; and

[102] *See* AAMVA, *About AAMVA*, https://www.aamva.org/about-aamva/ and *DL/ID Standards*, https://www.aamva.org/dl-id-card-design-standard/ (last visited Feb. 16, 2018).
[103] AAMVA, *Mobile Driver's License (mDL)*, https://www.aamva.org/Mobile-Drivers-License/ (last visited Feb. 16, 2018).
[104] AAMVA, *Mobile Driver's License – Functional Needs White Paper 0.8 Document Version* (revised Sept. 5, 2017), https://www.aamva.org/mDLFunctionalNeedsRequirements-08/ (last visited Feb. 16, 2018).
[105] This definition is identical to the definition of "electronic" as used in Florida's Uniform Electronic Transaction Act. See s. 668.50(2)(e), F.S.
[106] This definition is identical to the definition of "electronic record" as used in Florida's Uniform Electronic Transaction Act. See s. 668.50(2)(g), F.S.
[107] An "electronic ID" is defined as a "technology solution by which a qualified entity authenticates the identity of an individual receiving goods or services."

- Upon completion of the *initial phase*, submit a report regarding the continued implementation and tools necessary for future phases to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

The electronic credential provider must have the necessary technological capabilities to execute the authentication of an electronic credential across all states, jurisdictions, federal and state agencies, and municipalities. The electronic credential and verification solution must provide the standardized system integration necessary:

- For qualified entities to securely consume the electronic credential;
- For the production of a fully compliant electronic credential electronic credential providers; and
- To successfully ensure secure authentication and validation of data from disparate sources.

Qualified entities are required to have technological capabilities necessary to integrate with the credential service provider (an electronic credential provider competitively procured by the DHSMV).

This section requires the DHSMV to provide access to a standardized digital transaction process for use by electronic credential providers to enable the financial transaction be completed in such a manner that the proceeds are accepted by the DHSMV at the point of sale. This process must enable the providers of the credential to direct through their electronic commerce workflows to a standardized checkout process and be able to document the providers involved.

This section authorizes the DHSMV to issue electronic credentials to persons who hold a Florida driver license or identification card. The bill does not specifically state that a person must pay a fee to have an electronic credential or authorize the DHSMV to set a fee, but the bill does state that the DHSMV must provide the electronic credential providers "access to a standardized digital transaction process that provides the proceeds of a completed financial transaction to the department at the point of sale." Revenue generated from the electronic credential system must be deposited into the Motor Vehicle Licensing Clearing Trust Fund and distributed pursuant to a legislative appropriation and the DHSMV agreements with the electronic credential providers.

Additionally, the DHSMV may assess a market rate fee structure for use of the credential service provider for any qualified entity to obtain an electronic ID. Revenue generated from use of the service provider by digital identity verifiers is shared between the state and the credential provider and distributed pursuant to DHSMV agreements with digital identity verifiers.

Fees may not be charged to any state court, state governmental entity, or law enforcement agency.

The electronic credential is required to be in a format that allows law enforcement or an authorized consumer to verify the authenticity of the credential, identify the identity of the holder, and to validate the status of the holder's driving privilege associated with the credential. It provides that the act of presenting the electronic credential to a law enforcement officer does not constitute consent for inspection of any information on the device other than the displayed credential, and the person who presents the device assumes liability for any resulting damage to the device.

Finally, the bill amends various sections of statute to replace the term "digital proof of driver license" or add the term "electronic credential." Specifically:

- **Section 25** amends s. 322.032, F.S., to prohibit a person from being issued an electronic credential until he or she has satisfied all requirements of ch. 322, F.S., to be issued a physical driver license or identification card;
- **Section 25** amends s. 322.032, F.S., to penalize a person who manufactures or possesses a false electronic credential as a third degree felony;
- **Section 26** amends s. 322.059, F.S., to require the DHSMV invalidate the electronic credential if the person's driver license has been suspended;
- **Section 28** amends s. 322.143, F.S., to add that the term "swipe" used in reference to the use of a driver license or identification card includes consuming an electronic credential; and
- **Section 29** amends s. 322.15, F.S., to authorize a licensee to present or submit the electronic credential upon request of a law enforcement officer or an authorized representative of the DHSMV in lieu of a physical driver license.

Learner's Driver License for Minors in Foster Care (Section 27)

Present Situation

The application for a driver license for any person under the age of 18 years old must be signed by the person's parent or guardian, or, if there is no parent or guardian, by another responsible adult willing to assume such obligation.[108] The signee is jointly and severally liable with the minor for any damages caused by negligence or willful misconduct of the minor when driving a motor vehicle.[109]

However, for a minor in foster care,[110] the minor's foster parent, caseworker, authorized representative for the residential group home where the minor resides, or a guardian ad litem authorized by the minor's caregiver may sign the application for the minor's learner's driver license without assuming any obligation or liability for damages caused by the minor.[111]

Effect of Proposed Changes

Section 27 amends s. 322.09, F.S., to add that a *caregiver* of a minor who is in foster care may sign the minor's application for a learner's driver license without assuming any obligation or liability for damages caused by the minor.

Renting a Motor Vehicle to Another (Section 30)

Present Situation

Section 322.38, F.S., sets the requirements for an individual who wishes to rent a motor vehicle to another. These include that the individual inspects the:

[108] Section 322.09(1), F.S.
[109] Section 322.09(2), F.S.
[110] As defined in s. 39.01, F.S., "foster care" means "care provided a child in a foster family or boarding home, group home, agency boarding home, child care institution, or any combination thereof."
[111] Section 322.091(4), F.S.

- Driver license of the person to whom the vehicle is to be rented, and compares and verifies the signature thereon with the signature of such person written in his or her presence before the vehicle can be rented.
- Further, the individual must keep a record of the registration number of the motor vehicle rented, the name and address of the person renting and the number, date, and place of issue.

Effect of Proposed Changes

Section 30 amends s. 322.38, F.S., to eliminate the requirement that a person renting a motor vehicle to another verify the latter individual's signature on his or her driver license, and adds the requirement that the individual renting the vehicle to another verify that the renter's driver license is unexpired. The bill also eliminates the requirement that the individual renting the vehicle to another record the date on which the driver license was issued.

This section creates s. 322.38(4), F.S., to provide that a rental car company that rents a motor vehicle to a person through digital, electronic, or other means which allows the renter to obtain possession of the vehicle without direct contact with an agent or employee of the rental car company, or where the renter does not execute a rental contract at the time he or she takes possession of the vehicle, is deemed to have met the license inspection requirements if the renter verifies that he or she is duly licensed and the license is unexpired. Such verification *may* occur when the renter enrolls in a rental company's membership program, master agreement, or other means of establishing use of the company's services or at any time thereafter.

For-hire Passenger Vehicle Insurance (Sections 33 and 34)

Present Situation

Section 324.031, F.S., provides that the owner or operator of a taxicab, limousine, jitney, or any other for-hire passenger transportation vehicle may prove financial responsibility by providing satisfactory evidence of holding a motor vehicle liability policy, which is issued by an insurance carrier that is a member of the Florida Insurance Guaranty Association (FIGA).[112]

A person required to maintain motor vehicle insurance who is the owner or registrant of a vehicle that operates as a taxicab and who operates one or more for-hire passenger vehicles may prove financial responsibility with evidence of holding a motor vehicle insurance liability policy with minimum limits of $125,000/250,000/50,000.[113] However, a motor vehicle owner or lessee required to maintain insurance under s. 324.021(9)(b), F.S., which includes lessors of motor vehicles and owners who loan out their motor vehicles, and who operates at least 300 for-hire passenger vehicles may prove financial responsibility through self-insurance as provided in s. 324.171, F.S.[114]

[112] The Florida Insurance Guaranty Association is created in s. 631.55, F.S.
[113] Section 324.032(1)(a), F.S. Section 324.032, F.S., provides it is notwithstanding the provisions of s. 324.031, F.S.
[114] Section 324.032(2), F.S. The maximum amount of self-insurance permissible under this section is $300,000 on a per occurrence basis, and the self-insurer must maintain adequate excess insurance issued by an authorized or eligible insurer licensed or approved by the Office of Insurance Regulation.

Effect of Proposed Changes

Section 33 amends s. 324.031, F.S., to provide that a for-hire passenger vehicle's motor vehicle liability policy must be provided by an insurer *authorized to do business in this state* and who is a member of the FIGA, *or* by an eligible nonadmitted (or surplus lines) insurer that has a superior, excellent, exceptional, or equivalent financial strength rating by a rating agency acceptable to the Office of Insurance Regulation.

Section 34 amends s. 324.032(2), F.S., to reduce the minimum number of for-hire passenger vehicles an owner or lessee must operate to be eligible to self-insure, from 300 vehicles to 150 vehicles.

High-Occupancy Toll Lanes and Express Lanes (Sections 35 and 36)

Present Situation

A high-occupancy-vehicle (HOV) lane is a lane of a public roadway designated for use by vehicles in which there is more than one occupant.[115] A high-occupancy toll lane is an HOV lane that requires payment of a toll. Tolled HOV lanes are referred to as high-occupancy toll lanes, or HOT lanes.

The FDOT manages such tolled lanes so that, generally, the required toll amount for use of the lane "is dynamically [or variably] priced based on the congestion in the express lanes with a goal of providing a free flow condition [in the express lanes]."[116] The FDOT's general goal is that a driver in such a lane should be able to maintain an average speed of 45 miles per hour or greater while traveling in the lane.[117]

The 2017 Legislature amended s. 338.166(5), F.S., effective July 1, 2018, to require a customer to be charged the minimum express lane toll if a customer's average travel speed for a *trip* in an FDOT express lane falls below 40 miles per hour. The provision currently defines a customer's express lane average travel speed as the customer's average travel speed from the customer's entry point to the customer's exit point.[118]

The Legislature also amended s. 338.2216(1)(d), F.S., to prohibit variable pricing in express lanes on the turnpike system when the level of service in the express lane, determined in accordance with the Transportation Research Board Highway Capacity Manual (5th Edition, HCM 2010),[119] as amended, is equal to level of service A.[120] When the level of service in the

[115] Section 316.0741(1)(a), F.S.
[116] For a detailed discussion of the FDOT's management of express lanes, see the Senate Bill Analysis of CS/CS/SB 1562, April 26, 2017, at p. 8, http://www.flsenate.gov/Session/Bill/2017/1562/Analyses/2017s01562.ap.PDF (lase visited Mar. 1, 2018.)
[117] See the FDOT email to Senate Transportation Committee staff dated April 18, 2017 (On file in the Senate Transportation Committee).
[118] Chapter 2017-182, L.O.F.
[119] Copy on file with the Senate Transportation Committee.
[120] According to the manual, level A is characterized by free-flow operations meaning that free-flow speed prevails on the freeway and vehicles are almost completely unimpeded in their ability to maneuver within the traffic stream.

express lane is level B,[121] variable pricing in the express lane may only be implemented by charging the general toll lane toll amount, plus an amount set by FDOT rule. Pricing in express lanes when the level of service is other than level of service A or B may vary in the manner established by the Florida Turnpike Enterprise (FTE) to manage congestion in the express lanes, with an exception: effective July 1, 2018, if a customer's average travel speed for a *trip* in an express lane falls below 40 miles per hour, the customer must be charged the general toll lane toll amount plus an amount set by FDOT rule. A customer's express lane average travel speed is also defined as the customer's average travel speed from the customer's *entry point* to the customer's *exit point*.

Effect of Proposed Changes

Section 35 amends s. 338.166(5), F.S., to require that if a customer's average travel speed for a *segment* of an express lane falls below 40 miles per hour, the toll charged must be the *segment's* minimum toll amount. An express lane segment is defined as the distance between the customer's *point of entry* to the *first available* exit. Additional segments are defined by the distance between subsequent exits.

Section 36 amends s. 338.2216(1)(d), F.S., to authorize variable pricing in express lanes when the level of service in the lane is level B, but only by charging the *segment's* general toll amount plus the *segment's* minimum toll amount. The bill defines an express lane segment as the distance between the customer's *point of entry* to the *first available exit*, with additional segments defined by the distance between subsequent exits. The current exception to be effective July 1, 2018, is removed.

Local Road Closure - State University Ingress and Egress (Section 37)

Present Situation

Section 336.09, F.S., authorizes county commissioners, with respect to property under their jurisdiction, to close any existing public or private street, road, or highway, other than a state or federal highway, and to disclaim any right of the county and the public in any underlying land.[122]

Section 2(b), Art. VIII of the Florida Constitution grants municipalities "governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes except as otherwise provided by law." Statutory implementation of the constitution's broad grant of home rule authority to municipalities is reflected in s. 166.021, F.S., which defines "municipal purpose" as "any activity or power which may be exercised by the state or its political subdivisions." Current law contains no provision specifically addressing or otherwise providing for municipal road closures. Thus, municipalities are authorized to close municipal streets under their home rule authority.

[121] Level B is characterized by reasonably free-flow operations, meaning that free-flow speed is maintained and the ability to maneuver is only slightly restricted.
[122] Section 336.10, F.S., sets forth the process for closing or abandoning a county road.

Effect of Proposed Changes

Section 37 creates s. 334.352, F.S., entitled "state university ingress and egress," to prohibit a local governmental entity from preventing public motor vehicle use on, or access to, an existing transportation facility[123] or transportation corridor[124] if that facility or corridor is the only point, or one of only two points, of ingress to and egress from a state university defined in s. 1000.21, F.S.,[125] and regulated by the Board of Governors of the State University System.[126] Counties and municipalities are prohibited from denying vehicular use of or access to an existing transportation facility or corridor under the conditions specified.

Cargo Theft (Section 39)

Present Situation

First degree grand theft, a first degree felony, is theft of:
- Property valued at $100,000 or more.
- A semitrailer deployed by a law enforcement officer.
- Cargo valued at $50,000 or more in specified circumstances.

First degree grand theft also includes any grand theft in which, in the course of committing the offense, a motor vehicle is used as specified or the offender causes damage to the real or personal property of another in excess of $1,000.[127]

A first degree felony is punishable by up to 30 years in state prison and a fine of up to $10,000.[128]

Currently, it is a second degree misdemeanor[129] to, without authority, willfully, maliciously, or intentionally tamper with, attempt to tamper with, or otherwise interfere with any motor vehicle or trailer of another which results in the:
- Cargo or contents of such motor vehicle or trailer becoming unloaded or damaged; or
- Mechanical functions of such motor vehicle or trailer becoming inoperative or impaired.[130]

Global positioning system (GPS) jammers are devices using radio frequency transmitters in order to intentionally block, jam, or interfere with GPS systems. It is illegal to market, sell, or use GPS

[123] Defined in s. 334.03(30), F.S., as "any means for the transportation of people or property from place to place which is constructed, operated, or maintained in whole or in part from public funds. The term includes the property or property rights, both real and personal, which have been or may be established by public bodies for the transportation of people or property from place to place."
[124] Defined in s. 334.03(29), F.S., as "any land area designated by the state, a county, or a municipality which is between two geographic points and which area is used or suitable for the movement of people and goods by one or more modes of transportation, including areas necessary for management of access and securing applicable approvals and permits."
[125] Section 1000.21(6), F.S., lists the institutions in Florida, including any branch campuses, centers, or other affiliates of the institutions.
[126] Section 20.155, F.S.
[127] Section 812.014(2)(a), F.S.
[128] Sections 775.082 and 775.083, F.S.
[129] A second degree misdemeanor is punishable by up to 60 days imprisonment in county jail and a fine of up to $500. Id.
[130] Section 860.17, F.S.

jammers in the United States.[131] Such devices have been linked to cargo thefts throughout the United States.[132]

Effect of Proposed Changes

Section 39 amends s. 812.014(2), F.S., to create a new first degree grand theft crime. A person commits first degree grand theft if he or she commits cargo theft and uses a device in the course of committing the offense to defeat, block, disable, jam, or interfere with a GPS or similar system designed to identify the location of the cargo or the vehicle or trailer carrying the cargo.

"Cargo" is "partial or entire shipments, containers, or cartons of property which are contained in or on a trailer, motortruck, aircraft, vessel, warehouse, freight station, freight consolidation facility, or air navigation facility."[133]

Conforming Changes (Sections 31 and 38)

The bill amends ss. 322.61 and 655.960, F.S., to make conforming changes to cross-references.

Effective Date (Section 40)

Except as otherwise provided, 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:

The bill exempts a Florida resident from certificate of title fees when he or she is transferring a Florida-titled vehicle into his or her name from a deceased owner who is his or her parent or child. This exemption from title fees will have a recurring negative impact primarily on the General Revenue Fund, as well as the State Transportation Trust Fund, HSOTF, and local governments. The Revenue Estimating Conference has not yet

[131] See GPS.gov, *Information About GPS Jamming*, http://www.gps.gov/spectrum/jamming/ (last visited Feb. 16, 2018).
[132] Federal Bureau of Investigation, Private Industry Notification 141002-001, *Cargo Thieves use GPS Jammers to Mask GPS Trackers* (Oct. 2, 2014), https://info.publicintelligence.net/FBI-CargoThievesGPS.pdf (last visited Feb. 16, 2018).
[133] Section 812.012(1), F.S.

estimated the impact of this provision. The DHSMV estimates that the provision could reduce revenues by $4.5 million annually.[134]

The bill creates an electronic credential for a driver license and requires fees paid to obtain an electronic credential or to access a system to verify an electronic credential to be deposited into the HSOTF and shared with the contracted providers pursuant to the agreements entered into by the DHSMV and the providers. The impact of any revenue generated under these provisions is indeterminate.

B. Private Sector Impact:

The bill may have a positive fiscal impact on:

- Manufacturers of PDDs and mobile carriers that will be authorized to be operated on sidewalks and crosswalks in the state;
- Residents of the state who will not have to pay fees to transfer a Florida-registered motor vehicle title into their name upon the death of a parent or child;
- Entities that will be authorized to use the DHSMV's EFS system;
- Operators of motor vehicle platoons and manufacturers of platooning technology that will be authorized to operate on Florida roadways;
- Specialty license plate organizations if motor vehicle dealers or fleet companies choose to purchase the organization's specialty license plate;
- Fleet companies who qualify to be part of the Fleet Vehicle Temporary Tag pilot program and will be able to receive up to 50 temporary tags at a time, which can reduce the amount of time a replacement fleet vehicle is inoperable while awaiting permanent registration and title;
- Certain nonadmitted insurers who may be able to provide a motor vehicle liability insurance policy to owners and operators of for-hire passenger vehicles; and
- Owners and lessees of 150 for-hire passenger vehicles, but less than 300, who will be authorized to self-insure;
- The Alzheimer's Association, Inc.

The bill creates a new crime for persons who commit grand theft while using a device to interfere with a GPS or similar system that is designed to identify the location of the cargo or the vehicle or trailer carrying the cargo. This provision may deter cargo theft. A first degree felony is generally punishable by up to 30 years in state prison and a fine of up to $10,000.

There is a potential fiscal impact to the CMV industry associated with changes to the CMV regulations contained in the bill; however, the impact is indeterminate at this time.

C. Government Sector Impact:

The bill may have a negative, but indeterminate impact on the DHSMV, the HSOTF, the State Transportation Trust Fund, the General Revenue Fund, and local tax collectors.

[134] Email from the DHSMV to Senate Transportation Committee staff, March 3, 2018.

DHSMV will incur programming and implementation costs associated with changes made by the bill.

The bill makes changes to address compliance issues with federal laws relating to commercial motor vehicles. According to the DHSMV, if Florida fails to comply with FMCSA compatibility requirements, Florida may experience a reduction of up to four percent of Federal-aid highway funds following the first year of noncompliance and up to eight percent for subsequent years.[135] Noncompliance may also affect the potential award of future grants.

The FTC may have reduced administrative expenses associated with no longer receiving, reviewing, and selecting from the applications three candidates for nomination as the FDOT secretary.

The bill creates an electronic credential and allows the DHSMV to competitively procure at least 2 and no more than 5 providers to implement the credential. The procurement is for services based upon a revenue sharing model. The bill allows the DHSMV to establish a competitive market rate fee structure to verify an electronic credential. The bill exempts state courts, state governmental entities, and law enforcement agencies from these fees. The revenue generated from the electronic credential will increase revenues to the HSOTF by an indeterminate amount.

The changes made by the bill regarding high-occupancy toll and express lanes may facilitate the FDOT's ability to implement the toll reduction under the revised conditions, potentially resulting in increased toll revenues.

The bill may increase operating expenses of the DHSMV and the FDOT. For example, the cost to the FDOT to create a permit for truck platooning is unknown.

The Criminal Justice Impact Conference has reviewed the bill and estimated provisions of the bill concerning cargo theft and the illegal creation of electronic credentials may have a positive indeterminate impact on prison beds, meaning the bill will result in an unquantifiable increase in prison beds.[136]

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 6 requires an operator in a platoon to provide notification to the DHSMV in order to operate in this state. The bill does not specify how notification to the DHSMV is required to be made or what information is required from the operator. Further, it is unclear how law

[135] Email from the DHSMV (Feb. 17, 2017) (on file with the Senate Committee on Transportation).
[136] EDR, Criminal Justice Impact Conference, *CS/SB 1104 – pcs – Commercial Motor Vehicles, available at* http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/CSSB1104pcs.pdf (last visited March 3, 2018).

enforcement will be able to identify that a vehicle is operating in a platoon and thus exempt from certain traffic law requirements.

Effective January 1, 2019, **section 15** amends the DHSMV's current statutory requirement to adopt rules to administer s. 320.03, F.S., and instead provides that DHSMV *may* adopt rules to administer the section.

Section 25 allows for an electronic version of a driver license, and appears to allow to the charge of a fee to have such version of a driver license. However, the bill does not specifically allow the DHSMV to set a fee, does not specifically state that a fee will be charged, and does not amend s. 322.21, F.S., which sets forth the fees charged for licenses.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 20.23, 316.003, 316.008, 316.0895, 316.2071, 316.302, 316.303, 316.85, 319.141, 319.32, 320.01, 320.02, 320.03, 320.06, 320.0605, 320.0607, 320.0657, 320.08, 320.08056, 320.131, 320.95, 322.01, 322.032, 322.059, 322.09, 322.143, 322.15, 322.38, 322.61, 324.021, 324.031, 324.032, 338.166, 338.2216, 655.960, and 812.014.

This bill creates the following sections of the Florida Statutes: 316.0897 and 334.352.

This bill repeals section 316.0896 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 March 2, 2018:
The committee substitute changes the "relating to" clause of the bill to "[a]n act relating to transportation" and adds or amends several new provisions to the bill. The CS/CS:

- Clarifies the organization of FDOT and removes the requirement that the Governor must pick an FDOT secretary from the FTC's nominated FDOT secretary candidates;
- Defines "mobile carriers" and provides regulations for such devices;
- Increases the allowable weight of PDDs to less than 100 pounds, instead of less than 80 pounds;
- Revises s. 316.0897, F.S., created by the bill, to require platoon operators notify the DHSMV, obtain a permit from the FDOT to operate, directs the FDOT to adopt rules for issuance of such permits, and provides for the repeal of this section on October 1, 2023, unless saved from repeal by the Legislature;
- Repeals s. 316.0895(2), F.S., which prohibits trucks and vehicles towing other vehicles or trailers from following one another within 300 feet on roadways outside of a business or residence district;
- Provides that the prohibition on following another vehicle more closely than is reasonable and prudent may not be construed to prevent overtaking and passing;

- Revises s. 316.302(1)(e), F.S., created by the bill, to exempt certain intrastate motor carriers from federal electronic logging device and hours of service support document requirements until December 31, 2018, instead of 2019, to remain compliant with federal law;
- Authorizes the FTE to fund, construct, and operate test facilities for the advancement of autonomous and connected transportation technology solutions for improving safety and congestion;
- Extends the Pilot Rebuilt Motor Vehicle Inspection Program to July 1, 2020, requires the DHSMV submit a report evaluating the program by January 1, 2019, and provides additional requirements for the program;
- Prohibits the DHSMV or tax collectors from charging title transfer fees when transferring a Florida motor vehicle title from a deceased owner to the deceased's parent or child within 30 days of the death;
- Requires the motor vehicle registration application and renewal form include a voluntary checkoff to allow contributions of $1 per applicant to be distributed to the Alzheimer's Association, Inc.;
- Expands businesses that may be authorized to use the DHSMV's electronic filing system to an entity that, in the normal course of its business, process title transactions, derelict motor vehicle certificates, or certificates of destruction for derelict or salvage motor vehicles;
- Allows the DHSMV to authorize the format of an electronic certificate of registration;
- Authorizes a DHSMV-approved electronic copy of a motor vehicle certificate of registration or motor vehicle rental or lease documentation be accepted by law enforcement or agents of the DHSMV as proof of possession of such documentation, and provides restrictions and liability regarding the electronic device displaying such documentation;
- Removes reference in Florida Statutes to "digital proof of driver license" and replaces such term with "electronic credentials";
- Requires the DHSMV implement protocols for issuing an optional electronic credential, provides requirements for the procurement of electronic credential and verification solution providers (including technological requirements), and authorizes the issuance and use of electronic credentials;
- Exempts a caregiver of a foster child, who signs the application for the minor's learner's driver license, from any obligation or liability for damages caused by the negligence or willful misconduct of the minor by reason of having signed the application;
- Provides that a motor vehicle rental company is deemed to have met the requirements of inspecting a driver license and prohibiting the rental of a motor vehicle to a person required to be licensed who is not, if the renter verifies he or she holds a valid driver license and the vehicle is rented from the company through digital, electronic, or other means not requiring direct contact with an employee of the rental company;
- Removes a requirement that a person who rents a vehicle to another person compare the signature of the renter with the renter's driver license signature; instead the person must verify that the renter's driver license is unexpired;
- Allows for-hire passenger vehicles to be insured by certain eligible nonadmitted insurers who are not members of the Florida Insurance Guaranty Association;

- Reduces the number of for-hire passenger vehicles an owner or lessee must operate to self-insure, from 300 to 150 for-hire vehicles;
- Requires the FDOT to charge a customer the minimum express lane toll for a segment of the express lane if the average travel speed of that segment falls below 40 miles per hour, rather than for the entire customer's trip;
- Provides that, when variable pricing in express lanes is allowed, the FTE can charge a person for the segment's general toll amount plus the segment's minimum toll amount, rather than the general toll lane amount plus an amount set by FDOT;
- Prohibits a local governmental entity from preventing public motor vehicle use or access to an existing transportation facility or corridor if it is the only point, or one of two points, of ingress to and egress from a state university; and
- Makes technical and cross-reference changes to the bill.

CS by Transportation on January 18, 2018:
The CS changes the "relating to" clause of the bill to "[a]n act relating to commercial motor vehicles," and adds numerous provisions to the bill. The CS:

- Repeals s. 316.0896, F.S., creating the Assistive Truck Platooning Technology Pilot Program, which has been conducted by the FDOT in consultation with the DHSMV;
- Removes the definition of "driver-assistive truck platooning technology" and reference to the term in the Florida Statues;
- Authorizes a motor vehicle platoon to be operated on Florida roadways after an operator provides notification to the FDOT and DHSMV;
- Defines the term "platoon" for purposes of ch. 316, F.S., and exempts certain operators of platoons from state laws relating to "following too closely" and television receiver prohibitions;
- Updates various commercial motor vehicle regulations to address compatibility issues with federal law and the International Registration Plan;
- Allows motor vehicle dealers and fleet companies to purchase specialty license plates;
- Creates a Fleet Vehicle Temporary Tag pilot program; and
- Provides enhanced penalties for persons who commit grand theft while using any device to interfere with a GPS or similar system.

B. Amendments:

None.

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

By the Committee on Transportation; and Senator Brandes

596-02193-18 20181104c1

A bill to be entitled

An act relating to commercial motor vehicles; amending s. 316.003, F.S.; deleting the term "driver-assistive truck platooning technology"; defining the term "platoon"; repealing s. 316.0896, F.S., relating to the assistive truck platooning technology pilot project; creating s. 316.0897, F.S.; exempting the operator of a non-lead vehicle in a platoon from a specified provision; authorizing a platoon to be operated on a roadway in this state after an operator provides notification to the Department of Transportation and the Department of Highway Safety and Motor Vehicles; amending s. 316.302, F.S.; revising regulations to which owners and drivers of commercial motor vehicles are subject; delaying the requirement for electronic logging devices and support documents for certain intrastate motor carriers; deleting a limitation on a civil penalty for falsification of certain time records; deleting a requirement that a motor carrier maintain certain documentation of driving times; providing an exemption from specified provisions for a person who operates a commercial motor vehicle with a certain gross vehicle weight, gross vehicle weight rating, and gross combined weight rating; deleting the exemption from such provisions for a person transporting petroleum products; amending s. 316.303, F.S.; conforming a provision to changes made by the act; amending s. 320.01, F.S.; revising the definition of the term

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"apportionable vehicle"; amending s. 320.06, F.S.; requiring a vehicle that has an apportioned registration to be issued, before a specified date, an annual license plate and a cab card denoting the declared gross vehicle weight; providing requirements, beginning on a specified date, for license plates, cab cards, and validation stickers for vehicles registered in accordance with the International Registration Plan; providing a specified fee for initial and renewed validation stickers; requiring the fee to be deposited into the Highway Safety Operating Trust Fund; authorizing a damaged or worn license plate to be replaced at no charge under certain circumstances; providing an exception to the design of dealer license plates for specialty license plates; amending s. 320.0607, F.S.; providing an exemption, beginning on a specified date, from a certain fee for vehicles registered under the International Registration Plan; amending s. 320.0657, F.S.; providing an exception to the design of fleet license plates for specialty license plates; authorizing fleet companies to purchase specialty license plates in lieu of the standard fleet license plates for additional specified fees; requiring fleet companies to be responsible for all costs associated with the specialty license plate; amending s. 320.08, F.S.; authorizing dealers to purchase specialty license plates in lieu of the standard graphic dealer license plates for additional specified fees; requiring dealers to be responsible

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for all costs associated with the specialty license plate; amending s. 320.08056, F.S.; allowing the Department of Highway Safety and Motor Vehicles to authorize dealer and fleet specialty license plates; authorizing a dealer or fleet company to purchase specialty license plates to be used on dealer and fleet vehicles with the permission of the sponsoring specialty license plate organization; requiring a dealer or fleet specialty license plate to include specified letters on the right side of the license plate; requiring dealer and fleet specialty license plates to be ordered directly through the department; amending s. 320.131, F.S.; authorizing, beginning on a specified date, the department to partner with a county tax collector to conduct a Fleet Vehicle Temporary Tag pilot program, subject to certain requirements; providing for future repeal; amending s. 812.014, F.S.; providing a criminal penalty for an offender committing grand theft who uses a device to interfere with a global positioning or similar system; providing an effective date.

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

Section 1. Present subsection (20) is amended, present subsections (21) through (52) of section 316.003, Florida Statutes, are renumbered as subsections (20) through (51), respectively, and a new subsection (52) is added to that section, to read:

316.003 Definitions.—The following words and phrases, when used in this chapter, shall have the meanings respectively ascribed to them in this section, except where the context otherwise requires:

~~(20) DRIVER-ASSISTIVE TRUCK PLATOONING TECHNOLOGY. Vehicle automation and safety technology that integrates sensor array, wireless vehicle-to-vehicle communications, active safety systems, and specialized software to link safety systems and synchronize acceleration and braking between two vehicles while leaving each vehicle's steering control and systems command in the control of the vehicle's driver in compliance with the National Highway Traffic Safety Administration rules regarding vehicle to vehicle communications.~~

(52) PLATOON.—A group of individual motor vehicles traveling in a unified manner at electronically coordinated speeds at following distances that are closer than defined under s. 316.0895(2).

Section 2. Section 316.0896, Florida Statutes, is repealed.

Section 3. Section 316.0897, Florida Statutes, is created to read:

316.0897 Platoons.—

(1) Section 316.0895 does not apply to the operator of a non-lead vehicle in a platoon, as defined in s. 316.003.

(2) A platoon may be operated on a roadway in this state after an operator provides notification to the Department of Transportation and the Department of Highway Safety and Motor Vehicles.

Section 4. Subsection (1) and paragraphs (a), (c), (d), and (f) of subsection (2) of section 316.302, Florida Statutes, are

amended to read:

316.302 Commercial motor vehicles; safety regulations; transporters and shippers of hazardous materials; enforcement.—

(1) Except as otherwise provided in subsection (3):

(a) All owners and drivers of commercial motor vehicles that are operated on the public highways of this state while engaged in interstate commerce are subject to the rules and regulations contained in 49 C.F.R. parts 382, 385, and 390-397.

(b) Except as otherwise provided in this section, all owners or drivers of commercial motor vehicles that are engaged in intrastate commerce are subject to the rules and regulations contained in 49 C.F.R. parts 382, 383, 385, and 390-397~~, with the exception of 49 C.F.R. s. 390.5 as it relates to the definition of bus,~~ as such rules and regulations existed on December 31, 2017 ~~2012~~.

(c) The emergency exceptions provided by 49 C.F.R. s. 392.82 also apply to communications by utility drivers and utility contractor drivers during a Level 1 activation of the State Emergency Operations Center, as provided in the Florida Comprehensive Emergency Management plan, or during a state of emergency declared by executive order or proclamation of the Governor.

(d) Except as provided in ~~s. 316.215(5), and except as provided in~~ s. 316.228 for rear overhang lighting and flagging requirements for intrastate operations, the requirements of this section supersede all other safety requirements of this chapter for commercial motor vehicles.

(e) For motor carriers engaged in intrastate commerce who are not carrying hazardous materials in amounts that require

placards, the requirement for electronic logging devices and hours of service support documents shall take effect December 31, 2019.

(2)(a) A person who operates a commercial motor vehicle solely in intrastate commerce not transporting any hazardous material in amounts that require placarding pursuant to 49 C.F.R. part 172 need not comply with 49 C.F.R. ss. 391.11(b)(1) and 395.3 ~~395.3(a) and (b)~~.

(c) Except as provided in 49 C.F.R. s. 395.1, a person who operates a commercial motor vehicle solely in intrastate commerce not transporting any hazardous material in amounts that require placarding pursuant to 49 C.F.R. part 172 may not drive after having been on duty more than 70 hours in any period of 7 consecutive days or more than 80 hours in any period of 8 consecutive days if the motor carrier operates every day of the week. Thirty-four consecutive hours off duty shall constitute the end of any such period of 7 or 8 consecutive days. This weekly limit does not apply to a person who operates a commercial motor vehicle solely within this state while transporting, during harvest periods, any unprocessed agricultural products or unprocessed food or fiber that is subject to seasonal harvesting from place of harvest to the first place of processing or storage or from place of harvest directly to market or while transporting livestock, livestock feed, or farm supplies directly related to growing or harvesting agricultural products. Upon request of the Department of Highway Safety and Motor Vehicles, motor carriers shall furnish time records or other written verification to that department so that the Department of Highway Safety and Motor Vehicles can

determine compliance with this subsection. These time records must be furnished to the Department of Highway Safety and Motor Vehicles within 2 days after receipt of that department's request. Falsification of such information is subject to a civil penalty ~~not to exceed $100~~. ~~The provisions of~~ This paragraph does ~~do~~ not apply to operators of farm labor vehicles operated during a state of emergency declared by the Governor or operated pursuant to s. 570.07(21)~~,~~ and does ~~do~~ not apply to drivers of utility service vehicles as defined in 49 C.F.R. s. 395.2.

(d) A person who operates a commercial motor vehicle solely in intrastate commerce not transporting any hazardous material in amounts that require placarding pursuant to 49 C.F.R. part 172 within a 150 air-mile radius of the location where the vehicle is based need not comply with 49 C.F.R. s. 395.8~~,~~ if the requirements of 49 C.F.R. s. 395.1(e)(1)(ii), (iii)(A) and (C), ~~395.1(c)(1)(iii)~~ and (v) are met. ~~If a driver is not released from duty within 12 hours after the driver arrives for duty, the motor carrier must maintain documentation of the driver's driving times throughout the duty period.~~

(f) A person who operates a commercial motor vehicle having a ~~declared~~ gross vehicle weight, gross vehicle weight rating, and gross combined weight rating of less than 26,001 pounds solely in intrastate commerce and who is not transporting hazardous materials in amounts that require placarding pursuant to 49 C.F.R. part 172~~, or who is transporting petroleum products as defined in s. 376.301,~~ is exempt from subsection (1). However, such person must comply with 49 C.F.R. parts 382, 392, and 393~~,~~ and with 49 C.F.R. ss. 396.3(a)(1) and 396.9.

Section 5. Subsection (3) of section 316.303, Florida

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Statutes, is amended to read:

316.303 Television receivers.—

(3) This section does not prohibit the use of an electronic display used in conjunction with a vehicle navigation system; an electronic display used by an operator of a vehicle equipped with autonomous technology, as defined in s. 316.003; or an electronic display used by an operator of a platoon ~~vehicle equipped and operating with driver-assistive truck platooning technology~~, as defined in s. 316.003.

Section 6. Subsection (24) of section 320.01, Florida Statutes, is amended to read:

320.01 Definitions, general.—As used in the Florida Statutes, except as otherwise provided, the term:

(24) "Apportionable vehicle" means any vehicle, except recreational vehicles, vehicles displaying restricted plates, city pickup and delivery vehicles, ~~buses used in transportation of chartered parties,~~ and government-owned vehicles, which is used or intended for use in two or more member jurisdictions that allocate or proportionally register vehicles and which is used for the transportation of persons for hire or is designed, used, or maintained primarily for the transportation of property and:

(a) Is a power unit having a gross vehicle weight in excess of 26,000 pounds;

(b) Is a power unit having three or more axles, regardless of weight; or

(c) Is used in combination, when the weight of such combination exceeds 26,000 pounds gross vehicle weight.

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Vehicles, or combinations thereof, having a gross vehicle weight of 26,000 pounds or less and two-axle vehicles may be proportionally registered.

Section 7. Paragraph (b) of subsection (1) and paragraph (a) of subsection (3) of section 320.06, Florida Statutes, are amended to read:

320.06 Registration certificates, license plates, and validation stickers generally.—

(1)

(b)1. Registration license plates bearing a graphic symbol and the alphanumeric system of identification shall be issued for a 10-year period. At the end of the 10-year period, upon renewal, the plate shall be replaced. The department shall extend the scheduled license plate replacement date from a 6-year period to a 10-year period. The fee for such replacement is $28, $2.80 of which shall be paid each year before the plate is replaced, to be credited toward the next $28 replacement fee. The fees shall be deposited into the Highway Safety Operating Trust Fund. A credit or refund may not be given for any prior years' payments of the prorated replacement fee if the plate is replaced or surrendered before the end of the 10-year period, except that a credit may be given if a registrant is required by the department to replace a license plate under s. 320.08056(8)(a). With each license plate, a validation sticker shall be issued showing the owner's birth month, license plate number, and the year of expiration or the appropriate renewal period if the owner is not a natural person. The validation sticker shall be placed on the upper right corner of the license plate. The license plate and validation sticker shall be issued

based on the applicant's appropriate renewal period. The registration period is 12 months, the extended registration period is 24 months, and all expirations occur based on the applicant's appropriate registration period.

2. Before October 1, 2019, a vehicle that has an apportioned registration shall be issued an annual license plate and a cab card denoting ~~that denote~~ the declared gross vehicle weight ~~for each apportioned jurisdiction in which the vehicle is authorized to operate~~.

3. Beginning October 1, 2019, a vehicle registered in accordance with the International Registration Plan shall be issued a license plate for a 5-year period, an annual cab card denoting the declared gross vehicle weight, and an annual validation sticker showing the month and year of expiration. The validation sticker shall be placed in the center of the license plate. The license plate and validation sticker shall be issued based on the applicant's appropriate renewal period. The fee for the initial validation sticker and any renewed validation sticker is $28. This fee shall be deposited into the Highway Safety Operating Trust Fund. A damaged or worn license plate may be replaced at no charge by applying to the department and surrendering the current license plate.

4.~~2.~~ In order to retain the efficient administration of the taxes and fees imposed by this chapter, the 80-cent fee increase in the replacement fee imposed by chapter 2009-71, Laws of Florida, is negated as provided in s. 320.0804.

(3)(a) Registration license plates must be made of metal specially treated with a retroreflection material, as specified by the department. The registration license plate is designed to

increase nighttime visibility and legibility and must be at least 6 inches wide and not less than 12 inches in length, unless a plate with reduced dimensions is deemed necessary by the department to accommodate motorcycles, mopeds, or similar smaller vehicles. Validation stickers must also be treated with a retroreflection material, must be of such size as specified by the department, and must adhere to the license plate. The registration license plate must be imprinted with a combination of bold letters and numerals or numerals, not to exceed seven digits, to identify the registration license plate number. The license plate must be imprinted with the word "Florida" at the top and the name of the county in which it is sold, the state motto, or the words "Sunshine State" at the bottom. Apportioned license plates must have the word "Apportioned" at the bottom and license plates issued for vehicles taxed under s. 320.08(3)(d), (4)(m) or (n), (5)(b) or (c), or (14) must have the word "Restricted" at the bottom. License plates issued for vehicles taxed under s. 320.08(12) must be imprinted with the word "Florida" at the top and the word "Dealer" at the bottom unless the license plate is a specialty license plate as authorized in s. 320.08056. Manufacturer license plates issued for vehicles taxed under s. 320.08(12) must be imprinted with the word "Florida" at the top and the word "Manufacturer" at the bottom. License plates issued for vehicles taxed under s. 320.08(5)(d) or (e) must be imprinted with the word "Wrecker" at the bottom. Any county may, upon majority vote of the county commission, elect to have the county name removed from the license plates sold in that county. The state motto or the words "Sunshine State" shall be printed in lieu thereof. A license

plate issued for a vehicle taxed under s. 320.08(6) may not be assigned a registration license number, or be issued with any other distinctive character or designation, that distinguishes the motor vehicle as a for-hire motor vehicle.

Section 8. Subsection (5) of section 320.0607, Florida Statutes, is amended to read:

320.0607 Replacement license plates, validation decal, or mobile home sticker.—

(5) Upon the issuance of an original license plate, the applicant shall pay a fee of $28 to be deposited in the Highway Safety Operating Trust Fund. Beginning October 1, 2019, this subsection does not apply to a vehicle registered under the International Registration Plan.

Section 9. Paragraph (b) of subsection (2) of section 320.0657, Florida Statutes, is amended to read:

320.0657 Permanent registration; fleet license plates.—

(2)

(b) The plates, which shall be of a distinctive color, shall have the word "Fleet" appearing at the bottom and the word "Florida" appearing at the top unless the license plate is a specialty license plate as authorized in s. 320.08056. The plates shall conform in all respects to the provisions of this chapter, except as specified herein. For additional fees as set forth in s. 320.08056, fleet companies may purchase specialty license plates in lieu of the standard fleet license plates. Fleet companies shall be responsible for all costs associated with the specialty license plate, including all annual use fees, processing fees, fees associated with switching license plate types, and any other applicable fees.

Section 10. Subsection (12) of section 320.08, Florida Statutes, is amended to read:

320.08 License taxes.—Except as otherwise provided herein, there are hereby levied and imposed annual license taxes for the operation of motor vehicles, mopeds, motorized bicycles as defined in s. 316.003(3), tri-vehicles as defined in s. 316.003, and mobile homes as defined in s. 320.01, which shall be paid to and collected by the department or its agent upon the registration or renewal of registration of the following:

(12) DEALER AND MANUFACTURER LICENSE PLATES.—A franchised motor vehicle dealer, independent motor vehicle dealer, marine boat trailer dealer, or mobile home dealer and manufacturer license plate: $17 flat, of which $4.50 shall be deposited into the General Revenue Fund. For additional fees as set forth in s. 320.08056, dealers may purchase specialty license plates in lieu of the standard graphic dealer license plates. Dealers shall be responsible for all costs associated with the specialty license plate, including all annual use fees, processing fees, fees associated with switching license plate types, and any other applicable fees.

Section 11. Subsection (2) of section 320.08056, Florida Statutes, is amended to read:

320.08056 Specialty license plates.—

(2)(a) The department shall issue a specialty license plate to the owner or lessee of any motor vehicle, except a vehicle registered under the International Registration Plan, a commercial truck required to display two license plates pursuant to s. 320.0706, or a truck tractor, upon request and payment of the appropriate license tax and fees.

(b) The department may authorize dealer and fleet specialty license plates. With the permission of the sponsoring specialty license plate organization, a dealer or fleet company may purchase specialty license plates to be used on dealer and fleet vehicles.

(c) Notwithstanding s. 320.08058, a dealer or fleet specialty license plate must include the letters "DLR" or "FLT" on the right side of the license plate. Dealer and fleet specialty license plates must be ordered directly through the department.

Section 12. Subsection (10) is added to section 320.131, Florida Statutes, to read:

320.131 Temporary tags.—

(10) Beginning October 1, 2018, the department may partner with a county tax collector to conduct a Fleet Vehicle Temporary Tag pilot program to provide temporary tags to fleet companies to allow them to operate fleet vehicles awaiting a permanent registration and title.

(a) The department shall establish a memorandum of understanding that allows a maximum of three companies to participate in the pilot program and receive multiple temporary tags for company fleet vehicles.

(b) To participate in the program a fleet company must have a minimum of 3,500 fleet vehicles registered in this state which qualify to be registered as fleet vehicles pursuant to s. 320.0657.

(c) The department may issue up to 50 temporary tags at a time to an eligible fleet company, if requested by such company.

(d) The temporary tags are for exclusive use on a vehicle

purchased for the company's fleet, and may not be used on any other vehicle.

(e) Each temporary plate may be used on only one vehicle and each vehicle may only use one temporary plate.

(f) Upon issuance of the vehicle's permanent license plate and registration, the temporary tag becomes invalid and must be removed from the vehicle and destroyed.

(g) Upon a finding by the department that a temporary tag has been misused by a fleet company under this program, the department may terminate the memorandum of understanding with the company, invalidate all temporary tags issued to the company under the program, and require such company to return any unused temporary tags.

(h) This subsection is repealed on October 1, 2021, unless saved from repeal through reenactment by the Legislature.

Section 13. Paragraph (a) of subsection (2) of section 812.014, Florida Statutes, is amended to read:

812.014 Theft.—

(2)(a)1. If the property stolen is valued at $100,000 or more or is a semitrailer that was deployed by a law enforcement officer; or

2. If the property stolen is cargo valued at $50,000 or more that has entered the stream of interstate or intrastate commerce from the shipper's loading platform to the consignee's receiving dock; or

3. If the offender commits any grand theft and:

a. In the course of committing the offense the offender uses a motor vehicle as an instrumentality, other than merely as a getaway vehicle, to assist in committing the offense and

thereby damages the real property of another; ~~or~~

b. In the course of committing the offense the offender causes damage to the real or personal property of another in excess of $1,000; or

c. In the course of committing the offense the offender uses any type of device to defeat, block, disable, jam, or interfere with a global positioning system or similar system designed to identify the location of the cargo or the vehicle or trailer carrying the cargo,

the offender commits grand theft in the first degree, punishable as a felony of the first degree, as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 14. This act shall take effect October 1, 2018.

The Florida Senate

Committee Agenda Request

To: Senator Robert Bradley
Committee on Appropriations

Subject: Committee Agenda Request

Date: February 15, 2018

I respectfully request that **Senate Bill #1104**, relating to **Vehicle Registration**, 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)

3/2/18
Meeting Date

1104
Bill Number (if applicable)

419998
Amendment Barcode (if applicable)

Topic Commercial Insurance

Name Michael Spinelli

Job Title Lobbyist

Address PO Box 2535 Phone 850-566-6767
Street

Windermere FL 34786 Email michael@spinelli-inc.com
City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information

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

Representing United Cab of Pinellas

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

3/2/15
Meeting Date

1104
Bill Number (if applicable)

419998
Amendment Barcode (if applicable)

Topic Unregistered Commercial Motor Vehicles

Name Audrey Brown

Job Title President + C.E.O

Address 200 W. College Ave
Street

Tallahassee FL 32309
City *State* *Zip*

Phone 850-386-2204

Email AudreyB@FAHP.net

Speaking: ☐ For ☑ Against ☐ Information

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

Representing Florida Association of Health Plans

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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)

3/2/18
Meeting Date

1104
Bill Number (if applicable)

419998
Amendment Barcode (if applicable)

Topic Commercial Insurance

Name Travis Mitchell

Job Title Lobbyist

Address PO Box 274108 Phone 3862997298
Street

Tampa FL 33688 Email travismitchell6@gmail.com
City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Tampa Taxi Coalition

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/2/18
Meeting Date

SB 1104
Bill Number (if applicable)

796284
Amendment Barcode (if applicable)

Topic _____

Name Cari Roth

Job Title DEAN MEAD

Address 215 S. Monroe St Suite 815 Phone _____
Street

Tallahassee FL 32301 Email _____
City *State* *Zip*

Speaking: ☐ For ☒ Against ☐ Information

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

Representing FLORIDA Ambulance 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/CS/SB 1218 (485662)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Criminal and Civil Justice); Criminal Justice Committee; and Senator Brandes
SUBJECT:	Persons Awaiting Trial
DATE:	March 1, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cox	Jones	CJ	**Fav/CS**
2.	Forbes	Sadberry	ACJ	**Recommend: Fav/CS**
3.	Forbes	Hansen	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 1218 makes changes to a number of provisions related to public safety and the criminal justice system, including:

- Creating the "Florida Correctional Operations Oversight Council" to oversee the criminal and juvenile justice systems;
- Clarifying that law enforcement mutual aid agreements may be used to increase law enforcement presence in the event of an emergency response or evacuation;
- Requiring sheriffs to provide security to the trial court and coordinate with the chief judge on security matters;
- Requiring each circuit to establish a "Driver License Reinstatement Days Program" (Reinstatement Days Program) involving specified entities and hold events through the Reinstatement Days Program on one or more days where a person can pay specified fees and obtain license reinstatement;
- Prohibiting issuance of an attorney's fee in protective injunctions for repeat, sexual, or dating violence or stalking;
- Authorizing a court to depart from the imposition of a mandatory minimum sentence in drug trafficking cases if certain circumstances are met;
- Establishing a centralized system of uniform data collection for the entire criminal justice system to ensure data transparency;
- Requiring specified criminal justice entities to collect certain data on a monthly basis and report such data to the Florida Department of Law Enforcement (FDLE) quarterly;

- For data reported pursuant to data transparency provisions, the FDLE must:
  - Establish a unique identifier for every person who is the subject of a criminal case, which will be used for all local and state entities' reported data related to that person in order to track that individual's entire experience in Florida's criminal justice system;
  - Create a publicly accessible and searchable database for the data reported;
- Modifying the sentencing scoresheet to a digital format and requiring information contained in the scoresheet to be reported to the FDLE and included in the publicly available database;
- Creating a pilot program in the 6th Judicial Circuit to ensure program data collected is valid and providing an appropriation, including nine FTEs, within the FDLE to support the implementation of data collection and transparency;
- Authorizing counties to establish a supervised bond program (Bond Program), which allows eligible defendants to be released on active electronic monitoring, continuous alcohol monitoring, or both subsequent to the administration of a risk assessment instrument (RAI) by the county's chief correctional officer (sheriff) and acceptance into the Bond program;
- Creating a Risk Assessment Pilot Program in Hillsborough, Pasco, and Pinellas Counties that requires the counties to administer a RAI to all persons arrested for a felony offense in the county for use in programming and sentencing;
- Requiring transition assistance staff within the Department of Corrections (DOC) to identify industry certifications or job assignment credentialing for which an inmate is eligible;
- Requiring the DOC to provide inmates with a comprehensive community reentry resource directory that includes specified information related to services and portals available in the county to which the inmate is to be released;
- Permitting specified entities to apply with the DOC to be registered to provide inmate reentry services and requiring the DOC to create a process for screening, approving, and registering such entities;
- Authorizing the DOC to contract with specified Veteran's Advocacy Clinics to assist qualified veterans with obtaining services in the community upon release;
- Authorizing the DOC to develop a Prison Entrepreneurship Program that includes education with specified curriculum;
- Creating a "certificate of achievement and employability" application process where the DOC may issue certificates to specified eligible inmates that require licensing agencies to individually consider licensing decisions of certificate holders;
- Prohibiting a licensing agency from denying a professional license to a certificate holder solely on the basis of a criminal conviction;
- Creating two new designations for conditional medical release (CMR) ("inmate with a debilitating illness" and "medically frail inmate") and modifying the current designation of "terminally ill inmate";
- Creating a new "Mandatory Conditional Medical Release" process that requires, rather than permits, the Florida Commission on Offender Review (FCOR) to release an inmate that meets one of four designations if specified factors are met;
- Requiring each circuit to create an alternative sanctions program to handle specified types and occurrences of technical violations of probation or community control outside of a hearing with the judge's concurrence;
- Authorizing a circuit to create a community court program for certain defendants charged with misdemeanors;

- Adding specified data to the information that must be reported in the Office of Program Policy Analysis and Government Accountability's (OPPAGA) annual pretrial programs report (s. 907.043, F.S.);
- Requiring the counties to report use and success of the supervised bond program and community court programs created by the act; and
- Modifying the submission date from October 10th to December 1st for the annual contraband seizure report (s. 932.7061, F.S.).

The bill makes the following appropriations:
- $205,000 from the General Revenue Fund to the Executive Office of the Governor and authorizes one full-time-equivalent position to administer the Florida Correctional Operations Council.
- $1.75 million from the General Revenue Fund to the Department of Law Enforcement and authorizes nine full-time-equivalent positions to crime reporting, and collecting and submitting crime statistics.

The Department of Corrections, the Department of Law Enforcement, and local governments are expected to incur significant costs associated with additional workload and the need for information technology updates for which no funds are provided to implement the provisions of this bill. The Department of Law Enforcement expects to experience a reduction in revenues associated with the criminal history records. See Section V. Fiscal Impact Statement.

The bill takes effect October 1, 2018.

II. Present Situation:

Refer to Section III. Effect of Proposed Changes for discussion of the relevant portions of current law.

III. Effect of Proposed Changes:

Supervised Bond Program (Section 13)

Pretrial Release Subsequent to an Arrest

The Florida Constitution provides that every person charged with a crime is entitled to pretrial release with reasonable conditions.[1] There are three types of pretrial release for a defendant who is awaiting trial: posting of a bail or surety bond, pretrial release conditions, or release on his or her own recognizance.[2]

Bail and Surety Bond

The purpose of a bail determination in criminal proceedings is intended to ensure the defendant's appearance at subsequent proceedings and protect the community against unreasonable danger

[1] FLA. CONST. art. I, s. 14. This right does not apply to persons charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great. *Id.*
[2] *See* FLA. CONST. art. I, s. 14; *See also* ss. 903.046 and 907.041. F.S.

from the defendant.[3] Bail is a common monetary condition of pretrial release, governed by ch. 903, F.S. [4] For the defendant to be released from jail, a court may require bail by a defendant to provide security, such as cash or a bond to ensure that he or she will return for trial and any other required court appearances.[5]

As an alternative to posting the entire bail amount, a defendant may provide a criminal surety bail bond[6] executed by a bail bond agent. Generally, the defendant or another person on the defendant's behalf pays the bail bond agent a nonrefundable fee equal to 10 percent of the bond amount set by the court with the addition of some type of asset provided to the bond agent as collateral. If the defendant does not appear in court, the bail bond agent is responsible for paying the entire bond amount.[7]

Pretrial Release Conditions

A judge can release a defendant with any combination of the following pretrial release conditions:

- Release on the defendant's own recognizance; [8]
- Execute an unsecured appearance bond in an amount specified by the judge;
- Comply with any court-imposed restrictions on travel, association, or place of abode during the period of release;
- Be placed in the custody of a designated person or organization agreeing to supervise the defendant;
- Have a designate execute a bail bond with sufficient solvent sureties, or the deposit of cash in lieu thereof; or
- Comply with any other condition deemed reasonably necessary to assure required appearance, including a condition requiring the defendant to return to custody after specified hours.[9]

A judge also can release a defendant to a pretrial release program. Generally, judges allow a defendant to be released to a pretrial release program without posting a bond; however, a judge can require a defendant to post a bond and participate in the program.[10] Specifically, s. 907.041, F.S., provides a presumption in favor of release on nonmonetary conditions for any person who is granted pretrial release unless such person is charged with a dangerous crime.[11] These

[3] Section 903.046(1), F.S.
[4] "Bail" Black's Law Dictionary (3rd Pocket Edition). The purpose of a bail bond is to guarantee the defendant's presence in court to face criminal charges.
[5] *Universal Bail Bonds v. State*, 929 So.2d 697, 699 (Fla. 3d DCA 2006).
[6] Sections 903.011 and 903.105, F.S.
[7] OPPAGA, *County Pretrial Release Programs: Calendar Year 2016*, Report No. 17-12, at 2. (Dec. 2017) available at http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1712rpt.pdf (last visited February 23, 2018) (hereinafter cited as "OPPAGA Pretrial Report").
[8] A defendant released on his or her own recognizance (ROR) is released without a monetary requirement and without any conditions of release or supervision of any type. Release on recognizance is defined to mean the pretrial release of an arrested person who promises, usually in writing, but without supplying a surety of posting bond, to appear for trial at a later date. BLACK'S LAW DICTIONARY 606 (3d Pocket ed. 2006).
[9] Rule 3.131(b)(1), Fla. R. Crim. Pro.
[10] *Id.* If a monetary bail is required, the judge must determine a separate amount for each charge or offense. Rule 3.131(b)(2), Fla. R. Crim. Pro.
[11] *See* s. 907.041, F.S., for a list of enumerated felonies that are included in the definition of a dangerous crime.

programs supervise defendants with various methods, including electronic monitoring[12] or phone contact.[13]

A Court's Determination of Pretrial Release

The judge must consider all available relevant factors during the first appearance hearing to determine what form of release is necessary to assure the defendant's appearance and the community's safety, including factors such as:

- The nature and circumstances of the offense charged.
- The weight of the evidence against the defendant.
- The defendant's family ties, length of residence in the community, employment history, financial resources, and mental condition.
- The defendant's past and present conduct, including any record of convictions, previous flight to avoid prosecution, or failure to appear at court proceedings.
- The nature and probability of danger that the defendant's release poses to the community.[14]

Section 903.047, F.S., provides additional conditions that a defendant must comply with upon release from custody pending trial, including:

- Refrain from criminal activity of any kind;
- Refrain from contact of any type with the victim; and
- Comply with all conditions of pretrial release.

Standard Bond Schedule

Florida does not have a statewide bond schedule, but each circuit has developed a standard bond schedule. Courts create uniform bail bond schedules to ensure that alleged offenders are provided equal treatment when charged with similar crimes and generally apply to all felonies, misdemeanors and county or municipal ordinance violations as the presumptive bond to be set unless ordered differently by a judge.[15] Even though a county may have an established standard bond schedule, a judge may impose a bond that is above or below such schedule if he or she deems it is necessary based upon circumstances of the case.[16]

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[12] An electronic monitoring device (EM) is a tamper-resistant device worn on the body that monitors the location of a person at all times of the day. The monitoring agency is notified for various violations of the terms of supervision, such as if the person travels to a location he or she is not authorized to be or if the device is removed by the person. EM systems can be either "passive" or "active" and are typically operated through ratio frequency or global positioning system (GPS) monitoring. Office of Juvenile Justice and Delinquency Prevention, *Home Confinement and Electronic Monitoring*, October, 2014, available at https://www.ojjdp.gov/mpg/litreviews/Home_Confinement_EM.pdf (last visited February 23, 2018).

[13] OPPAGA Pretrial Report, at 9.

[14] Section 903.046(2), F.S. *See also* Rule 3.131(b)(3), Fla. R. Crim. Pro.

[15] Some common ways to address the bond schedules are to either have a standard based on the degree of the offense (for example a $5,000 bond for all second degree felonies, as seen in the Tenth Judicial Circuit) or a specific amount agreed upon for a specific offense, as seen in the Sixth Judicial Circuit. *See* Tenth Judicial Circuit, In and For Hardee, Highlands, and Polk Counties, *Administrative Order IN RE: Uniform Bond Schedule*, available at http://jud10.flcourts.org/sites/all/files/docs/2-49.8.pdf; Sixth Judicial Circuit, In and For Pasco and Pinellas Counties, *Administrative Order NO. 2009-021 PA-CIR, RE: Uniform Bond Schedule – Pasco County*, available at http://www.jud6.org/LegalCommunity/LegalPractice/AOSAndRules/aos/aos2009/2009-021.htm (last visited all sites January 22, 2018).

[16] *Mehaffie v. Rutherford*, 143 So.3d 432 at 434 (Fla. 1st DCA 2014). Under s. 903.286, F.S., the clerk of the court may withhold sufficient funds to pay any unpaid costs of prosecution, costs of representation, court fees, court costs, and criminal penalties from the return of a cash bond posted on behalf of a criminal defendant. If sufficient funds are not available to pay

Violation of Pretrial Release Conditions

A defendant who does not comply with the terms of the pretrial release can have his or her bond forfeited if certain factors are proven.[17] Under s. 903.0471, F.S., the court may revoke, on its own motion, pretrial release and order pretrial detention if the court finds probable cause to believe that the defendant committed a new crime while on pretrial release.[18]

Supervised Bond Programs in Florida

There is a movement towards bail reform in the United States, with some circuits, including Pinellas County in Florida, implementing a new model for releasing defendants while awaiting trial. The new programs typically require the administration of a RAI, which is then used to determine the release conditions for the defendant.

The Pinellas County supervised bond program has been operating since 2014.[19] Sheriff Gualtieri, the chief correctional officer for Pinellas County, testified in the Senate Criminal Justice Committee on January 8, 2018, that this program was created in an effort to reduce the jail population in Pinellas County and avoid the need to build a larger facility.[20] Sheriff Gualtieri reported that while the bond amounts imposed by the court were proper to ensure public safety and compliance, judges could not lower the bail while still ensuring public safety and compliance without more oversight. As a result, a number of defendants remained in custody for months unable to meet the bail amount imposed.[21]

Upon agreement from the judiciary and in partnership with the bail bond industry, the Pinellas County Sheriff's Office established a supervised bond program that requires active electronic monitoring, continuous alcohol monitoring[22] or both.[23]

The Pinellas County Sheriff's Office averages approximately 200 people per day on active supervision through the supervised bond program.[24] Sheriff Gualtieri reported that of all the defendants who have been released on the supervised bond program, 99.5 percent have appeared

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all unpaid costs associated with the criminal case, the clerk of the court must immediately obtain payment from the defendant or enroll the defendant in a payment plan. This section does not apply to the portion that is paid by a licensed bail bond agent.

[17] *See* s. 903.26, F.S.

[18] This discretion is provided regardless of the conditions for granting pretrial release provided for in s. 907.041, F.S.

[19] Presentation by Sheriff Bob Gualtieri, Pinellas County Sheriff's Office, in the Senate Criminal Justice Committee, January 8, 2018 (hereinafter cited as "Committee Presentation"); *See also* Sheriff Bob Gualtieri, PowerPoint Presentation, *ROR and Supervised Bond Presentation* (on file with the Criminal Justice Committee) (hereinafter cited as "Supervised Bond PowerPoint").

[20] Sheriff Gualtieri testified that the Pinellas County jail was crowded in 2014 with approximately 70 percent of the inmates being pretrial detainees. Supervised Bond PowerPoint, at 3.

[21] Supervised Bond PowerPoint, at 2-4.

[22] Continuous Alcohol Monitoring systems are tamper-resistant automated alcohol-monitoring devices that use transdermal testing to measure the amount of alcohol in person's body, known as transdermal alcohol content (TAC). When alcohol is consumed, ethanol migrates through the skin and is excreted through perspiration. *See* National Institute of Justice, *Secure Continuous Remote Alcohol Monitoring (SCRAM) Technology Evaluability Assessment*, available at https://www.ncjrs.gov/pdffiles1/nij/secure-continuous-remote-alcohol.pdf (last visited February 23, 2018).

[23] *Id*. at 4-5.

[24] Supervised Bond PowerPoint, at 7.

for required court hearings and 94.9 percent did not commit a new crime while in the program.[25] Of the total cases supervised on the Supervised Bond Program, 45 percent were felonies, 30 percent were misdemeanors, and 25 percent were for felony or misdemeanor driving under the influence.[26] Sheriff Gualtieri reported that these programs have resulted in a $38.9 million annual savings.[27]

Evidence-Based Risk Assessment Tools

RAIs measure a defendant's criminal risk factors and specific needs that, if addressed, will reduce the likelihood of future criminal activity.[28] RAIs consist of a set of questions that guide face-to-face interviews with a defendant, intended to evaluate behaviors and attitudes that research shows are related to criminals reoffending. The questioner typically supplements the interview with an official records check. The RAI then calculates an overall score that classifies a defendant as being at high, moderate, or low risk for reoffending.[29]

Research has identified both static and dynamic risk factors that are related to criminal behavior. Static risk factors[30] do not change, while dynamic risk factors[31] either can change on their own or change through an intervention. The Risk-Needs-Responsivity (RNR) model has become the dominant paradigm in risk and needs assessment.[32] The RNR principle refers to predicting which inmates have a higher probability of recidivating, and treating the criminogenic needs of those higher risk inmates with appropriate programming and services based on their level of need. In general, research suggests that the most commonly used assessment instruments can, with a moderate level of accuracy, predict who is at risk for violent recidivism. It also suggests that no single instrument is superior to any other when it comes to predictive validity.[33]

Use of Risk Assessment Instruments by the Department of Corrections

The DOC has created a RAI, known as Spectrum, which is administered to an inmate at reception through motivational interviewing techniques.[34] Spectrum, as well as its predecessor,

[25] *Id*. at 9.
[26] *Id*. at 10.
[27] *Id*. at 16. This savings takes into account the cost it required to house an additional 900 inmates per day with the current per diem rate and the operational cost.
[28] Congressional Research Service, *Risk and Needs Assessment in the Criminal Justice System*, Nathan James, at 2 (October 13, 2015), available at https://fas.org/sgp/crs/misc/R44087.pdf (last visited February 23, 2018) (hereinafter cited at CRS Report).
[29] *Id*. 2-4.
[30] Some examples of static factors considered include age at first arrest, gender, past problems with substance or alcohol abuse, prior mental health problems, or a past history of violating terms of supervision. CRS Report, p. 3.
[31] Dynamic risk factors, also called "criminogenic needs," can be affected through interventions and include factors such as current age, education level, or marital status; being currently employed or in substance or alcohol abuse treatment; and having a stable residence. "Criminogenic" is commonly understood to mean factors that can contribute to criminal behavior. CRS Report, at 3.
[32] The risk principle states that high-risk offenders need to be placed in programs that provide more intensive treatment and services while low-risk offenders should receive minimal or even no intervention. The need principle states that effective treatment should focus on addressing needs that contribute to criminal behavior. The responsivity principle states that rehabilitative programming should be delivered in a style and mode that is consistent with the ability and learning style of the offender. CRS Report, at 2 and 6.
[33] *Id*.
[34] DOC, Spectrum Video, available at https://www.youtube.com/watch?v=WRI5ldWf5MY&feature=youtu.be (last visited January 25, 2018) (hereinafter cited as "Spectrum Video"); DOC, *Program Information: Compass 100, Spectrum, Academic*

the Corrections Integrated Needs Assessment System (CINAS), is based on the RNR model and contains responsivity elements.[35] Inmates identified during the assessment as being in need of treatment or services become mandated program participants and are placed on the DOC's centralized statewide-automated priority list for placement in a program.[36]

Spectrum has been independently verified through the School of Criminology at Florida State University.[37]

Spectrum hosts an array of assessments and screenings across multiple disciplines including mental health, substance abuse, academic and workforce education.[38] Spectrum calculates an individual's overall risk of returning to prison upon release and identifies needs that can be addressed to reduce his or her risk within seven criminogenic domains and three core program areas.[39] The DOC uses the results from the Spectrum assessment to create an evidence-driven performance plan that matches the inmate's needs with services and programming offered in the DOC. Data collected during administration of Spectrum is also used to assist with transitioning an inmate back into the community upon release through relaying the information to reentry service providers in the local community and community corrections.[40]

Effect of the Bill

The bill creates s. 907.042, F.S., authorizing each county to create a supervised bond program (Bond Program). The terms of each county's Bond Program must be developed with the concurrence of the chief judge of the circuit, the sheriff, the state attorney (SA), and the public defender (PD). However, a county that has already established and implemented a Bond Program may continue to operate without such concurrence if the program complies with the specified program and RAI requirements discussed below.

A Bond Program established pursuant to this bill must, at a minimum:

- Require the sheriff to administer the Bond Program.

& Workforce Education/GED (on file with the Senate Criminal Justice Committee) (hereinafter cited as "DOC Program Information").

[35] DOC, *Agency Analysis for SB 1222*, p. 2, January 18, 2018 (on file with the Senate Criminal Justice Committee) (hereinafter cited as "The DOC SB 1222 Analysis"). The DOC reports that criminogenic needs are those factors that are associated with recidivism that can be changed (e.g. lack of education, substance abuse, criminal thinking, lack of marketable job skills, etc.). Offenders are not higher risk because they have a particular risk factor, but, rather, because they have multiple risk factors. Accordingly, a range of services and interventions is provided that target the specific crime producing needs of offenders who are higher risk. *See also Id.* and Email from Jared Torres, DOC, Director of Legislative Affairs (January 25, 2018) (on file with Senate Criminal Justice Committee).

[36] Substance Abuse Annual Report, at 6.

[37] Letter from Dr. William D. Bales and Jennifer M. Brown, ABD to DOC Secretary, Julie Jones, (January 19, 2018) (on file with the Senate Criminal Justice Committee). Dr. Bales provides that Spectrum "produces a level of predictive accuracy that is above the conventional threshold of acceptability and is consistent with risk assessment systems used by other correctional systems throughout the United States."

[38] DOC Program Information.

[39] The criminogenic domains include social awareness (antisocial personality); criminal associates; substance abuse history; family and marital relationships; wellness; criminal thinking or attitude; and employment and education history. Spectrum Video. The three core program areas include GED, Career & Technical skills (vocation), and substance use treatment and is part of the needs portion of the RNR model as they address criminogenic risk factors. Email from Jared Torres, DOC, Director of Legislative Affairs (January 25, 2018) (on file with the Senate Criminal Justice Committee).

[40] *Id*.

- Require the sheriff, or his or her designee, to administer the RAI to a potential defendant.
- Utilize a RAI to determine eligible defendants and determine an appropriate level of supervision for each defendant upon release.
- Review the bond of a defendant who is being accepted into the Bond Program to determine if a reduction of the court-ordered bond, up to its entirety, is appropriate.
- Provide that the findings of the RAI will be used to create an individualized supervision plan for each eligible defendant that is tailored to the defendant's risk level and supervision needs.
- Require, as part of the individualized supervision plan, that any defendant released in the Bond Program must be placed on active electronic monitoring or active continuous alcohol monitoring, or both, dependent upon the level of risk indicated by the RAI.
- Require weekly communication between the sheriff's office and the defendant as part of the individualized supervision plan, which can be satisfied via telephone or in person contact, dependent upon the level of risk indicated by the RAI.
- Establish procedures for reassessing or terminating defendants from the Bond Program who do not comply with the terms of the individualized supervision plan imposed through the program.

Each county must utilize a RAI that conducts a criminogenic assessment for use in evaluating the proper level of supervision appropriate to ensure compliance with pretrial conditions and safety to the community. The RAI must consider, but need not be limited to, the following criteria:

- The nature and circumstances of the offense the defendant is alleged to have committed.
- The nature and extent of the defendant's prior criminal history, if any.
- Any prior history of the defendant failing to appear in court.
- The defendant's employment history, employability skills, and employment interests.
- The defendant's educational, vocational, and technical training.
- The defendant's background, including his or her family, home, and community environment.
- The defendant's physical and mental health history, including any substance use.
- An evaluation of the defendant's criminal thinking, criminal associates, and social awareness.

Further, a county may use a RAI that the county creates on its own for the purpose of operating a Bond Program and determining appropriateness of pretrial release, the defendant's risk of noncompliance on pretrial release, and risk to the community, that:

- The county has previously developed for a similar purpose;
- The DOC develops or modifies from a RAI that it has already developed;
- Another county has developed for a similar purpose; or
- An independent entity has previously developed for a similar purpose.

If a county opts to use a RAI that is developed by any entity listed above other than the DOC, such RAI must be independently validated by the DOC and contain the criteria listed above.

A county may begin to implement its Bond Program immediately upon securing a contract for the use of, or the completion of development or modification, of a RAI and, if applicable, validation of the RAI. Additionally, a county that has not established a Bond Program, but has created a RAI for a similar purpose as is intended in the act, may implement its Bond Program immediately upon the RAI being validated by the DOC. A county that has already implemented

a Bond Program may continue to operate its program while the RAI it utilizes is being validated. Implementation must include training of all county staff that will administer the RAI.

The bill requires each county that establishes a Bond Program, or that has an existing Bond Program that operates in compliance with the act, to provide an annual report to the OPPAGA that details the:

- Results of the administration of the RAI;
- Programming used for defendants who received the assessment and were accepted into the Bond Program;
- Success rate of the Bond Program; and
- Savings realized by the county as a result of defendants being released from custody pending trial through the Bond Program.

The county's annual report must be submitted to the OPPAGA by October 1 each year. The OPPAGA must compile the results of the counties' reports for inclusion in an independent section of its annual report developed and submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives in accordance with s. 907.044, F.S.[41]

Lastly, the bill also provides several legislative findings supporting the changes made in the act.

Risk Assessment Pilot Program (Section 14)

The bill creates a Risk Assessment Pilot Program. The bill provides the following legislative findings for the program:

- There is a need to use evidence-based methods to reduce recidivism.
- The use of actuarial instruments that classify offenders according to levels of risk to reoffend provides a more consistent and accurate assessment of an offender's risk and needs.
- Research indicates that using accurate risk and needs assessment instruments to identify appropriate interventions and programming for offenders reduces recidivism.

Risk Assessment Instrument Criteria

The bill directs the DOC to develop a RAI that conducts a criminogenic assessment by March 1, 2019, for use in evaluating the proper placement and programming needs for a person who is arrested. The RAI must consider at a minimum the following criteria:

- The nature and circumstances of the offense the person committed.
- The nature and extent of the person's prior criminal history, if any.
- Any prior history of the person failing to appear in court.
- The person's employment history, employability skills, and employment interests.
- The person's educational, vocational, and technical training.
- The person's background, including his or her family, home, and community environment.
- The person's physical and mental health history, including any substance use.
- An evaluation of the person's criminal thinking, criminal associates, and social awareness.

[41] Section 907.044, F.S., requires the OPPAGA to conduct an annual study to evaluate the effectiveness and cost efficiency of pretrial release programs in Florida. The OPPAGA is required to submit its report to the President of the Senate and the Speaker of the House of Representatives by January 1 of each year.

The DOC may use or modify an existing RAI if it contains the above-listed criteria.

Implementation Requirements

The bill authorizes the DOC to begin implementation of the RAI immediately upon completion, but requires implementation, including all staff training, to be completed no later than June 30, 2019.

Administration of the Risk Assessment Instrument

The bill provides that a representative of the sheriff's office must administer the RAI as early as reasonably possible after a person's arrest, but no later than 10 business days after the arrest. The RAI may be conducted via video teleconference. In the event that a person is released from custody on pretrial release before the RAI has been administered, the sheriff or his or her representative must schedule a time for the person to come back to the jail to have the RAI administered. The person must be provided written notice of the appointment upon release.

Upon completion of a RAI report, the report must be provided to the person that had the RAI administered upon him or her, the defense counsel, and the SA.

The DOC must submit the report to the court, but the court may not review the report without the consent of the person who is the subject of the report and his or her legal counsel.

Pilot Program Creation and Requirements

The bill creates a three-year pilot program, contingent upon appropriations and a contract with each participating county and the DOC. The bill provides that the counties eligible for participation include Hillsborough, Pasco, and Pinellas Counties. The sheriff from each participating county must enter into a contract with the DOC to use the RAI developed under the act.

The bill requires the counties participating in the program to administer the RAI to all persons arrested for a felony and use the results of the RAI as a tool for determining appropriate programming and sentencing with the goal of reducing recidivism. By July 1 of each year, each participating county must provide an annual report to the DOC detailing the results of the administration of the RAI, programming used for persons who received the RAI, and the success rate of such programming.

The DOC is required to compile the county reports and submit one annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by October 1 of each year of the pilot program.

Rulemaking Authority

The bill provides rulemaking authority to the DOC to implement the act. The rules must be developed in consultation with the sheriff, chief judge, SA, and PD of each participating county.

Drug Trafficking Sentencing Departure (Section 9)

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 the schedule classification of a substance are the "potential for abuse"[42] of the substance and whether there is a currently accepted medical use for the substance in the United States.[43]

Drug Trafficking

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 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.[44] The controlled substance involved in the trafficking must meet a specified weight or quantity threshold.

Most drug trafficking offenses are first degree felonies[45] and are subject to a mandatory minimum term of imprisonment[46] and a mandatory fine, which is determined by the weight or quantity range applicable to the weight or quantity of the substance involved in the trafficking.[47] 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.[48] Trafficking in 200 grams or more, but less than 400 grams, of cocaine, a first degree felony, is punishable by a 15-year mandatory minimum term of imprisonment and a mandatory fine of $100,000.[49]

[42] 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.
[43] *See* s. 893.03(1)-(5), F.S.
[44] *See* s. 893.135, F.S., for the substances which are included in the offense if drug trafficking.
[45] 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 and 775.083, F.S.
[46] There are currently 56 mandatory minimum terms of imprisonment in s. 893.135, F.S., which range from three years to life imprisonment.
[47] *See* s. 893.135, F.S.
[48] Section 893.135(b)(1)a., F.S.
[49] Section 893.135(b)(1)b., F.S.

Criminal Punishment Code

The Criminal Punishment Code[50] (Code) is Florida's "primary sentencing policy."[51] Noncapital felonies sentenced under the Code receive an offense severity level ranking (Levels 1-10).[52] 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.[53] Absent mitigation,[54] 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. The statutory maximum sentence for a first-degree felony is 30 years, for a second-degree felony is 15 years, and for a third degree felony is 5 years.[55]

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."[56] 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.[57] The exercise of this discretion may determine whether 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. Further, a prosecutor could move the court to reduce or suspend a sentence if the defendant renders substantial assistance.

[50] 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.
[51] DOC, *Florida's Criminal Punishment Code: A Comparative Assessment (FY 2012-2013) Executive Summary (Offenses Committed On or After October 1, 1998)*, available at http://www.dc.state.fl.us/pub/sg_annual/1213/executives.html (last visited on February 21, 2018).
[52] 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.
[53] Section 921.0024, F.S. Unless otherwise noted, information on the Code is from this source.
[54] 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.
[55] *See* s. 775.082, F.S.
[56] Fla. R. Crim. P. 3.704(d)(26).
[57] "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).

There are few circumstances in which a court of its own accord can depart from a mandatory minimum term. A court may depart from a mandatory minimum term if the defendant is a youthful offender.[58] 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), 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."[59]

Effect of the Bill

The bill amends s. 893.135, F.S., to authorize a court to depart from a mandatory minimum term of imprisonment and mandatory fine applicable to that offense. The departure is authorized if the court finds on the record that the person did not:

- Engage in a continuing criminal enterprise;[60]
- Use or threaten violence or use a weapon during the commission of the crime; and
- 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 imprisonment).[61]

Probation and Community Control (Sections 29-32)

Forms of Supervision through the Department of Corrections

At sentencing, a judge may place an offender on probation or community control in lieu of or in addition to incarceration.[62] The DOC supervises more than 167,000 offenders on active community supervision. This includes offenders released from prison on parole, conditional release, or conditional medical release and offenders placed on court ordered supervision including probation, drug offender probation, sex offender probation, and community control.[63]

Probation

Probation is a form of community supervision requiring specified contacts with probation officers and other conditions a court may impose.[64] There are also specialized forms of

[58] Section 958.04, F.S.
[59] Section 316.027(2)(g), F.S.
[60] 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.
[61] 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.
[62] Section 948.01, F.S.
[63] DOC, *Introduction to Community Corrections*, available at http://www.dc.state.fl.us/facilities/comcor/ (last visited February 21, 2018).
[64] Section 948.001(8), F.S. Terms and conditions of probation are provided in s. 948.03, F.S.

supervision such as drug offender probation[65] and mental health probation.[66] Section 948.03, F.S., provides that a court must determine the terms and conditions of probation. Standard conditions of probation that are enumerated in s. 948.03, F.S., are not required to be announced on the record, but the court must orally pronounce, as well as provide in writing, any special conditions of probation imposed.

Administrative Probation

Section 948.013, F.S., provides that the DOC may establish procedures for transferring an offender to administrative probation. Administrative probation is defined in s. 948.001(1), F.S. There are specified underlying offenses that are prohibited from being transferred to administrative probation.[67]

Community Control

Section 948.001(3), F.S., defines "community control" as a form of intensive, supervised custody in the community, including surveillance on weekends and holidays, administered by officers with restricted caseloads.[68] The community control program is rigidly structured and designed to accommodate offenders who, in the absence of such a program, will be committed to the custody of the DOC or a county jail.[69] A person on community control (controlee) has an individualized program and is restricted to his or her home or noninstitutional residential placement, unless working, attending school, performing public service hours, participating in treatment or another special activity that has been approved in advance by his or her parole and probation officer.[70]

Conditions of community control are determined by the court when the offender is placed on such supervision. There are standard conditions of community control with which all controlees must comply.[71] A person may be placed on additional terms of supervision as part of his or her community control sentence.[72]

Violations of Probation or Community Control

If an offender violates the terms of his or her probation or community control, the supervision can be revoked in accordance with s. 948.06, F.S.73 A violation of probation (VOP) or violation of community control (VOCC) can be the result of a new violation of law or a technical violation of the conditions imposed. If reasonable grounds exist to believe that an offender on probation or community control has violated his or her terms of supervision in a material respect, an offender may be arrested without a warrant by a:

- Law enforcement officer who is aware of the inmate's supervised community release status;

[65] Section 948.001(4), F.S., defines "drug offender probation" as a form of intensive supervision that emphasizes treatment of drug offenders in accordance with individualized treatment plans administered by probation officers with reduced caseloads.
[66] Section 948.001(5), F.S., "mental health probation" means a form of specialized supervision that emphasizes mental health treatment and working with treatment providers to focus on underlying mental health disorders and compliance with a prescribed psychotropic medication regimen in accordance with individualized treatment plans.
[67] *See* Section 948.013(2) and (3), F.S.
[68] Section 948.10(2), F.S., provides that caseloads must be no more than 30 cases per officer.
[69] Section 948.10(1), F.S.
[70] *Id*.
[71] *See* s. 948.101(1), F.S., for the standard conditions of community control.
[72] Section 948.101(2), F.S.
[73] Section 948.10(3), F.S.

- Probation officer; or
- County or municipal law enforcement officer upon request by a probation officer.[74]

The offender must be returned to the court granting such probation or community control.[75] Additionally, the committing court judge may issue a warrant, upon the facts being made known to him or her by affidavit of one having knowledge of such facts, for the arrest of the offender.[76]

Upon a finding through a VOP or VOCC hearing, a court may revoke, modify, or continue the supervision. If the court chooses to revoke the supervision, it may impose any sentence originally permissible before placing the offender on supervision.[77] In addition, if an offender qualifies as a violent felony offender of special concern (VFOSC), the court must revoke supervision, unless it makes written findings that the VFSOC does not pose a danger to the community.[78] The VFOSC status also accrues sentence points under the Code, which affects the scoring of the lowest permissible sentence.[79]

Alternative Sanctioning Programs

In FY 2016-17, 18,999 of all resolved violations were technical in nature as were 20,834 of the violations resolved in FY 2015-16. Many of these violations resulted in the offender returning to some form of supervision or serving a county jail sentence.[80] Prior to 2016, the DOC developed and implemented an alternative sanctioning program (ASP) in twelve counties within six judicial circuits.[81] An ASP allows for an alternative resolution of technical violations of probation that ensures a swift and certain response without initiating the court process or arresting and booking the offender. Section 948.06, F.S., was amended during the 2016 Legislative Session to codify ASPs.[82] The use of such programs has substantially increased since enactment of the ASP option. As of February 2018, 13 circuits (including 45 of 67 counties) have established ASPs by administrative order. These participating jurisdictions have resolved 2,371 violations through the ASP.[83]

[74] Section 948.06(1)(a), F.S.
[75] *Id*.
[76] Section 948.06(1)(b), F.S. The committing trial court judge may also issue a notice to appear if the controlee has never been convicted of committing, and is not currently alleged to have committed, a qualifying offense as enumerated in s. 948.06(8)(c), F.S.
[77] Section 948.06(2)(b), F.S.
[78] *See* s. 948.06(8)(a), F.S., for all VFOSC qualifications and enumerated list of felonies that are considered qualifying offenses. *See also* ch. 2007-2, L.O.F.
[79] Section 921.0024, F.S.
[80] Email from the DOC Staff (February 22, 2018) (on file with Senate Criminal Justice Committee).
[81] DOC, *Agency Analysis HB 1149 (2016)*, at p. 2 (January 20, 2016) (on file with the Senate Criminal Justice Committee).
[82] Ch. 2016-100, L.O.F.
[83] Email from the DOC Staff (February 21, 2018). The circuits that have enacted administrative orders include: Third (Columbia, Dixie, Hamilton, Lafayette, Madison, Suwannee and Taylor Counties); Fourth (Duval County); Fifth (Citrus, Hernando, Lake, Marion and Sumter Counties); Sixth (Pasco and Pinellas Counties); Seventh (Flagler, Putnam, St. Johns and Volusia Counties); Eighth (Alachua, Baker, Bradford, Gilchrist, Levy, and Union Counties); Tenth (Hardee, Highlands, and Polk Counties); Twelfth (DeSoto, Manatee, and Sarasota Counties); Thirteenth (Hillsborough County); Fourteenth (Bay, Calhoun, Gulf, Holmes, Jackson and Washington Counties); Fifteenth (Palm Beach County); Eighteenth (Brevard and Seminole Counties); and Nineteenth (Indian River, Martin, Okeechobee and St. Lucie Counties).

Section 948.06(1)(h), F.S., authorizes the chief judge of each judicial circuit to establish an ASP, in consultation with the SA, PD, and the DOC to address technical VOPs and VOCCs. A technical violation is defined to include any alleged violation of supervision that is not a new felony offense, misdemeanor offense, or criminal traffic offense.[84] Once an ASP administrative order is signed establishing the terms[85] of the program, the DOC may enforce specified sanctions for certain technical violations with court approval.

Common sanctions issued through the ASP include increased reporting requirements, which can be in person or via phone, community service hours, imposition or modification of a curfew, electronic monitoring, drug evaluation and treatment, employment searches and workforce training.[86] As of January 2018, two circuits and Brevard had included short jail sentences as a possible ASP sanction through administrative order.[87]

After receiving written notice of an alleged technical violation and disclosure of the evidence supporting the violation, an offender who is eligible for the ASP may elect to either participate in the program or waive participation.[88] If the offender waives participation, the violation proceeds through the court resolution process.[89] If the offender elects to participate, he or she must admit to the technical violation, agree to comply with the probation officer's recommended sanction, and agree to waive the right to:

- Be represented by counsel.
- Require the state to prove his or her guilt.
- Subpoena witnesses and present evidence to a judge in his or her defense.
- Confront and cross-examine witnesses.
- Receive a written statement from a factfinder as to the evidence relied on and the reasons for the sanction imposed.[90]

Upon the offender admitting to the technical violation and agreeing with the probation officer's recommended sanction, the probation officer must submit the recommended sanction to the court for approval. The submission to the court must include documentation related to the offender's admission to the technical violation and agreement with the recommended sanction. The court may impose the recommended sanction or may direct the DOC to submit a violation report, affidavit, and warrant.[91]

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[84] Section 946.08(2)(h)1., F.S.
[85] Section 948.06(1)(h)2., F.S., provides that the administrative order must address which technical violations are eligible for alternative sanctioning, offender eligibility criteria, permissible sanctions, and the process for reporting technical violations.
[86] Third Judicial Circuit, *Administrative Order 2016-003, Criminal Alternative Sanctioning Program*, available at http://www.jud3.flcourts.org/Admin_Orders/All/2016-003-Criminal%20Alternative%20Sanctioning%20Program.pdf Thirteenth Judicial Circuit, *Administrative Order S-2016-019, Alternative Sanctioning Program*, available at http://www.fljud13.org/Portals/0/AO/DOCS/S-2016-019.pdf?ver=2016-06-07-104033-303 (all sites last visited February 22, 2018).
[87] Two Circuits offer short county jail time as a sanction and Brevard County offers weekends with the Brevard County Sheriff's Work Farm. Email from the DOC Staff (February 22, 2018) (on file with Senate Criminal Justice Staff).
[88] Section 948.06(1)(h)3., F.S.
[89] Section 948.06(1)(h)3.a., F.S.
[90] Section 948.06(1)(h)3.b., F.S.
[91] Section 948.06(1)(h)4. and 5., F.S.

Participation in an ASP is voluntary. Additionally, the offender may elect to waive or discontinue participation in an ASP at any time before the issuance of a court order imposing the recommended sanction. The offender's prior admission to the technical violation may not be used as evidence in subsequent proceedings.[92]

Conditions of Probation in the Florida Crime Information Center

The Florida Crime Information Center (FCIC) is the state's central database for tracking crime related information. Information contained in the FCIC database includes, but is not limited to, statewide information on persons and property, driver's license and registration information, wanted and missing persons, stolen guns, vehicles, and other property, and persons' status files, and computerized criminal history.[93] It is commonly used by law enforcement officers to gather relevant information when responding to a call for service or engaging in a citizen encounter.

Every criminal justice agency[94] within Florida is eligible for access to the FCIC.[95] Access is divided into limited access and full access. With limited access, the user is able to run a query in the system. With full access, the user is able to make modifications in the system.[96] Currently, an officer may run a driver license, warrant, or person query in the FCIC and the results will include information on whether the individual is currently on probation.[97] However, in general, a law enforcement officer will only see that the person is on probation. The FCIC will not include the specific terms of probation.[98]

When probation conditions are ordered, modified, or deleted by the court, that information is forwarded to the DOC via the clerk of the court (clerk).[99] Once the conditions are received by the DOC, they are manually entered into the database.[100] Delays in this process may vary due to the volume of information, the manner in which information is received, and the variations in the process among the circuits.[101]

The DOC sends a probationer's data electronically to FDLE through a real time direct data pipeline. To include a probationer's conditions, the DOC will enter the information into a "Miscellaneous Field of the Status Record" field available in the FCIC.[102] However, the DOC

[92] Section 948.06(1)(h)6. and 7., F.S
[93] Department of Juvenile Justice, *Florida Department of Juvenile Justice Procedure*, p. 2, available at http://www.djj.state.fl.us/docs/policies/fcic-ncic-cjnet-jis-and-david-access-use-procedures-fdjj-1805p.pdf?sfvrsn=4 (last visited February 22, 2018) (hereinafter cited as "DJJ Procedure").
[94] FDLE defines "criminal justice agency" to include courts and governmental agencies that perform the administration of criminal justice pursuant to a statute or executive order.
[95] DJJ Procedure.
[96] *Id*.
[97] Id.
[98] Email from Florida Sheriffs Association Staff (February 22, 2018) (on file with Senate Criminal Justice Committee).
[99] *Id*.
[100] *Id*.
[101] *Id*.
[102] Email from the DOC Staff (February 23, 2018) (on file with the Senate Criminal Justice Committee). The DOC currently includes the specified conditions of probation for each probationer in the data it sends to FDLE, including, but not limited to: Sex offender curfew; Curfew for non-sex offenders; Remain confined to approved residence; No unsupervised contact with minors; No work or volunteer work with children; Do not live or work within 1,000 feet of school or bus stop; Submit to search; No driving or driver license revoked or suspended; Driving for employment only; No alcohol or illegal drugs; No

reports that it includes a number of special conditions of probation as prioritized by the FDLE, but that the current FDLE system only allows a smaller, specified amount of data and typically does not allot enough space to include all special conditions of probation.[103]

A court has authority to modify or alter conditions of probation based on a probationer's particular circumstances.[104] As a result, a probation officer may have permission to allow certain exceptions to conditions of probation on a case-by-case basis. For example, a court may allow a probation officer to give permission to a probationer to stay out past a designated curfew if the reason is for work, school, or health care emergencies. When this occurs, probation officers may not have access to the DOC databases in order to update in real time any exceptions to the individual's probation in the FCIC.[105]

Effect of the Bill

Alternative Sanctioning Programs

The bill amends s. 948.06, F.S., *requiring* each judicial circuit to establish an ASP and providing specific guidelines for the types of technical violations and sanctions that can be provided for in an ASP. The bill authorizes a court to define additional sanctions or eligibility criteria and specify the process for reporting technical violations. For each instance that a technical VOP or VOCC is alleged to have been committed, the DOC is required to determine whether such person is eligible for the ASP. If eligible, the probation officer may offer the ASP in lieu of filing an affidavit with the court. The bill maintains the same definition for technical violations as is in current law and limits ASPs to resolving technical violations.

The bill classifies technical violations eligible for an ASP as low-risk and moderate risk, specifically:

- A low-risk violation includes:
  - Positive drug or alcohol test result;
  - Failure to report to the probation office;
  - Failure to report a change in address or other required information;
  - Failure to attend a required class, treatment or counseling session, or meeting;
  - Failure to submit to a drug or alcohol test;
  - Violation of curfew;
  - Failure to meet a monthly quota on any required probation condition, including, but not limited to, making restitution payments, payment of court costs, and completing community service hours;
  - Leaving the county without permission;
  - Failure to report a change in employment;
  - Associating with a person engaged in criminal activity; or

contact with victim; No pornographic material; Restrictions to enter or leave a city; No employment that involves handling money; No post office box; and No checking account.

[103] *Id*. This amount of space typically allows for the inclusion of the condition number, a dash and then the description up to 34 bytes per condition reoccurring for a total of 398 bytes. The Special Condition description can be shorter than 34 bytes or up to 34 bytes but the total bytes of all of them combined for each offender can only add up to 398 bytes per offender file sent real time.

[104] Section 948.039, F.S.

[105] Email from the Florida Sheriff's Association Staff (February 23, 2018) (on file with Senate Criminal Justice Staff).

  - Any other violation as determined by administrative order of the chief judge of the circuit.
- A moderate-risk violation includes:
  - A low-risk violation listed above, which is committed by an offender on community control;
  - Failure to remain at an approved residence by an offender on community control;
  - A third violation of a low-risk violation listed above by a probationer within the current term of supervision; or
  - Any other violation as determined by administrative order by the chief judge of the circuit.

The bill excludes certain probationers or offenders on community control from participating in an ASP if any of the following criteria apply:
- The offender is a VFOSC.
- The violation is absconding.
- The violation is of a stay-away order or no-contact order.
- The violation is not identified as low-risk or moderate-risk under the bill or by administrative order.
- He or she has a prior moderate-risk level violation during the current term of supervision.
- He or she has three prior low-risk level violations during the same term of supervision.
- The term of supervision is scheduled to terminate in less than 90 days.
- The terms of the sentence prohibit the use of ASP.

An eligible person who has committed a first or second low-risk technical violation within his or her current term of supervision may be offered one or more of the following as a sanction:
- Up to five days in a county detention facility;
- Up to 50 additional community service hours;
- Counseling or treatment;
- Support group attendance;
- Drug testing;
- Loss of travel or other privileges;
- Curfew for up to 30 days;
- House arrest for up to 30 days; or
- Any other sanction as determined by administrative order by the chief judge of the circuit.

An eligible person who has committed a first time moderate-risk violation within the current term of supervision may be offered, provided the probation officer receives approval from his or her supervisor, one or more of the following as a sanction:
- Up to 21 days in the county detention facility;
- Curfew for up to 90 days;
- House arrest for up to 90 days;
- Electronic monitoring for up to 90 days;
- Residential treatment for up to 90 days;
- Any other sanction available for a low-risk violation; or
- Any other sanction as determined by administrative order of the chief judge of the circuit.

The bill retains current law regarding the ability of an offender to enter or waive his or her participation in the program; process for an offender to acknowledge his or her desire to participate in the program, including the specified rights that must be waived; ability of a court to approve the sanction and the effect of a court not approving the probation officer's recommendation; effect of an offender's discontinued participation in the program; and prohibition on the court using a prior admission to a technical violation as evidence in subsequent proceedings.[106] However, the bill imposes a 90-day deadline for an offender to complete successfully all ordered sanctions from the ASP if the court or probation officer did not specify a timeframe in the imposition of the sanction.

Administrative Probation

The bill amends ss. 948.001(1) and 948.013, F.S., relating to administrative probation to restructure the placement of relevant language. These changes do not appear to have a substantive impact on the laws applicable to administrative probation.

Conditions of Probation in the FCIC

The bill requires the DOC to input into the FCIC all of a probationer's specific conditions of probation as determined by the court. If the court modifies the conditions of probation during the period of probation, the DOC must update the changes in the FCIC.

Reentry and Transitional Services Provisions (Sections 19-25)

Services Offered to Inmates in the Custody of the DOC

The DOC is required to provide a wide range of transitional services, including in the areas of employment, life skills training, job placement, for the purpose of increasing the likelihood of the inmate's successful reentry into society thereby reducing recidivism.[107]

Section 944.704, F.S., requires the DOC to provide a transition assistance specialist at each of its major prison institutions to assist an inmate with specified assistance, including, in part, obtaining job placement information.[108]

Section 944.705, F.S., requires the DOC to establish a standard release orientation program available to every eligible inmate.[109] Release orientation must include instruction addressing:

- Employment skills;
- Money management skills;
- Personal development and planning;
- Special needs;

[106] *See* s. 948.06(1)(h)4.-7., F.S. (2017), for the relevant provisions retained in the bill.
[107] *See* ss. 944.701-708, F.S.
[108] Section 944.704, F.S., further provides that correctional officers and correctional probation officers are prohibited from serving in the role of the transition assistance specialist.
[109] Sections 944.703 and 944.7031, F.S., provide that all inmates released from the custody of the DOC are eligible to receive transition services. However, the law instructs the DOC to give priority for these services to substance abuse addicted inmates. The law provides that inmates released from private correctional facilities should be informed of and provided with the same level of transition assistance services as provided by the DOC for an inmate in a state correctional facility.

- Community reentry concerns;
- Community reentry support; and
- Any other appropriate instruction to ensure the inmate's successful reentry into the community.[110]

To provide these services, the DOC may contract with outside public or private entities, including faith-based service groups.[111]

Determining the Appropriate Services for Inmates

All inmates are screened at reception and assessed and placed into programs using the CINAS.[112] As described above, the CINAS is administered to inmates at reception and again at 42 months from release. Additionally, the DOC conducts updates every six months thereafter to evaluate the inmate's progress and ensure enrollment in needed programs. The DOC's use of the CINAS allows for development and implementation of programs that increase the likelihood of successful transition through the selection of services that are matched to the offender's learning characteristics and then to the offender's stage of change readiness.[113] Additionally, the CINAS allows for a flow of information between the DOC's Office of Community Corrections and Office of Institutions, which assist the DOC in better serving the offender and preparing him or her for successful transition back into the community.[114]

Education for State Prisoners

Section 944.801, F.S., establishes a Correctional Education Program (CEP), which must be composed of the educational facilities and services of all institutions, and facilities housing inmates operated by the DOC.[115] The duties of the CEP, in part, include:

- Developing guidelines for collecting education-related information during the inmate reception process and for disseminating such information to the classification staff of the DOC.[116]
- Approving educational programs of the appropriate levels and types in the correctional institutions and developing procedures for the admission of inmate students into such programs.[117]
- Entering into agreements with public or private school districts, entities, community colleges, junior colleges, colleges, or universities as may be deemed appropriate for the purpose of carrying out the CEP duties.[118]

[110] Section 944.705, F.S.
[111] Section 944.705(5), F.S.
[112] The DOC SB 1222 Analysis, p. 2.
[113] The DOC SB 1222 Analysis, p. 2. The DOC reports that it matches factors that influence an inmate's responsiveness to different types of services with programs that are proven to be effective within an inmate population.
[114] *Id*.
[115] Section 944.801(1), F.S.
[116] Section 944.801(3)(a), F.S., also provides that the information collected must include the inmate's areas of educational or vocational interest, vocational skills, and level of education.
[117] Section 944.801(3)(d), F.S.
[118] Section 944.801(3)(e), F.S.

- Ensuring that such local agreements require minimum performance standards and standards for measurable objectives, in accordance with established Department of Education (DOE) standards.[119]
- Developing and maintaining complete and reliable statistics on the number of high school equivalency diplomas and vocational certificates issued by each institution in each skill area, the change in inmate literacy levels, and the number of inmate admissions to and withdrawals from education courses.[120]

Workforce Training Offered by the DOC

The DOC offers a wide range of career and technical education programs for inmates.[121] In FY 2015-16, the DOC awarded 1,829 vocational certificates and 2,027 industry certificates, and in FY 2016-17, the DOC awarded 1,799 vocational certificates and 1,349 industry certifications. The DOC has since launched new credentialing programs for Canine Obedience and Beekeeping programs, and plans to expand credentialing to construction, horticulture, farm, and culinary programs in 30 institutions.[122]

Obtaining Professional Licenses Subsequent to a Criminal Conviction

Licensure - Overview

A person may only be denied employment by the state, any of its agencies or political subdivisions, or any municipality, based on a prior conviction for a crime if the crime was a felony or first-degree misdemeanor and directly related to the position of employment sought.[123] However, a person may be denied a license, permit, or certification to pursue, practice, or engage in an occupation, trade, vocation, profession, or business based on a prior conviction for a crime. The crime must be a felony or first-degree misdemeanor and directly relate to the standard determined by the regulatory authority to be necessary and reasonably related to the protection of the public or the welfare of the profession, or business for which the license, permit or certificate is sought.[124] There are a number of professions that require licensure, which may be impacted by a criminal conviction.[125]

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[119] *Id*.
[120] Section 944.801(3)(g), F.S.
[121] The programs include: Air Conditioning, Refrigeration and Heating Technology; Applied Welding Technologies; Automotive Collison Repair and Refinishing; Automotive Technology Career Services; Cabinetmaking; Carpentry; Commercial Class "B" Driving; Computer Systems and Information Technology; Cosmetology; Culinary Arts; Digital Design; Drafting; Electricity; Environmental Design; Environmental Services; Equine Care Technology; Industrial Machine Repair; Janitorial Services; Landscape Management; Masonry, Brick and Block; Plumbing Technology; Printing and Graphic Communications; Technology Support Services; Wastewater/Water Treatment Technologies; and Web Development. *See* DOC, *Annual Report Fiscal Year 2015-2016*, p. 18-19, available at http://www.dc.state.fl.us/pub/annual/1516/FDC_AR2015-16.pdf (last visited February 22, 2018).
[122] DOC, *Agency Analysis of SB 226-Revised*, p. 2 (October 25, 2017) (on file with the Senate Criminal Justice Committee).
[123] Section 112.011(1)(a), F.S.
[124] Section 112.011(1)(b), F.S.
[125] These include, but are not limited to, professions regulated by the Department of Health, such as septic tank contractors, health care professionals and pharmacy professionals, and massage therapists. *See* ss. 489.553(4)(a), 456.0635(2)(a), 465.0022, and 480.041(7), F.S.

Department of Business and Professional Regulation

Chapter 455, F.S., provides the general powers of the Department of Business and Professional Regulation (DBPR) and authorizes the DBPR to regulate the issuance of licensing for specified purposes.[126] However, the DBPR is prohibited from creating a regulation that has an unreasonable effect on job creation or job retention, or a regulation that unreasonably restricts the ability of those who desire to engage in a profession or occupation to find employment.[127] When a person is authorized to engage in a profession or occupation in Florida, the DBPR issues a "permit, registration, certificate, or license" to the licensee.[128] The Division of Professions within the DBPR is responsible for licensing more than 435,500 professionals with a variety of professional licenses.[129]

The DBPR may disqualify an individual from employment if he or she has been arrested for and is awaiting final disposition of, has been found guilty of, or entered a plea of nolo contender or guilty to, or has been adjudicated delinquent and the record has not been sealed or expunged for a number of specified offenses. Applicants for all professions are required to answer questions pertaining to their criminal history when submitting an application for licensure.[130]

The DBPR reports that there are no statutory provisions or departmental rules that prohibit individuals from applying for licensure while they are still incarcerated or under some form of supervised release, nor are individuals charged any additional fees for applying for a license while still incarcerated or on supervised release.[131]

Agency for Health Care Administration

The Agency for Health Care Administration (AHCA), disqualifies an individual from employment in certain facilities regulated by AHCA, such as nursing homes and hospices, based on an applicant's criminal history. Any individual considered for employment in a facility licensed by chs. 400 and 408, F.S., must complete a level 2 background screening pursuant to ss. 435.04(2) and (3), F.S. In addition to the disqualifying offenses listed above for DBPR, the applicant may be disqualified by AHCA for a number of offenses.[132]

Exemption from Disqualification

Florida law provides for exemptions from disqualification for prior criminal offenses. The head of the appropriate agency may grant an employee otherwise disqualified from employment an exemption from disqualification.[133]

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[126] Section 455.201(2), F.S., provides that the DBPR may engage in the regulation of professions only for the "preservation of the health, safety, and welfare of the public under the police powers of the state."
[127] Section 455.201(4)(b), F.S.
[128] Section 455.01(4) and (5), F.S.
[129] *See* DBPR, *Annual Report, Fiscal Year 2016-2017*, p. 21-22, available at http://www.myfloridalicense.com/dbpr/os/documents/DivisionAnnualReport.pdf?x40199 (last visited February 22, 2018). Of the total 434,574 licensees in the Division of Professions, 21,702 are inactive.
[130] DBPR, *Agency Analysis CS/SB 1114*, February 19, 2018, (on file with the Senate Criminal Justice Committee).
[131] *Id*.
[132] *See* s. 408.809(4), F.S.
[133] *See* s. 435.07, F.S., for specific statutory exemptions.

A person applying for exemption must pay any outstanding court fee, fine, fund, lien, civil judgment, application, cost of prosecution, trust, or restitution as part of the criminal case prior to being eligible for exemption.[134] To grant an exemption to an applicant, the applicant has the burden to demonstrate by clear and convincing evidence that he or she should not be disqualified from employment.[135]

Prison Entrepreneurship Programs

In 2011, the University of Virginia's Darden School of Business implemented a prison entrepreneurship program at Virginia's Dillwyn Correctional Center, a medium-security prison housing more than 1,000 inmates. The program focuses on entrepreneurship skills, ethics, and business strategy. Students must complete math testing, develop a personal business plan, and complete a final exam.[136]

Similar programs have had success in other states. Texas has a prison entrepreneurship program at the Cleveland Correctional Facility in Houston and approximately 800 inmates graduate from the program annually. Of its graduates, 106 have founded businesses and the recidivism rate of those inmates is less than 7 percent.[137] Though not statutorily mandated, the DOC partners with several educational institutions to offer inmates job training and readiness skills, including, but not limited to, Stetson University, Florida State University, University of Central Florida, and University of West Florida.[138] Additionally, the DOC operates an entrepreneurship education program at Hardee Correctional Institution.[139]

Effect of the Bill

Transition Assistance Staff

The bill amends s. 944.704, F.S., requiring that transition assistance specialists also provide inmates with information about any job assignment credentialing or industry certifications for which the inmate is eligible.

[134] Section 435.07(1)(b), F.S.
[135] *See* s. 435.07(3)(a), F.S. Evidence provided may include, but is not limited to: the circumstances surrounding the criminal incident; the time period that has elapsed since the incident; the nature of the harm caused to the victim; applicant's history since the incident; and any other evidence or circumstances indicating that the applicant will not present a danger if employment or continued employment is allowed. The decision of the head of an agency regarding an exemption may be challenged pursuant to ch. 120, F.S.
[136] The Darden Report, *Second Changes: Darden's Fairchild Launches Prison Entrepreneurship Program*, January 4, 2013, available at: https://news.virginia.edu/content/second-chances-darden-s-fairchild-launches-prison-entrepreneurship-program (last visited February 22, 2018).
[137] *Id*. *See also* The Prison Entrepreneurship Program, available at http://www.pep.org/releasing-potential/ (last visited February 22, 2018).
[138] Email from the DOC Staff (February 22, 2018) (on file with Senate Criminal Justice Committee).
[139] *Id*. The DOC reports that the course provides an introductory overview of the knowledge and skills needed for the identification, evaluation, and exploitation of opportunities in a variety of circumstances and environments.

Release Orientation Program

The bill amends s. 944.705, F.S., requiring that each inmate receive a comprehensive community reentry resource directory organized by the county to which the inmate is being released with specified information related to providers and portals of entry.[140]

The DOC must allow a nonprofit faith-based, business and professional, civic, or community organization to apply to be registered under this section to provide inmate reentry services. The DOC must also adopt policies and procedures for screening, approving, and registering an organization that applies to be registered to provide inmate reentry services. The DOC may deny approval and registration of an organization or a representative from an organization if it determines that the organization or representative does not meet such policies or procedures. The bill defines reentry services as services that include, but are limited to counseling; providing information on housing and job placement; money management assistance; and programs addressing substance abuse, mental health, or co-occurring conditions.

The bill also authorizes the DOC to contract with a public or private educational institution's Veteran's Advocacy Clinic or Veteran's Legal Clinic to assist qualified veteran inmates in applying for veteran's assistance benefits upon release.

Certificates of Achievement and Employability

The bill creates ss. 944.805-8065, F.S., establishing a certificate of achievement and employability (CAE) that may remove most mandatory barriers to licensure and employment for ex-offenders.

Definitions

The bill defines a number of terms applicable to these provisions, including:

- Discretionary civil impact: any Florida statute or rule that creates a penalty, disability, or disadvantage to which all of the following apply:
  - The impact is triggered in whole or in part by a person's conviction of an offense, whether or not the penalty, disability, or disadvantage is included in the judgment or sentence.
  - The impact is imposed on a person, licensing agency, or employer.
  - The impact permits, but does not require, that a convicted person have a license denied or revoked, permits an agency to deny or revoke a license or certification to a convicted person, or permits a business to refuse to employ a convicted person.
- Eligible inmate: a person who is serving a prison term in a state correctional institution or facility; under the supervision of the DOC on probation or community control; or under a post release control sanction; and who is eligible to apply to the DOC for a certificate of achievement and employability.
- Licensing agency: any regulatory or licensing entity with authority to issue, suspend, or revoke any professional license or certification.
- Mandatory civil impact: any Florida statute or rule that creates a penalty, disability, or disadvantage to which all of the following apply:

[140] The directory must include the name, address, telephone number and a description of services offered of each provider and also include the name, address, and telephone number of existing portals of entry.

- The impact is triggered automatically solely by a person's conviction of an offense, whether or not the penalty, disability, or disadvantage is included in the judgment or sentence.
- The impact is imposed on a person, licensing agency, or employer.
- The impact precludes a convicted person from maintaining or obtaining licensure or employment, precludes a licensing agency from issuing a license or certification to a convicted person, or precludes a business from being certified or from employing a convicted person.[141]

Application for Certificate of Achievement and Employability

An eligible inmate may apply to the DOC for a CAE if the inmate:

- Has satisfactorily completed one or more in-prison vocational programs approved by the DOC.
- Has demonstrated exemplary performance as determined by completion of one or more cognitive or behavioral improvement programs approved by the DOC while incarcerated in a state correctional institution or facility or under supervision, or during both periods of time.
- Shows other evidence of achievement and rehabilitation.
- Has never been convicted of a dangerous crime as defined in s. 907.041, F.S., or a violation specified as a predicate offense for registration as a sexual predator under s. 775.21, F.S., or as a sexual offender under s. 943.0435, F.S.

An incarcerated eligible inmate may apply for a CAE from one year prior to the date of his or her release up to the date of release. An eligible inmate in the community may apply anytime while serving the term of probation or community control.

The application must specify the mandatory civil impacts for which the eligible inmate is seeking relief. The DOC is required to notify the licensing agency whose mandatory civil impact may be impacted by the issuance of a CAE and provide the licensing agency with a copy of the CAE application and any documentation that the DOC has concerning the eligible inmate. The licensing agency must be given the opportunity to object in writing to the issuance of a CAE.

The DOC must consider the eligible inmate's application and all objections to issuing the CAE and the DOC must issue the CAE if it finds that the inmate is eligible, the application was filed timely, and all objections to issuing the certificate are insufficient. However, a CAE does not affect the mandatory civil impacts under article VI, section 4 of the Florida Constitution, or ss. 775.13, 775.21, 943.0435, and 944.292, F.S.

Effect of the Certificate of Achievement and Employability

A CAE holder that applies to an agency for licensure or certification must be given individualized consideration by the licensing agency. The CAE provides a rebuttable presumption to the CAE holder for purposes of licensure review. The bill provides that the conviction of a CAE holder alone is insufficient evidence that he or she is unfit for the license or certification. However, the licensing agency is still authorized to deny the license or certification

[141] The bill provides that the definitions of mandatory and discretionary civil impact do not include imprisonment, probation, parole, supervised release, forfeiture, restitution, fine, assessment, or costs of prosecution.

if it determines that the CAE holder is unfit for licensure or certification after considering all relevant facts and circumstances.

The bill distinguishes between the effect of an unemployed CAE holder applying to an agency and an employer of an employed CAE applying to an agency. An employer of an employed CAE holder may apply to an agency for the licensure of his or her employee and the bill provides that the CAE reclassifies the mandatory civil impacts into discretionary civil impacts and that the CAE is a rebuttable presumption. However, for an unemployed CAE holder, the CAE only provides a rebuttable presumption and does not reclassify the mandatory civil impacts.

Revocation of the Certificate of Achievement and Employability

The bill requires the DOC to, at a minimum, adopt rules that result in the revocation of a CAE if a certificate holder is convicted of or pleads guilty to a felony offense subsequent to the issuance of the certificate. The DOC must determine which additional offenses require revocation, considering the nature of the offense and the employment of a certificate holder.

Liability and Rulemaking Authority

The bill provides that the DOC is not liable for a claim for damages arising from issuing, denying, or revoking a CAE or for failing to revoke a certificate. The bill also provides the DOC with rulemaking authority to develop any rules necessary to implement the CAE provisions and requires the CAE program be funded within existing resources.

Prison Entrepreneurship Program

The bill amends s. 944.801, F.S., authorizing the CEP to develop a Prison Entrepreneurship Program. The program must include at least 180 days of in-prison education with curriculum that includes a component on developing a business plan, procedures for graduation and certification of successful student inmates, and at least 90 days of transitional and post release continuing education services. The bill provides transitional and post release continuing education services may be offered to graduate student inmates on a voluntary basis and are not required for completion of the program.

The program must be funded within existing resources and the DOC is required to enter into agreements with public or private community colleges, junior colleges, colleges, universities, or other non-profit entities to implement the program.

Lastly, the bill provides rulemaking authority and authority to adopt procedures for admitting student inmates.

The bill reenacts ss. 447.203 and 944.026, F.S., incorporating changes made by the act.

Conditional Medical Release (Sections 27, 28 and 36-47)

The pronouncement of a sentence that includes a term of imprisonment imposed by a sentencing court reflects the length of actual time to be served. With limited exceptions, such a term of

imprisonment may only be lessened by the application of gain-time,[142] and may not be reduced in an amount that results in the defendant serving less than 85 percent of his or her term of imprisonment.[143] One of the exceptions provided for in law is conditional medical release.

Conditional Medical Release

CMR is a discretionary release of inmates who are "terminally ill" or "permanently incapacitated" and who are not a danger to others.[144] The FCOR reviews eligible inmates for release under the CMR program.

Eligible inmates include inmates that are designated by the DOC as a:

- "Permanently incapacitated inmate," which is an inmate who has a condition caused by injury, disease, or illness which, to a reasonable degree of medical certainty, renders the inmate permanently and irreversibly physically incapacitated to the extent that the inmate does not constitute a danger to herself or himself or others; or
- "Terminally ill inmate," which is an inmate who has a condition caused by injury, disease, or illness which, to a reasonable degree of medical certainty, renders the inmate terminally ill to the extent that there can be no recovery and death is imminent, so that the inmate does not constitute a danger to herself or himself or others.[145]

The release of an inmate on CMR is for the remainder of the inmate's sentence and requires periodic medical evaluations at intervals determined by the FCOR at the time of release.[146] Supervision can be revoked and the offender returned to prison if the FCOR determines that a violation of any condition of the release has occurred or his or her medical or physical condition improves to the point that the offender no longer meets the CMR criteria.[147] Section 947.141, F.S., provides a hearing process for determining whether a CMR releasee must be recommitted to the DOC for a violation of release conditions or a change in medical status.

The FCOR has approved and released 55 inmates for CMR in the last three fiscal years.[148] The DOC has recommended 120 inmates for release in the past three fiscal years.[149]

Effect of the Bill

The bill amends s. 947.149, F.S., by creating two new CMR designations and two processes for an inmate to be granted CMR, including "Permissive Conditional Medical Release" and "Mandatory Conditional Medical Release."

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[142] Section 944.275, F.S., provides for various types of incentive and meritorious gain-time.
[143] Section 921.002(1), F.S.
[144] Chapter 92-310, L.O.F.; FCOR, *Release Types, Post Release*, available at https://www.fcor.state.fl.us/postrelease.shtml#conditionalMedicalRelease (last visited January 8, 2018).
[145] Section 947.149(1), F.S. Inmates sentenced to death are ineligible for CMR.
[146] Section 947.149(4), F.S.
[147] Section 947.149(5), F.S.
[148] This includes 14 people in FY 2016-17; 27 in FY 2015-16; and 14 in FY 2014-15. Email from FCOR Staff (December 15, 2017) (attachment on file with the Senate Committee on Criminal Justice).
[149] *Id*. This includes 34 people FY 2016-17; 51 in FY 2015-16; and 35 in FY 2014-15.

Designations

The bill creates two new CMR designations, including a designation entitled:

- Inmate with a debilitating illness: an inmate who is determined to be suffering from a significant and permanent terminal or nonterminal condition, disease, or syndrome that has rendered the inmate so physically or cognitively debilitated or incapacitated as to create a reasonable probability that the inmate does not constitute a danger to herself or himself or others.
- Medically frail inmate: an inmate whose physical or mental health has deteriorated to a point that creates a reasonable probability that the inmate does not constitute a danger to herself or himself or others, as determined by a risk assessment completed by a qualified practitioner, and whose deterioration is the direct result of the inmate's:
  - Impairment of the mental or emotional processes that exercise conscious control of one's actions or of the ability to perceive or understand reality, where such impairment substantially interferes with the person's ability to meet the ordinary demands of living;
  - History of substance abuse, as defined in s. 397.311(45), F.S.; or
  - Requirement of acute long-term medical or mental health treatment or services.

The current designation of terminally ill inmate is amended to apply to inmates whose death is expected within 12 months, rather than imminent. The current designation of permanently incapacitated inmate is not altered.

Permissive Conditional Medical Release

The current CMR process remains substantially the same but is amended to be entitled "Permissive Conditional Medical Release." The bill expands Permissive CMR from current law by permitting any inmate determined to be eligible under any of the four CMR designations described above and referred by the DOC to the FCOR to be considered for release by the FCOR. The FCOR continues to retain sole discretion on the determination of whether to release an inmate under Permissive CMR.

Mandatory Conditional Medical Release

The bill creates a new CMR process, entitled "Mandatory Conditional Medical Release," that imposes eligibility requirements in addition to those required in Permissive CMR. If an inmate meets all of the eligibility requirements of Mandatory CMR, the FCOR is *required* to release the inmate on CMR upon verifying the inmate's eligibility.

For Mandatory CMR, the bill requires the DOC to refer an inmate to the FCOR for release if the inmate meets one of the four CMR designations mentioned above and the inmate has:

- Served at least 50 percent of his or her sentence.
- No current or prior conviction for a capital, life, or first-degree felony; sexual offense; or an offense involving a child.
- Not received a disciplinary report within the previous six months.
- Never received a disciplinary report for a violent act.
- Renounced any gang affiliation.

The FCOR must verify that an inmate meets the above-mentioned eligibility criteria within 60 days of the referral.

Referral of an Inmate

The DOC's referral of an inmate for either Permissive or Mandatory CMR must include:

- The proposed conditional medical release plan.
- Any relevant medical history, including current medical prognosis.
- Criminal history, including:
  - The inmate's claim of innocence, if any;
  - The degree to which the inmate accepts responsibility for his or her actions leading to the conviction of the crime; and
  - How any claim of responsibility has affected the inmate's feelings of remorse.
- Any history of substance abuse and mental health issues, provided the inmate authorizes release when such information is collected in accordance with 42 C.F.R. s. 2.
- Any disciplinary action taken against the inmate while in prison.
- Any participation in prison work and other prison programs.
- Any other information the DOC deems necessary.

Placement Considerations and Release Plan

The bill provides that a determination to approve an inmate's release on CMR must consider conditions such as whether:

- A placement option has been secured for the inmate in the community. A placement option may include, but is not limited to, home confinement or a medical or mental health facility that is not a public institution.[150]
- The placement option secured under this section poses a minimal risk to society.
- The DOC has made a reasonable effort to determine whether expenses related to the placement option secured under this subsection are covered by Medicaid, a health care policy, a certificate of insurance, or another source for the payment of medical expenses or whether the inmate has sufficient income or assets to pay for the expenses related to the placement.
- The DOC has provided notice to the prosecutor's office in the county in which the prisoner was sentenced and to each victim entitled to notice under article I, section 16(b) of the Florida Constitution.

The bill requires the DOC to develop a release plan for an inmate released on Permissive or Mandatory CMR and the FCOR is authorized to approve the release plan. The release plan must include periodic medical evaluations and may include supervision with electronic monitoring. An inmate's release on Permissive or Mandatory CMR is for the remainder of the inmate's sentence. However, the bill also applies the above-described process for revocation and recommitment to inmates released on Permissive or Mandatory CMR.

The bill also amends s. 947.005, F.S., adding two new definitions, including:

[150] A placement option need not involve any type of supervision of the inmate by an employee or a private contractor of the DOC or otherwise be considered a secure facility. A placement option may involve the use of an electronic monitoring device as defined in 947.005(6), F.S.

- Electronic monitoring device: an electronic or telecommunications device that is used to track and supervise the location of a person. Such devices include, but are not limited to, voice tracking systems, position-tracking systems, position location systems, or biometric tracking systems.
- Conditional medical release: the release from a state correctional institution or facility under this chapter for medical or mental health treatment pursuant to s. 947.149, F.S.

Lastly, the bill reenacts ss. 316.1935, 775.084, 775.087, 784.07, 790.235, 794.0115, 893.135, 921.0024, 944.605, 944.70, 947.13, and 947.141, F.S., incorporating changes made by the act.

Criminal Justice Data Collection and Transparency (Sections 10-12, 16, 18, and 26)

Data Collection by Florida's Criminal Justice Agencies

Currently, Florida does not have a publicly accessible website containing comprehensive criminal justice data. Several state departments, local agencies and local offices, including the clerks, SAs, PDs, county jails, and the DOC collect data within the criminal justice system. Each entity collects and maintains data in different ways and for different purposes.

Clerks of the Circuit Courts

The clerks use a secured single point-of-search database portal for statewide court case information, the Comprehensive Case Information System (CCIS).[151] Section 28.2405, F.S., requires all clerks to participate in the CCIS and submit data for criminal, civil, juvenile, probate, and traffic cases.[152] The CCIS provides controlled access to court records for governmental agencies.[153] Currently, 19 governmental organizations use the CCIS and may use it to search information related to call court cases maintained by the clerks.[154]

The CCIS has more than 45,000 active users. The clerks assign each user or organization a security level that allows them to view certain data on the CCIS. Not all data elements are available to all users and CCIS is not available to the public.[155]

County Detention Facilities

Data collection and storage by county detention facilities varies greatly from county to county.[156] Larger county detention facilities have data systems allowing for direct data input and report generation, while smaller jails have databases using Microsoft Access or other commercially available templates.[157]

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[151] *See* s. 28.2405, F.S. CCIS access site, available at https://www.flccis.com/ocrs/login.xhtml (last visited February 23, 2018).
[152] *See also* Florida Court Clerks & Comptrollers, *Criminal Court Case Data Collection*, p. 7 (November 14, 2017) (PowerPoint presentation on file with the Senate Criminal Justice Committee).
[153] *Id.* at 2.
[154] *Id.* at 3 and 6.
[155] *Id.* at 11.
[156] Section 951.23(1)(a), F.S., defines a county detention facility to mean a county jail, county stockade, county work camp, county residential probation center, or any other place, except a municipal detention facility, used by a county or county officer for the detention of persons charged with or convicted of a crime.
[157] Florida Sheriffs Association, *Criminal Justice Data Collection*, p. 5 (November 14, 2017) (PowerPoint presentation on file with the Senate Criminal Justice Committee) (hereinafter cited as "FSA PowerPoint").

Section 951.23(2), F.S., requires administrators of county detention facilities to collect and report certain information to the DOC. The DOC then uses such data to analyze and evaluate county detention facilities.[158] Many jails also collect data relating to jail capacity, per diems, demographic data, criminal charges, custody levels, and medical information.[159] Jail administrators use this data to manage daily operations, verify total jail costs and budgets, and ensure proper staffing and training.[160]

State Attorneys and Public Defenders

There is no statutory requirement for a SA or PD to collect, publish, or report specific data. Many circuits, on their own initiative, collect data elements for internal purposes, but this data is not publicly available or shared among agencies.

Department of Corrections

The DOC uses is the Offender Based Information System (OBIS) to collect and organize data related to sentencing information and scoresheets from the clerks, criminal history information from the FDLE, and background information self-reported by inmates.[161] The DOC uses this information for a variety of operational functions including determining an inmate's custody level and an inmate's release date.[162] The DOC shares the OBIS information with law enforcement and other state and federal agencies pursuant to relevant statutory authority, federal law, or other directives.[163]

The Bureau of Research and Data Analysis (Bureau) within the DOC analyzes the OBIS data to generate information for the DOC, the Governor, the Legislature, and other state agencies.[164] The Bureau publishes an annual report that includes information regarding inmate population, statistics, and other information relating to the DOC.[165] While annual reports are accessible to the public, users are not permitted to search the data that is collected in OBIS.

Criminal Punishment Code Scoresheet

Section 921.0024, F.S., requires the preparation of a Criminal Punishment Code scoresheet for each defendant who is sentenced for a felony offense. The scoresheet must be developed by the DOC, in consultation with the Office of the State Courts Administrator (OSCA), SAs, and PDs, and submitted to the Supreme Court for approval by June 15 of each year, as necessary. Further, the DOC is required to distribute sufficient copies of the scoresheets to those persons charged with the responsibility for preparing scoresheets.[166]

[158] Section 951.23(3), F.S.
[159] FSA PowerPoint, at 3.
[160] *Id.* at 6.
[161] Section 20.315(10), F.S., and the DOC, *Overview of FDC Criminal Justice Data*, p. 3-4 (November 14, 2017) (on file with the Senate Criminal Justice Committee).
[162] *Id.* at 5.
[163] *Id.* at 6.
[164] DOC, *Bureau of Research and Data Analysis*, available at http://www.dc.state.fl.us/orginfo/research.html (last visited February 23, 2018).
[165] DOC, *Annual Report Fiscal Year 2015-2016*, available at http://www.dc.state.fl.us/pub/annual/1516/FDC_AR2015-16.pdf (last visited February 23, 2018).
[166] Section 921.0024(3)-(5), F.S.

Effect of the Bill

Data Collection

The bill creates s. 900.05, F.S., specifying Legislative intent of the Legislature to create a model of uniform criminal justice data collection by requiring local and state criminal justice agencies to report complete, accurate, and timely data, and make such data available to the public.

Definitions:

The bill defines the following terms:

- Annual felony caseload: the yearly caseload of each full-time SA and assistant SA (ASA) or PD and assistant PD (APD) for cases assigned to the circuit criminal division, based on the number of felony cases reported to the Supreme Court under s. 25.075, F.S.
- Annual misdemeanor caseload: the yearly caseload of each full-time SA and ASA or PD and APD for cases assigned to the county criminal division, based on the number of misdemeanor cases reported to the Supreme Court under s. 25.075, F.S.[167]
- Attorney assignment date: the date a court-appointed attorney is assigned to the case or, if privately retained, the date an attorney files a notice of appearance with the clerk.
- Attorney withdrawal date: the date the court removes court-appointed counsel from a case or, for a privately retained attorney, the date a motion to withdraw is granted by the court.
- Case number: the identification number assigned by the clerk to a criminal case.
- Case status: whether a case is open, inactive, closed, or reopened due to a VOP or VOCC.
- Charge description: the statement of the conduct that is alleged to have been violated, the associated statutory section establishing such conduct as criminal, and the misdemeanor or felony classification that is provided for in the statutory section alleged to have been violated.
- Charge modifier: an aggravating circumstance of an alleged crime that enhances or reclassifies a charge to a more serious misdemeanor or felony offense level.
- Concurrent or consecutive sentence flag: an indication that a defendant is serving another sentence concurrently or consecutively in addition to the sentence for which data is being reported.
- Daily number of correctional officers: the number of full-time, part-time, and auxiliary correctional officers who are actively providing supervision, protection, care, custody, and control of inmates in a county detention facility or state correctional institution or facility each day.
- Deferred prosecution or pretrial diversion agreement date: the date a contract is signed by the parties regarding a defendant's admission into a deferred prosecution or pretrial diversion program.
- Deferred prosecution or pretrial diversion hearing date: each date that a hearing, including a status hearing, is held on a case that is in a deferred prosecution or pretrial diversion program, if applicable.
- Disciplinary violation and action: any conduct performed by an inmate in violation of the rules of a county detention facility or state correctional institution or facility that results in

[167] The terms "annual felony caseload" and "annual misdemeanor caseload" do not include the appellate caseload of a PD or APD. Cases reported pursuant to these terms must be associated with a case number and each case number must only be reported once regardless of the number of attorney assignments that occur during the course of litigation

the initiation of disciplinary proceedings by the custodial entity and the consequences of such disciplinary proceedings.
- Disposition date: the date of final judgment, adjudication, adjudication withheld, dismissal, or nolle prosequi for the case and if different dates apply, the disposition dates of each charge.
- Domestic violence flag: an indication that a charge involves domestic violence as defined in s. 741.28, F.S.
- Gang affiliation flag: an indication that a defendant is involved in or associated with a criminal gang as defined in s. 874.03, F.S.
- Gain-time credit earned: a credit of time awarded to an inmate in a county detention facility in accordance with s. 951.22, F.S., or a state correctional institution or facility in accordance with s. 944.275, F.S.
- Habitual offender flag: an indication that a defendant is a habitual felony offender as defined in s. 775.084, F.S., or a habitual misdemeanor offender as defined in s. 775.0837, F.S.
- Judicial transfer date: a date on which a defendant's case is transferred to another court or presiding judge.
- Number of contract attorneys representing indigent defendants for the office of the public defender: the number of attorneys hired on a temporary basis, by contract, to represent indigent clients who were appointed a PD.
- Pretrial release violation flag: an indication that the defendant has violated the terms of his or her pretrial release.
- Prior incarceration within the state: any prior history of a defendant being incarcerated in a county detention facility or state correctional institution or facility.
- Tentative release date: the anticipated date that an inmate will be released from incarceration after the application of adjustments for any gain-time earned or credit for time served.
- Sexual offender flag: an indication that a defendant is required to register as a sexual predator as defined in s. 775.21, F.S., or as a sexual offender as defined in s. 943.0435, F.S.

Collection

Beginning January 1, 2019, specified entities are required to collect certain data on a monthly basis. Each entity must report the data collected to the FDLE on a quarterly basis.

Each clerk must collect the following data for each criminal case:
- Case number.
- Date that the alleged offense occurred.
- County in which the offense is alleged to have occurred.
- Date of arrest, if such date is different from the date the offense is alleged to have occurred.
- Date that the criminal prosecution of a defendant is formally initiated through the filing, with the clerk of the court, of an information by the SA or an indictment issued by a grand jury.
- Arraignment date.
- Attorney assignment date.
- Attorney withdrawal date.
- Case status.
- Disposition date.
- Information related to each defendant, including:

  - Identifying information, including name, date of birth, age, race or ethnicity, and gender.
  - Zip code of primary residence.
  - Primary language.
  - Citizenship.
  - Immigration status, if applicable.
  - Whether the defendant has been found by a court to be indigent pursuant to s. 27.52, F.S.
- Information related to the formal charges filed against the defendant, including:
  - Charge description.
  - Charge modifier, if applicable.
  - Drug type for each drug charge, if known.
  - Qualification for a flag designation, including a domestic violence flag, gang affiliation flag, sexual offender flag, habitual offender flag, or pretrial release violation flag.
- Information related to bail or bond and pretrial release determinations, including the dates of any such determinations:
  - Pretrial release determination made at a first appearance hearing that occurs within 24 hours of arrest, including all monetary and nonmonetary conditions of release.
  - Modification of bail or bond conditions made by a court, including modifications to any monetary and nonmonetary conditions of release.
  - Cash bail or bond payment, including whether the defendant utilized a bond agent to post a surety bond.
  - Date defendant is released on bail, bond, or pretrial release.
  - Bail or bond revocation due to a new offense, a failure to appear, or a violation of the terms of bail or bond, if applicable.
- Information related to court dates and dates of motions and appearances, including:
  - Date of any court appearance and the type of proceeding scheduled for each date reported.
  - Date of any failure to appear in court, if applicable.
  - Judicial transfer date, if applicable.
  - Trial date.
  - Date that a defendant files a notice to participate in discovery.
  - Speedy trial motion and hearing dates, if applicable.
  - Dismissal motion and hearing dates, if applicable.
- Whether the attorney representing the defendant is court-appointed to, or privately retained by, a defendant or whether the defendant is represented pro se.
- Information related to sentencing, including:
  - Date that a court enters a sentence against a defendant.
  - Sentence type and length imposed by the court.[168]
  - Amount of time served in custody credited to the defendant at the time of disposition.
  - Total amount of court fees imposed by the court at the disposition of the case.
  - Outstanding balance of the defendant's court fees imposed by the court at disposition of the case.
  - Total amount of fines imposed by the court at the disposition of the case.
  - Outstanding balance of the defendant's fines imposed by the court at disposition of the case.

[168] This terms includes, but is not limited to, the total duration of imprisonment in a county detention facility or state correctional institution or facility, and conditions probation or community control supervision.

  - Restitution amount ordered, including the amount collected by the court and the amount paid to the victim, if applicable.
  - Digitized sentencing scoresheet prepared in accordance with s. 921.0024, F.S.
- The number of judges or magistrates, or their equivalents, hearing cases in circuit or county criminal divisions of the circuit court.[169]

Each SA must collect the following data:
- Information related to a victims of a criminal offense, including identifying information of the victim, including race or ethnicity, gender, age, and relationship to the offender, if any.
- Number of full-time and part-time prosecutors.
- Annual felony and misdemeanor caseloads.
- Any charge referred to the SA by a law enforcement agency related to an episode of criminal activity.
- Number of cases in which a no-information was filed.
- Information related to each defendant, including:
  - Each charge referred to the SA by a law enforcement agency related to an episode of criminal activity.
  - Drug type for each drug charge, if applicable.
  - Deferred prosecution or pretrial diversion agreement date and hearing dates, if applicable.

Each PD must collect the following data for each criminal case:
- Number of full-time and part-time PDs and APDs.
- Number of contract attorneys representing indigent defendants for the office of the PD.
- Annual felony and misdemeanor caseloads.

The administrator of each county detention facility must collect the following data:
- Maximum capacity for the county detention facility.
- Weekly admissions to the county detention facility for a revocation of probation or community control.
- Daily population of the county detention facility, including the specific number of inmates in the custody of the county that:
  - Are awaiting case disposition.
  - Have been sentenced by a court to a term of imprisonment in the county detention facility.
  - Have been sentenced by a court to a term of imprisonment with the DOC and who are awaiting transportation to the DOC.
  - Have a federal detainer or are awaiting disposition of a case in federal court.
- Information related to each inmate, including:
  - Date a defendant is processed into the county detention facility for an arrest for a new violation of law or for a VOP or VOCC.
  - Qualification for a flag designation, including domestic violence flag, gang affiliation flag, habitual offender flag, pretrial release violation flag, or sexual offender flag.

[169] Judges or magistrates, or their equivalents, who solely hear appellate cases from the county criminal division are not to be reported.

- Total population of the county detention facility at year-end.[170]
- Per diem rate for a county detention facility bed.
- Daily number of correctional officers for the county detention facility.
- Annual county detention facility budget.[171]
- Revenue generated for the county from the temporary incarceration of federal defendants or inmates.

The DOC is required to collect the following data:

- Information related to each inmate, including:
  - Identifying information, including name, date of birth, race or ethnicity, and identification number assigned by the DOC.
  - Number of children.
  - Education level, including any vocational training.
  - Date the inmate was admitted to the custody of the DOC.
  - Current institution placement and the security level assigned to the institution.
  - Custody level assignment.
  - Qualification for a flag designation, including sexual offender flag, habitual offender flag, gang affiliation flag, or concurrent or consecutive sentence flag.
  - County that committed the prisoner to the custody of the DOC.
  - Whether the reason for admission to the DOC is for a new conviction or a violation of probation, community control, or parole. For an admission for a VOP, VOCC, or parole violation, the DOC must report whether the violation was technical or based on a new violation of law.
  - Specific statutory citation for which the inmate was committed to the DOC, including, for an inmate convicted of drug trafficking under s. 893.135, F.S., and the statutory citation for each specific drug trafficked.
  - Length of sentence or concurrent or consecutive sentences served.
  - Tentative release date.
  - Gain time earned in accordance with s. 944.275, F.S.
  - Prior incarceration within the state.
  - Disciplinary violation and action.
  - Participation in rehabilitative or educational programs while in the custody of the DOC.
- Information about each state correctional institution or facility, including:
  - Budget for each state correctional institution or facility.
  - Daily prison population of all inmates incarcerated in a state correctional institution or facility.
  - Daily number of correctional officers for each state correctional institution or facility.
- Information related to persons supervised by the DOC on probation or community control, including:
  - Identifying information for each person supervised by the DOC on probation or community control, including his or her name, date of birth, race or ethnicity, sex, and DOC-assigned case number.
  - Length of probation or community control sentence imposed and amount of time that has been served on such sentence.

[170] This data must include the same specified classifications required for daily population.
[171] This information only has to be reported once annually at the beginning of the county's fiscal year.

- Projected termination date for probation or community control.
- Revocation of probation or community control due to a VOP or VOCC that is technical in nature or the result of a new law violation.

- Per diem rates for prison beds, probation, and community control.[172]

Publishing of Data

The bill requires the FDLE, beginning January 1, 2019, to publish datasets in its possession in a modern, open, electronic format that is machine-readable and readily accessible by the public on the FDLE's website. The bill requires the FDLE, beginning March 1, 2019, to publish the data received pursuant to the bill in the same modern, open, electronic format that is machine-readable and readily accessible to the public on the FDLE's website. The data must be published by the FDLE no later than July 1, 2019.

Data Transparency

The bill creates s. 943.687, F.S., requiring the FDLE to:

- Collect, compile, maintain, and manage the data submitted by local and state entities pursuant to the bill, and coordinate related activities to collect and submit data;
- Create a unique identifier for each criminal case received from the clerks, which identifies the person who is the subject of the criminal case. The unique identifier must be:
  - The same for that person in any court case and used across local and state entities for all information related to that person at any time; and
  - Randomly created without portions of the person's social security number or birth date.
- Promote criminal justice data sharing by making data received under the bill comparable, transferable, and readily usable;
- Create and maintain an online database of criminal justice data received under the bill in a modern, open, electronic format that is machine-readable and readily accessible through an application program interface;[173]
- Develop written agreements with local, state, and federal agencies to facilitate criminal justice data sharing;
- Establish by rule:
  - Requirements for the entities subject to the data submission requirements under the bill to submit data through an application program interface;
  - A data catalog defining data objects, describing data fields, and detailing the meaning of and options for each data element reported pursuant to the bill;
  - How data collected pursuant to the bill is compiled, processed, structured, used, or shared;[174]
  - Requirements for implementing and monitoring the online database established by the bill; and
  - How information contained in the online database established by the bill is accessed by the public.

[172] This information only needs to be reported once annually at the time the most recent per diem rate is published.
[173] The database must permit the public to search, at a minimum, by each data element, county, judicial circuit, or unique identifier and the FDLE may not require a license or charge a fee to access or receive information from the database.
[174] The rule must provide for the tagging of all information associated with each case number and unique identifier.

- Consult with local, state, and federal criminal justice agencies and other public and private users of the online database on the data elements collected under the bill, the use of such data, and adding data elements to be collected;
- Monitor data collection procedures and test data quality to facilitate the dissemination of accurate, valid, reliable, and complete criminal justice data; and
- Develop methods for archiving data, retrieving archived data, and data editing and verification.

The bill also creates s. 945.041, F.S., requiring the DOC to publish on its website and make available to the public specified information, updated on a quarterly basis:

- Inmate admissions by offense type, specifically reporting separately burglary of a dwelling[175] offenses from all other property crimes; and
- The recidivism rate.[176]

Criminal Punishment Code Scoresheet

The bill amends s. 921.0024, F.S., requiring the Criminal Punishment Code scoresheet to be digitized. The bill also requires such digitized scoresheets to have individual, structured data cells for each data field on the scoresheet.

Pilot Program

The bill creates a pilot program in the Sixth Judicial Circuit for the purpose of ensuring that data submitted under s. 900.05, F.S., is accurate, valid, reliable, and structured. The bill authorizes the entities specified in the data collection and transparency provisions to enter into a memorandum of understanding (MOU) with a national, nonpartisan, not-for-profit entity, which provides data and measurement for county-level criminal justice systems.

The MOU must establish the duties and responsibilities of a data fellow, which must be completely funded by the entity. The data fellow must assist with data extraction, validation, and quality, and publish such data consistent with the terms of the MOU. The data fellow must assist the office or agency in compiling and reporting data pursuant to the data collection and transparency provisions and in compliance with rules promulgated by the FDLE. The pilot project expires in accordance with the terms of the MOU.

Appropriation

For purposes of implementing ss. 900.05(3) and 943.687, F.S., transitioning to incident-based crime reporting, and collecting and submitting crime statistics that meet the requirements of the Federal Bureau of Investigation under the National Incident-Based Reporting System, the bill provides a specific appropriation to the FDLE for FY 2018-19, including nine FTEs with associated salary rate of 476,163, and the recurring sum of $665,884 and the nonrecurring sum of $1,084,116 from the General Revenue Fund.

[175] The bill defines "burglary of a dwelling" as offenses enumerated in s. 810.02(2), (3)(a), and (3)(b), F.S.
[176] The bill defines "recidivism" as rearrest, reconviction, reincarceration, and probation revocation in the state within a 3-year time period following release from incarceration

Driver License Reinstatement Days Program (Section 6)

Florida requires any person operating a motor vehicle on the state's roadways to hold a driver license[177] or be exempt from licensure.[178] Exemptions to the licensure requirement include nonresidents who possess a valid driver license issued by their home states, federal government employees operating a government vehicle for official business, and people operating a road machine, tractor, or golf cart.[179] Both licensed drivers and exempted individuals have a driving privilege in Florida.[180]

The Department of Highway Safety and Motor Vehicles (DHSMV) can revoke or suspend a driver license or driving privilege for several driving-related and non-driving-related reasons. Revocation means the driving privilege is terminated, while suspension means the driving privilege is temporary withdrawn.[181] Both revocations and suspensions can be indefinite or for a defined period of time, but only revocations in certain circumstances can be permanent. The base fee for driver license reinstatement after revocation is $75, and the fee for reinstatement after suspension is $45.[182]

Failure to Meet Court-Imposed Obligations

The clerks can notify the DHSMV to suspend a license for several reasons, including failure to comply with civil penalties, failure to appear, and failure to pay criminal financial obligations.[183] These suspensions last until the individual is compliant with the court's requirements for reinstatement or, in the case of criminal financial obligations, the court grants relief from the suspension.[184]

Payment Plans, Community Service Options, and Collections

The clerk is required to accept partial payment of court-related fees, service charges, costs, or fines in accordance with the terms of an established payment plan. The court may review the reasonableness of the payment plan. A monthly payment amount is presumed to correspond to the person's ability to pay if the amount does not exceed two percent of the person's annual net income, divided by twelve.[185]

The court may convert a statutory financial obligation in a criminal case or a noncriminal traffic infraction into a requirement to perform community service. The clerk must pursue the collection of any unpaid financial obligations that remain unpaid after 90 days by referring the account to a private attorney or collection agent. The clerk must have attempted to collect the unpaid obligation through a collection court, collections docket, or any other collections process prior to

[177] Section 322.03(17), F.S., defines a "driver license" to mean a certificate that, subject to all other requirements of law, authorizes an individual to drive a motor vehicle.
[178] Section 322.03(1), F.S.
[179] Section 322.04, F.S.
[180] *State v. Miller*, 227 So.3d 562, 564 (Fla. 2017) ("the Legislature's use of 'driving privilege' refers to all individuals who may lawfully operate vehicles on Florida's roads, even if they do not possess a Florida driver license").
[181] Section 322.01(36) and (40), F.S., respectively.
[182] DHSMV, *Fees*, available at https://www.flhsmv.gov/fees/ (last visited February 22, 2018).
[183] Sections 318.15 and 322.245, F.S.
[184] *Id*.
[185] Section 28.246(4), F.S.

referring the account to a private attorney or collections agent, find the referral to be cost-effective, and follow any applicable procurement processes. A collection fee of up to forty percent of the amount owed at the time the account is referred to the attorney or agent for collection may be added to the outstanding balance.[186]

Reinstatement Clinics

Several counties have held events to assist individuals whose licenses are suspended for financial reasons related to civil penalties or criminal financial obligations. In April 2015, 60 out of 67 counties participated in Operation Green Light: a short-term event in which the clerk waived the forty percent collections surcharge in exchange for full payment of the financial obligation behind a person's driver license suspension.[187] Upon satisfaction of the obligation, the participants' licenses were reinstated. The total statewide cost for the event was less than $133,000, and the clerks collected almost $5.5 million in fees and reinstated almost 1,900 licenses.[188] Several counties have since conducted similar events.[189]

Effect of the Bill

The bill creates s. 322.75, F.S., requiring each judicial circuit to establish a Driver License Reinstatement Days program that must include participation from the DHSMV, the SAs office, the PDs office, the circuit and county courts, the clerks, and any interested community organization. The clerk, in consultation with above-listed participants, must select one or more days for an event where an event attendee may have his or her driver license reinstated. A person must pay the full license reinstatement fee, but the clerk is authorized to reduce or waive other fees and costs to facilitate reinstatement.

The bill provides that a person is eligible for reinstatement under the program if his or her license was suspended due to:

- Driving without a valid driver license;
- Driving with a suspended driver license;
- Failing to make a payment on penalties in collection;
- Failing to appear in court for a traffic violation; or
- Failing to comply with provisions of chs. 318 or 322, F.S.

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[186] Section 28.264(6), F.S.
[187] Harrison Barrus, *"Operation Green Light" gives ticket payers a break*, NEWS 4 JAX, available at https://www.news4jax.com/news/local/operation-green-light-gives-ticket-payers-a-break (last visited February 22, 2018).
[188] Florida Clerks of Court Operations Corporation, *Statewide Collection Initiative Update*, p. 11-17, available at http://c.ymcdn.com/sites/www.flclerks.com/resource/resmgr/Statewide_Collection_Initiat.pdf (last visited February 22, 2018).
[189] Wayne K. Roustan, *Operation Green Light to offer amnesty on unpaid fines, fees in Broward*, SUN SENTINEL (April 21, 2017), available at http://www.sun-sentinel.com/news/transportation/fl-sb-broward-ticket-amnesty-20170421-story.html; Karl Etters, *Clinic hopes to restore driver's licenses*, Tallahassee Democrat (May 30, 2017), available at http://www.tallahassee.com/story/news/2017/05/30/clinic-hopes-restore-drivers-licenses/102055664/; 11th Judicial Circuit, Driver License Reinstatement Event Flyer, available at https://www.jud11.flcourts.org/DesktopModules/EasyDNNNews/DocumentDownload.ashx?portalid=0&moduleid=599&articleid=2744&documentid=11 (all articles last visited February 22, 2018).

A person is eligible for reinstatement under the program if the period of suspension or revocation has elapsed, the person has completed any course or program required of him or her,[190] and the person is otherwise eligible for reinstatement.

However, a person is ineligible for reinstatement under the program if his or her driver license is suspended or revoked:

- Because the person failed to fulfill a court-ordered child support obligation;
- For a violation of s. 316.193, F.S., or a traffic related felony;
- Because the person has not completed a required course or program; or
- Because the person is a habitual traffic offender under s. 322.264, F.S.

Lastly, the bill requires the clerk and the DHSMV to verify any information necessary for reinstatement of a driver license under the program at the event.

Community Court Programs (Section 33)

Problem-solving courts are specialized, non-traditional courts addressing the underlying causes of crime to reduce recidivism and promote rehabilitation. Problem-solving courts build relationships in the community, address each defendant individually, and typically include:

- A problem-solving team including judges, case managers, prosecutors, defense attorneys, treatment professionals, law enforcement officers, corrections personnel, and other community stakeholders.
- A non-adversarial approach.
- Individualized treatment services.
- Judicial leadership and interaction.
- Responses to defendant compliance.[191]

Today, Florida has over 170 problem-solving courts, including, but not limited to adult and juvenile drug courts, veterans' courts, mental health courts, DUI courts, and permanency courts.

Effect of the Bill

The bill creates s. 948.081, F.S., authorizing each judicial circuit to establish a community court program for defendants charged with certain misdemeanor offenses, which at a minimum:

- Adopts a nonadversarial approach.
- Establishes an advisory committee to recommend solutions and sanctions in each case.
- Considers the needs of the victim.
- Considers individualized treatment services for the defendant.
- Provides for judicial leadership and interaction.
- Monitors the defendant's compliance.

[190] The bill provides that these courses may include a driver training program, driver improvement course, or alcohol or substance abuse education or evaluation program as required under ss. 316.192, 316.193, 322.2616, 322.271, or 322.264, F.S.
[191] The Florida Courts, *Problem-Solving Courts*, available at http://www.flcourts.org/resources-and-services/court-improvement/problem-solving-courts/index.stml (last visited February 22, 2018). Florida created the first drug court in the United States in Miami-Dade County in 1989.

The chief judge in each county that elects to establish a community court program must issue an administrative order specifying the misdemeanors that are eligible for the program. In making such determination, the chief judge must consider the particular needs and concerns of the communities within the judicial circuit. The DOC, Department of Juvenile Justice (DJJ), Department of Health, FDLE, DOE, law enforcement agencies, and other government entities involved in the criminal justice system are required to support any community court programs established.

Participation in the community court program must be voluntary and each program shall have a resource coordinator who:

- Coordinates the responsibilities of the participating agencies and service providers;
- Provides case management services;
- Monitors compliance by defendants with court requirements; and
- Manages the collection of data for program evaluation and accountability.

Additionally, the chief judge of the judicial circuit must appoint an advisory committee for each community court. Membership must include, at a minimum the chief judge or a community court judge designated by the chief judge, who shall serve as chair, the SA, the PD, and the community court resource coordinator.[192]

The advisory committee's duties, in part, are to review each defendant's case and each committee member is permitted to make a recommendation to the judge, including appropriate sanctions and treatment solutions for the defendant. The judge must consider recommendations made by the advisory committee in determining sanctions and treatment with respect to each defendant.

The bill requires each judicial circuit that establishes a community court program to report client-level and programmatic data to the OSCA annually for program evaluation.[193]

Community court program funding must be secured from sources other than the state for costs not assumed by the state under s. 29.004, F.S. However, a program is not precluded from using funds provided for treatment and other services through state executive branch agencies.

Oversight Council (Sections 1 and 2)

The Florida Corrections Commission

The Florida Corrections Commission (Commission) was established by the Legislature in 1994[194] and abolished in 2006.[195] The Commission was housed within the DOC, but acted as an

[192] The committee may also include community stakeholders, treatment representatives, and other persons the chair deems appropriate.
[193] The bill provides that client-level data includes primary offenses resulting in the community court referral or sentence, treatment compliance, completion status, reasons for failing to complete the program, offenses committed during treatment and sanctions imposed, frequency of court appearances, and units of service; and programmatic data includes referral and screening procedures, eligibility criteria, type and duration of treatment offered, and residential treatment resources.
[194] Chapter 94-117, L.O.F.
[195] Chapter 06-32, L.O.F.

independent body[196] that reviewed the DOC and looked at policies of the entire criminal justice system affecting corrections.[197] The Commission consisted of nine members appointed by the Governor and subject to confirmation by the Senate.[198] The membership of the Commission was required to represent equally all geographic areas of the state, and each member had to be a citizen and registered to vote. The term for each Commission member was four-years.[199]

The primary functions of the Commission included, but were not limited to:
- Recommending major correctional policies and assuring proper execution of approved policies and revisions;
- Periodically reviewing the status of the state correctional system and recommending improvements to the Legislature and the Governor;
- Monitoring the overall financial status of the DOC, including management of revenue and bond proceeds;
- Reviewing annual budget requests, the comprehensive correctional master plan, and the tentative construction program for compliance with laws and policies of the DOC; and
- Regularly evaluating the efficiency, productivity, and management of the DOC.[200]

The Commission was specifically prohibited from interfering with the day-to-day operations of the DOC.[201]

The Commission held regular meetings, which were required to be noticed in accordance with Florida's public meetings laws.[202] The Commission was also required to appoint an executive staff that served under the direction of the Commission.[203]

Office of the Inspector General

In 1994, the Florida Legislature created the Office of the Chief Inspector General and an Office of Inspector General in each state agency.[204] Every state agency has an inspector general who achieves their mission through conducting professional and independent investigations, audits, and reviews with the goal of enhancing the public trust in government.[205]

The Office of the Chief Inspector General is responsible for promoting accountability, integrity, and efficiency in the Executive Office of the Governor (EOG) and in agencies under the jurisdiction of the Governor.[206] The Chief Inspector General serves as the Inspector General for

[196] Section 20.315(6)(a)3., F.S. (2005).
[197] Section 20.315(6)(a)1., F.S. (2005).
[198] Section 20.315(6)(a)2., F.S. (2005).
[199] *Id*.
[200] Section 20.315(6)(b), F.S. (2005).
[201] Section 20.315(6)(c), F.S. (2005).
[202] Article I, s. 24(b) of the Florida Constitution and s. 286.011, F.S., require all state, county, or municipal meetings to be open and noticed to the public.
[203] Section 20.315(6)(e), F.S. (2005).
[204] Chapter 94-235, L.O.F.
[205] Florida Inspectors General, available at http://www.floridaoig.com/default.htm (last visited February 24, 2018).
[206] Executive Office of the Governor (Chief Inspector General), *2016-2017 Annual Report*, available at http://www.floridaoig.com/library/Annual_rpts/2016-17-CIG-Annual-Report.pdf (last visited February 24, 2018).

the EOG and reports directly to the Governor.[207] The duties of the Office of the Chief Inspector General include, in part, conducting audits, investigations, and other activities.[208]

Councils

Section 20.03(7), F.S., defines a "council" as an advisory body created by specific statutory enactment and appointed to function on a continuing basis for the study of the problems arising in a specified functional or program area of state government and to provide recommendations and policy alternatives.

Florida has established a number of councils that address a wide variety of public policy topics, such as the Suicide Prevention Coordinating Council, Statewide Council on Human Trafficking, Regional Planning Councils, and Council on Arts and Culture.[209] Statutes that create councils at a minimum typically include provisions designating the specified number of members, procedures for appointing such members, and the purpose for and duties of the council.[210]

Effect of the Bill

The bill establishes the Florida Correctional Operations Oversight Council (Oversight Council) within the Office of the Chief Inspector General. The Office of the Chief Inspector General must provide administrative support to the Oversight Council; however, the Oversight Council is not under the control, supervision, or direction of the Office of the Chief Inspector General in the performance of its duties. Further, the Oversight Council is prohibited from interfering with the day-to-day operations of the DOC or the DJJ.

The Oversight Council will operate as a council as such term is defined in s. 20.03, F.S., with the specific purpose of overseeing matters relating to the corrections and juvenile justice continuum with an emphasis on the safe and effective operations of major institutions and facilities under the purview of the DOC and the DJJ. The bill also requires the council to make recommendations and findings on the policies of other components of the criminal justice system if such policies affect corrections or the juvenile justice continuum.

The Oversight Council is comprised of nine members of whom the Governor, President of the Senate, and the Speaker of the House of Representatives are each authorized to appoint three members. All members must be initially appointed by October 1, 2018. The term length will be four-years; however, one appointee of each appointing entity must be appointed to an initial two-year term to achieve staggered terms. Members will serve without compensation, but may receive reimbursement for per diem and travel expenses as provided in s. 112.061, F.S.[211]

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[207] Sections 14.32(4), F.S.
[208] Section 14.32(2), F.S.
[209] *See* ss. 14.20195, 16.617, 265.285, F.S.
[210] *See Id*. for examples of common purposes, duties, and membership structure of councils.
[211] Section 112.061, F.S., establishes standardized travel reimbursement rates, procedures, and limitations, with specified exceptions, that apply to all public officers, employees, and authorized persons whose travel is authorized and paid for by a public agency. Per diem and travel expenses cover costs such as lodging, meals, vehicle rental, gas, plane fare, tolls, or parking fees. Rates are dependent upon factors such as whether the business travel requires an overnight stay or day trip and the length of time away from official headquarters.

The bill requires that members are Florida residents and emphasizes, but does not require, that members have a background in prison operations, jail management, or the juvenile justice continuum of services. Appointments must be made in a manner that provides equitable representation to all geographic regions of the state. Members must provide representation to the state in its entirety and not conduct themselves in a manner that benefits a particular region.

A person is prohibited from being appointed as a member of the Oversight Council if he or she has an immediate family member that is employed by the DOC, the DJJ, a private institution, facility, or provider under contract with the DOC or the DJJ; or a direct or indirect interest in a contract, subcontract, franchise, privilege, or other benefit that can be awarded by either the DOC or the DJJ during the term of service.

The Oversight Council's primary duties include:

- Evaluating, investigating, and overseeing the daily operations of correctional and juvenile facilities and conducting announced and unannounced inspections of correctional and juvenile facilities,[212] including entering any facility housing prisoners, residents, or juveniles. Members must be provided immediate access to places requested and given the ability to communicate with any prisoner, resident, or juvenile privately with adequate security in place.
- Identifying and monitoring high-risk and problematic correctional or juvenile facilities and reporting findings and recommendations relating to these facilities.
- Providing technical assistance when appropriate.
- Submitting an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by November 1, that includes statutory, budgetary, and operational recommendations to the Legislature that address problems identified by the council.[213]
- Conducting confidential interviews with staff, officers, inmates, juveniles, volunteers, and public officials relating to the operations and conditions of correctional and juvenile facilities.
- Developing and implementing a monitoring tool that will be used to assess the performance of each correctional and juvenile facility.
- Conducting regular on-site visits to correctional and juvenile facilities.

Additionally, the Oversight Council must appoint an executive director to serve under the direction of the members. The bill provides that the executive director position will be governed by the classification plan and salary and benefits plan approved by the EOG.

The bill provides a specific appropriation of $168,074 recurring General Revenue funds and $37,855 nonrecurring General Revenue funds, and creates one FTE for the purpose of administering the Oversight Council at an authorized salary rate of $70,000.

[212] This provision applies to facilities operated by the state or a private contractor.
[213] If the bill becomes law, the first report is due by November 1, 2019.

Mutual Aid Agreements (Section 3)

The Florida Mutual Aid Act was established to ensure adequate coordination and preparations amongst law enforcement and other specified entities in the event of natural or manmade disasters or emergencies and other major law enforcement problems.[214] Section 23.1225, F.S., provides that mutual aid agreements are agreements between two or more law enforcement agencies to permit voluntary cooperation in routine matters or to render assistance in the event of a law enforcement emergency. A mutual aid agreement must generally be in writing and specify:

- The nature of the assistance to be rendered;
- The agency or entity that will bear liability in certain situations;
- Procedures for requesting and authorizing assistance;
- The agency or entity in charge of supervision;
- The time limit for the agreement;
- The terms of compensation; and
- Any other terms necessary to give effect to the agreement.[215]

Effect of the Bill

The bill amends s. 23.1225, F.S., specifying that in the event the Governor declares a state of emergency pursuant to ch. 252, F.S., a mutual aid agreement may be used to increase the presence of law enforcement to aid in traffic and crowd control, emergency response, and evacuation support.

Courthouse Security Provided by Sheriffs (Section 4)

Sheriffs

The Florida Constitution establishes five specific county officers, including the county sheriff. Each sheriff is elected by county voters for a four-year term. Abolishing the office of sheriff or revising the manner in which the sheriff is chosen may be provided by county charter or special law approved by a vote of the electors of the county under certain circumstances.[216]

Section 30.15, F.S., provides for the powers and duties of sheriffs. Some of the duties a sheriff, or his or her deputies, must perform within their respective counties include:

- Execute all process of the courts and board of county commissioners;
- Execute other writs, processes, warrants, and papers;
- Act as conservators of the peace and apprehend any person disturbing the peace; and
- Attend sessions of the circuit court and county court.

[214] Section 23.121, F.S.
[215] Section 23.1225(1), F.S. If the Governor declares a state of emergency pursuant to ch. 252, F.S., the requirement that an agreement to render emergency assistance be in writing may be waived by the participating agencies for up to 90 days after the Governor's declaration.
[216] FLA. CONST. art. III, s. 1.

If a sheriff fails to attend a session of the court, either in person or by deputy, the judge may appoint an interim sheriff to assume the sheriff's responsibilities and duties.[217] The sheriff is the executive officer of the county court and circuit court of the county.[218]

Judicial Administration

The Florida Constitution provides that the chief judge of each judicial circuit is responsible for the administrative supervision of the circuit courts and county courts in the circuit.[219] Some duties over which the chief judge has authority include:

- Regulate the use of courtrooms;
- Supervise dockets and calendars;
- Delegate to the trial court administrator the authority to bind the circuit in contract;
- Promote the prompt and efficient administration of justice; and
- Manage, operate, and oversee the jury system.[220]

Failure of any judge, clerk, SA, PD, or other officer of the court to comply with an order or directive of the chief judge under s. 43.26, F.S., constitutes neglect of duty.[221] Additionally, the Rules of Judicial Administration provides that the chief judge regulates the use of court facilities and directs the formation and implementation of policies and priorities for the operation of all courts and officers within the circuit.[222]

Effect of the Bill

The bill amends s. 30.15, F.S., requiring the sheriff and the governing board of the county to provide security for trial court facilities located within each county of a judicial circuit. The sheriff and the county must coordinate with the chief judge of the applicable judicial circuit on security matters for such facilities, but the sheriff and county retain operational control over the manner in which security is provided, as applicable, in such facilities. The bill provides that these provisions do not affect or erode the authority of counties under Article V, s. 14 of the Florida Constitution or s. 29.008, F.S., to provide and fund the security of facilities as defined s. 29.008(1)(e), F.S.[223] Additionally, the bill provides that sheriffs and their deputies, employees, and contractors are officers of the court when providing security for trial court facilities.

The chief judge of the judicial circuit retains decision-making authority to ensure the protection of due process rights, including, but not limited to, the scheduling and conduct of trials and other judicial proceedings, as part of his or her responsibility for the administrative supervision of the trial courts pursuant to s. 43.26, F.S.

[217] Section 30.12, F.S.
[218] Sections 26.49 and 34.07, F.S.
[219] FLA. CONST. art. V, s. 2(d).
[220] Section 43.26, F.S.; *See also* s. 40.001, F.S.
[221] Section 43.26(4), F.S.
[222] Fla. R. Jud. Admin. 2.215(b).
[223] These provisions address judicial funding.

Attorney's Fees in Specific Injunction Cases (Sections 5, 7 and 8)

Protective Injunctions

Protective injunctions are available under Florida law for victims of domestic violence, repeat violence, sexual violence, dating violence, and stalking.[224]

A protective injunction may prohibit a person from:
- Going to or being within 500 feet of the petitioner's residence, school, place of employment, or other specified place;
- Committing an act of violence against the petitioner;
- Telephoning, contacting, or otherwise communicating with the petitioner; and
- Knowingly and intentionally coming within 100 feet of the petitioner's motor vehicle.[225]

Violation of a protective injunction is a first-degree misdemeanor, punishable by up to one year in jail and a $1,000 fine.[226]

Procedure for Obtaining an Injunction

The process for obtaining an injunction in any of the above-mentioned circumstances is very similar and requires that the victim file a sworn petition for injunction that alleges:
- He or she is a victim of domestic violence; repeat, sexual, or dating violence; or stalking; or
- In the case of a petition for a domestic violence injunction, he or she has reasonable cause to believe he or she is in imminent danger of such violence.[227]

As soon as possible following the filing of the petition, a court must set a hearing to determine whether an immediate and present danger of the violence alleged exists. Upon finding an immediate and present danger, the court may grant an ex parte temporary injunction for 15 days. A court must then set a hearing with notice to the respondent, and upon such hearing with notice, may grant protective injunctive relief as it deems proper.[228]

Attorney's Fees

A court must award a reasonable attorney's fee to be paid by the losing party and the losing party's attorney on any claim or defense during a civil proceeding or action if the court finds that the losing party or losing party's attorney knew or should have known that a claim:
- Was not supported by the material facts necessary to establish the claim or defense; or
- Would not be supported by the application of then-existing law to those material facts.[229]

Florida law prohibits attorney fee awards stemming from domestic violence injunction proceedings; however, there is no such explicit prohibition for repeat violence, sexual violence, dating violence, or stalking injunction proceedings. In *Lopez v. Hall*, the Florida Supreme Court

[224] Sections 741.30, 784.046, and 784.0485, F.S.
[225] Sections 741.31, 784.047, and 784.0487, F.S.
[226] *Id*.
[227] Sections 741.30, 784.046, and 784.0485, F.S.
[228] *Id*.
[229] Section 57.105, F.S.

held that an award of attorney's fees was permissible in dating, repeat, and sexual violence injunction proceedings, as they were not explicitly prohibited by statute.[230]

Effect of the Bill

The bill amends ss. 57.105, 784.046, and 784.0485, F.S., prohibiting the award of attorney's fees in injunction proceedings for repeat violence, sexual violence, sexual violence, and stalking.

Reporting Provisions (Sections 15 and 17)

Reports Concerning Seized or Forfeited Property

The Florida Contraband Forfeiture Act (act)[231] provides for the seizure and civil forfeiture of property related to criminal and non-criminal violations of law.[232] Contraband and other property may be seized when utilized during a violation of, or for the purpose of violating, the act. Property constituting a "contraband article" includes, but is not limited to, a controlled substance as defined in ch. 893, F.S., any gambling paraphernalia being used or attempted to be used in violation of the state's gambling laws, and any motor fuel upon which the motor fuel tax has not been paid as required by law.[233]

Currently, any contraband article, vessel, motor vehicle, aircraft, other personal property, or real property used in violation of any provision of the act, or in, upon, or by means of which any violation of the act has taken or is taking place, may be seized and forfeited subject to the act.[234] If the court finds that the seizure occurred lawfully[235] and that probable cause exists for the seizure, the forfeiture may proceed as set forth in the act.[236]

When a seizing agency obtains a final judgment granting forfeiture of real or personal property, it may elect to:

- Retain the property for the agency's use;
- Sell the property at public auction or by sealed bid to the highest bidder;[237] or
- Salvage, trade, or transfer the property to any public or nonprofit organization.[238]

Section 932.7061, F.S., requires every law enforcement agency to submit an annual report by October 10 indicating whether the agency has seized or forfeited property under the act.[239] In the event that a law enforcement agency received or expended forfeited property or proceeds from the sale of forfeited property in accordance with the act, the annual report must document such receipts and expenditures.

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[230] No. SC16-1921 (Slip. Op.) (January 11, 2018).
[231] *See* ss. 932.701-932.7062, F.S.,
[232] Section 932.701(1), F.S.
[233] *See* s. 932.701(2)(a)1.-12., F.S.
[234] Section 932.703(1)(a), F.S.
[235] Section 932.703(1)(a), F.S., sets forth the circumstances that permit for a lawful seizure of property.
[236] Section 932.703(2)(c), F.S.
[237] Real property should be listed on the market and sold in a commercially reasonable manner after appraisal. Section 932.7055(1)(b), F.S.
[238] Section 932.7055(1)(a)-(c), F.S.
[239] Section 932.7061(1), F.S.

An agency that is in noncompliance with the reporting requirements in s. 932.7061, F.S., must be notified by the FDLE. Such agency has 60 days within receipt of the notification of noncompliance to comply with the reporting requirements. An agency that fails to comply within 60 days is subject to a civil fine of $5,000. The fine is determined by the Chief Financial Officer (CFO) and payable to the General Revenue Fund.[240] The FDLE must submit any substantial noncompliance to the CFO, which will then be responsible for the enforcement of the fine.[241]

The fiscal year for sheriff departments runs from October 1-September 30, making it difficult to gather all required information and submit it by October 10 to comply with the statutory mandate.

Effect of the Bill

The bill changes the deadline for the submission of such report to December 1.

Pretrial Release Annual Report

Current law requires each pretrial release program[242] to submit an annual report no later than March 31 for the previous calendar year that contains information about each program, including, but not limited to, the amount of fees paid by defendants to the pretrial release program and the number of persons employed by the program.[243]

Effect of the Bill

The bill requires the following additional information to be contained in the annual report:

- The number of defendants accepted into a pretrial release program who paid a surety or cash bail or bond;
- The number of defendants for whom a risk assessment tool was used in determining whether the defendant should be released pending the disposition of the case and the number of defendants for whom a risk assessment tool was not used;
- The type of each criminal charge of a defendant accepted into a pretrial release program including, at a minimum, the number of defendants charged with dangerous crimes as defined in s. 907.041, F.S., nonviolent felonies, and misdemeanors only.
- The number of defendants accepted into a pretrial release program with no prior criminal conviction.

The bill defines "nonviolent felony" to exclude the commission of, an attempt to commit, or a conspiracy to commit any of the following:

- An offense enumerated in s. 775.084(1)(c), F.S.;
- An offense that requires a person to register as a sexual predator in accordance with s. 775.21, F.S., or as a sexual offender in accordance with s. 943.0435, F.S.;

[240] Section 932.7062, F.S.
[241] *Id.*
[242] "Pretrial release program" means an entity, public or private, that conducts investigations of pretrial detainees, makes pretrial release recommendations to a court, and electronically monitors and supervises pretrial defendants. Section 907.043(2)(b), F.S.
[243] Section 907.043(4), F.S.

- Failure to register as a sexual predator in violation of s. 775.21, F.S., or as a sexual offender in violation of s. 943.0435, F.S.;
- Facilitating or furthering terrorism in violation of s. 775.31, F.S.;
- A forcible felony as described in s. 776.08, F.S.;
- False imprisonment in violation of s. 787.02, F.S.;
- Burglary of a dwelling or residence in violation of s 810.02(3), F.S.;
- Abuse, aggravated abuse, and neglect of an elderly person or disabled adult in violation of s. 825.102, F.S.;
- Abuse, aggravated abuse, and neglect of a child in violation of s. 827.03, F.S.;
- Poisoning of food or water in violation of s. 859.01, F.S.;
- Abuse of a dead human body in violation of s. 872.06, F.S.;
- A capital offense in violation of ch. 893, F.S.;
- An offense that results in serious bodily injury or death to another human; or
- A felony offense in which the defendant used a weapon or firearm in the commission of the offense.

The bill is effective October 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The county or municipality mandates provision of article VII, section 18 of the Florida Constitution may apply because of several provisions in the bill, including the requirement that all county-operated detention facilities collect and transmit data elements to the FDLE, each county develop an ASP, and each county establish a Driver License Reinstatement Days, require counties to expend funds.

Article VII, s. 18(a) of the Florida Constitution provides, in pertinent part, that "no county or municipality shall be bound by any general law requiring such county or municipality to spend funds or take an action requiring the expenditure of funds unless the legislature has determined that such law fulfills an important state interest and unless the law requiring such expenditure is approved by two-thirds of the membership in each house of the legislature."

The bill does not contain a legislative finding that the act fulfills an important state interest.
These requirements do not apply[244] to laws that have an insignificant fiscal impact, [245] which for fiscal year 2017-2018 is $2.05 million or less.[246]

[244] FLA. CONST. art. VII, s. 18(d).
[245] 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.
[246] Based on the Demographic Estimating Conference's population adopted on Dec. 5, 2017. The conference packet is available at http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf.

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:

Certificate of Achievement and Employability

The bill may result in a greater number of state inmates being able to find employment upon release from incarceration which could have an indeterminate positive impact on the private sector.

Attorney's Fees

The bill prohibits the court from awarding attorney fees in proceedings for protective injunctions for repeat, sexual, or dating violence or stalking. This change may have an indeterminate, but likely insignificant, impact on attorneys.

Pretrial Release Programs

To the extent that pretrial release programs use vendors to monitor released defendants, there may be a fiscal impact to collect additional data that is not currently collected by these vendors.

C. Government Sector Impact:

Supervised Bond Program

Local governments may experience reduced costs as a result of the implementation of the Bond Program. A county may implement a supervised bond program, which allows an eligible defendant to be released on active supervision and some form of bond or ROR while awaiting trial. As a result, the county's costs to supervise the participants may be decreased from the full daily county jail per diem to the much lower per diem rates for active electronic monitoring or continuous alcohol monitoring technologies, or both.

Drug Trafficking Sentencing Departure

The Criminal Justice Impact Conference (CJIC) estimates that the provisions of the bill relating to departure from drug trafficking mandatory minimum sentences will have a "negative significant" prison bed impact (i.e., a decrease of more than 25 prison beds).[247]

Risk Assessment Pilot Program

The bill creates a Risk Assessment Pilot Program that utilizes a RAI to ensure better programming for defendants after arrest. To the extent that this program reduces recidivism, the bill may reduce the need for jail beds and prison beds.

The DOC estimates it will cost $321,584 and 4 FTE to implement the requirements of this bill. Staff will be needed at each of the county pilot sites for implementation, training, monitoring the data and assessment environments to identify and resolve issues onsite. Staff will also be required to be project managers and will be used to ensure communication, monitor overall logistics, conduct analysis and prepare and submit necessary reports.[248] In addition, the DOC also estimates it will cost $763,575 for technology-related costs associated with a modified version of the spectrum assessment system.[249]

Data Collection

Local Detention Facilities

The bill will have an indeterminate impact on local administrators of county detention facilities by requiring the reporting and transmission of data from the facilities to the FDLE on a weekly basis. According to the Florida Sheriffs Association, the fiscal impact will be significant as each jail operates an independent jail management system. Additionally, not all systems currently collect the data elements required by the bill and interfacing the jail management systems with the FDLE may be problematic and may require additional technology upgrades to resolve.[250] Depending on the size of the facility and current data capabilities, some counties may need to hire additional positions to input and maintain the data and the requirements may involve technology upgrades or installing new systems.

Counties that operate a pretrial release program may also have an indeterminate fiscal impact due to the additional data elements that must be collected and reported to the FDLE.

[247] 2018 Conference Results (through February 12, 2018), CJIC, available at http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/CJIC18.xls (last visited on Feb. 14, 2018).
[248] DOC, *Agency Analysis for SB 1218*, p. 5, January 26, 2018 (on file with Senate Criminal Justice Committee).
[249] *Id*. at 7.
[250] Email from Florida Sheriffs Association Staff (February 23, 2018) (on file with Senate Criminal Justice Committee).

Clerks of the Court

The clerks report that the bill will have a significant fiscal impact on the clerks. The clerks in the Sixth Judicial Circuit (Pinellas and Pasco Counties) indicate they will need to modify their individual case management systems (CMS) for missing data elements. Additionally, CCIS will need to be modified to transmit information to the FDLE. The clerks estimate the cost to implement the bill for the Sixth Judicial Circuit is approximately $2 million for the first year of implementation and approximately $600,000 of recurring funds will be needed for subsequent years.[251] Other circuits will likely have similar fiscal impacts.

Department of Corrections

The bill will have a fiscal impact on the DOC. The requirements of reporting additional budget information will require one additional full time employee (Senior Management Analyst II) to implement at a cost of approximately $93,000 per year.

In order to create the digitized scoresheet and provide the additional data information requested there will be significant technology impact, which will include developing new applications to create the digitized scoresheet, and completing programming changes and development to the OBIS related to offender tracking and information screens. According to the DOC, these changes will cost approximate $340,000. However, it is anticipated that this could be updated at minimal cost given that there is already an electronic version of the scoresheet in existence.[252]

Florida Department of Law Enforcement

The bill will have a significant fiscal impact on the FDLE for receiving, publishing, maintaining, and storing the data. The bill requires upkeep and maintenance of the data. The FDLE may need to contract with other vendors to facilitate the publicly available website, allow users to determine their research parameters and data elements to explore, and download the data in a format of their choice.

The bill authorizes nine FTE positions with associated salary rate of 476,163 and appropriates the recurring sum of $665,884 and the nonrecurring sum of $1,084,116 from the General Revenue Fund to the FDLE to accomplish the goals of the bill and to begin the transition to incident-based reporting to the FBI. In addition to the FY 2018-19 appropriation, the FDLE reports it will need three FTE with a cost of $276,069 in year one for salary, benefits, expense, and human resources services and $264,804 in recurring years. Additionally, the FDLE recommends developing a new information system that will make data specified in the bill accessible to the public through the FDLE website. The FDLE estimates the cost to be $6.4 million over the next 24 months to cover the

[251] The Clerks of the Court, *HB 7071 Criminal Justice Data Transparency Pilot Initiation Analysis – Sixth Judicial Circuit*, p. 1, provided by the Florida Clerks of Court Operations Corporation (Feb. 8, 2018).
[252] DOC, *Agency Analysis of 2018 House Bill 7071*, p. 8, February 8, 2018 (on file with Senate Criminal Justice Staff).

technology impact of the bill with a recurring cost to manage the database of approximately $319,000.[253]

The FDLE does not yet have a specific fiscal impact estimate, but expects the impact to be significant. If the bill passes, the FDLE anticipates holding a series of workshops with the clerks, SAs, PDs, sheriffs and county detention facility administrators, and the DOC. The FDLE anticipates submitting a legislative budget request to address the significant fiscal impact created by this bill.[254]

Additionally, the FDLE reports that there will likely be a loss in revenue that is normally collected under s. 943.053(3)(e), F.S., which authorizes the FDLE, for a fee of $24 per record to the public or reduced for certain state agencies, to provide criminal history information. The provisions of the bill creating s. 900.05, F.S., are in direct conflict with s. 943.053, F.S., due to the lack of fee charged for information that is similar in nature to that which is obtained through a criminal background check for a fee. This could negatively affect the amount of record checks requested and reduce revenue to the FDLE.[255]

State Attorneys and Public Defenders

The bill will have an indeterminate, but potentially significant, fiscal impact on the SAs and PDs. It is unknown how much of the information required by the bill is currently collected by these entities. The additional data and weekly transmission requirements may require more staff for the twenty SA and PD offices, as well as updated or new technology.

Reinstatement Days Program

The bill requires counties to establish a Reinstatement Days Program to assist persons in obtaining a reinstatement of a driver license. To the extent that this provision increases workload to the specified entities that are required to participate, the local governments may incur additional but indeterminate costs.

Court Security

Currently, a sheriff must provide security at any court facility, which includes office space relating to court administration. The bill limits this duty to securing "trial court facilities." Therefore, the bill may reduce the fiscal impact to local governments.

Probation Provisions

The CJIC considered HB 7089, which has these identical provisions, on February 19, 2018, and determined that creating statewide ASPs will have a negative significant impact on the prison population (i.e. decrease of more than 25 prison beds). The CJIC

[253] *See* FDLE, *Agency Analysis of HB 7071 (Draft)*, p. 2-4, February 13, 2018 (on file with Senate Criminal Justice Committee) (hereinafter cited as "The FDLE HB 7071 Analysis").
[254] *Id*., p. 4.
[255] *Id*. at 6.

reports that in FY 2016-17, 5,443 technical violators were sentenced to prison.[256] The ASP would apply to certain technical violators and result in greater non-prison sanctions for these violators.

However, one of the ASP sanctions included in the bill is up to 5 days incarceration in a county detention facility for a low-risk violation and up to 21 days for a moderate-risk violation. This section will likely result in increased but indeterminate costs on local government.

The bill requires the DOC to submit additional information to the FCIC if the court modifies conditions of probation. This requirement will cost the DOC a nonrecurring amount of $6,800 to modify their existing data feed to the FDLE and a nonrecurring amount of $13,600 to modify the OBIS. [257] It is anticipated that these fiscal impacts can be absorbed within existing resources.

Reentry Provisions

Transition Assistance

The bill has a fiscal impact to the DOC for the provisions relating to transition assistance. The DOC indicates that Transition Assistant Specialists have not been funded since 2003. To implement the provisions in the bill, the DOC indicates a need for 13 Correctional Services Assistant Consultant positions at a total cost of $834,119 ($774,982 recurring; $59,137 nonrecurring). [258]

Currently, the DOC does not have the programming capability to provide for nonprofit faith-based, business and professional, civic or community organizations to apply to be registered to provide inmate reentry services. In order to accomplish this, a new system/web portal would need to be created or purchased. The DOC indicates that the cost to create a new system/web portal is indeterminate and may require a procurement to identify possible solutions.[259]

Entrepreneurship Program

The bill allows the DOC to develop an entrepreneurship program. If the DOC elects to do so, the bill requires the program to be implemented within existing resources. In its analysis, the DOC identifies the need to have one Correctional Services Consultant to coordinate program services at a total cost of $68,989 ($64,440 recurring; $4,549 nonrecurring) and a recurring cost of $200,000 to implement and provide services at one location.[260]

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[256] Economic and Demographic Research (EDR), Criminal Justice Impact Conference, February 19, 2018, available at http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/PCBJDC1803.pdf (last visited February 22, 2018).
[257] The DOC HB 7089 Analysis, p. 8.
[258] DOC, *Agency Analysis of HB 7089*, p. 3 (February 20, 2018) (on file with Senate Criminal Justice Committee) (hereinafter cited as "The DOC HB 7089 Analysis").
[259] *Id*. at 8.
[260] *Id*. at 4.

Certificates of Achievement and Employability

The bill requires the DOC to fund the CAE program within existing resources. The DOC indicates it will cost $207,825 to develop a system to transmit the necessary information to the various licensing agencies in the state including the DBPR and the ACHA.

Conditional Medical Release

The bill expands CMR by creating new CMR designations and modifying current designations, which will likely cause an increased number of inmates to be referred to the FCOR for CMR. Additionally, the bill requires the FCOR to release inmates that qualify for release under the Mandatory CMR process. However, it is unknown how many additional inmates will be eligible for release under the new provisions of the bill. To the extent that the bill increases the number of inmates released on CMR, the bill will likely result in a negative indeterminate prison bed impact (i.e., an unquantifiable decrease in prison beds).

Oversight Council

The bill provides a specific appropriation of $168,074 recurring General Revenue funds and $37,855 nonrecurring General Revenue funds, and creates one FTE for the purpose of administering the Oversight Council at an authorized salary rate of $70,000.

Additionally, to the extent that creating the Oversight Council improves the corrections and juvenile justice continuum systems, the bill may result in cost savings.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Lines 463-503: The bill creates a Reinstatement Days Program and provides that the events may be held on one or more days. However, the bill language does not indicate if these events are to be recurring events or just one time. The bill may need clarification if the intent is to require counties to hold these events on an annual basis.

Lines 642-644: The definition of "prior incarceration with the state" includes reporting any prior history of a defendant being incarcerated in a county detention facility. This may need to be clarified to indicate whether this reporting requirement applies to only post-disposition sentencing to a county jail or also incarceration in a county jail while awaiting trial.

Lines 652-888: There is no data collection requirement that will capture cases that are assigned to regional conflict counsels or private attorneys that are appointed by the court to handle indigent clients.

Lines 889-900: The FDLE reports that it is unable to meet the July 1, 2019, date to publish all data received under the bill and recommends the effective date be moved to July 1, 2020.[261]

Lines 1477-1482: The definition of "eligible inmate" is not clear as to what makes a person eligible. Additionally, the title of this definition may be confusing as it applies to eligible persons who are out of custody on supervision and eligible persons who are incarcerated with the DOC, whereas the term inmate tends to be associated solely with persons who are incarcerated.

Lines 1562-1590: The bill attempts to create a process whereby specified eligible inmates can provide a CAE to a state agency and receive an individualized review for purposes of obtaining licensure or certification. However, the language related to the effect of a CAE for an unemployed certificate holder does not appear to have an impact. The bill provides that the CAE provides a rebuttable presumption, but does not impact the status of the mandatory civil impacts. Without reclassifying the mandatory civil impact to a discretionary civil impact, an agency will be bound by the requirement to deny licensure to a person that has a criminal conviction.

Lines 1593-1601: The DOC does not monitor inmates after release from prison, unless there is a specific judicial order of post-release supervision. The bill requires the DOC to revoke a certificate of achievement and employability, if the certificate holder is convicted or pleads guilty to a felony. Unless a court sentences the certificate holder to prison or state probation, the DOC may not know of a new felony conviction.

Lines 1822-1840: The language of the bill seems to not have a substantive impact. Courts are provided specific authority for sentencing which includes placing an offender on probation. However, probation and administrative probation are defined independently and it does not appear that anything would change for sentencing options without a specific reference. If the language is intended to permit courts to sentence an offender to administrative probation, the bill needs to provide a specific reference to administrative probation.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 14.32, 23.1225, 30.15, 57.105, 784.046, 784.0485, 893.135, 907.043, 921.0024, 932.7061, 944.704, 944.705, 944.801, 947.005, 947.149, 948.001, 948.013, 948.03, and 948.06.

This bill creates the following sections of the Florida Statutes: 322.75, 900.05, 907.042, 907.0421, 943.687, 944.805, 944.8055, 944.806, 944.8065, 945.041, and 948.081.

The bill reenacts the following sections of the Florida Statutes: 447.203, 944.206, 316.1935, 775.084, 775.087, 784.07, 790.235, 794.0115, 893.135, 921.0024, 944.605, 944.70, 947.13, and 947.141.

[261] *Id*.

IX. Additional Information:

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

Recommended CS/CS by Appropriations Subcommittee on Criminal and Civil Justice on February 21, 2018:

- Creating the "Florida Correctional Operations Oversight Council" to oversee the criminal and juvenile justice systems, including an appropriation with one FTE position in the Executive Office of the Governor to operate the oversight council;
- Clarifying that law enforcement mutual aid agreements may be used to increase law enforcement presence in the event of an emergency response or evacuation;
- Requiring sheriffs to provide security to the trial court and coordinate with the chief judge on security matters;
- Requiring each circuit to establish a Reinstatement Days Program involving specified entities and hold events through the program on one or more days where a person can pay specified fees and obtain license reinstatement;
- Prohibiting issuance of an attorney's fee in protective injunctions for repeat, sexual, or dating violence or stalking;
- Authorizing a court to depart from the imposition of a mandatory minimum sentence in drug trafficking cases if certain circumstances are met;
- Establishing a centralized system of uniform data collection for the entire criminal justice system to ensure data transparency;
- Requiring specified criminal justice entities to collect certain data on a monthly basis and report such data to the FDLE quarterly;
- For data reported pursuant to data transparency provisions, the FDLE must:
  - Establish a unique identifier for every person who is the subject of a criminal case, which will be used for all local and state entities' reported data related to that person in order to track that individual's entire experience in Florida's criminal justice system;
  - Create a publicly accessible and searchable database for the data reported;
- Modifying the sentencing scoresheet to a digital format and requiring information contained in the scoresheet to be reported to the FDLE and included in the publicly available database;
- Creating a pilot program in the 6th Judicial Circuit to ensure program data collected is valid and providing an appropriation, including nine FTEs, within the FDLE to support the implementation of data collection and transparency;
- Authorizing counties to establish a Bond Program, which allows eligible defendants to be released on active electronic monitoring, continuous alcohol monitoring, or both subsequent to the administration of a RAI by the county's sheriff and acceptance into the Bond program;
- Creating a Risk Assessment Pilot Program in Hillsborough, Pasco, and Pinellas Counties that requires the counties to administer a RAI to all persons arrested for a felony offense in the county for use in programming and sentencing;
- Requiring transition assistance staff within the DOC to identify industry certifications or job assignment credentialing for which an inmate is eligible;

- Requiring the DOC to provide inmates with a comprehensive community reentry resource directory that includes specified information related to services and portals available in the county to which the inmate is to be released;
- Permitting specified entities to apply with the DOC to be registered to provide inmate reentry services and requiring the DOC to create a process for screening, approving, and registering such entities;
- Authorizing the DOC to contract with specified Veteran's Advocacy Clinics to assist qualified veterans with obtaining services in the community upon release;
- Authorizing the DOC to develop a Prison Entrepreneurship Program that includes education with specified curriculum;
- Creating a "certificate of achievement and employability" application process where the DOC may issue certificates to specified eligible inmates that require licensing agencies to individually consider licensing decisions of certificate holders;
- Prohibiting a licensing agency from denying a professional license to a certificate holder solely on the basis of a criminal conviction;
- Creating two new designations for CMR ("inmate with a debilitating illness" and "medically frail inmate") and modifying the current designation of "terminally ill inmate";
- Creating a new "Mandatory Conditional Medical Release" process that requires, rather than permits, the FCOR to release an inmate that meets one of four designations if specified factors are met;
- Requiring each circuit to create an alternative sanctions program to handle specified types and occurrences of technical violations of probation or community control outside of a hearing with the judge's concurrence;
- Authorizing a circuit to create a community court program for certain defendants charged with misdemeanors;
- Adding specified data to the information that must be reported in the OPPAGA's annual pretrial programs report (s. 907.043, F.S.);
- Requiring the counties to report use and success of the supervised bond program and community court programs created by the act; and
- Modifying the submission date from October 10th to December 1st for the annual contraband seizure report (s. 932.7061, F.S.).

CS by Criminal Justice on January 29, 2018:
The committee substitute removes all provisions related to the charitable bail program and clarifies that the office of the county chief correctional officer will administer the RAI to persons arrested for a felony in the participating county.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
03/02/2018	.	
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The Committee on Appropriations (Brandes) recommended the following:

Senate Amendment (with title amendment)

Between lines 2200 and 2201
insert:

Section 34. Paragraphs (c), (d), and (e) of subsection (2) and paragraphs (a), (b), and (c) of subsection (3) of section 812.014, Florida Statutes, are amended to read:

812.014 Theft.—

(2)

(c) It is grand theft of the third degree and a felony of

the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the property stolen is:

1. Valued at $1,000 ~~$300~~ or more, but less than $5,000.

2. Valued at $5,000 or more, but less than $10,000.

3. Valued at $10,000 or more, but less than $20,000.

~~4. A will, codicil, or other testamentary instrument.~~

4.~~5.~~ A firearm.

5.~~6.~~ A motor vehicle, except as provided in paragraph (a).

6.~~7.~~ Any commercially farmed animal, including any animal of the equine, bovine, or swine class or other grazing animal; a bee colony of a registered beekeeper; and aquaculture species raised at a certified aquaculture facility. If the property stolen is aquaculture species raised at a certified aquaculture facility, then a $10,000 fine shall be imposed.

~~8. Any fire extinguisher.~~

7.~~9.~~ Any amount of citrus fruit consisting of 2,000 or more individual pieces of fruit.

~~10. Taken from a designated construction site identified by the posting of a sign as provided for in s. 810.09(2)(d).~~

~~11. Any stop sign.~~

~~12. Anhydrous ammonia.~~

8.~~13.~~ Any amount of a controlled substance as defined in s. 893.02. Notwithstanding any other law, separate judgments and sentences for theft of a controlled substance under this subparagraph and for any applicable possession of controlled substance offense under s. 893.13 or trafficking in controlled substance offense under s. 893.135 may be imposed when all such offenses involve the same amount or amounts of a controlled substance.

However, if the property is stolen within a county that is subject to a state of emergency declared by the Governor under chapter 252, the property is stolen after the declaration of emergency is made, and the perpetration of the theft is facilitated by conditions arising from the emergency, the offender commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the property is valued at $5,000 or more, but less than $10,000, as provided under subparagraph 2., or if the property is valued at $10,000 or more, but less than $20,000, as provided under subparagraph 3. As used in this paragraph, the term "conditions arising from the emergency" means civil unrest, power outages, curfews, voluntary or mandatory evacuations, or a reduction in the presence of or the response time for first responders or homeland security personnel. For purposes of sentencing under chapter 921, a felony offense that is reclassified under this paragraph is ranked one level above the ranking under s. 921.0022 or s. 921.0023 of the offense committed.

(d) It is grand theft of the third degree and a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the property stolen is valued at $1,000 ~~$100~~ or more, but less than $5,000 ~~$300~~, and is taken from a dwelling as defined in s. 810.011(2) or from the unenclosed curtilage of a dwelling pursuant to s. 810.09(1).

(e) Except as provided in paragraph (d), if the property stolen is valued at $500 ~~$100~~ or more, but less than $1,000 ~~$300~~, the offender commits petit theft of the first degree, punishable as a misdemeanor of the first degree, as provided in

s. 775.082 or s. 775.083.

(3)(a) Theft of any property not specified in subsection (2) is petit theft of the second degree and a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, and as provided in subsection (5), as applicable.

(b) A person who commits petit theft and who has previously been convicted of any theft commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(c) A person who commits petit theft of the first degree and who has previously been convicted two or more times of any theft as an adult commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083, if the third or subsequent petit theft offense occurs within 3 years of his or her most recent theft conviction.

Section 35. Subsections (8) and (9) of section 812.015, Florida Statutes, are amended to read:

812.015 Retail and farm theft; transit fare evasion; mandatory fine; alternative punishment; detention and arrest; exemption from liability for false arrest; resisting arrest; penalties.—

(8) Except as provided in subsection (9), a person who commits retail theft commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the property stolen is valued at $1,000 ~~$300~~ or more, and the person:

(a) Individually, or in concert with one or more other persons, coordinates the activities of one or more individuals in committing the offense, in which case the amount of each individual theft is aggregated to determine the value of the

property stolen;

(b) Commits theft from more than one location within a 48-hour period, in which case the amount of each individual theft is aggregated to determine the value of the property stolen;

(c) Acts in concert with one or more other individuals within one or more establishments to distract the merchant, merchant's employee, or law enforcement officer in order to carry out the offense, or acts in other ways to coordinate efforts to carry out the offense; or

(d) Commits the offense through the purchase of merchandise in a package or box that contains merchandise other than, or in addition to, the merchandise purported to be contained in the package or box.

(9) A person commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the person:

(a) Violates subsection (8) as an adult and within 3 years prior to the violation he or she has ~~previously~~ been convicted as an adult of a violation of subsection (8); or

(b) Individually, or in concert with one or more other persons, coordinates the activities of one or more persons in committing the offense of retail theft where the stolen property has a value in excess of $3,000.

Section 36. Paragraphs (a), (b), (d), (e), 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

711458

(a) LEVEL 1

Florida Statute	Felony Degree	Description
24.118(3)(a)	3rd	Counterfeit or altered state lottery ticket.
212.054(2)(b)	3rd	Discretionary sales surtax; limitations, administration, and collection.
212.15(2)(b)	3rd	Failure to remit sales taxes, amount greater than $300 but less than $20,000.
316.1935(1)	3rd	Fleeing or attempting to elude law enforcement officer.
319.30(5)	3rd	Sell, exchange, give away certificate of title or identification number plate.
319.35(1)(a)	3rd	Tamper, adjust, change, etc., an odometer.
320.26(1)(a)	3rd	Counterfeit, manufacture, or sell registration license

			plates or validation stickers.
136			
	322.212 (1)(a)-(c)	3rd	Possession of forged, stolen, counterfeit, or unlawfully issued driver license; possession of simulated identification.
137			
	322.212(4)	3rd	Supply or aid in supplying unauthorized driver license or identification card.
138			
	322.212(5)(a)	3rd	False application for driver license or identification card.
139			
	414.39(3)(a)	3rd	Fraudulent misappropriation of public assistance funds by employee/official, value more than $200.
140			
	443.071(1)	3rd	False statement or representation to obtain or increase reemployment assistance benefits.
141			
	509.151(1)	3rd	Defraud an innkeeper, food or lodging value greater

			than $300.
142			
	517.302(1)	3rd	Violation of the Florida Securities and Investor Protection Act.
143			
	562.27(1)	3rd	Possess still or still apparatus.
144			
	713.69	3rd	Tenant removes property upon which lien has accrued, value more than $50.
145			
	812.014(3)(c)	3rd	Petit theft as adult (3rd or subsequent conviction) within certain time; theft of any property not specified in subsection (2).
146			
	812.081(2)	3rd	Unlawfully makes or causes to be made a reproduction of a trade secret.
147			
	815.04(5)(a)	3rd	Offense against intellectual property (i.e., computer programs, data).
148			
	817.52(2)	3rd	Hiring with intent to defraud, motor vehicle

			services.
149			
	817.569(2)	3rd	Use of public record or public records information or providing false information to facilitate commission of a felony.
150			
	826.01	3rd	Bigamy.
151			
	828.122(3)	3rd	Fighting or baiting animals.
152			
	831.04(1)	3rd	Any erasure, alteration, etc., of any replacement deed, map, plat, or other document listed in s. 92.28.
153			
	831.31(1)(a)	3rd	Sell, deliver, or possess counterfeit controlled substances, all but s. 893.03(5) drugs.
154			
	832.041(1)	3rd	Stopping payment with intent to defraud $150 or more.
155			
	832.05(2)(b) & (4)(c)	3rd	Knowing, making, issuing worthless checks $150 or more or obtaining property in return for worthless

			check $150 or more.
156			
	838.15(2)	3rd	Commercial bribe receiving.
157			
	838.16	3rd	Commercial bribery.
158			
	843.18	3rd	Fleeing by boat to elude a law enforcement officer.
159			
	847.011(1)(a)	3rd	Sell, distribute, etc., obscene, lewd, etc., material (2nd conviction).
160			
	849.01	3rd	Keeping gambling house.
161			
	849.09(1)(a)-(d)	3rd	Lottery; set up, promote, etc., or assist therein, conduct or advertise drawing for prizes, or dispose of property or money by means of lottery.
162			
	849.23	3rd	Gambling-related machines; "common offender" as to property rights.
163			
	849.25(2)	3rd	Engaging in bookmaking.
164			
	860.08	3rd	Interfere with a railroad

		signal.
860.13(1)(a)	3rd	Operate aircraft while under the influence.
893.13(2)(a)2.	3rd	Purchase of cannabis.
893.13(6)(a)	3rd	Possession of cannabis (more than 20 grams).
934.03(1)(a)	3rd	Intercepts, or procures any other person to intercept, any wire or oral communication.

(b) LEVEL 2

Florida Statute	Felony Degree	Description
379.2431 (1)(e)3.	3rd	Possession of 11 or fewer marine turtle eggs in violation of the Marine Turtle Protection Act.
379.2431	3rd	Possession of more than

	(1)(e)4.		11 marine turtle eggs in violation of the Marine Turtle Protection Act.
176			
	403.413(6)(c)	3rd	Dumps waste litter exceeding 500 lbs. in weight or 100 cubic feet in volume or any quantity for commercial purposes, or hazardous waste.
177			
	517.07(2)	3rd	Failure to furnish a prospectus meeting requirements.
178			
	590.28(1)	3rd	Intentional burning of lands.
179			
	784.05(3)	3rd	Storing or leaving a loaded firearm within reach of minor who uses it to inflict injury or death.
180			
	787.04(1)	3rd	In violation of court order, take, entice, etc., minor beyond state limits.

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806.13(1)(b)3.	3rd	Criminal mischief; damage $1,000 or more to public communication or any other public service.
810.061(2)	3rd	Impairing or impeding telephone or power to a dwelling; facilitating or furthering burglary.
810.09(2)(e)	3rd	Trespassing on posted commercial horticulture property.
812.014(2)(c)1.	3rd	Grand theft, 3rd degree; $1,000 ~~$300~~ or more but less than $5,000.
812.014(2)(d)	3rd	Grand theft, 3rd degree; $1,000 ~~$100~~ or more but less than $5,000 ~~$300~~, taken from unenclosed curtilage of dwelling.
812.015(7)	3rd	Possession, use, or attempted use of an antishoplifting or

		inventory control device countermeasure.
817.234(1)(a)2.	3rd	False statement in support of insurance claim.
817.481(3)(a)	3rd	Obtain credit or purchase with false, expired, counterfeit, etc., credit card, value over $300.
817.52(3)	3rd	Failure to redeliver hired vehicle.
817.54	3rd	With intent to defraud, obtain mortgage note, etc., by false representation.
817.60(5)	3rd	Dealing in credit cards of another.
817.60(6)(a)	3rd	Forgery; purchase goods, services with false card.
817.61	3rd	Fraudulent use of credit

			cards over $100 or more within 6 months.
826.04		3rd	Knowingly marries or has sexual intercourse with person to whom related.
831.01		3rd	Forgery.
831.02		3rd	Uttering forged instrument; utters or publishes alteration with intent to defraud.
831.07		3rd	Forging bank bills, checks, drafts, or promissory notes.
831.08		3rd	Possessing 10 or more forged notes, bills, checks, or drafts.
831.09		3rd	Uttering forged notes, bills, checks, drafts, or promissory notes.
831.11		3rd	Bringing into the state forged bank bills, checks, drafts, or

		notes.
832.05(3)(a)	3rd	Cashing or depositing item with intent to defraud.
843.08	3rd	False personation.
893.13(2)(a)2.	3rd	Purchase of any s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs other than cannabis.
893.147(2)	3rd	Manufacture or delivery of drug paraphernalia.

(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.
210			
	499.0051(1)	3rd	Failure to maintain or deliver transaction history, transaction information, or transaction statements.
211			
	499.0051(5)	2nd	Knowing sale or delivery, or possession with intent to sell, contraband prescription drugs.
212			
	517.07(1)	3rd	Failure to register securities.
213			
	517.12(1)	3rd	Failure of dealer, associated person, or issuer of securities to register.
214			
	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.
223			
	787.03(1)	3rd	Interference with custody; wrongly takes minor from appointed guardian.
224			
	787.04(2)	3rd	Take, entice, or remove child beyond state limits with criminal intent pending custody proceedings.
225			
	787.04(3)	3rd	Carrying child beyond state lines with criminal intent to avoid producing child at custody hearing or delivering to designated person.
226			
	787.07	3rd	Human smuggling.
227			
	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.-7. ~~812.014 (2)(c)4.-10.~~	3rd	Grand theft, 3rd degree, a ~~will,~~ firearm, motor vehicle, livestock, bee colony, aquaculture species, citrus fruit ~~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.
837.02(1)	3rd	Perjury in official proceedings.
837.021(1)	3rd	Make contradictory statements in official proceedings.
838.022	3rd	Official misconduct.
839.13(2)(a)	3rd	Falsifying records of an individual in the care

		and custody of a state agency.
839.13(2)(c)	3rd	Falsifying records of the Department of Children and Families.
843.021	3rd	Possession of a concealed handcuff key by a person in custody.
843.025	3rd	Deprive law enforcement, correctional, or correctional probation officer of means of protection or communication.
843.15(1)(a)	3rd	Failure to appear while on bail for felony (bond estreature or bond jumping).
847.0135(5)(c)	3rd	Lewd or lascivious exhibition using computer; offender less than 18 years.
874.05(1)(a)	3rd	Encouraging or

		recruiting another to join a criminal gang.
893.13(2)(a)1.	2nd	Purchase of cocaine (or other s. 893.03(1)(a), (b), or (d), (2)(a), (2)(b), or (2)(c)4. drugs).
914.14(2)	3rd	Witnesses accepting bribes.
914.22(1)	3rd	Force, threaten, etc., witness, victim, or informant.
914.23(2)	3rd	Retaliation against a witness, victim, or informant, no bodily injury.
918.12	3rd	Tampering with jurors.
934.215	3rd	Use of two-way communications device to facilitate commission of a crime.

(e) LEVEL 5

Florida Statute	Felony Degree	Description
316.027(2)(a)	3rd	Accidents involving personal injuries other than serious bodily injury, failure to stop; leaving scene.
316.1935(4)(a)	2nd	Aggravated fleeing or eluding.
316.80(2)	2nd	Unlawful conveyance of fuel; obtaining fuel fraudulently.
322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.
379.365(2)(c)1.	3rd	Violation of rules

			relating to: willful molestation of stone crab traps, lines, or buoys; illegal bartering, trading, or sale, conspiring or aiding in such barter, trade, or sale, or supplying, agreeing to supply, aiding in supplying, or giving away stone crab trap tags or certificates; making, altering, forging, counterfeiting, or reproducing stone crab trap tags; possession of forged, counterfeit, or imitation stone crab trap tags; and engaging in the commercial harvest of stone crabs while license is suspended or revoked.
270			
	379.367(4)	3rd	Willful molestation of a commercial harvester’s spiny lobster trap,

			line, or buoy.
271			
	379.407(5)(b)3.	3rd	Possession of 100 or more undersized spiny lobsters.
272			
	381.0041(11)(b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
273			
	440.10(1)(g)	2nd	Failure to obtain workers' compensation coverage.
274			
	440.105(5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
275			
	440.381(2)	2nd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.
276			
	624.401(4)(b)2.	2nd	Transacting insurance without a certificate or

			authority; premium collected $20,000 or more but less than $100,000.
277			
	626.902(1)(c)	2nd	Representing an unauthorized insurer; repeat offender.
278			
	790.01(2)	3rd	Carrying a concealed firearm.
279			
	790.162	2nd	Threat to throw or discharge destructive device.
280			
	790.163(1)	2nd	False report of bomb, explosive, weapon of mass destruction, or use of firearms in violent manner.
281			
	790.221(1)	2nd	Possession of short-barreled shotgun or machine gun.
282			
	790.23	2nd	Felons in possession of firearms, ammunition, or electronic weapons or

		devices.
796.05(1)	2nd	Live on earnings of a prostitute; 1st offense.
800.04(6)(c)	3rd	Lewd or lascivious conduct; offender less than 18 years of age.
800.04(7)(b)	2nd	Lewd or lascivious exhibition; offender 18 years of age or older.
806.111(1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
812.0145(2)(b)	2nd	Theft from person 65 years of age or older; $10,000 or more but less than $50,000.
812.015(8)	3rd	Retail theft; property stolen is valued at <u>$1,000</u> ~~$300~~ or more and one or more specified acts.

812.019(1)	2nd	Stolen property; dealing in or trafficking in.
812.131(2)(b)	3rd	Robbery by sudden snatching.
812.16(2)	3rd	Owning, operating, or conducting a chop shop.
817.034(4)(a)2.	2nd	Communications fraud, value $20,000 to $50,000.
817.234(11)(b)	2nd	Insurance fraud; property value $20,000 or more but less than $100,000.
817.2341(1), (2)(a) & (3)(a)	3rd	Filing false financial statements, making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity.
817.568(2)(b)	2nd	Fraudulent use of personal identification

			information; value of benefit, services received, payment avoided, or amount of injury or fraud, $5,000 or more or use of personal identification information of 10 or more persons.
817.611(2)(a)		2nd	Traffic in or possess 5 to 14 counterfeit credit cards or related documents.
817.625(2)(b)		2nd	Second or subsequent fraudulent use of scanning device, skimming device, or reencoder.
825.1025(4)		3rd	Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.
827.071(4)		2nd	Possess with intent to promote any photographic

			material, motion picture, etc., which includes sexual conduct by a child.
300			
	827.071(5)	3rd	Possess, control, or intentionally view any photographic material, motion picture, etc., which includes sexual conduct by a child.
301			
	839.13(2)(b)	2nd	Falsifying records of an individual in the care and custody of a state agency involving great bodily harm or death.
302			
	843.01	3rd	Resist officer with violence to person; resist arrest with violence.
303			
	847.0135(5)(b)	2nd	Lewd or lascivious exhibition using computer; offender 18 years or older.
304			
	847.0137	3rd	Transmission of

	(2) & (3)		pornography by electronic device or equipment.
305			
	847.0138 (2) & (3)	3rd	Transmission of material harmful to minors to a minor by electronic device or equipment.
306			
	874.05(1)(b)	2nd	Encouraging or recruiting another to join a criminal gang; second or subsequent offense.
307			
	874.05(2)(a)	2nd	Encouraging or recruiting person under 13 years of age to join a criminal gang.
308			
	893.13(1)(a)1.	2nd	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).
309			
	893.13(1)(c)2.	2nd	Sell, manufacture, or deliver cannabis (or

			other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.
310			
	893.13(1)(d)1.	1st	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs) within 1,000 feet of university.
311			
	893.13(1)(e)2.	2nd	Sell, manufacture, or deliver cannabis or other drug prohibited under s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7.,

		(2)(c)8., (2)(c)9., (3), or (4) within 1,000 feet of property used for religious services or a specified business site.
893.13(1)(f)1.	1st	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), or (2)(a), (2)(b), or (2)(c)4. drugs) within 1,000 feet of public housing facility.
893.13(4)(b)	2nd	Use or hire of minor; deliver to minor other controlled substance.
893.1351(1)	3rd	Ownership, lease, or rental for trafficking in or manufacturing of controlled substance.

(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.
326			
	784.021(1)(a)	3rd	Aggravated assault; deadly weapon without intent to kill.
327			
	784.021(1)(b)	3rd	Aggravated assault; intent to commit felony.
328			
	784.041	3rd	Felony battery; domestic battery by strangulation.
329			
	784.048(3)	3rd	Aggravated stalking; credible threat.
330			
	784.048(5)	3rd	Aggravated stalking of person under 16.
331			
	784.07(2)(c)	2nd	Aggravated assault on law enforcement officer.
332			
	784.074(1)(b)	2nd	Aggravated assault on sexually violent predators facility staff.
333			
	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 as adult; property stolen $1,000 ~~$300~~ or more; second or subsequent conviction within certain time.

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.

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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 37. Paragraph (a) of subsection (1) and paragraph (c) of subsection (2) of section 985.557, Florida Statutes, are 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 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)5. ~~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)5. ~~s.~~

~~812.014(2)(c)6.~~ or s. 812.014(2)(b).

(2) MANDATORY DIRECT FILE.—

(c) The state attorney must file an information if a child, regardless of the child's age at the time the alleged offense was committed, is alleged to have committed an act that would be a violation of law if the child were an adult, that involves stealing a motor vehicle, including, but not limited to, a violation of s. 812.133, relating to carjacking, or s. 812.014(2)(c)5. ~~s. 812.014(2)(c)6.~~, relating to grand theft of a motor vehicle, and while the child was in possession of the stolen motor vehicle the child caused serious bodily injury to or the death of a person who was not involved in the underlying offense. For purposes of this section, the driver and all willing passengers in the stolen motor vehicle at the time such serious bodily injury or death is inflicted shall also be subject to mandatory transfer to adult court. "Stolen motor vehicle," for the purposes of this section, means a motor vehicle that has been the subject of any criminal wrongful taking. For purposes of this section, "willing passengers" means all willing passengers who have participated in the underlying offense.

Section 38. For the purpose of incorporating the amendment made by this act to section 812.014, Florida Statutes, in a reference thereto, subsection (10) of section 95.18, Florida Statutes, is reenacted to read:

95.18 Real property actions; adverse possession without color of title.—

(10) A person who occupies or attempts to occupy a residential structure solely by claim of adverse possession

under this section and offers the property for lease to another commits theft under s. 812.014.

Section 39. For the purpose of incorporating the amendment made by this act to section 812.014, Florida Statutes, in a reference thereto, paragraph (c) of subsection (3) of section 373.6055, Florida Statutes, is reenacted to read:

373.6055 Criminal history checks for certain water management district employees and others.—

(3)

(c) In addition to other requirements for employment or access established by any water management district pursuant to its water management district's security plan for buildings, facilities, and structures, each water management district's security plan shall provide that:

1. Any person who has within the past 7 years been convicted, regardless of whether adjudication was withheld, for a forcible felony as defined in s. 776.08; an act of terrorism as defined in s. 775.30; planting of a hoax bomb as provided in s. 790.165; any violation involving the manufacture, possession, sale, delivery, display, use, or attempted or threatened use of a weapon of mass destruction or hoax weapon of mass destruction as provided in s. 790.166; dealing in stolen property; any violation of s. 893.135; any violation involving the sale, manufacturing, delivery, or possession with intent to sell, manufacture, or deliver a controlled substance; burglary; robbery; any felony violation of s. 812.014; any violation of s. 790.07; any crime an element of which includes use or possession of a firearm; any conviction for any similar offenses under the laws of another jurisdiction; or conviction for conspiracy to

commit any of the listed offenses may not be qualified for initial employment within or authorized regular access to buildings, facilities, or structures defined in the water management district's security plan as restricted access areas.

2. Any person who has at any time been convicted of any of the offenses listed in subparagraph 1. may not be qualified for initial employment within or authorized regular access to buildings, facilities, or structures defined in the water management district's security plan as restricted access areas unless, after release from incarceration and any supervision imposed as a sentence, the person remained free from a subsequent conviction, regardless of whether adjudication was withheld, for any of the listed offenses for a period of at least 7 years prior to the employment or access date under consideration.

Section 40. For the purpose of incorporating the amendment made by this act to section 812.014, Florida Statutes, in a reference thereto, subsection (3) of section 400.9935, Florida Statutes, is reenacted to read:

400.9935 Clinic responsibilities.—

(3) A charge or reimbursement claim made by or on behalf of a clinic that is required to be licensed under this part but that is not so licensed, or that is otherwise operating in violation of this part, regardless of whether a service is rendered or whether the charge or reimbursement claim is paid, is an unlawful charge and is noncompensable and unenforceable. A person who knowingly makes or causes to be made an unlawful charge commits theft within the meaning of and punishable as provided in s. 812.014.

Section 41. For the purpose of incorporating the amendment made by this act to section 812.014, Florida Statutes, in a reference thereto, paragraph (g) of subsection (17) of section 409.910, Florida Statutes, is reenacted to read:

409.910 Responsibility for payments on behalf of Medicaid-eligible persons when other parties are liable.—

(17)

(g) The agency may investigate and request appropriate officers or agencies of the state to investigate suspected criminal violations or fraudulent activity related to third-party benefits, including, without limitation, ss. 414.39 and 812.014. Such requests may be directed, without limitation, to the Medicaid Fraud Control Unit of the Office of the Attorney General or to any state attorney. Pursuant to s. 409.913, the Attorney General has primary responsibility to investigate and control Medicaid fraud.

Section 42. For the purpose of incorporating the amendment made by this act to section 812.014, Florida Statutes, in a reference thereto, subsection (4) of section 489.126, Florida Statutes, is reenacted to read:

489.126 Moneys received by contractors.—

(4) Any person who violates any provision of this section is guilty of theft and shall be prosecuted and punished under s. 812.014.

Section 43. For the purpose of incorporating the amendment made by this act to section 812.015, Florida Statutes, in a reference thereto, subsection (5) of section 538.09, Florida Statutes, is reenacted to read:

538.09 Registration.—

(5) In addition to the fine provided in subsection (4), registration under this section may be denied or any registration granted may be revoked, restricted, or suspended by the department if the department determines that the applicant or registrant:

(a) Has violated any provision of this chapter or any rule or order made pursuant to this chapter;

(b) Has made a material false statement in the application for registration;

(c) Has been guilty of a fraudulent act in connection with any purchase or sale or has been or is engaged in or is about to engage in any practice, purchase, or sale which is fraudulent or in violation of the law;

(d) Has made a misrepresentation or false statement to, or concealed any essential or material fact from, any person in making any purchase or sale;

(e) Is making purchases or sales through any business associate not registered in compliance with the provisions of this chapter;

(f) Has, within the preceding 10-year period for new registrants who apply for registration on or after October 1, 2006, been convicted of, or has entered a plea of guilty or nolo contendere to, or had adjudication withheld for, a crime against the laws of this state or any other state or of the United States which relates to registration as a secondhand dealer or which involves theft, larceny, dealing in stolen property, receiving stolen property, burglary, embezzlement, obtaining property by false pretenses, possession of altered property, any felony drug offense, any violation of s. 812.015, or any

fraudulent dealing;

(g) Has had a final judgment entered against her or him in a civil action upon grounds of fraud, embezzlement, misrepresentation, or deceit; or

(h) Has failed to pay any sales tax owed to the Department of Revenue.

In the event the department determines to deny an application or revoke a registration, it shall enter a final order with its findings on the register of secondhand dealers and their business associates, if any; and denial, suspension, or revocation of the registration of a secondhand dealer shall also deny, suspend, or revoke the registration of such secondhand dealer's business associates.

Section 44. For the purpose of incorporating the amendment made by this act to section 812.014, Florida Statutes, in a reference thereto, subsection (2) of section 538.23, Florida Statutes, is reenacted to read:

538.23 Violations and penalties.—

(2) A secondary metals recycler is presumed to know upon receipt of stolen regulated metals property in a purchase transaction that the regulated metals property has been stolen from another if the secondary metals recycler knowingly and intentionally fails to maintain the information required in s. 538.19 and shall, upon conviction of a violation of s. 812.015, be punished as provided in s. 812.014(2) or (3).

Section 45. For the purpose of incorporating the amendment made by this act to section 812.014, Florida Statutes, in a reference thereto, subsection (10) of section 550.6305, Florida

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Statutes, is reenacted to read:

550.6305 Intertrack wagering; guest track payments; accounting rules.—

(10) All races or games conducted at a permitholder's facility, all broadcasts of such races or games, and all broadcast rights relating thereto are owned by the permitholder at whose facility such races or games are conducted and constitute the permitholder's property as defined in s. 812.012(4). Transmission, reception of a transmission, exhibition, use, or other appropriation of such races or games, broadcasts of such races or games, or broadcast rights relating thereto without the written consent of the permitholder constitutes a theft of such property under s. 812.014; and in addition to the penal sanctions contained in s. 812.014, the permitholder has the right to avail itself of the civil remedies specified in ss. 772.104, 772.11, and 812.035 in addition to any other remedies available under applicable state or federal law.

Section 46. For the purpose of incorporating the amendment made by this act to section 812.014, Florida Statutes, in a reference thereto, subsection (2) of section 634.319, Florida Statutes, is reenacted to read:

634.319 Reporting and accounting for funds.—

(2) Any sales representative who, not being entitled thereto, diverts or appropriates such funds or any portion thereof to her or his own use is, upon conviction, guilty of theft, punishable as provided in s. 812.014.

Section 47. For the purpose of incorporating the amendment made by this act to section 812.014, Florida Statutes, in a reference thereto, subsection (2) of section 634.421, Florida

Statutes, is reenacted to read:

634.421 Reporting and accounting for funds.—

(2) Any sales representative who, not being entitled thereto, diverts or appropriates funds or any portion thereof to her or his own use commits theft as provided in s. 812.014.

Section 48. For the purpose of incorporating the amendment made by this act to section 812.014, Florida Statutes, in a reference thereto, subsection (3) of section 636.238, Florida Statutes, is reenacted to read:

636.238 Penalties for violation of this part.—

(3) A person who collects fees for purported membership in a discount plan but purposefully fails to provide the promised benefits commits a theft, punishable as provided in s. 812.014.

Section 49. For the purpose of incorporating the amendment made by this act to section 812.014, Florida Statutes, in a reference thereto, subsection (2) of section 642.038, Florida Statutes, is reenacted to read:

642.038 Reporting and accounting for funds.—

(2) Any sales representative who, not being entitled thereto, diverts or appropriates such funds or any portion thereof to his or her own use commits theft as provided in s. 812.014.

Section 50. For the purpose of incorporating the amendment made by this act to section 812.014, Florida Statutes, in a reference thereto, subsection (4) of section 705.102, Florida Statutes, is reenacted to read:

705.102 Reporting lost or abandoned property.—

(4) Any person who unlawfully appropriates such lost or abandoned property to his or her own use or refuses to deliver

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such property when required commits theft as defined in s. 812.014, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 51. For the purpose of incorporating the amendment made by this act to section 812.014, Florida Statutes, in a reference thereto, paragraph (d) of subsection (1) of section 718.111, Florida Statutes, is reenacted to read:

718.111 The association.—

(1) CORPORATE ENTITY.—

(d) As required by s. 617.0830, an officer, director, or agent shall discharge his or her duties in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner he or she reasonably believes to be in the interests of the association. An officer, director, or agent shall be liable for monetary damages as provided in s. 617.0834 if such officer, director, or agent breached or failed to perform his or her duties and the breach of, or failure to perform, his or her duties constitutes a violation of criminal law as provided in s. 617.0834; constitutes a transaction from which the officer or director derived an improper personal benefit, either directly or indirectly; or constitutes recklessness or an act or omission that was in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. Forgery of a ballot envelope or voting certificate used in a condominium association election is punishable as provided in s. 831.01, the theft or embezzlement of funds of a condominium association is punishable as provided in s. 812.014, and the destruction of or the refusal to allow inspection or

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copying of an official record of a condominium association that is accessible to unit owners within the time periods required by general law in furtherance of any crime is punishable as tampering with physical evidence as provided in s. 918.13 or as obstruction of justice as provided in chapter 843. An officer or director charged by information or indictment with a crime referenced in this paragraph must be removed from office, and the vacancy shall be filled as provided in s. 718.112(2)(d)2. until the end of the officer's or director's period of suspension or the end of his or her term of office, whichever occurs first. If a criminal charge is pending against the officer or director, he or she may not be appointed or elected to a position as an officer or a director of any association and may not have access to the official records of any association, except pursuant to a court order. However, if the charges are resolved without a finding of guilt, the officer or director must be reinstated for the remainder of his or her term of office, if any.

Section 52. For the purpose of incorporating the amendment made by this act to section 812.014, Florida Statutes, in a reference thereto, subsection (2) of section 812.015, Florida Statutes, is reenacted to read:

812.015 Retail and farm theft; transit fare evasion; mandatory fine; alternative punishment; detention and arrest; exemption from liability for false arrest; resisting arrest; penalties.—

(2) Upon a second or subsequent conviction for petit theft from a merchant, farmer, or transit agency, the offender shall be punished as provided in s. 812.014(3), except that the court

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shall impose a fine of not less than $50 or more than $1,000. However, in lieu of such fine, the court may require the offender to perform public services designated by the court. In no event shall any such offender be required to perform fewer than the number of hours of public service necessary to satisfy the fine assessed by the court, as provided by this subsection, at the minimum wage prevailing in the state at the time of sentencing.

Section 53. For the purpose of incorporating the amendment made by this act to section 812.014, Florida Statutes, in a reference thereto, subsections (1) and (2) of section 812.0155, Florida Statutes, are reenacted to read:

812.0155 Suspension of driver license following an adjudication of guilt for theft.—

(1) Except as provided in subsections (2) and (3), the court may order the suspension of the driver license of each person adjudicated guilty of any misdemeanor violation of s. 812.014 or s. 812.015, regardless of the value of the property stolen. Upon ordering the suspension of the driver license of the person adjudicated guilty, the court shall forward the driver license of the person adjudicated guilty to the Department of Highway Safety and Motor Vehicles in accordance with s. 322.25.

(a) The first suspension of a driver license under this subsection shall be for a period of up to 6 months.

(b) A second or subsequent suspension of a driver license under this subsection shall be for 1 year.

(2) The court may revoke, suspend, or withhold issuance of a driver license of a person less than 18 years of age who

violates s. 812.014 or s. 812.015 as an alternative to sentencing the person to:

(a) Probation as defined in s. 985.03 or commitment to the Department of Juvenile Justice, if the person is adjudicated delinquent for such violation and has not previously been convicted of or adjudicated delinquent for any criminal offense, regardless of whether adjudication was withheld.

(b) Probation as defined in s. 985.03, commitment to the Department of Juvenile Justice, probation as defined in chapter 948, community control, or incarceration, if the person is convicted as an adult of such violation and has not previously been convicted of or adjudicated delinquent for any criminal offense, regardless of whether adjudication was withheld.

Section 54. For the purpose of incorporating the amendment made by this act to section 812.014, Florida Statutes, in a reference thereto, subsections (4), (7), and (8) of section 812.14, Florida Statutes, are reenacted to read:

812.14 Trespass and larceny with relation to utility fixtures; theft of utility services.—

(4) A person who willfully violates subsection (2) commits theft, punishable as provided in s. 812.014.

(7) An owner, lessor, or sublessor who willfully violates subsection (5) commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. Prosecution for a violation of subsection (5) does not preclude prosecution for theft pursuant to subsection (8) or s. 812.014.

(8) Theft of utility services for the purpose of facilitating the manufacture of a controlled substance is theft, punishable as provided in s. 812.014.

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Section 55. For the purpose of incorporating the amendment made by this act to section 812.014, Florida Statutes, in a reference thereto, subsection (3) of section 893.138, Florida Statutes, is reenacted to read:

893.138 Local administrative action to abate drug-related, prostitution-related, or stolen-property-related public nuisances and criminal gang activity.—

(3) Any pain-management clinic, as described in s. 458.3265 or s. 459.0137, which has been used on more than two occasions within a 6-month period as the site of a violation of:

(a) Section 784.011, s. 784.021, s. 784.03, or s. 784.045, relating to assault and battery;

(b) Section 810.02, relating to burglary;

(c) Section 812.014, relating to theft;

(d) Section 812.131, relating to robbery by sudden snatching; or

(e) Section 893.13, relating to the unlawful distribution of controlled substances,

may be declared to be a public nuisance, and such nuisance may be abated pursuant to the procedures provided in this section.

Section 56. For the purpose of incorporating the amendment made by this act to section 812.014, Florida Statutes, in a reference thereto, paragraph (b) of subsection (3) of section 943.051, Florida Statutes, is reenacted to read:

943.051 Criminal justice information; collection and storage; fingerprinting.—

(3)

(b) A minor who is charged with or found to have committed the following offenses shall be fingerprinted and the fingerprints shall be submitted electronically to the department, unless the minor is issued a civil citation pursuant to s. 985.12:

1. Assault, as defined in s. 784.011.

2. Battery, as defined in s. 784.03.

3. Carrying a concealed weapon, as defined in s. 790.01(1).

4. Unlawful use of destructive devices or bombs, as defined in s. 790.1615(1).

5. Neglect of a child, as defined in s. 827.03(1)(e).

6. Assault or battery on a law enforcement officer, a firefighter, or other specified officers, as defined in s. 784.07(2)(a) and (b).

7. Open carrying of a weapon, as defined in s. 790.053.

8. Exposure of sexual organs, as defined in s. 800.03.

9. Unlawful possession of a firearm, as defined in s. 790.22(5).

10. Petit theft, as defined in s. 812.014(3).

11. Cruelty to animals, as defined in s. 828.12(1).

12. Arson, as defined in s. 806.031(1).

13. Unlawful possession or discharge of a weapon or firearm at a school-sponsored event or on school property, as provided in s. 790.115.

Section 57. For the purpose of incorporating the amendment made by this act to section 812.014, Florida Statutes, in a reference thereto, paragraph (b) of subsection (1) of section 985.11, Florida Statutes, is reenacted to read:

985.11 Fingerprinting and photographing.—

(1)

(b) Unless the child is issued a civil citation or is participating in a similar diversion program pursuant to s. 985.12, a child who is charged with or found to have committed one of the following offenses shall be fingerprinted, and the fingerprints shall be submitted to the Department of Law Enforcement as provided in s. 943.051(3)(b):

1. Assault, as defined in s. 784.011.

2. Battery, as defined in s. 784.03.

3. Carrying a concealed weapon, as defined in s. 790.01(1).

4. Unlawful use of destructive devices or bombs, as defined in s. 790.1615(1).

5. Neglect of a child, as defined in s. 827.03(1)(e).

6. Assault on a law enforcement officer, a firefighter, or other specified officers, as defined in s. 784.07(2)(a).

7. Open carrying of a weapon, as defined in s. 790.053.

8. Exposure of sexual organs, as defined in s. 800.03.

9. Unlawful possession of a firearm, as defined in s. 790.22(5).

10. Petit theft, as defined in s. 812.014.

11. Cruelty to animals, as defined in s. 828.12(1).

12. Arson, resulting in bodily harm to a firefighter, as defined in s. 806.031(1).

13. Unlawful possession or discharge of a weapon or firearm at a school-sponsored event or on school property as defined in s. 790.115.

A law enforcement agency may fingerprint and photograph a child taken into custody upon probable cause that such child has

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committed any other violation of law, as the agency deems appropriate. Such fingerprint records and photographs shall be retained by the law enforcement agency in a separate file, and these records and all copies thereof must be marked "Juvenile Confidential." These records are not available for public disclosure and inspection under s. 119.07(1) except as provided in ss. 943.053 and 985.04(2), but shall be available to other law enforcement agencies, criminal justice agencies, state attorneys, the courts, the child, the parents or legal custodians of the child, their attorneys, and any other person authorized by the court to have access to such records. In addition, such records may be submitted to the Department of Law Enforcement for inclusion in the state criminal history records and used by criminal justice agencies for criminal justice purposes. These records may, in the discretion of the court, be open to inspection by anyone upon a showing of cause. The fingerprint and photograph records shall be produced in the court whenever directed by the court. Any photograph taken pursuant to this section may be shown by a law enforcement officer to any victim or witness of a crime for the purpose of identifying the person who committed such crime.

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

And the title is amended as follows:

Delete line 283

and insert:

programs; detailing program criteria; amending s. 812.014, F.S.; revising threshold amounts and types of

884 property which qualify for theft offenses; amending s.
885 812.015, F.S.; revising threshold amounts for retail
886 theft; amending s. 921.0022, F.S.; conforming
887 provisions to changes made by the act; conforming a
888 cross-reference; amending s. 985.557, F.S.; conforming
889 cross-references; reenacting ss. 95.18(10),
890 373.6055(3)(c), 400.9935(3), 409.910(17)(g),
891 489.126(4), 538.09(5), 538.23(2), 550.6305(10),
892 634.319(2), 634.421(2), 636.238(3), 642.038(2),
893 705.102(4), 718.111(1)(d), 812.015(2), 812.0155(1) and
894 (2), 812.14(4),(7), and (8), 893.138(3),
895 943.051(3)(b), and 985.11(1)(b), F.S., relating to
896 adverse possession without color of title, criminal
897 history checks for certain water management district
898 employees and others, clinic responsibilities,
899 responsibility for payments on behalf of Medicaid-
900 eligible persons when other parties are liable, moneys
901 received by contractors, secondhand dealer
902 registration, secondary metals recycler violations and
903 penalties, intertrack wagering, diversion or
904 appropriation of funds by warranty association sales
905 representatives, collection of fees for purported
906 membership in discount plan organizations, diversion
907 or appropriation of funds by legal expense insurance
908 sales representatives, reporting lost or abandoned
909 property, condominium associations, retail and farm
910 theft, suspension of driver license following an
911 adjudication of guilt for theft, trespass and larceny
912 with relation to utility fixtures and theft of utility

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services, local administrative action to abate drug-related, prostitution-related, or stolen-property-related public nuisances and criminal gang activity, fingerprinting of certain minors, and fingerprinting and photographing of certain children, respectively, to incorporate the amendments made by the act in cross-references to amended provisions; reenacting s.

606820

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/02/2018	.	
	.	
	.	
	.	

The Committee on Appropriations (Brandes) recommended the following:

Senate Amendment to Amendment (711458)

Delete line 31
and insert:
12. Anhydrous ammonia.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/02/2018	.	
	.	
	.	
	.	

The Committee on Appropriations (Brandes) recommended the following:

Senate Substitute for Amendment (711458) (with title amendment)

Between lines 2200 and 2201
insert:

Section 34. Paragraphs (c), (d), and (e) of subsection (2) and paragraphs (a), (b), and (c) of subsection (3) of section 812.014, Florida Statutes, are amended to read:

812.014 Theft.—

(2)

(c) It is grand theft of the third degree and a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the property stolen is:

1. Valued at $1,000 ~~$300~~ or more, but less than $5,000.

2. Valued at $5,000 or more, but less than $10,000.

3. Valued at $10,000 or more, but less than $20,000.

~~4. A will, codicil, or other testamentary instrument.~~

4.~~5.~~ A firearm.

5.~~6.~~ A motor vehicle, except as provided in paragraph (a).

6.~~7.~~ Any commercially farmed animal, including any animal of the equine, bovine, or swine class or other grazing animal, or any animal of the avian class; a bee colony of a registered beekeeper; and aquaculture species raised at a certified aquaculture facility. If the property stolen is aquaculture species raised at a certified aquaculture facility, then a $10,000 fine shall be imposed.

~~8. Any fire extinguisher.~~

7.~~9.~~ Any amount of citrus fruit consisting of 2,000 or more individual pieces of fruit.

~~10. Taken from a designated construction site identified by the posting of a sign as provided for in s. 810.09(2)(d).~~

~~11. Any stop sign.~~

8.~~12.~~ Anhydrous ammonia.

9.~~13.~~ Any amount of a controlled substance as defined in s. 893.02. Notwithstanding any other law, separate judgments and sentences for theft of a controlled substance under this subparagraph and for any applicable possession of controlled substance offense under s. 893.13 or trafficking in controlled substance offense under s. 893.135 may be imposed when all such

offenses involve the same amount or amounts of a controlled substance.

10. A utility service under s. 812.14.

However, if the property is stolen within a county that is subject to a state of emergency declared by the Governor under chapter 252, the property is stolen after the declaration of emergency is made, and the perpetration of the theft is facilitated by conditions arising from the emergency, the offender commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the property is valued at $5,000 or more, but less than $10,000, as provided under subparagraph 2., or if the property is valued at $10,000 or more, but less than $20,000, as provided under subparagraph 3. As used in this paragraph, the term "conditions arising from the emergency" means civil unrest, power outages, curfews, voluntary or mandatory evacuations, or a reduction in the presence of or the response time for first responders or homeland security personnel. For purposes of sentencing under chapter 921, a felony offense that is reclassified under this paragraph is ranked one level above the ranking under s. 921.0022 or s. 921.0023 of the offense committed.

(d) It is grand theft of the third degree and a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the property stolen is valued at $1,000 ~~$100~~ or more, but less than $5,000 ~~$300~~, and is taken from a dwelling as defined in s. 810.011(2) or from the unenclosed curtilage of a dwelling pursuant to s. 810.09(1).

(e) Except as provided in paragraph (d), if the property

stolen is valued at $500 ~~$100~~ or more, but less than $1,000 ~~$300~~, the offender commits petit theft of the first degree, punishable as a misdemeanor of the first degree, as provided in s. 775.082 or s. 775.083.

(3)(a) Theft of any property not specified in subsection (2) is petit theft of the second degree and a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, and as provided in subsection (5), as applicable.

(b) A person who commits petit theft and who has previously been convicted of any theft commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(c) A person who commits petit theft in the first degree, ~~and~~ who has previously been convicted two or more times as an adult of any theft, and if the third or subsequent petit theft offense occurred within 3 years of the expiration of his or her sentence for the most recent theft conviction, commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

Section 35. Subsections (8) and (9) of section 812.015, Florida Statutes, are amended to read:

812.015 Retail and farm theft; transit fare evasion; mandatory fine; alternative punishment; detention and arrest; exemption from liability for false arrest; resisting arrest; penalties.—

(8) Except as provided in subsection (9), a person who commits retail theft commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the property stolen is valued at $1,000 ~~$300~~ or more, and the person:

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(a) Individually, or in concert with one or more other persons, coordinates the activities of one or more individuals in committing the offense, in which case the amount of each individual theft is aggregated to determine the value of the property stolen;

(b) Commits theft from more than one location within a 48-hour period, in which case the amount of each individual theft is aggregated to determine the value of the property stolen;

(c) Acts in concert with one or more other individuals within one or more establishments to distract the merchant, merchant's employee, or law enforcement officer in order to carry out the offense, or acts in other ways to coordinate efforts to carry out the offense; or

(d) Commits the offense through the purchase of merchandise in a package or box that contains merchandise other than, or in addition to, the merchandise purported to be contained in the package or box.

(9) A person commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the person:

(a) Violates subsection (8) <u>as an adult</u> and has previously been convicted of a violation of subsection (8) <u>within 3 years of the expiration of his or her sentence for the conviction</u>; or

(b) Individually, or in concert with one or more other persons, coordinates the activities of one or more persons in committing the offense of retail theft where the stolen property has a value in excess of $3,000.

Section 36. Paragraphs (b), (e), and (f) of subsection (3) of section 921.0022, Florida Statutes, are amended to read:

127 921.0022 Criminal Punishment Code; offense severity ranking
128 chart.—
129 (3) OFFENSE SEVERITY RANKING CHART
130 (b) LEVEL 2
131
132

Florida Statute	Felony Degree	Description
379.2431 (1)(e)3.	3rd	Possession of 11 or fewer marine turtle eggs in violation of the Marine Turtle Protection Act.
379.2431 (1)(e)4.	3rd	Possession of more than 11 marine turtle eggs in violation of the Marine Turtle Protection Act.
403.413(6)(c)	3rd	Dumps waste litter exceeding 500 lbs. in weight or 100 cubic feet in volume or any quantity for commercial purposes, or hazardous waste.
517.07(2)	3rd	Failure to furnish a prospectus meeting requirements.
590.28(1)	3rd	Intentional burning of lands.

784.05(3)	3rd	Storing or leaving a loaded firearm within reach of minor who uses it to inflict injury or death.
787.04(1)	3rd	In violation of court order, take, entice, etc., minor beyond state limits.
806.13(1)(b)3.	3rd	Criminal mischief; damage $1,000 or more to public communication or any other public service.
810.061(2)	3rd	Impairing or impeding telephone or power to a dwelling; facilitating or furthering burglary.
810.09(2)(e)	3rd	Trespassing on posted commercial horticulture property.
812.014(2)(c)1.	3rd	Grand theft, 3rd degree; $1,000 ~~$300~~ or more but less than $5,000.
812.014(2)(d)	3rd	Grand theft, 3rd degree; $1,000

			~~$100~~ or more but less than $5,000 ~~$300~~, taken from unenclosed curtilage of dwelling.
145			
	812.015(7)	3rd	Possession, use, or attempted use of an antishoplifting or inventory control device countermeasure.
146			
	817.234(1)(a)2.	3rd	False statement in support of insurance claim.
147			
	817.481(3)(a)	3rd	Obtain credit or purchase with false, expired, counterfeit, etc., credit card, value over $300.
148			
	817.52(3)	3rd	Failure to redeliver hired vehicle.
149			
	817.54	3rd	With intent to defraud, obtain mortgage note, etc., by false representation.
150			
	817.60(5)	3rd	Dealing in credit cards of another.
151			
	817.60(6)(a)	3rd	Forgery; purchase goods,

		services with false card.
817.61	3rd	Fraudulent use of credit cards over $100 or more within 6 months.
826.04	3rd	Knowingly marries or has sexual intercourse with person to whom related.
831.01	3rd	Forgery.
831.02	3rd	Uttering forged instrument; utters or publishes alteration with intent to defraud.
831.07	3rd	Forging bank bills, checks, drafts, or promissory notes.
831.08	3rd	Possessing 10 or more forged notes, bills, checks, or drafts.
831.09	3rd	Uttering forged notes, bills, checks, drafts, or promissory notes.
831.11	3rd	Bringing into the state forged bank bills, checks, drafts, or

		notes.
832.05(3)(a)	3rd	Cashing or depositing item with intent to defraud.
843.08	3rd	False personation.
893.13(2)(a)2.	3rd	Purchase of any s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs other than cannabis.
893.147(2)	3rd	Manufacture or delivery of drug paraphernalia.

(e) LEVEL 5

Florida Statute	Felony Degree	Description
316.027(2)(a)	3rd	Accidents involving personal injuries other than serious bodily injury, failure to stop; leaving scene.

316.1935(4)(a)	2nd	Aggravated fleeing or eluding.
316.80(2)	2nd	Unlawful conveyance of fuel; obtaining fuel fraudulently.
322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.
379.365(2)(c)1.	3rd	Violation of rules relating to: willful molestation of stone crab traps, lines, or buoys; illegal bartering, trading, or sale, conspiring or aiding in such barter, trade, or sale, or supplying, agreeing to supply, aiding in supplying, or giving away stone crab trap tags or certificates; making, altering, forging, counterfeiting, or reproducing stone crab trap tags; possession of forged, counterfeit, or imitation stone crab trap tags; and engaging in the commercial harvest of stone

			crabs while license is suspended or revoked.
175			
	379.367(4)	3rd	Willful molestation of a commercial harvester's spiny lobster trap, line, or buoy.
176			
	379.407(5)(b)3.	3rd	Possession of 100 or more undersized spiny lobsters.
177			
	381.0041(11)(b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
178			
	440.10(1)(g)	2nd	Failure to obtain workers' compensation coverage.
179			
	440.105(5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
180			
	440.381(2)	2nd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.
181			
	624.401(4)(b)2.	2nd	Transacting insurance without a certificate or authority; premium collected $20,000 or

		more but less than $100,000.
626.902(1)(c)	2nd	Representing an unauthorized insurer; repeat offender.
790.01(2)	3rd	Carrying a concealed firearm.
790.162	2nd	Threat to throw or discharge destructive device.
790.163(1)	2nd	False report of bomb, explosive, weapon of mass destruction, or use of firearms in violent manner.
790.221(1)	2nd	Possession of short-barreled shotgun or machine gun.
790.23	2nd	Felons in possession of firearms, ammunition, or electronic weapons or devices.
796.05(1)	2nd	Live on earnings of a prostitute; 1st offense.
800.04(6)(c)	3rd	Lewd or lascivious conduct; offender less than 18 years of age.

800.04(7)(b)	2nd	Lewd or lascivious exhibition; offender 18 years of age or older.
806.111(1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
812.0145(2)(b)	2nd	Theft from person 65 years of age or older; $10,000 or more but less than $50,000.
812.015(8)	3rd	Retail theft; property stolen is valued at $1,000 ~~$300~~ or more and one or more specified acts.
812.019(1)	2nd	Stolen property; dealing in or trafficking in.
812.131(2)(b)	3rd	Robbery by sudden snatching.
812.16(2)	3rd	Owning, operating, or conducting a chop shop.
817.034(4)(a)2.	2nd	Communications fraud, value $20,000 to $50,000.

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817.234(11)(b)	2nd	Insurance fraud; property value $20,000 or more but less than $100,000.
817.2341(1), (2)(a) & (3)(a)	3rd	Filing false financial statements, making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity.
817.568(2)(b)	2nd	Fraudulent use of personal identification information; value of benefit, services received, payment avoided, or amount of injury or fraud, $5,000 or more or use of personal identification information of 10 or more persons.
817.611(2)(a)	2nd	Traffic in or possess 5 to 14 counterfeit credit cards or related documents.
817.625(2)(b)	2nd	Second or subsequent fraudulent use of scanning device, skimming device, or reencoder.

825.1025(4)	3rd	Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.
827.071(4)	2nd	Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.
827.071(5)	3rd	Possess, control, or intentionally view any photographic material, motion picture, etc., which includes sexual conduct by a child.
839.13(2)(b)	2nd	Falsifying records of an individual in the care and custody of a state agency involving great bodily harm or death.
843.01	3rd	Resist officer with violence to person; resist arrest with violence.
847.0135(5)(b)	2nd	Lewd or lascivious exhibition using computer; offender 18 years or older.

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847.0137 (2) & (3)	3rd	Transmission of pornography by electronic device or equipment.
847.0138 (2) & (3)	3rd	Transmission of material harmful to minors to a minor by electronic device or equipment.
874.05(1)(b)	2nd	Encouraging or recruiting another to join a criminal gang; second or subsequent offense.
874.05(2)(a)	2nd	Encouraging or recruiting person under 13 years of age to join a criminal gang.
893.13(1)(a)1.	2nd	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).
893.13(1)(c)2.	2nd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs)

			within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.
215			
	893.13(1)(d)1.	1st	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs) within 1,000 feet of university.
216			
	893.13(1)(e)2.	2nd	Sell, manufacture, or deliver cannabis or other drug prohibited under s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) within 1,000 feet of property used for religious services or a specified business site.
217			
	893.13(1)(f)1.	1st	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), or (2)(a), (2)(b), or (2)(c)4.

		drugs) within 1,000 feet of public housing facility.
893.13(4)(b)	2nd	Use or hire of minor; deliver to minor other controlled substance.
893.1351(1)	3rd	Ownership, lease, or rental for trafficking in or manufacturing of controlled substance.

(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.

246	790.161(2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.
247	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.
248	790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.
249	794.011(8)(a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.
250	794.05(1)	2nd	Unlawful sexual activity with specified minor.
251	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.
252			
	806.031(2)	2nd	Arson resulting in great bodily harm to firefighter or any other person.
253			
	810.02(3)(c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.
254			
	810.145(8)(b)	2nd	Video voyeurism; certain minor victims; 2nd or subsequent offense.
255			
	812.014(2)(b)1.	2nd	Property stolen $20,000 or more, but less than $100,000, grand theft in 2nd degree.
256			
	812.014(6)	2nd	Theft; property stolen $3,000 or more; coordination of others.
257			
	812.015(9)(a)	2nd	Retail theft; property stolen $1,000 ~~$300~~ or more; second or subsequent adult conviction in specified period.
258			
	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.

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

And the title is amended as follows:

Delete line 283

and insert:

programs; detailing program criteria; amending s.

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812.014, F.S.; increasing threshold amounts for certain theft offenses; revising the list of items the theft of which constitutes a felony of the third degree; amending s. 812.015, F.S.; increasing threshold amounts for certain theft offenses; revising circumstances under which an offense of retail theft by a person with a prior conviction of retail theft constitutes a felony of the second degree; amending s. 921.0022, F.S.; conforming provisions of the offense severity ranking chart of the Criminal Punishment Code to changes made by the act; reenacting s.

485662

576-03505-18

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

A bill to be entitled

An act relating to public safety; amending s. 14.32, F.S.; creating the council within the Office of Chief Inspector General; specifying the purpose of the council; requiring the Office of Chief Inspector General to provide administrative support to the council; specifying the composition of the council; providing terms of office and requirements regarding the council's membership; prescribing the duties and responsibilities of the council; prohibiting the council from interfering with the operations of the Department of Corrections or the Department of Juvenile Justice; authorizing the council to appoint an executive director; authorizing reimbursement for per diem and travel expenses for members of the council; establishing certain restrictions applicable to members of the council and council staff; providing an appropriation; amending s. 23.1225, F.S.; authorizing a mutual aid agreement in the event of a declared state of emergency for certain law enforcement purposes; amending s. 30.15, F.S.; making sheriffs responsible for providing security for trial court facilities in their respective counties; requiring a sheriff to coordinate with the chief judge of the judicial circuit on trial court facility security matters; providing that certain provisions do not affect or erode the authority of the counties

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under s. 14, Article V of the State Constitution or s. 29.08, F.S., to provide and fund the security of facilities; deeming sheriffs and their deputies, employees, and contractors officers of the court when providing security; granting the chief judge of the judicial circuit authority to protect due process rights in certain circumstances; amending s. 57.105, F.S.; limiting attorney fee awards in civil proceedings in certain circumstances; creating s. 322.75, F.S.; requiring each judicial circuit to establish a Driver License Reinstatement Days program for reinstating suspended driver licenses in certain circumstances; providing duties of the clerks of court and the Department of Highway Safety and Motor Vehicles; authorizing the clerk of court to compromise on certain fees and costs; providing for program eligibility; amending s. 784.046, F.S.; prohibiting attorney fee awards in certain proceedings; amending s. 784.0485, F.S.; prohibiting attorney fee awards in certain proceedings; 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; creating s. 900.05, F.S.; providing legislative intent; providing definitions; requiring specified entities to collect specific data monthly beginning on a certain date; requiring specified entities to transmit certain collected data to the Department of Law Enforcement

quarterly; requiring the Department of Law Enforcement to compile, maintain, and make publicly accessible such data beginning on a certain date; creating a pilot project in a specified judicial circuit to improve criminal justice data transparency and ensure data submitted under s. 900.05, F.S., is accurate, valid, reliable, and structured; authorizing certain persons to enter into a memorandum of understanding with a national, nonpartisan, not-for-profit entity meeting certain criteria for the purpose of embedding a data fellow in the office or agency; establishing data fellow duties and responsibilities; providing for the expiration of the pilot project; providing an appropriation; creating s. 907.042, F.S.; authorizing each county to create a supervised bond release program; providing legislative findings; providing a supervised bond program must be created with the concurrence of the chief judge, county's chief correctional officer, state attorney, and public defender; providing an exception to a county that has already established and implemented a supervised bond program that utilizes a risk assessment instrument; providing specified program components; providing guidelines for the risk assessment instrument; authorizing the county to contract with the Department of Corrections to develop or modify a risk assessment instrument if such instrument meets certain requirements; authorizing a county to develop or use an existing risk assessment instrument if validated by

the department and such instrument meets certain requirements; authorizing a county to contract with another county for the use of a risk assessment instrument if validated and such instrument meets certain requirements; authorizing the county to contract with an independent entity for use of a risk assessment instrument if validated and such instrument meets certain requirements; specifying requirements for the use, implementation, and distribution of the risk assessment instrument; requiring each county that establishes a supervised bond program to submit a report annually by a certain date to the Office of Program Policy Analysis and Government Accountability (OPPAGA); requiring OPPAGA to compile the reports and include such information in a report sent to the Governor, President of the Senate, and Speaker of the House of Representatives in accordance with s. 907.044, F.S.; creating s. 907.0421, F.S.; providing legislative findings; requiring the Department of Corrections to develop a risk assessment instrument; authorizing the department to use or modify an existing risk assessment instrument; requiring the department to develop or modify the risk assessment instrument by a certain date; specifying requirements for the use, implementation, and distribution of the risk assessment instrument; creating the Risk Assessment Pilot Program for a specified period; specifying the participating counties; requiring each participating county's chief correctional officer to

contract with the department to administer the risk assessment instrument; requiring all counties to administer the risk assessment instrument to all persons arrested for a felony; requiring each participating county to submit a report annually by a certain date to the department with specified information; requiring the department to compile the information of the findings from the participating counties and submit an annual report by a certain date to the Governor and the Legislature; authorizing the department, in consultation with specified persons, to adopt rules; amending s. 907.043, F.S.; requiring each pretrial release program to include in its annual report the types of criminal charges of defendants accepted into a pretrial release program, the number of defendants accepted into a pretrial release program who paid a bail or bond, the number of defendants accepted into a pretrial release program with no prior criminal conviction, and the number of defendants for whom a pretrial risk assessment tool was used or was not used; creating a pilot project in a specified judicial circuit to improve criminal justice data transparency and ensure data submitted under s. 900.05, F.S., is accurate, valid, reliable, and structured; authorizing certain persons to enter into a memorandum of understanding with a national, nonpartisan, not-for-profit entity meeting certain criteria for the purpose of embedding a data fellow in the office or agency; establishing data fellow duties

and responsibilities; providing for the expiration of the pilot project; providing an appropriation; amending s. 921.0024, F.S.; requiring scoresheets prepared for all criminal defendants to be digitized; requiring the Department of Corrections to develop and submit revised digitized scoresheets to the Supreme Court for approval; requiring digitized scoresheets to include individual data cells for each field on the scoresheet; requiring the clerk of court to electronically transmit the digitized scoresheet used in each sentencing proceeding to the Department of Corrections; amending s. 932.7061, F.S.; revising the deadline for submitting an annual report by law enforcement agencies concerning property seized or forfeited under the Florida Contraband Forfeiture Act; creating s. 943.687, F.S.; requiring the Department of Law Enforcement to collect, compile, maintain, and manage data collected pursuant to s. 900.05, F.S.; requiring the Department of Law Enforcement to make data comparable, transferable, and readily usable; requiring the department to create a unique identifier for each criminal case received from the clerks of court; requiring the department to create and maintain a certain Internet-based database; providing requirements for data searchability and sharing; requiring the department to establish certain rules; requiring the department to monitor data collection procedures and test data quality; providing for data archiving, editing, retrieval, and verification;

amending s. 944.704, F.S.; requiring transition assistance staff to include information about job assignment credentialing and industry certification in job placement information given to an inmate; amending s. 944.705, F.S.; requiring the Department of Corrections to provide a comprehensive community reentry resource directory to each inmate prior to release; requiring the department to allow nonprofit faith-based, business and professional, civic, and community organizations to apply to be registered to provide inmate reentry services; requiring the department to adopt policies for screening, approving, and registering organizations that apply; authorizing the department to contract with public or private educational institutions to assist veteran inmates in applying for certain benefits; amending s. 944.801, F.S.; requiring the department to develop a Prison Entrepreneurship Program and adopt procedures for student inmate admission; specifying requirements for the program; requiring the department to enter into agreements with certain entities to carry out duties associated with the program; authorizing the department to contract with certain entities to provide education services for the Correctional Education Program; creating s. 944.805, F.S.; creating definitions relating to a certificate of achievement and employability; creating s. 944.8055, F.S.; establishing eligibility requirements; establishing a timeframe for an eligible inmate to apply for a

certificate; establishing eligibility requirements for an inmate under probation or post-control sanction; establishing a timeframe for an eligible inmate under probation or post-control sanction to apply for a certificate; requiring the department to notify a licensing agency upon the filing of an application and provide the opportunity to object to issuing a certificate; authorizing the department to issue a certificate; excluding mandatory civil impacts for which a certificate will not provide relief; requiring the department to adopt rules; creating s. 944.806, F.S.; providing a certificate of achievement and employability shall convert a mandatory civil impact into a discretionary civil impact for purposes of determining licensure or certification; providing a certificate shall convert a mandatory civil impact into a discretionary civil impact for purposes of determining licensure or certification for an employer who has hired a certificate holder; creating s. 944.8065, F.S.; requiring the department to adopt rules governing revocation of a certificate of achievement and employability; creating s. 945.041, F.S.; requiring the Department of Corrections to publish quarterly on its website inmate admissions based on offense type and the recidivism rate and rate of probation revocation within a specified period after release from incarceration; amending s. 947.005, F.S.; defining the terms “electronic monitoring device” and “conditional medical release”; amending s.

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947.149, F.S.; defining the terms "inmate with a debilitating illness" and "medically frail inmate"; amending the definition of "terminally ill inmate"; expanding eligibility for conditional medical release to include inmates with debilitating illnesses; entitling the current conditional medical release process as "permissive conditional medical release"; requiring the Department of Corrections to refer eligible inmates; authorizing the Florida Commission on Offender Review to release eligible inmates; creating mandatory conditional medical release; specifying eligibility criteria for mandatory conditional medical release; requiring the department to refer an eligible inmate to the commission; requiring that certain inmates whose eligibility is verified by the commission be placed on conditional medical release; requiring the commission to review the information and verify an inmate's eligibility within a certain timeframe; requiring that the department's referral for release include certain information; requiring that release consider specified factors related to placement upon release; authorizing electronic monitoring for an inmate on conditional medical release; amending s. 948.001, F.S.; revising a definition; amending s. 948.013, F.S.; authorizing the Department of Corrections to transfer an offender to administrative probation in certain circumstances; amending s. 948.03, F.S.; requiring the Department of Corrections to include conditions of probation in the

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Florida Crime Information Center database; amending s. 948.06, F.S.; requiring each judicial circuit to establish an alternative sanctioning program; defining low- and moderate-risk level technical violations of probation; establishing permissible sanctions for low- and moderate-risk violations of probation under the program; establishing eligibility criteria; authorizing a probationer who allegedly committed a technical violation to waive participation in or elect to participate in the program, admit to the violation, agree to comply with the recommended sanction, and agree to waive certain rights; requiring a probation officer to submit the recommended sanction and certain documentation to the court if the probationer admits to committing the violation; authorizing the court to impose the recommended sanction or direct the department to submit a violation report, affidavit, and warrant to the court; specifying that a probationer's participation in the program is voluntary; authorizing a probation officer to submit a violation report, affidavit, and warrant to the court in certain circumstances; creating s. 948.081, F.S.; authorizing the establishment of community court programs; detailing program criteria; reenacting s. 932.7062, F.S., relating to a penalty for noncompliance with reporting requirements, to incorporate the amendment made to s. 932.7061, F.S., in a reference thereto; reenacting ss. 447.203(3), F.S., and 944.026(3), F.S., relating to definitions

and community-based facilities, to incorporate the amendment made to s. 944.801, F.S., in references thereto; reenacting ss. 316.1935(6), 775.084(4)(k), 775.087(2)(b) and(3)(b), 784.07(3), 790.235(1), 794.0115(7), 893.135(1)(b), (c), and (g) and (3), 921.0024(2), 944.605(7)(b), 944.70(1)(b), 947.13(1)(h), and 947.141(1), (2), and (7), F.S., all relating to authorized conditional medical release granted under s. 947.149, F.S., to incorporate the amendment made to s. 947.149, F.S., in references thereto; providing an effective date.

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

Section 1. Subsection (6) is added to section 14.32, Florida Statutes, to read:

14.32 Office of Chief Inspector General.—

(6) The Florida Correctional Operations Oversight Council, a council as defined in s. 20.03, is created within the Office of Chief Inspector General. The council is created for the purpose of overseeing matters relating to the corrections and juvenile justice continuum with an emphasis on the safe and effective operations of major institutions and facilities under the purview of the Department of Corrections and the Department of Juvenile Justice. However, in instances in which the policies of other components of the criminal justice system affect corrections or the juvenile justice continuum, the council shall advise and make recommendations. The Office of Chief Inspector General shall provide administrative support to the council. The

council is not subject to control, supervision, or direction by the Chief Inspector General in the performance of its duties, but is governed by the classification plan and salary and benefits plan approved by the Executive Office of the Governor.

(a) The council is composed of the following members:

1. Three members appointed by the Governor.

2. Three members appointed by the President of the Senate.

3. Three members appointed by the Speaker of the House of Representatives.

The initial members of the council shall be appointed by January 1, 2019. Members of the council shall be appointed for terms of 4 years. However, to achieve staggered terms, one appointee of each of the appointing authorities shall be appointed for an initial 2-year term. Members must be appointed in a manner that ensures equitable representation of different geographic regions of the state, and members must be residents of this state. Members of the council must act on behalf of the state as a whole and may not subordinate the needs of the state to those of a particular region. The council's membership should, to the greatest extent possible, include persons with a background in prison operations, county detention facility management, or the juvenile justice continuum of services.

(b) The council's primary duties and responsibilities include:

1. Evaluating, investigating, and overseeing the daily operations of correctional and juvenile facilities.

2. Conducting announced and unannounced inspections of correctional and juvenile facilities, including facilities

operated by private contractors. Members of the council may enter any facility where prisoners, residents, or juveniles are kept. Members shall be immediately admitted to such places as they request and may consult and confer with any prisoner, resident, or juvenile privately with adequate security in place.

3. Identifying and monitoring high-risk and problematic correctional or juvenile facilities, and reporting findings and recommendations relating to such facilities.

4. Providing technical assistance when appropriate.

5. Submitting an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by each November 1, beginning in 2019. The report must include statutory, budgetary, and operational recommendations to the Legislature which address problems identified by the council.

6. Conducting confidential interviews with staff, officers, inmates, juveniles, volunteers, and public officials relating to the operations and conditions of correctional and juvenile facilities.

7. Developing and implementing a monitoring tool that will be used to assess the performance of each correctional and juvenile facility.

8. Conducting on-site visits to correctional and juvenile facilities on a regular basis.

(c) The council may not interfere with the day-to-day operations of the Department of Corrections and the Department of Juvenile Justice, but shall conduct investigations and provide recommendations for improvement.

(d) The council shall appoint an executive director who

shall serve under the direction of the members of the council.

(e) Members of the council shall serve without compensation but are entitled to receive reimbursement for per diem and travel expenses as provided in s. 112.061.

(f) Members of the council or its staff may not have immediate family members working for the Department of Corrections, the Department of Juvenile Justice, or a private institution, facility, or provider under contract with either department. A member of the council may not have any direct or indirect interest in a contract, subcontract, franchise, privilege, or other benefit granted or awarded by either department while serving as a member of the council.

Section 2. For the 2018-2019 fiscal year, the sums of $168,074 in recurring funds and $37,855 in nonrecurring funds are appropriated from the General Revenue Fund to the Executive Office of the Governor, and one full-time equivalent position with associated salary rate of 70,000 is authorized, for the purpose of administering the Florida Correctional Operations Oversight Council.

Section 3. Subsection (5) of section 23.1225, Florida Statutes, is amended to read:

23.1225 Mutual aid agreements.—

(5) In the event of a disaster or emergency such that a state of emergency is declared by the Governor pursuant to chapter 252, a mutual aid agreement may be used to increase the presence of law enforcement to aid in traffic and crowd control, emergency response, and evacuation support. The requirement that a requested operational assistance agreement be a written agreement for rendering of assistance in a law enforcement

emergency may be waived by the participating agencies for a period of up to 90 days from the declaration of the disaster.

(a) When a law enforcement agency lends assistance pursuant to this subsection, all powers, privileges, and immunities listed in s. 23.127, except with regard to interstate mutual aid agreements, apply to the agency or entity, if the law enforcement employees rendering services are being requested and coordinated by the affected local law enforcement executive in charge of law enforcement operations.

(b) A listing of such agencies or entities and the officers and employees of such agencies or entities rendering assistance pursuant to this subsection must be maintained by the agency or entity requesting such assistance and filed at the end of the 90-day period with the Florida Department of Law Enforcement.

Section 4. Subsection (4) is added to section 30.15, Florida Statutes, to read:

30.15 Powers, duties, and obligations.—

(4)(a) The sheriff and the governing board of the county shall provide security for trial court facilities located within each county of a judicial circuit. The sheriff and the county shall coordinate with the chief judge of the applicable judicial circuit on security matters for such facilities, but the sheriff and county shall retain operational control over the manner in which security is provided, as applicable, in such facilities. Nothing in this subsection shall be construed to affect or erode the authority of counties under s. 14, Article V of the State Constitution or s. 29.008, to provide and fund the security of facilities as defined s. 29.008(1)(e).

(b) Pursuant to s. 26.49, sheriffs and their deputies,

employees, and contractors are officers of the court when providing security for trial court facilities under this subsection.

(c) The chief judge of the judicial circuit shall have decisionmaking authority to ensure the protection of due process rights, including, but not limited to, the scheduling and conduct of trials and other judicial proceedings, as part of his or her responsibility for the administrative supervision of the trial courts pursuant to s. 43.26.

Section 5. Subsection (1) of section 57.105, Florida Statutes, is amended to read:

57.105 Attorney's fee; sanctions for raising unsupported claims or defenses; exceptions; service of motions; damages for delay of litigation.—

(1) Unless otherwise provided, upon the court's initiative or motion of any party, the court shall award a reasonable attorney's fee, including prejudgment interest, to be paid to the prevailing party in equal amounts by the losing party and the losing party's attorney on any claim or defense at any time during a civil proceeding or action in which the court finds that the losing party or the losing party's attorney knew or should have known that a claim or defense when initially presented to the court or at any time before trial:

(a) Was not supported by the material facts necessary to establish the claim or defense; or

(b) Would not be supported by the application of then-existing law to those material facts.

Section 6. Section 322.75, Florida Statutes, is created to read:

322.75 Driver License Reinstatement Days.—

(1) Each judicial circuit shall establish a Driver License Reinstatement Days program for reinstating suspended driver licenses. Participants shall include the Department of Highway Safety and Motor Vehicles, the state attorney's office, the public defender's office, the circuit and county courts, the clerk of court, and any interested community organization.

(2) The clerk of court, in consultation with other participants, shall select one or more days for an event at which a person may have his or her driver license reinstated. A person must pay the full license reinstatement fee; however, the clerk may compromise or waive other fees and costs to facilitate reinstatement.

(3)(a) A person is eligible for reinstatement under the program if his or her license was suspended due to:

1. Driving without a valid driver license;

2. Driving with a suspended driver license;

3. Failing to make a payment on penalties in collection;

4. Failing to appear in court for a traffic violation; or

5. Failing to comply with provisions of chapter 318 or this chapter.

(b) Notwithstanding paragraphs (4)(a) through (c), a person is eligible for reinstatement under the program if the period of suspension or revocation has elapsed, the person has completed any required course or program as described in paragraph (4)(c), and the person is otherwise eligible for reinstatement.

(4) A person is not eligible for reinstatement under the program if his or her driver license is suspended or revoked:

(a) Because the person failed to fulfill a court-ordered

child support obligation;

(b) For a violation of s. 316.193;

(c) Because the person has not completed a driver training program, driver improvement course, or alcohol or substance abuse education or evaluation program required under ss. 316.192, 316.193, 322.2616, 322.271, or 322.264;

(d) For a traffic-related felony; or

(e) Because the person is a habitual traffic offender under s. 322.264.

(5) The clerk of court and the Department of Highway Safety and Motor Vehicles shall verify any information necessary for reinstatement of a driver license under the program.

Section 7. Paragraph (f) is added to subsection (2) of section 784.046, Florida Statutes, to read:

784.046 Action by victim of repeat violence, sexual violence, or dating violence for protective injunction; dating violence investigations, notice to victims, and reporting; pretrial release violations; public records exemption.—

(2) There is created a cause of action for an injunction for protection in cases of repeat violence, there is created a separate cause of action for an injunction for protection in cases of dating violence, and there is created a separate cause of action for an injunction for protection in cases of sexual violence.

(f) Notwithstanding any other law, attorney fees may not be awarded in any proceeding under this section.

Section 8. Paragraph (d) is added to subsection (2) of section 784.0485, Florida Statutes, to read:

784.0485 Stalking; injunction; powers and duties of court

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and clerk; petition; notice and hearing; temporary injunction; issuance of injunction; statewide verification system; enforcement.—

(2)

(d) Notwithstanding any other law, attorney fees may not be awarded in any proceeding under this section.

Section 9. 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.

Section 10. Section 900.05, Florida Statutes, is created to read:

900.05 Criminal justice data collection.—It is the intent of the Legislature to create a model of uniform criminal justice data collection by requiring local and state criminal justice agencies to report complete, accurate, and timely data, and to

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make such data available to the public.

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

(a) "Annual felony caseload" means the yearly caseload of each full-time state attorney and assistant state attorney or public defender and assistant public defender for cases assigned to the circuit criminal division, based on the number of felony cases reported to the Supreme Court under s. 25.075. The term does not include the appellate caseload of a public defender or assistant public defender. Cases reported pursuant to this term must be associated with a case number and each case number must only be reported once regardless of the number of attorney assignments that occur during the course of litigation.

(b) "Annual misdemeanor caseload" means the yearly caseload of each full-time state attorney and assistant state attorney or public defender and assistant public defender for cases assigned to the county criminal division, based on the number of misdemeanor cases reported to the Supreme Court under s. 25.075. The term does not include the appellate caseload of a public defender or assistant public defender. Cases reported pursuant to this term must be associated with a case number and each case number must only be reported once regardless of the number of attorney assignments that occur during the course of litigation.

(c) "Attorney assignment date" means the date a court-appointed attorney is assigned to the case or, if privately retained, the date an attorney files a notice of appearance with the clerk of court.

(d) "Attorney withdrawal date" means the date the court removes court-appointed counsel from a case or, for a privately retained attorney, the date a motion to withdraw is granted by

the court.

(e) "Case number" means the identification number assigned by the clerk of court to a criminal case.

(f) "Case status" means whether a case is open, inactive, closed, or reopened due to a violation of probation or community control.

(g) "Charge description" means the statement of the conduct that is alleged to have been violated, the associated statutory section establishing such conduct as criminal, and the misdemeanor or felony classification that is provided for in the statutory section alleged to have been violated.

(h) "Charge modifier" means an aggravating circumstance of an alleged crime that enhances or reclassifies a charge to a more serious misdemeanor or felony offense level.

(i) "Concurrent or consecutive sentence flag" means an indication that a defendant is serving another sentence concurrently or consecutively in addition to the sentence for which data is being reported.

(j) "Daily number of correctional officers" means the number of full-time, part-time, and auxiliary correctional officers who are actively providing supervision, protection, care, custody, and control of inmates in a county detention facility or state correctional institution or facility each day.

(k) "Deferred prosecution or pretrial diversion agreement date" means the date a contract is signed by the parties regarding a defendant's admission into a deferred prosecution or pretrial diversion program.

(l) "Deferred prosecution or pretrial diversion hearing date" means each date that a hearing, including a status

hearing, is held on a case that is in a deferred prosecution or pretrial diversion program, if applicable.

(m) "Disciplinary violation and action" means any conduct performed by an inmate in violation of the rules of a county detention facility or state correctional institution or facility that results in the initiation of disciplinary proceedings by the custodial entity and the consequences of such disciplinary proceedings.

(n) "Disposition date" means the date of final judgment, adjudication, adjudication withheld, dismissal, or nolle prosequi for the case and if different dates apply, the disposition dates of each charge.

(o) "Domestic violence flag" means an indication that a charge involves domestic violence as defined in s. 741.28.

(p) "Gang affiliation flag" means an indication that a defendant is involved in or associated with a criminal gang as defined in s. 874.03.

(q) "Gain-time credit earned" means a credit of time awarded to an inmate in a county detention facility in accordance with s. 951.22 or a state correctional institution or facility in accordance with s. 944.275.

(r) "Habitual offender flag" means an indication that a defendant is a habitual felony offender as defined in s. 775.084 or a habitual misdemeanor offender as defined in s. 775.0837.

(s) "Judicial transfer date" means a date on which a defendant's case is transferred to another court or presiding judge.

(t) "Number of contract attorneys representing indigent defendants for the office of the public defender" means the

number of attorneys hired on a temporary basis, by contract, to represent indigent clients who were appointed a public defender.

(u) "Pretrial release violation flag" means an indication that the defendant has violated the terms of his or her pretrial release.

(v) "Prior incarceration within the state" means any prior history of a defendant being incarcerated in a county detention facility or state correctional institution or facility.

(w) "Tentative release date" means the anticipated date that an inmate will be released from incarceration after the application of adjustments for any gain-time earned or credit for time served.

(x) "Sexual offender flag" means an indication that a defendant required to register as a sexual predator as defined in s. 775.21 or as a sexual offender as defined in s. 943.0435.

(2) DATA COLLECTION AND REPORTING.—Beginning January 1, 2019, an entity required to collect data in accordance with this subsection shall collect the specified data required of the entity on a monthly basis. Each entity shall report the data collected in accordance with this subsection to the Department of Law Enforcement on a quarterly basis.

(a) Clerk of the Court.—Each clerk of court shall collect the following data for each criminal case:

1. Case number.

2. Date that the alleged offense occurred.

3. County in which the offense is alleged to have occurred.

4. Date the defendant is taken into physical custody by a law enforcement agency or is issued a notice to appear on a criminal charge, if such date is different from the date the

offense is alleged to have occurred.

5. Date that the criminal prosecution of a defendant is formally initiated through the filing, with the clerk of the court, of an information by the state attorney or an indictment issued by a grand jury.

6. Arraignment date.

7. Attorney assignment date.

8. Attorney withdrawal date.

9. Case status.

10. Disposition date.

11. Information related to each defendant, including:

a. Identifying information, including name, date of birth, age, race or ethnicity, and gender.

b. Zip code of primary residence.

c. Primary language.

d. Citizenship.

e. Immigration status, if applicable.

f. Whether the defendant has been found by a court to be indigent pursuant to s. 27.52.

12. Information related to the formal charges filed against the defendant, including:

a. Charge description.

b. Charge modifier, if applicable.

c. Drug type for each drug charge, if known.

d. Qualification for a flag designation as defined in this section, including a domestic violence flag, gang affiliation flag, sexual offender flag, habitual offender flag, or pretrial release violation flag.

13. Information related to bail or bond and pretrial

release determinations, including the dates of any such determinations:

a. Pretrial release determination made at a first appearance hearing that occurs within 24 hours of arrest, including all monetary and nonmonetary conditions of release.

b. Modification of bail or bond conditions made by a court having jurisdiction to try the defendant or, in the absence of the judge of the trial court, by the circuit court, including modifications to any monetary and nonmonetary conditions of release.

c. Cash bail or bond payment, including whether the defendant utilized a bond agent to post a surety bond.

d. Date defendant is released on bail, bond, or pretrial release.

e. Bail or bond revocation due to a new offense, a failure to appear, or a violation of the terms of bail or bond, if applicable.

14. Information related to court dates and dates of motions and appearances, including:

a. Date of any court appearance and the type of proceeding scheduled for each date reported.

b. Date of any failure to appear in court, if applicable.

c. Judicial transfer date, if applicable.

d. Trial date.

e. Date that a defendant files a notice to participate in discovery.

f. Speedy trial motion and hearing dates, if applicable.

g. Dismissal motion and hearing dates, if applicable.

15. Whether the attorney representing the defendant is

court-appointed to or privately retained by a defendant, or whether the defendant is represented pro se.

16. Information related to sentencing, including:

a. Date that a court enters a sentence against a defendant.

b. Sentence type and length imposed by the court, including, but not limited to, the total duration of imprisonment in a county detention facility or state correctional institution or facility, and conditions probation or community control supervision.

c. Amount of time served in custody by the defendant related to the reported criminal case that is credited at the time of disposition of the case to reduce the actual length of time the defendant will serve on the term of imprisonment that is ordered by the court at disposition.

d. Total amount of court fees imposed by the court at the disposition of the case.

e. Outstanding balance of the defendant’s court fees imposed by the court at disposition of the case.

f. Total amount of fines imposed by the court at the disposition of the case.

g. Outstanding balance of the defendant’s fines imposed by the court at disposition of the case.

h. Restitution amount ordered, including the amount collected by the court and the amount paid to the victim, if applicable.

i. Digitized sentencing scoresheet prepared in accordance with s. 921.0024.

17. The number of judges or magistrates, or their equivalents, hearing cases in circuit or county criminal

divisions of the circuit court. Judges or magistrates, or their equivalents, who solely hear appellate cases from the county criminal division are not to be reported under this subparagraph.

(b) State attorney.—Each state attorney shall collect the following data:

1. Information related to a human victim of a criminal offense, including:

a. Identifying information of the victim, including race or ethnicity, gender, and age.

b. Relationship to the offender, if any.

2. Number of full-time prosecutors.

3. Number of part-time prosecutors.

4. Annual felony caseload.

5. Annual misdemeanor caseload.

6. Any charge referred to the state attorney by a law enforcement agency related to an episode of criminal activity.

7. Number of cases in which a no-information was filed.

8. Information related to each defendant, including:

a. Each charge referred to the state attorney by a law enforcement agency related to an episode of criminal activity.

b. Drug type for each drug charge, if applicable.

c. Deferred prosecution or pretrial diversion agreement date, if applicable.

d. Deferred prosecution or pretrial diversion hearing date, if applicable.

(c) Public defender.—Each public defender shall collect the following data for each criminal case:

1. Number of full-time public defenders.

2. Number of part-time public defenders.

3. Number of contract attorneys representing indigent defendants for the office of the public defender.

4. Annual felony caseload.

5. Annual misdemeanor caseload.

(d) County detention facility.—The administrator of each county detention facility shall collect the following data:

1. Maximum capacity for the county detention facility.

2. Weekly admissions to the county detention facility for a revocation of probation or community control.

3. Daily population of the county detention facility, including the specific number of inmates in the custody of the county that:

a. Are awaiting case disposition.

b. Have been sentenced by a court to a term of imprisonment in the county detention facility.

c. Have been sentenced by a court to a term of imprisonment with the Department of Corrections and who are awaiting transportation to the department.

d. Have a federal detainer or are awaiting disposition of a case in federal court.

4. Information related to each inmate, including:

a. Date a defendant is processed into the county detention facility subsequent to an arrest for a new violation of law or for a violation of probation or community control.

b. Qualification for a flag designation as defined in this section, including domestic violence flag, gang affiliation flag, habitual offender flag, pretrial release violation flag, or sexual offender flag.

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5. Total population of the county detention facility at year-end. This data must include the same specified classifications as subparagraph 3.

6. Per diem rate for a county detention facility bed.

7. Daily number of correctional officers for the county detention facility.

8. Annual county detention facility budget. This information only needs to be reported once annually at the beginning of the county's fiscal year.

9. Revenue generated for the county from the temporary incarceration of federal defendants or inmates.

(e) Department of Corrections.—The Department of Corrections shall collect the following data:

1. Information related to each inmate, including:

a. Identifying information, including name, date of birth, race or ethnicity, and identification number assigned by the department.

b. Number of children.

c. Education level, including any vocational training.

d. Date the inmate was admitted to the custody of the department.

e. Current institution placement and the security level assigned to the institution.

f. Custody level assignment.

g. Qualification for a flag designation as defined in this section, including sexual offender flag, habitual offender flag, gang affiliation flag, or concurrent or consecutive sentence flag.

h. County that committed the prisoner to the custody of the

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department.

i. Whether the reason for admission to the department is for a new conviction or a violation of probation, community control, or parole. For an admission for a probation, community control, or parole violation, the department shall report whether the violation was technical or based on a new violation of law.

j. Specific statutory citation for which the inmate was committed to the department, including, for an inmate convicted of drug trafficking under s. 893.135, the statutory citation for each specific drug trafficked.

k. Length of sentence or concurrent or consecutive sentences served.

l. Tentative release date.

m. Gain time earned in accordance with s. 944.275.

n. Prior incarceration within the state.

o. Disciplinary violation and action.

p. Participation in rehabilitative or educational programs while in the custody of the department.

2. Information about each state correctional institution or facility, including:

a. Budget for each state correctional institution or facility.

b. Daily prison population of all inmates incarcerated in a state correctional institution or facility.

c. Daily number of correctional officers for each state correctional institution or facility.

3. Information related to persons supervised by the department on probation or community control, including:

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a. Identifying information for each person supervised by the department on probation or community control, including his or her name, date of birth, race or ethnicity, sex, and department-assigned case number.

b. Length of probation or community control sentence imposed and amount of time that has been served on such sentence.

c. Projected termination date for probation or community control.

d. Revocation of probation or community control due to a violation, including whether the revocation is due to a technical violation of the conditions of supervision or from the commission of a new law violation.

4. Per diem rates for:

a. Prison bed.

b. Probation.

c. Community control.

This information only needs to be reported once annually at the time the most recent per diem rate is published.

(3) DATA PUBLICLY AVAILABLE.—Beginning January 1, 2019, the Department of Law Enforcement shall publish datasets in its possession in a modern, open, electronic format that is machine-readable and readily accessible by the public on the department's website. The published data must be searchable, at a minimum, by each data element, county, circuit, and unique identifier. Beginning March 1, 2019, the department shall begin publishing the data received under subsection (2) in the same modern, open, electronic format that is machine-readable and

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readily accessible to the public on the department's website. The department shall publish all data received under subsection (2) no later than July 1, 2019.

Section 11. A pilot project is established in the Sixth Judicial Circuit for the purpose of improving criminal justice data transparency and ensuring that data submitted under s. 900.05, Florida Statutes, is accurate, valid, reliable, and structured. The clerk of court, the state attorney, the public defender, or a sheriff in the circuit may enter into a memorandum of understanding with a national, nonpartisan, not-for-profit entity which provides data and measurement for county-level criminal justice systems to establish the duties and responsibilities of a data fellow, completely funded by the entity, to be embedded with the office or agency. The data fellow shall assist with data extraction, validation, and quality and shall publish such data consistent with the terms of the memorandum. The data fellow shall assist the office or agency in compiling and reporting data pursuant to s. 900.05, Florida Statutes, in compliance with rules established by the Department of Law Enforcement. The pilot project shall expire as provided in the memorandum.

Section 12. For the 2018-2019 fiscal year, nine full-time equivalent positions with associated salary rate of 476,163 are authorized and the recurring sum of $665,884 and the nonrecurring sum of $1,084,116 is appropriated from the General Revenue Fund to the Department of Law Enforcement for the purposes of implementing ss. 900.05(3) and 943.687, Florida Statutes, transitioning to incident-based crime reporting, and collecting and submitting crime statistics that meet the

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requirements of the Federal Bureau of Investigation under the National Incident-Based Reporting System.

Section 13. Section 907.042, Florida Statutes, is created to read:

907.042 Supervised bond program.—

(1) LEGISLATIVE FINDINGS.—The Legislature finds that there is a need to use evidence-based methods to identify defendants that can successfully comply with specified pretrial release conditions. The Legislature finds that the use of actuarial instruments that evaluate criminogenic based needs and classify defendants according to levels of risk provides a more consistent and accurate assessment of a defendant's risk of noncompliance while on pretrial release pending trial. The Legislature also finds that both the community and a defendant are better served when a defendant, who poses a low risk to society, is provided the opportunity to fulfill employment and familial responsibilities in the community under a structured pretrial release plan that ensures the best chance of remaining compliant with all pretrial conditions rather than remaining in custody. The Legislature finds that there is a benefit to establishing a supervised bond program in each county for the purpose of providing pretrial release to certain defendants who may not otherwise be eligible for pretrial release on unsupervised nonmonetary conditions and who do not have the ability to satisfy the bond imposed by the court. The Legislature finds that the creation of such a program will reduce the likelihood of defendants remaining unnecessarily in custody pending trial.

(2) CREATION.—A supervised bond program may be established

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in each county with the terms of each program to be developed with concurrence of the chief judge of the circuit, the county's chief correctional officer, the state attorney, and the public defender. A county that has already established and implemented a supervised bond program whose program and risk assessment instrument is in compliance with subsections (3) and (4) may continue to operate without such concurrence.

(3) PROGRAM REQUIREMENTS.—A supervised bond program, at a minimum, shall:

(a) Require the county's chief correctional officer to administer the supervised bond program.

(b) Provide that a risk assessment instrument may be utilized to determine eligible defendants and determine an appropriate level of supervision for each defendant upon release.

(c) Require the county's chief correctional officer, or his or her designee, to administer the risk assessment instrument to a potential defendant if a county elects to utilize a risk assessment instrument for its supervised bond program.

(d) Provide that the findings of a risk assessment instrument may be used to create an individualized supervision plan for each eligible defendant that is tailored to the defendant's risk level and supervision needs.

(e) Require the appropriate court to make a final determination regarding whether a defendant will be placed into the supervised bond program and, if the court makes such a determination, the court must also:

1. Determine the conditions of the individualized supervision plan for which the defendant must comply as a part

of the supervised bond program, including, but not limited to, the requirement that the defendant:

a. Be placed on active electronic monitoring or active continuous alcohol monitoring, or both, dependent upon the level of risk indicated by the risk assessment instrument;

b. Communicate weekly, via telephone or in person contact as determined by the court, with the office of the county's chief correctional officer; and

2. Review the bond of a defendant who is being accepted into the supervised bond program to determine if a reduction of the court-ordered bond, up to its entirety, is appropriate.

(f) Establish procedures for reassessing or terminating defendants from the supervised bond program who do not comply with the terms of the individualized supervision plan imposed through the program.

(4) RISK ASSESSMENT INSTRUMENT.—

(a) Each county that establishes a supervised bond program may utilize a risk assessment instrument that conducts a criminogenic assessment for use in evaluating the proper level of supervision appropriate to ensure compliance with pretrial conditions and safety to the community. The risk assessment instrument must consider, but need not be limited to, the following criteria:

1. The nature and circumstances of the offense the defendant is alleged to have committed.

2. The nature and extent of the defendant's prior criminal history, if any.

3. Any prior history of the defendant failing to appear in court.

4. The defendant's employment history, employability skills, and employment interests.

5. The defendant's educational, vocational, and technical training.

6. The defendant's background, including his or her family, home, and community environment.

7. The defendant's physical and mental health history, including any substance use.

8. An evaluation of the defendant's criminal thinking, criminal associates, and social awareness.

(b) A county may contract with the Department of Corrections to develop a risk assessment instrument or modify an instrument that has already been developed by the department, provided the instrument contains the criteria enumerated in paragraph (a). If a county elects to utilize a risk assessment instrument developed or modified by the department in accordance with this paragraph, the county's chief correctional officer shall enter into a contract with the department for such use.

(c) Each county may create its own risk assessment instrument for the purpose of operating a supervised bond program or may utilize a risk assessment instrument that has previously been developed for a similar purpose as provided for in this section. Additionally, a county may utilize a risk assessment instrument that has been developed by another county for a similar purpose as provided for in this section. To utilize a risk assessment instrument developed by a county in accordance with this paragraph, the risk assessment instrument must be validated by the Department of Corrections and contain the criteria enumerated in paragraph (a). If a county elects to

utilize a risk assessment instrument developed or modified by another county in accordance with this paragraph, the counties' chief correctional officers shall enter into a contract for such use.

(d) A county may contract with an independent entity to utilize a risk assessment instrument that has previously been developed for a similar purpose as provided for in this section. To utilize a risk assessment instrument developed by an independent entity in accordance with this paragraph, the risk assessment instrument must be validated by the Department of Corrections and contain the criteria enumerated in paragraph (a). If a county elects to utilize a risk assessment instrument developed or modified by an independent entity in accordance with this paragraph, the county's chief correctional officer shall enter into a contract with the independent entity for such use.

(e) A county that elects to utilize a risk assessment instrument in its supervised bond program may begin to implement the program immediately upon securing a contract for the utilization of or the completion of development or modification, and if applicable, validation of, a risk assessment instrument. A county that intends to utilize a risk assessment instrument it has already developed or modified may implement a supervised bond program immediately upon validation of the risk assessment instrument. A county that has already implemented a supervised bond program may continue to operate such program while the risk assessment instrument it utilizes is being validated. Implementation must include training of all county staff that will administer the risk assessment instrument.

(5) REPORTING.—Each county that establishes a supervised bond program pursuant to this section, or has an existing supervised bond program that operates in compliance with this section, shall provide an annual report to the Office of Program Policy Analysis and Government Accountability that details the results of the administration of the risk assessment instrument, programming used for defendants who received the assessment and were accepted into the supervised bond program, the success rate of such program, and savings realized by the county as a result of such defendants being released from custody pending trial. The annual report from the county must be submitted to OPPAGA by October 1 each year. OPPAGA shall compile the results of the counties reports for inclusion in an independent section of its annual report developed and submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives in accordance with s. 907.044.

Section 14. Section 907.0421, Florida Statutes, is created to read:

907.0421 Risk Assessment Pilot Program.—

(1) LEGISLATIVE FINDINGS.—The Legislature finds that there is a need to use evidence-based methods to reduce recidivism. The Legislature finds that the use of actuarial instruments that classify offenders according to levels of risk to reoffend provides a more consistent and accurate assessment of an offender's risk and needs. The Legislature also finds that research indicates that using accurate risk and needs assessment instruments to identify appropriate interventions and programming for offenders reduces recidivism.

(2) RISK ASSESSMENT INSTRUMENT.—

(a) The Department of Corrections shall develop a risk assessment instrument that conducts a criminogenic assessment for use in evaluating the proper placement and programming needs for a person who is arrested. The risk assessment instrument must consider, but need not be limited to, the following criteria:

1. The nature and circumstances of the offense the person committed.

2. The nature and extent of the person's prior criminal history, if any.

3. Any prior history of the person failing to appear in court.

4. The person's employment history, employability skills, and employment interests.

5. The person's educational, vocational, and technical training.

6. The person's background, including his or her family, home, and community environment.

7. The person's physical and mental health history, including any substance use.

8. An evaluation of the person's criminal thinking, criminal associates, and social awareness.

(b) The Department of Corrections may use or modify an existing risk assessment instrument, if the instrument contains the criteria enumerated in paragraph (a).

(c) The Department of Corrections shall complete the development or modification of a risk assessment instrument no later than March 1, 2019. The department may begin to implement the risk assessment instrument immediately upon completion.

Implementation, including training all staff that will administer the risk assessment instrument, must be completed by June 30, 2019.

(d) A representative of the county's chief correctional officer shall administer the risk assessment instrument as early as reasonably possible after a person's arrest, but no later than 10 business days after the arrest. If a person is released from jail pursuant to chapter 903 before the administration of the risk assessment instrument, the chief correctional officer, or his or her representative, must schedule and provide written notification of a date and time for the person to return to the jail for the administration of the risk assessment instrument. The date and time must be provided in writing upon the person's pretrial release. The risk assessment instrument may be conducted by video teleconference.

(e) A risk assessment instrument report must be made available to the person to whom the instrument is administered, his or her legal counsel, and the state attorney upon completion of the report. The Department of Corrections shall submit to the court the risk assessment instrument report, but the court may not review it without the consent of the person who is the subject of the report and his or her legal counsel.

(3) CREATION.—Contingent upon appropriations and a contract with each participating county, it is the intent of the Legislature to establish a 3-year Risk Assessment Pilot Program to perform a risk assessment evaluation on all persons arrested for a felony in participating counties.

(4) PARTICIPATING COUNTIES.—Participation in the pilot program is limited to Hillsborough, Pasco, and Pinellas

Counties. Each participating county's chief correctional officer shall enter into a 3-year contract with the Department of Corrections for the ability to utilize the risk assessment instrument that is developed in accordance with this section.

(5) PILOT PROGRAM REQUIREMENTS.—

(a) The participating counties shall administer the risk assessment instrument to all persons arrested for a felony and utilize the results of such risk assessment instrument as a tool for determining appropriate programming and sentencing with the goal of reducing recidivism.

(b) Each county participating in the pilot program shall provide an annual report to the Department of Corrections by July 1 of each year of the pilot program which details the results of the administration of the risk assessment instrument, programming used for persons who received the assessment, and the success rate of such programming. The department shall compile the county reports and submit one annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by October 1 of each year of the pilot program.

(6) RULEMAKING.—The Department of Corrections, in consultation with a participating county's chief correctional officer, chief judge, state attorney, and public defender, may adopt rules to administer this section.

Section 15. Paragraph (b) of subsection (4) of section 907.043, Florida Statutes, is amended to read:

907.043 Pretrial release; citizens' right to know.—

(4)

(b) The annual report must contain, but need not be limited

to:

1. The name, location, and funding sources of the pretrial release program, including the amount of public funds, if any, received by the pretrial release program.

2. The operating and capital budget of each pretrial release program receiving public funds.

3.a. The percentage of the pretrial release program's total budget representing receipt of public funds.

b. The percentage of the total budget which is allocated to assisting defendants obtain release through a nonpublicly funded program.

c. The amount of fees paid by defendants to the pretrial release program.

4. The number of persons employed by the pretrial release program.

5. The number of defendants assessed and interviewed for pretrial release.

6. The number of defendants recommended for pretrial release.

7. The number of defendants for whom the pretrial release program recommended against nonsecured release.

8. The number of defendants granted nonsecured release after the pretrial release program recommended nonsecured release.

9. The number of defendants assessed and interviewed for pretrial release who were declared indigent by the court.

10. The number of defendants accepted into a pretrial release program who paid a surety or cash bail or bond.

11. The number of defendants for whom a risk assessment

tool was used in determining whether the defendant should be released pending the disposition of the case and the number of defendants for whom a risk assessment tool was not used.

12. The specific statutory citation for each criminal charge related to a defendant whose case is accepted into a pretrial release program, including, at a minimum, the number of defendants charged with dangerous crimes as defined in s. 907.041; nonviolent felonies; or misdemeanors only. A "nonviolent felony" for purposes of this subparagraph excludes the commission of, an attempt to commit, or a conspiracy to commit any of the following:

a. An offense enumerated in s. 775.084(1)(c);

b. An offense that requires a person to register as a sexual predator in accordance with s. 775.21 or as a sexual offender in accordance with s. 943.0435;

c. Failure to register as a sexual predator in violation of s. 775.21 or as a sexual offender in violation of s. 943.0435;

d. Facilitating or furthering terrorism in violation of s. 775.31;

e. A forcible felony as described in s. 776.08;

f. False imprisonment in violation of s. 787.02;

g. Burglary of a dwelling or residence in violation of s. 810.02(3).

h. Abuse, aggravated abuse, and neglect of an elderly person or disabled adult in violation of s. 825.102;

i. Abuse, aggravated abuse, and neglect of a child in violation of s. 827.03;

j. Poisoning of food or water in violation of s. 859.01;

k. Abuse of a dead human body in violation of s. 872.06;

l. A capital offense in violation of chapter 893;

m. An offense that results in serious bodily injury or death to another human; or

n. A felony offense in which the defendant used a weapon or firearm in the commission of the offense.

13. The number of defendants accepted into a pretrial release program with no prior criminal conviction.

14.~~10.~~ The name and case number of each person granted nonsecured release who:

a. Failed to attend a scheduled court appearance.

b. Was issued a warrant for failing to appear.

c. Was arrested for any offense while on release through the pretrial release program.

15.~~11.~~ Any additional information deemed necessary by the governing body to assess the performance and cost efficiency of the pretrial release program.

Section 16. Subsections (3) through (7) of section 921.0024, Florida Statutes, are amended to read:

921.0024 Criminal Punishment Code; worksheet computations; scoresheets.—

(3) A single digitized scoresheet shall be prepared for each defendant to determine the permissible range for the sentence that the court may impose, except that if the defendant is before the court for sentencing for more than one felony and the felonies were committed under more than one version or revision of the guidelines or the code, separate digitized scoresheets must be prepared. The scoresheet or scoresheets must cover all the defendant's offenses pending before the court for sentencing. The state attorney shall prepare the digitized

scoresheet or scoresheets, which must be presented to the defense counsel for review for accuracy in all cases unless the judge directs otherwise. The defendant's scoresheet or scoresheets must be approved and signed by the sentencing judge.

(4) The Department of Corrections, in consultation with the Office of the State Courts Administrator, state attorneys, and public defenders, must develop and submit the revised digitized Criminal Punishment Code scoresheet to the Supreme Court for approval by June 15 of each year, as necessary. The digitized scoresheet shall have individual, structured data cells for each data field on the scoresheet. Upon the Supreme Court's approval of the revised digitized scoresheet, the Department of Corrections shall produce and provide ~~sufficient copies of~~ the revised digitized scoresheets by September 30 of each year, as necessary. Digitized scoresheets must include individual data cells to indicate ~~item entries for the scoresheet preparer's use in indicating~~ whether any prison sentence imposed includes a mandatory minimum sentence or the sentence imposed was a downward departure from the lowest permissible sentence under the Criminal Punishment Code.

(5) The Department of Corrections shall make available ~~distribute sufficient copies of~~ the digitized Criminal Punishment Code scoresheets to those persons charged with the responsibility for preparing scoresheets.

(6) The clerk of the circuit court shall transmit a complete~~,~~ and accurate digitized~~, and legible~~ copy of the Criminal Punishment Code scoresheet used in each sentencing proceeding to the Department of Corrections. Scoresheets must be electronically transmitted no less frequently than monthly, by

the first of each month, and may be sent collectively.

(7) A digitized sentencing scoresheet must be prepared for every defendant who is sentenced for a felony offense. ~~A copy of~~ The individual offender's digitized Criminal Punishment Code scoresheet and any attachments thereto prepared pursuant to Rule 3.701, Rule 3.702, or Rule 3.703, Florida Rules of Criminal Procedure, or any other rule pertaining to the preparation and submission of felony sentencing scoresheets, must be included with ~~attached to the copy of~~ the uniform judgment and sentence form provided to the Department of Corrections.

Section 17. Subsection (1) of section 932.7061, Florida Statutes, is amended to read:

932.7061 Reporting seized property for forfeiture.—

(1) Every law enforcement agency shall submit an annual report to the Department of Law Enforcement indicating whether the agency has seized or forfeited property under the Florida Contraband Forfeiture Act. A law enforcement agency receiving or expending forfeited property or proceeds from the sale of forfeited property in accordance with the Florida Contraband Forfeiture Act shall submit a completed annual report by December 1 ~~October 10~~ documenting the receipts and expenditures. The report shall be submitted in an electronic form, maintained by the Department of Law Enforcement in consultation with the Office of Program Policy Analysis and Government Accountability, to the entity that has budgetary authority over such agency and to the Department of Law Enforcement. The annual report must, at a minimum, specify the type, approximate value, court case number, type of offense, disposition of property received, and amount of any proceeds received or expended.

Section 18. Section 943.687, Florida Statutes, is created to read:

943.687 Criminal justice data transparency.—In order to facilitate the availability of comparable and uniform criminal justice data, the department shall:

(1) Collect, compile, maintain, and manage the data submitted by local and state entities pursuant to s. 900.05 and coordinate related activities to collect and submit data. The department shall create a unique identifier for each criminal case received from the clerks of court which identifies the person who is the subject of the criminal case. The unique identifier must be the same for that person in any court case and used across local and state entities for all information related to that person at any time. The unique identifier shall be randomly created and may not include any portion of the person's social security number or date of birth.

(2) Promote criminal justice data sharing by making such data received under s. 900.05 comparable, transferable, and readily usable.

(3) Create and maintain an Internet-based database of criminal justice data received under s. 900.05 in a modern, open, electronic format that is machine-readable and readily accessible through an application program interface. The database must allow the public to search, at a minimum, by each data element, county, judicial circuit, or unique identifier. The department may not require a license or charge a fee to access or receive information from the database.

(4) Develop written agreements with local, state, and federal agencies to facilitate criminal justice data sharing.

(5) Establish by rule:

(a) Requirements for the entities subject to the requirements of s. 900.05 to submit data through an application program interface.

(b) A data catalog defining data objects, describing data fields, and detailing the meaning of and options for each data element reported pursuant to s. 900.05.

(c) How data collected pursuant to s. 900.05 is compiled, processed, structured, used, or shared. The rule shall provide for the tagging of all information associated with each case number and unique identifier.

(d) Requirements for implementing and monitoring the Internet-based database established under subsection (3).

(e) How information contained in the Internet-based database established under subsection (3) is accessed by the public.

(6) Consult with local, state, and federal criminal justice agencies and other public and private users of the database established under subsection (3) on the data elements collected under s. 900.05, the use of such data, and adding data elements to be collected.

(7) Monitor data collection procedures and test data quality to facilitate the dissemination of accurate, valid, reliable, and complete criminal justice data.

(8) Develop methods for archiving data, retrieving archived data, and data editing and verification.

Section 19. Subsection (3) of section 944.704, Florida Statutes, is amended to read:

944.704 Staff who provide transition assistance; duties.—

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The department shall provide a transition assistance specialist at each of the major institutions whose duties include, but are not limited to:

(3) Obtaining job placement information, ~~.~~ which must include identifying any job assignment credentialing or industry certifications for which an inmate is eligible.

The transition assistance specialist may not be a correctional officer or correctional probation officer as defined in s. 943.10.

Section 20. Subsections (3) through (6) of section 944.705, Florida Statutes, are renumbered as subsections (4), (5), (6), and (10), respectively, and new subsections (3), (7), (8), (9), and (11) are added to that section, to read:

944.705 Release orientation program.—

(3) Each inmate shall receive a comprehensive community reentry resource directory organized by the county to which the inmate is being released. The directory shall include the name, address, and telephone number of each provider, and a description of services offered. The directory must also include the name, address, and telephone number of existing portals of entry.

(7) The department shall allow a nonprofit faith-based, business and professional, civic, or community organization to apply to be registered under this section to provide inmate reentry services. Reentry services include, but are not limited to, counseling; providing information on housing and job placement; money management assistance; and programs addressing substance abuse, mental health, or co-occurring conditions.

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(8) The department shall adopt policies and procedures for screening, approving, and registering an organization that applies to be registered to provide inmate reentry services under subsection (7). The department may deny approval and registration of an organization or a representative from an organization if it determines that the organization or representative does not meet the department's policies or procedures.

(9) The department may contract with a public or private educational institution's Veteran's Advocacy Clinic or Veteran's Legal Clinic to assist qualified veteran inmates in applying for veteran's assistance benefits upon release.

(11) The department shall adopt rules to implement this section.

Section 21. Subsections (4) and (5) of section 944.801, Florida Statutes, are renumbered (5) and (6), respectively, and new subsection (4) is added to that section to read:

944.801 Education for state prisoners.—

(4) The Correctional Education Program may develop a Prison Entrepreneurship Program and adopt procedures for admitting student inmates. If the department elects to develop the program, it must include at least 180 days of in-prison education. Program curriculum must include a component on developing a business plan, procedures for graduation and certification of successful student inmates, and at least 90 days of transitional and postrelease continuing education services. Transitional and postrelease continuing education services may be offered to graduate student inmates on a voluntary basis and shall not be a requirement for completion of

the program. The department shall enter into agreements with public or private community colleges, junior colleges, colleges, universities, or other non-profit entities to implement the program. The program shall be funded within existing resources.

Section 22. Section 944.805, Florida Statutes, is created to read:

944.805 Certificate of achievement and employability; definitions.—

(1) As used in this section and ss. 944.806-944.8065, the term:

(a) "Discretionary civil impact" means any Florida statute or rule that creates a penalty, disability, or disadvantage to which all of the following apply:

1. The impact is triggered in whole or in part by a person's conviction of an offense, whether or not the penalty, disability, or disadvantage is included in the judgment or sentence.

2. The impact is imposed on a person, licensing agency, or employer.

3. The impact permits, but does not require, that a convicted person have a license denied or revoked, permits an agency to deny or revoke a license or certification to a convicted person, or permits a business to refuse to employ a convicted person.

The term does not include imprisonment, probation, parole, supervised release, forfeiture, restitution, fine, assessment, or costs of prosecution.

(b) "Eligible inmate" means a person who is serving a

prison term in a state correctional institution or facility; under the supervision of the department on probation or community control; or under a postrelease control sanction; and who is eligible to apply to the department for a certificate of achievement and employability.

(c) "Licensing agency" means any regulatory or licensing entity with authority to issue, suspend, or revoke any professional license or certification.

(d) "Mandatory civil impact" means any Florida statute or rule that creates a penalty, disability, or disadvantage to which all of the following apply:

1. The impact is triggered automatically solely by a person's conviction of an offense, whether or not the penalty, disability, or disadvantage is included in the judgment or sentence.

2. The impact is imposed on a person, licensing agency, or employer.

3. The impact precludes a convicted person from maintaining or obtaining licensure or employment, precludes a licensing agency from issuing a license or certification to a convicted person, or precludes a business from being certified or from employing a convicted person.

The term does not include imprisonment, probation, parole, supervised release, forfeiture, restitution, fine, assessment, or costs of prosecution.

Section 23. Section 944.8055, Florida Statutes, is created to read:

944.8055 Certificate of achievement and employability;

eligibility.—

(1) An eligible inmate may apply to the department at a time specified in paragraph (2)(a) for a certificate of achievement and employability if the inmate:

(a) Has satisfactorily completed one or more in-prison vocational programs approved by the department.

(b) Has demonstrated exemplary performance as determined by completion of one or more cognitive or behavioral improvement programs approved by the department while incarcerated in a state correctional institution or facility or under supervision, or during both periods of time.

(c) Shows other evidence of achievement and rehabilitation.

(d) Is not currently serving a sentence for or has not been previously convicted of a violation of a dangerous crime as defined in s. 907.041, or a violation specified as a predicate offense for registration as a sexual predator under s. 775.21 or for registration as a sexual offender under s. 943.0435.

(2)(a) An eligible inmate may apply for a certificate of achievement and employability no earlier than one year prior to the date of his or her release from department custody and no later than the actual date of release.

(b) An inmate released from a state correctional institution or facility, or under supervision or postrelease control sanction, and who satisfies all the criteria set forth in subsection (1), is eligible to apply to the department for a certificate of achievement and employability at any time while under supervision or postrelease control sanction.

(3) When applying for a certificate of achievement and employability, an eligible inmate shall specify the mandatory

civil impacts for which he or she is seeking relief through a certificate. If a mandatory civil impact of a licensing agency is affected by issuing the certificate, the department shall notify the licensing agency, provide the licensing agency with a copy of the application and documentation that the department has concerning the eligible inmate, and afford the licensing agency an opportunity to object in writing to issuing the certificate.

(4) The department shall consider the eligible inmate's application and all objections to issuing the certificate of achievement and employability. If the department determines that the inmate is eligible, the application was filed timely, and all objections to issuing the certificate are insufficient, it shall issue the certificate.

(5) A certificate of achievement or employability does not affect the mandatory civil impacts under s. 4, Art. VI of the State Constitution, or ss. 775.13, 775.21, 943.0435, and 944.292.

(6) The department is not liable for a claim for damages arising from issuing, denying, or revoking a certificate of achievement and employability or for failing to revoke a certificate under the circumstances described in s. 944.0865.

(7) The department shall adopt rules to implement this section.

Section 24. Section 944.806, Florida Statutes, is created to read:

944.806 Certificate of achievement and employability; effect.—

(1) A certificate holder who applies to a licensing agency

and has a conviction or guilty plea that otherwise would bar licensure or certification because of a mandatory civil impact shall be given individualized consideration by the licensing agency. The certificate constitutes a rebuttable presumption that the certificate holder's conviction alone is insufficient evidence that he or she is unfit for the license or certification. Notwithstanding the presumption established under this section, the licensing agency may deny the license or certification if it determines that the certificate holder is unfit for licensure or certification after considering all relevant facts and circumstances.

(2) If an employer that has hired a certificate holder applies to a licensing agency and the certificate holder has a conviction or guilty plea that otherwise would bar his or her employment with the employer, or would bar the employer's licensure or certification because of a mandatory civil impact, the agency shall give the certificate holder individualized consideration for licensure or certification. The mandatory civil impact shall be deemed a discretionary civil impact, and the certificate constitutes a rebuttable presumption that the holder's criminal convictions are insufficient evidence that he or she is unfit for the employment, or that the employer is unfit for the licensure or certification. The agency may deny the employer licensure or certification if it determines that the certificate holder is unfit for employment or that the employer is unfit for licensure or certification.

Section 25. Section 944.8065, Florida Statutes, is created to read:

944.8065 Certificate of achievement and employability;

revocation.—The department shall adopt rules governing revocation of a certificate of achievement and employability issued under s. 944.8055. The rules shall, at a minimum, require revocation if a certificate holder is convicted of or pleads guilty to a felony subsequent to the issuance of the certificate of eligibility. The department shall determine which additional offenses require revocation, considering the nature of the offense and the employment of a certificate holder.

Section 26. Section 945.041, Florida Statutes, is created to read:

945.041 Department of Corrections reports.—The department shall publish on its website and make available to the public the following information, updated on a quarterly basis:

(1) Inmate admissions by offense type. Burglary of dwelling offenses under s. 810.02(2), (3)(a), and (3)(b) must be reported as a separate category from all other property crimes.

(2) The recidivism rate, defined as rearrest, reconviction, reincarceration, and probation revocation in the state within a 3-year time period following release from incarceration.

Section 27. Current subsections (6) through (15) of section 947.005, Florida Statutes, are redesignated as subsections (8) through (17), respectively, and new subsections (6) and (7) are added to that section, to read:

947.005 Definitions.—As used in this chapter, unless the context clearly indicates otherwise:

(6) "Electronic monitoring device" means an electronic or telecommunications device that is used to track and supervise the location of a person. Such devices include, but are not limited to, voice tracking systems, position tracking systems,

position location systems, or biometric tracking systems.

(7) "Conditional medical release" means the release from a state correctional institution or facility under this chapter for medical or mental health treatment pursuant to s. 947.149.

Section 28. Section 947.149, Florida Statutes, is amended to read:

947.149 Conditional medical release.—

(1) ELIGIBILITY.—The commission shall, in conjunction with the department, establish the conditional medical release program. An inmate is eligible for supervised ~~consideration for~~ release under the conditional medical release program when the inmate, because of an existing medical or physical condition, is determined by the department to be within one of the ~~following~~ designations provided for in subsection (2) and meet the qualifications of subsection (3) or subsection (4).~~:~~

(2) DESIGNATIONS.—

(a) "Inmate with a debilitating illness," which means an inmate who is determined to be suffering from a significant and permanent terminal or nonterminal condition, disease, or syndrome that has rendered the inmate so physically or cognitively debilitated or incapacitated as to create a reasonable probability that the inmate does not constitute a danger to herself or himself or others.

(b) "Medically frail inmate," which means an inmate whose physical or mental health has deteriorated to a point that creates a reasonable probability that the inmate does not constitute a danger to herself or himself or others, as determined by a risk assessment completed by a qualified practitioner, and whose deterioration is the direct result of

the inmate's:

1. Impairment of the mental or emotional processes that exercise conscious control of one's actions or of the ability to perceive or understand reality, where such impairment substantially interferes with the person's ability to meet the ordinary demands of living;

2. History of substance abuse, as defined in s. 397.311(45); or

3. Requirement of acute long-term medical or mental health treatment or services.

(c)~~(a)~~ "Permanently incapacitated inmate," which means an inmate who has a condition caused by injury, disease, or illness which, to a reasonable degree of medical certainty, renders the inmate permanently and irreversibly physically incapacitated to the extent that the inmate does not constitute a danger to herself or himself or others.

(d)~~(b)~~ "Terminally ill inmate," which means an inmate who has a condition caused by injury, disease, or illness which, to a reasonable degree of medical certainty, renders the inmate terminally ill to the extent that there can be no recovery and death is expected within 12 months ~~is imminent~~, so that the inmate does not constitute a danger to herself or himself or others.

(3)~~(2)~~ PERMISSIVE CONDITIONAL MEDICAL RELEASE.—

(a) Notwithstanding any provision to the contrary, an inmate that is sentenced to the custody of the department and who qualifies for one of the designations defined in subsection (2) ~~any person determined eligible under this section and sentenced to the custody of the department~~ may, upon referral by

the department, be considered for conditional medical release by the commission, in addition to any parole consideration for which the inmate may be considered, except that conditional medical release is not authorized for an inmate who is under sentence of death. ~~No inmate has a right to conditional medical release or to a medical evaluation to determine eligibility for such release.~~

(b) ~~(3)~~ The authority and whether or not to grant conditional medical release and establish additional conditions of conditional medical release under this subsection rests solely within the discretion of the commission, in accordance with the provisions of this section, together with the authority to approve the release plan to include necessary medical care and attention.

(c) The department shall identify inmates who may be eligible for conditional medical release based upon available medical information and shall refer them to the commission for consideration.

(d) In considering an inmate for conditional medical release in accordance with this subsection, the commission may require that additional medical evidence be produced or that additional medical examinations be conducted, and may require such other investigations to be made as may be warranted.

(4) MANDATORY CONDITIONAL MEDICAL RELEASE.—

(a) An inmate is eligible for mandatory conditional medical release under this subsection if he or she qualifies for one of the designations defined in subsection (2) and the department determines that he or she meets all of the following criteria:

1. Has served at least 50 percent of his or her sentence.

2. Has no current or prior conviction for:

a. A capital, life, or first degree felony.

b. A sexual offense specified in s. 775.21(4)(a)1. or s. 943.0435(1)(h)1.a.(I).

c. An offense involving a child.

3. Has not received a disciplinary report within the previous 6 months.

4. Has never received a disciplinary report for a violent act.

5. Has renounced any gang affiliation.

(b) Any person sentenced to the custody of the department who is determined to be eligible for placement on mandatory conditional medical release in accordance with this subsection must be referred by the department to the commission. Upon receiving a referral from the department, the commission shall verify the eligibility of an inmate and, upon verification, such inmate must be placed on conditional medical release.

(c) In verifying the inmate's eligibility for mandatory conditional medical release, the commission shall review the information provided by the department.

(d) The commission must finish its verification of an inmate's eligibility within 60 days after the department refers the inmate for conditional medical release.

(5) RIGHTS NOT CONFERRED.—An inmate does not have a right to conditional medical release or to a medical evaluation to determine eligibility for such release.

(6) REFERRAL REQUIREMENTS.—The department's referral of an inmate to the commission for release under this section must include all of the following information on the inmate:

(a) The proposed conditional medical release plan.

(b) Any relevant medical history, including current medical prognosis.

(c) Criminal history. The criminal history must include all of the following information:

1. The inmate's claim of innocence, if any.

2. The degree to which the inmate accepts responsibility for his or her actions leading to the conviction of the crime.

3. How any claim of responsibility has affected the inmate's feelings of remorse.

(d) If authorized by the inmate, any history of substance abuse and mental health issues that is collected by the department in accordance with 42 C.F.R. s. 2.

(e) Any disciplinary action taken against the inmate while in prison.

(f) Any participation in prison work and other prison programs.

(g) Any other information that the department deems necessary.

(7) PLACEMENT REQUIREMENT.—A determination to approve a release on conditional medical release must take into consideration conditions such as whether:

(a) A placement option has been secured for the inmate in the community. A placement option may include, but is not limited to, home confinement or a medical or mental health facility that is not a public institution as defined at Title 42, Chapter IV, Subchapter C, Part 434, Subpart K of the Code of Federal Regulations. A placement option need not involve any type of supervision of the inmate by an employee or a private

contractor of the department or otherwise be considered a secure facility. A placement option may involve the use of an electronic monitoring device as defined in 947.005(6).

(b) The placement option secured under this section poses a minimal risk to society.

(c) The department has made a reasonable effort to determine whether expenses related to the placement option secured under this subsection are covered by Medicaid, a health care policy, a certificate of insurance, or another source for the payment of medical expenses or whether the inmate has sufficient income or assets to pay for the expenses related to the placement.

(d) The department has provided notice to the prosecutor's office in the county in which the prisoner was sentenced and to each victim entitled to notice under s. 16(b), Art. I of the State Constitution.

(8) ~~(4)~~ EFFECT OF RELEASE ON CONDITIONAL MEDICAL RELEASE.—The conditional medical release term of an inmate released on conditional medical release is for the remainder of the inmate's sentence, without diminution of sentence for good behavior. Supervision of the medical releasee must include a release plan as proposed by the department and approved by the commission and periodic medical evaluations. Supervision may also include electronic monitoring ~~at intervals determined by the commission at the time of release~~.

(9) ~~(5) (a)~~ REVOCATION AND RECOMMITMENT.—

(a) If it is discovered during the conditional medical release that the medical or physical condition of the medical releasee has improved to the extent that she or he would no

longer be eligible for conditional medical release under this section, the commission may order that the releasee be returned to the custody of the department for a conditional medical release revocation hearing, in accordance with s. 947.141. If conditional medical release is revoked due to improvement in the medical or physical condition of the releasee, she or he shall serve the balance of her or his sentence with credit for the time served on conditional medical release and without forfeiture of any gain-time accrued prior to conditional medical release. If the person whose conditional medical release is revoked due to an improvement in medical or physical condition would otherwise be eligible for parole or any other release program, the person may be considered for such release program pursuant to law.

(b) In addition to revocation of conditional medical release pursuant to paragraph (a), conditional medical release may also be revoked for violation of any condition of the release established by the commission, in accordance with s. 947.141, and the releasee's gain-time may be forfeited pursuant to s. 944.28(1).

(10) ~~(6)~~ RULEMAKING.—The department and the commission shall adopt rules as necessary to implement the conditional medical release program.

Section 29. Subsection (1) of section 948.001, Florida Statutes, is amended to read:

948.001 Definitions.—As used in this chapter, the term:

(1) "Administrative probation" means a form of no contact, nonreporting supervision ~~in which an offender who presents a low risk of harm to the community may, upon satisfactory completion~~

~~of half the term of probation, be transferred by the Department of Corrections to this type of reduced level of supervision, as provided in s. 948.013~~.

Section 30. Subsection (1) of section 948.013, Florida Statutes, is amended to read:

948.013 Administrative probation.—

(1) The Department of Corrections may transfer an offender to administrative probation if he or she presents a low risk of harm to the community and has satisfactorily completed at least half of the probation term. The department ~~of Corrections~~ may establish procedures for transferring an offender to administrative probation. The department may collect an initial processing fee of up to $50 for each probationer transferred to administrative probation. The offender is exempt from further payment for the cost of supervision as required in s. 948.09.

Section 31. Subsection (3) is added to section 948.03, Florida Statutes, to read:

948.03 Terms and conditions of probation.—

(3) The Department of Corrections shall include all conditions of probation for each probationer, as determined by the court, in the Florida Crime Information Center database.

Section 32. Subsection (1) of section 948.06, Florida Statutes, is amended, and subsection (9) is added to that section, to read:

948.06 Violation of probation or community control; revocation; modification; continuance; failure to pay restitution or cost of supervision.—

(1)(a) Whenever within the period of probation or community control there are reasonable grounds to believe that a

probationer or offender in community control has violated his or her probation or community control in a material respect, any law enforcement officer who is aware of the probationary or community control status of the probationer or offender in community control or any probation officer may arrest or request any county or municipal law enforcement officer to arrest such probationer or offender without warrant wherever found and return him or her to the court granting such probation or community control.

(b) Any committing trial court judge may issue a warrant, upon the facts being made known to him or her by affidavit of one having knowledge of such facts, for the arrest of the probationer or offender, returnable forthwith before the court granting such probation or community control. In lieu of issuing a warrant for arrest, the committing trial court judge may issue a notice to appear if the probationer or offender in community control has never been convicted of committing, and is not currently alleged to have committed, a qualifying offense as defined in this section.

(c) If a probationer or offender on community control commits a technical violation, the probation officer shall determine whether he or she is eligible for the alternative sanctioning program under subsection (9). If the probationer or offender on community control is eligible, the probation officer may proceed with the alternative sanctioning program in lieu of filing an affidavit of violation with the court. For purposes of this section, the term "technical violation" means an alleged violation of supervision that is not a new felony offense, misdemeanor offense, or criminal traffic offense.

(d) ~~(c)~~ If a judge finds reasonable grounds to believe that a probationer or an offender has violated his or her probation or community control in a material respect by committing a new violation of law, the judge may issue a warrant for the arrest of the person.

(e) ~~(d)~~ 1. At a first appearance hearing for an offender who has been arrested for violating his or her probation or community control in a material respect by committing a new violation of law the court:

a. Shall inform the person of the violation.

b. May order the person to be taken before the court that granted the probation or community control if the person admits the violation.

2. If the probationer or offender does not admit the violation at the first appearance hearing, the court:

a. May commit the probationer or offender or may release the person with or without bail to await further hearing, notwithstanding s. 907.041, relating to pretrial detention and release; or

b. May order the probationer or offender to be brought before the court that granted the probation or community control.

3. In determining whether to require or set the amount of bail, and notwithstanding s. 907.041, relating to pretrial detention and release, the court may consider whether the probationer or offender is more likely than not to receive a prison sanction for the violation.

This paragraph does not apply to a probationer or offender on

community control who is subject to the hearing requirements under subsection (4) or paragraph (8)(e).

(f) ~~(e)~~ Any probation officer, any officer authorized to serve criminal process, or any peace officer of this state is authorized to serve and execute such warrant. Any probation officer is authorized to serve such notice to appear.

(g) ~~(f)~~ Upon the filing of an affidavit alleging a violation of probation or community control and following issuance of a warrant for such violation, a warrantless arrest under this section, or a notice to appear under this section, the probationary period is tolled until the court enters a ruling on the violation. Notwithstanding the tolling of probation, the court shall retain jurisdiction over the offender for any violation of the conditions of probation or community control that is alleged to have occurred during the tolling period. The probation officer is permitted to continue to supervise any offender who remains available to the officer for supervision until the supervision expires pursuant to the order of probation or community control or until the court revokes or terminates the probation or community control, whichever comes first.

(h) ~~(g)~~ The chief judge of each judicial circuit may direct the department to use a notification letter of a technical violation in appropriate cases in lieu of a violation report, affidavit, and warrant or a notice to appear when the alleged violation is not a new felony or misdemeanor offense. Such direction must be in writing and must specify the types of specific technical violations which are to be reported by a notification letter of a technical violation, any exceptions to those violations, and the required process for submission. At

the direction of the chief judge, the department shall send the notification letter of a technical violation to the court.

~~(h)1. The chief judge of each judicial circuit, in consultation with the state attorney, the public defender, and the department, may establish an alternative sanctioning program in which the department, after receiving court approval, may enforce specified sanctions for certain technical violations of supervision. For purposes of this paragraph, the term "technical violation" means any alleged violation of supervision that is not a new felony offense, misdemeanor offense, or criminal traffic offense.~~

~~2. To establish an alternative sanctioning program, the chief judge must issue an administrative order specifying:~~

~~a. Eligibility criteria.~~

~~b. The technical violations that are eligible for the program.~~

~~c. The sanctions that may be recommended by a probation officer for each technical violation.~~

~~d. The process for reporting technical violations through the alternative sanctioning program, including approved forms.~~

~~3. If an offender is alleged to have committed a technical violation of supervision that is eligible for the program, the offender may:~~

~~a. Waive participation in the alternative sanctioning program, in which case the probation officer may submit a violation report, affidavit, and warrant to the court in accordance with this section; or~~

~~b. Elect to participate in the alternative sanctioning program after receiving written notice of an alleged technical~~

~~violation and a disclosure of the evidence against the offender, admit to the technical violation, agree to comply with the probation officer's recommended sanction if subsequently ordered by the court, and agree to waive the right to:~~

~~(I) Be represented by legal counsel.~~

~~(II) Require the state to prove his or her guilt before a neutral and detached hearing body.~~

~~(III) Subpoena witnesses and present to a judge evidence in his or her defense.~~

~~(IV) Confront and cross-examine adverse witnesses.~~

~~(V) Receive a written statement from a factfinder as to the evidence relied on and the reasons for the sanction imposed.~~

~~4. If the offender admits to committing the technical violation and agrees with the probation officer's recommended sanction, the probation officer must, before imposing the sanction, submit the recommended sanction to the court as well as documentation reflecting the offender's admission to the technical violation and agreement with the recommended sanction.~~

~~5. The court may impose the recommended sanction or may direct the department to submit a violation report, affidavit, and warrant to the court in accordance with this section.~~

~~6. An offender's participation in an alternative sanctioning program is voluntary. The offender may elect to waive or discontinue participation in an alternative sanctioning program at any time before the issuance of a court order imposing the recommended sanction.~~

~~7. If an offender waives or discontinues participation in an alternative sanctioning program, the probation officer may submit a violation report, affidavit, and warrant to the court~~

~~in accordance with this section. The offender's prior admission to the technical violation may not be used as evidence in subsequent proceedings.~~

(i) The court may allow the department to file an affidavit, notification letter, violation report, or other report under this section by facsimile or electronic submission.

(9)(a) For a first or second low-risk violation, as defined in paragraph (b), within the current term of supervision, a probation officer may offer an eligible probationer one or more of the following as an alternative sanction:

1. Up to five days in the county detention facility;

2. Up to fifty additional community service hours;

3. Counseling or treatment;

4. Support group attendance;

5. Drug testing;

6. Loss of travel or other privileges;

7. Curfew for up to thirty days;

8. House arrest for up to thirty days; or

9. Any other sanction as determined by administrative order by the chief judge of the circuit.

(b) When committed by a probationer, a low-risk violation includes:

1. Positive drug or alcohol test result;

2. Failure to report to the probation office;

3. Failure to report a change in address or other required information;

4. Failure to attend a required class, treatment or counseling session, or meeting;

5. Failure to submit to a drug or alcohol test;

6. Violation of curfew;

7. Failure to meet a monthly quota on any required probation condition, including, but not limited to, making restitution payments, payment of court costs, and completing community service hours;

8. Leaving the county without permission;

9. Failure to report a change in employment;

10. Associating with a person engaged in criminal activity; or

11. Any other violation as determined by administrative order of the chief judge of the circuit.

(c) For a first time moderate-risk violation, as defined in paragraph (d), within the current term of supervision, a probation officer, with supervisor approval, may offer an eligible probationer or offender on community control one or more of the following as an alternative sanction:

1. Up to 21 days in the county detention facility;

2. Curfew for up to 90 days;

3. House arrest for up to 90 days;

4. Electronic monitoring for up to 90 days;

5. Residential treatment for up to 90 days;

6. Any other sanction available for a low-risk violation; or

7. Any other sanction as determined by administrative order of the chief judge of the circuit.

(d) A moderate-risk violation includes:

1. A violation listed under paragraph (b) when committed by an offender on community control;

2. Failure to remain at an approved residence by an

offender on community control;

3. A third violation listed under paragraph (b) by a probationer within the current term of supervision; or

4. Any other violation as determined by administrative order by the chief judge of the circuit.

(e) A probationer or offender on community control is not eligible for an alternative sanction if:

1. He or she is a violent felony offender of special concern, as defined in paragraph (8)(b).

2. The violation is a felony, misdemeanor, or criminal traffic offense.

3. The violation is absconding.

4. The violation is of a stay-away order or no-contact order.

5. The violation is not identified as low-risk or moderate-risk under this paragraph or by administrative order.

6. He or she has a prior moderate-risk level violation during the current term of supervision.

7. He or she has three prior low-risk level violations during the same term of supervision.

8. The term of supervision is scheduled to terminate in less than 90 days.

9. The terms of the sentence prohibit alternative sanctioning.

(f) If a probationer or offender on community control is eligible for the alternative sanctioning program, he or she may:

1. Waive participation in the program, in which case the probation officer may submit a violation report, affidavit, and warrant to the court; or

2. Elect to participate in the program after receiving written notice of an alleged technical violation and disclosure of the evidence against him or her, admit to the technical violation, agree to comply with the probation officer's recommended sanction if subsequently ordered by the court, and agree to waive the right to:

a. Be represented by legal counsel.

b. Require the state to prove his or her guilt before a neutral and detached hearing body.

c. Subpoena witnesses and present to a judge evidence in his or her defense.

d. Confront and cross-examine adverse witnesses.

e. Receive a written statement from a judge as to the evidence relied on and the reasons for the sanction imposed.

3. If the probationer or offender on community control admits to committing the technical violation and agrees with the probation officer's recommended sanction, the probation officer must, before imposing the sanction, submit the recommended sanction to the court with documentation reflecting the probationer's admission to the technical violation and agreement with the recommended sanction.

(g) The court may impose the recommended sanction or direct the department to submit a violation report, affidavit, and warrant to the court.

(h) An offender's participation in the program is voluntary. The probationer or offender on community control may waive or discontinue participation in the program at any time before the court imposes a recommended sanction.

(i) If a probationer or offender on community control

waives or discontinues participation in the program or fails to complete successfully all alternative sanctions within 90 days of imposition or within the timeframe specified in the agreed upon sanction, the probation officer may submit a violation report, affidavit, and warrant to the court. A prior admission by the probationer or offender on community control to a technical violation may not be used as evidence in subsequent proceedings.

(j) Each judicial circuit shall establish an alternative sanctioning program as provided in this subsection. The chief judge of each judicial circuit may, by administrative order, define additional sanctions or eligibility criteria and specify the process for reporting technical violations through the alternative sanctioning program.

Section 33. Section 948.081, Florida Statutes, is created to read:

948.081 Community court programs.-

(1) Each judicial circuit may establish a community court program for defendants charged with certain misdemeanor offenses. Each community court shall, at a minimum:

(a) Adopt a nonadversarial approach.

(b) Establish an advisory committee to recommend solutions and sanctions in each case.

(c) Consider the needs of the victim.

(d) Consider individualized treatment services for the defendant.

(e) Provide for judicial leadership and interaction.

(f) Monitor the defendant's compliance.

(2) In the event a county elects to establish a community

court program pursuant to this section, the chief judge of the judicial circuit shall, by administrative order, specify each misdemeanor crime eligible for the community court program. In making such determination, the chief judge shall consider the particular needs and concerns of the communities within the judicial circuit.

(3) The Department of Corrections, Department of Juvenile Justice, Department of Health, Department of Law Enforcement, Department of Education, law enforcement agencies, and other government entities involved in the criminal justice system shall support such community court programs.

(4) A defendant's entry into a community court program shall be voluntary.

(5) Each community court program shall have a resource coordinator who:

(a) Coordinates the responsibilities of the participating agencies and service providers;

(b) Provides case management services;

(c) Monitors compliance by defendants with court requirements; and

(d) Manages the collection of data for program evaluation and accountability.

(6) The chief judge of the judicial circuit shall appoint an advisory committee for each community court. Membership must include, at a minimum:

(a) The chief judge or a community court judge designated by the chief judge, who shall serve as chair;

(b) The state attorney;

(c) The public defender; and

(d) The community court resource coordinator.

The committee may also include community stakeholders, treatment representatives, and other persons the chair deems appropriate.

(7) The advisory committee shall review each defendant's case. Each committee member may make recommendations to the judge, including appropriate sanctions and treatment solutions for the defendant. The judge shall consider such recommendations and make the final decision concerning sanctions and treatment with respect to each defendant.

(8) Each judicial circuit that establishes a community court program pursuant to this section shall report client-level and programmatic data to the Office of State Courts Administrator annually for program evaluation. Client-level data include primary offenses resulting in the community court referral or sentence, treatment compliance, completion status, reasons for failing to complete the program, offenses committed during treatment and sanctions imposed, frequency of court appearances, and units of service. Programmatic data include referral and screening procedures, eligibility criteria, type and duration of treatment offered, and residential treatment resources.

(9) Community court program funding must be secured from sources other than the state for costs not assumed by the state under s. 29.004. However, this subsection does not preclude the use of funds provided for treatment and other services through state executive branch agencies.

Section 34. For the purpose of incorporating the amendment made by this act to section 944.801, Florida Statutes, in a

reference thereto, subsection (3) of section 447.203, Florida Statutes, is reenacted to read:

447.203 Definitions.—As used in this part:

(2) "Public employer" or "employer" means the state or any county, municipality, or special district or any subdivision or agency thereof which the commission determines has sufficient legal distinctiveness properly to carry out the functions of a public employer. With respect to all public employees determined by the commission as properly belonging to a statewide bargaining unit composed of State Career Service System employees or Selected Professional Service employees, the Governor shall be deemed to be the public employer; and the Board of Governors of the State University System, or the board's designee, shall be deemed to be the public employer with respect to all public employees of each constituent state university. The board of trustees of a community college shall be deemed to be the public employer with respect to all employees of the community college. The district school board shall be deemed to be the public employer with respect to all employees of the school district. The Board of Trustees of the Florida School for the Deaf and the Blind shall be deemed to be the public employer with respect to the academic and academic administrative personnel of the Florida School for the Deaf and the Blind. The Governor shall be deemed to be the public employer with respect to all employees in the Correctional Education Program of the Department of Corrections established pursuant to s. 944.801.

Section 35. For the purpose of incorporating the amendment made by this act to section 944.704, Florida Statutes, in a

reference thereto, subsection (3) of section 944.026, Florida Statutes, is reenacted to read:

944.026 Community-based facilities and programs.—

(3)(a) The department shall develop and implement procedures to diagnose offenders prior to sentencing, for the purpose of recommending to the sentencing court suitable candidates for placement in a community-based residential drug treatment facility or probation and restitution center as provided in this section. The department shall also develop and implement procedures to properly identify inmates prior to release who demonstrate the need for or interest in and suitability for placement in a community-based substance abuse transition housing program as provided in this section and pursuant to ss. 944.4731 and 944.704.

(b) Pretrial intervention programs in appropriate counties to provide early counseling and supervision services to specified offenders as provided in s. 948.08.

Section 36. For the purpose of incorporating the amendment made by this act to section 947.149, Florida Statutes, in a reference thereto, subsection (6) of section 316.1935, Florida Statutes, is reenacted to read:

316.1935 Fleeing or attempting to elude a law enforcement officer; aggravated fleeing or eluding.—

(6) Notwithstanding s. 948.01, no court may suspend, defer, or withhold adjudication of guilt or imposition of sentence for any violation of this section. A person convicted and sentenced to a mandatory minimum term of incarceration under paragraph (3)(b) or paragraph (4)(b) is not eligible for statutory gain-time under s. 944.275 or any form of discretionary early

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release, other than pardon or executive clemency or conditional medical release under s. 947.149, prior to serving the mandatory minimum sentence.

Section 37. For the purpose of incorporating the amendment made by this act to section 947.149, Florida Statutes, in a reference thereto, paragraph (k) of subsection (4) of section 775.084, Florida Statutes, is reenacted to read:

775.084 Violent career criminals; habitual felony offenders and habitual violent felony offenders; three-time violent felony offenders; definitions; procedure; enhanced penalties or mandatory minimum prison terms.—

(4)

(k)1. A defendant sentenced under this section as a habitual felony offender, a habitual violent felony offender, or a violent career criminal is eligible for gain-time granted by the Department of Corrections as provided in s. 944.275(4)(b).

2. For an offense committed on or after October 1, 1995, a defendant sentenced under this section as a violent career criminal is not eligible for any form of discretionary early release, other than pardon or executive clemency, or conditional medical release granted pursuant to s. 947.149.

3. For an offense committed on or after July 1, 1999, a defendant sentenced under this section as a three-time violent felony offender shall be released only by expiration of sentence and shall not be eligible for parole, control release, or any form of early release.

Section 38. For the purpose of incorporating the amendment made by this act to section 947.149, Florida Statutes, in references thereto, paragraph (b) of subsection (2) and

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paragraph (b) of subsection (3) of section 775.087, Florida Statutes, are reenacted to read:

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

(2)

(b) Subparagraph (a)1., subparagraph (a)2., or subparagraph (a)3. does not prevent a court from imposing a longer sentence of incarceration as authorized by law in addition to the minimum mandatory sentence, or from imposing a sentence of death pursuant to other applicable law. Subparagraph (a)1., subparagraph (a)2., or subparagraph (a)3. does not authorize a court to impose a lesser sentence than otherwise required by law.

Notwithstanding s. 948.01, adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld, and the defendant is not eligible for statutory gain-time under s. 944.275 or any form of discretionary early release, other than pardon or executive clemency, or conditional medical release under s. 947.149, prior to serving the minimum sentence.

(3)

(b) Subparagraph (a)1., subparagraph (a)2., or subparagraph (a)3. does not prevent a court from imposing a longer sentence of incarceration as authorized by law in addition to the minimum mandatory sentence, or from imposing a sentence of death pursuant to other applicable law. Subparagraph (a)1., subparagraph (a)2., or subparagraph (a)3. does not authorize a court to impose a lesser sentence than otherwise required by law.

Notwithstanding s. 948.01, adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld, and the defendant is not eligible for statutory gain-time under s. 944.275 or any form of discretionary early release, other than pardon or executive clemency, or conditional medical release under s. 947.149, prior to serving the minimum sentence.

Section 39. For the purpose of incorporating the amendment made by this act to section 947.149, Florida Statutes, in a reference thereto, subsection (3) of section 784.07, Florida Statutes, is reenacted to read:

784.07 Assault or battery of law enforcement officers, firefighters, emergency medical care providers, public transit employees or agents, or other specified officers; reclassification of offenses; minimum sentences.—

(3) Any person who is convicted of a battery under paragraph (2)(b) and, during the commission of the offense, such person possessed:

(a) A "firearm" or "destructive device" as those terms are defined in s. 790.001, shall be sentenced to a minimum term of imprisonment of 3 years.

(b) A semiautomatic firearm and its high-capacity detachable box magazine, as defined in s. 775.087(3), or a machine gun as defined in s. 790.001, shall be sentenced to a minimum term of imprisonment of 8 years.

Notwithstanding s. 948.01, adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld, and the defendant is not eligible for statutory gain-time under s.

944.275 or any form of discretionary early release, other than pardon or executive clemency, or conditional medical release under s. 947.149, prior to serving the minimum sentence.

Section 40. For the purpose of incorporating the amendment made by this act to section 947.149, Florida Statutes, in a reference thereto, subsection (1) of section 790.235, Florida Statutes, is reenacted to read:

790.235 Possession of firearm or ammunition by violent career criminal unlawful; penalty.—

(1) Any person who meets the violent career criminal criteria under s. 775.084(1)(d), regardless of whether such person is or has previously been sentenced as a violent career criminal, who owns or has in his or her care, custody, possession, or control any firearm, ammunition, or electric weapon or device, or carries a concealed weapon, including a tear gas gun or chemical weapon or device, commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. A person convicted of a violation of this section shall be sentenced to a mandatory minimum of 15 years' imprisonment; however, if the person would be sentenced to a longer term of imprisonment under s. 775.084(4)(d), the person must be sentenced under that provision. A person convicted of a violation of this section is not eligible for any form of discretionary early release, other than pardon, executive clemency, or conditional medical release under s. 947.149.

Section 41. For the purpose of incorporating the amendment made by this act to section 947.149, Florida Statutes, in a reference thereto, subsection (7) of section 794.0115, Florida

Statutes, is reenacted to read:

794.0115 Dangerous sexual felony offender; mandatory sentencing.—

(7) A defendant sentenced to a mandatory minimum term of imprisonment under this section is not eligible for statutory gain-time under s. 944.275 or any form of discretionary early release, other than pardon or executive clemency, or conditional medical release under s. 947.149, before serving the minimum sentence.

Section 42. For the purpose of incorporating the amendment made by this act to section 947.149, Florida Statutes, in a reference thereto, paragraphs (b), (c), and (g) of subsection (1) and subsection (3) of section 893.135, Florida Statutes, are reenacted to read:

893.135 Trafficking; mandatory sentences; suspension or reduction of sentences; conspiracy to engage in trafficking.—

(1) Except as authorized in this chapter or in chapter 499 and notwithstanding the provisions of s. 893.13:

(b)1. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 28 grams or more of cocaine, as described in s. 893.03(2)(a)4., or of any mixture containing cocaine, but less than 150 kilograms of cocaine or any such mixture, commits a felony of the first degree, which felony shall be known as "trafficking in cocaine," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 28 grams or more, but less than 200 grams, such person shall be sentenced to a mandatory minimum term of

imprisonment of 3 years, and the defendant shall be ordered to pay a fine of $50,000.

b. Is 200 grams or more, but less than 400 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years, and the defendant shall be ordered to pay a fine of $100,000.

c. Is 400 grams or more, but less than 150 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and pay a fine of $250,000.

2. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 150 kilograms or more of cocaine, as described in s. 893.03(2)(a)4., commits the first degree felony of trafficking in cocaine. A person who has been convicted of the first degree felony of trafficking in cocaine under this subparagraph shall be punished by life imprisonment and is ineligible for any form of discretionary early release except pardon or executive clemency or conditional medical release under s. 947.149. However, if the court determines that, in addition to committing any act specified in this paragraph:

a. The person intentionally killed an individual or counseled, commanded, induced, procured, or caused the intentional killing of an individual and such killing was the result; or

b. The person's conduct in committing that act led to a natural, though not inevitable, lethal result,

such person commits the capital felony of trafficking in cocaine, punishable as provided in ss. 775.082 and 921.142. Any

person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

3. Any person who knowingly brings into this state 300 kilograms or more of cocaine, as described in s. 893.03(2)(a)4., and who knows that the probable result of such importation would be the death of any person, commits capital importation of cocaine, a capital felony punishable as provided in ss. 775.082 and 921.142. Any person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

(c)1. A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 4 grams or more of any morphine, opium, hydromorphone, or any salt, derivative, isomer, or salt of an isomer thereof, including heroin, as described in s. 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 4 grams or more of any mixture containing any such substance, but less than 30 kilograms of such substance or mixture, commits a felony of the first degree, which felony shall be known as "trafficking in illegal drugs," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 4 grams or more, but less than 14 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years and shall be ordered to pay a fine of $50,000.

b. Is 14 grams or more, but less than 28 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 years and shall be ordered to pay a fine of $100,000.

c. Is 28 grams or more, but less than 30 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 25 years and shall be ordered to pay a fine of $500,000.

2. A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 14 grams or more of hydrocodone, as described in s. 893.03(2)(a)1.j., codeine, as described in s. 893.03(2)(a)1.g., or any salt thereof, or 14 grams or more of any mixture containing any such substance, commits a felony of the first degree, which felony shall be known as "trafficking in hydrocodone," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 14 grams or more, but less than 28 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years and shall be ordered to pay a fine of $50,000.

b. Is 28 grams or more, but less than 50 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years and shall be ordered to pay a fine of $100,000.

c. Is 50 grams or more, but less than 200 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 years and shall be ordered to pay a fine of $500,000.

d. Is 200 grams or more, but less than 30 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 25 years and shall be ordered to pay a fine of $750,000.

3. A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in

actual or constructive possession of, 7 grams or more of oxycodone, as described in s. 893.03(2)(a)1.o., or any salt thereof, or 7 grams or more of any mixture containing any such substance, commits a felony of the first degree, which felony shall be known as "trafficking in oxycodone," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 7 grams or more, but less than 14 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years and shall be ordered to pay a fine of $50,000.

b. Is 14 grams or more, but less than 25 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years and shall be ordered to pay a fine of $100,000.

c. Is 25 grams or more, but less than 100 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 years and shall be ordered to pay a fine of $500,000.

d. Is 100 grams or more, but less than 30 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 25 years and shall be ordered to pay a fine of $750,000.

4.a. A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 4 grams or more of:

(I) Alfentanil, as described in s. 893.03(2)(b)1.;

(II) Carfentanil, as described in s. 893.03(2)(b)6.;

(III) Fentanyl, as described in s. 893.03(2)(b)9.;

(IV) Sufentanil, as described in s. 893.03(2)(b)29.;

(V) A fentanyl derivative, as described in s.

893.03(1)(a)62.;

(VI) A controlled substance analog, as described in s. 893.0356, of any substance described in sub-sub-subparagraphs (I)-(V); or

(VII) A mixture containing any substance described in sub-sub-subparagraphs (I)-(VI),

commits a felony of the first degree, which felony shall be known as "trafficking in fentanyl," punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

b. If the quantity involved under sub-subparagraph a.:

(I) Is 4 grams or more, but less than 14 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and shall be ordered to pay a fine of $50,000.

(II) Is 14 grams or more, but less than 28 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 years, and shall be ordered to pay a fine of $100,000.

(III) Is 28 grams or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 25 years, and shall be ordered to pay a fine of $500,000.

5. A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 30 kilograms or more of any morphine, opium, oxycodone, hydrocodone, codeine, hydromorphone, or any salt, derivative, isomer, or salt of an isomer thereof, including heroin, as described in s. 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 30 kilograms or more of any mixture containing any such substance, commits the

first degree felony of trafficking in illegal drugs. A person who has been convicted of the first degree felony of trafficking in illegal drugs under this subparagraph shall be punished by life imprisonment and is ineligible for any form of discretionary early release except pardon or executive clemency or conditional medical release under s. 947.149. However, if the court determines that, in addition to committing any act specified in this paragraph:

a. The person intentionally killed an individual or counseled, commanded, induced, procured, or caused the intentional killing of an individual and such killing was the result; or

b. The person's conduct in committing that act led to a natural, though not inevitable, lethal result,

such person commits the capital felony of trafficking in illegal drugs, punishable as provided in ss. 775.082 and 921.142. A person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

6. A person who knowingly brings into this state 60 kilograms or more of any morphine, opium, oxycodone, hydrocodone, codeine, hydromorphone, or any salt, derivative, isomer, or salt of an isomer thereof, including heroin, as described in s. 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 60 kilograms or more of any mixture containing any such substance, and who knows that the probable result of such importation would be the death of a person, commits capital importation of illegal drugs, a capital felony punishable as

provided in ss. 775.082 and 921.142. A person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

(g)1. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 4 grams or more of flunitrazepam or any mixture containing flunitrazepam as described in s. 893.03(1)(a) commits a felony of the first degree, which felony shall be known as "trafficking in flunitrazepam," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 4 grams or more but less than 14 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be ordered to pay a fine of $50,000.

b. Is 14 grams or more but less than 28 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years, and the defendant shall be ordered to pay a fine of $100,000.

c. Is 28 grams or more but less than 30 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 25 calendar years and pay a fine of $500,000.

2. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state or who is knowingly in actual or constructive possession of 30 kilograms or more of flunitrazepam or any mixture containing flunitrazepam as described in s. 893.03(1)(a) commits the first degree felony of trafficking in flunitrazepam. A person who has been convicted of the first degree felony of trafficking in flunitrazepam under

this subparagraph shall be punished by life imprisonment and is ineligible for any form of discretionary early release except pardon or executive clemency or conditional medical release under s. 947.149. However, if the court determines that, in addition to committing any act specified in this paragraph:

a. The person intentionally killed an individual or counseled, commanded, induced, procured, or caused the intentional killing of an individual and such killing was the result; or

b. The person's conduct in committing that act led to a natural, though not inevitable, lethal result,

such person commits the capital felony of trafficking in flunitrazepam, punishable as provided in ss. 775.082 and 921.142. Any person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

(3) Notwithstanding the provisions of s. 948.01, with respect to any person who is found to have violated this section, adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld, nor shall such person be eligible for parole prior to serving the mandatory minimum term of imprisonment prescribed by this section. A person sentenced to a mandatory minimum term of imprisonment under this section is not eligible for any form of discretionary early release, except pardon or executive clemency or conditional medical release under s. 947.149, prior to serving the mandatory minimum term of imprisonment.

Section 43. For the purpose of incorporating the amendment

made by this act to section 947.149, Florida Statutes, in a reference thereto, subsection (2) of section 921.0024, Florida Statutes, is reenacted to read:

921.0024 Criminal Punishment Code; worksheet computations; scoresheets.—

(2) The lowest permissible sentence is the minimum sentence that may be imposed by the trial court, absent a valid reason for departure. The lowest permissible sentence is any nonstate prison sanction in which the total sentence points equals or is less than 44 points, unless the court determines within its discretion that a prison sentence, which may be up to the statutory maximums for the offenses committed, is appropriate. When the total sentence points exceeds 44 points, the lowest permissible sentence in prison months shall be calculated by subtracting 28 points from the total sentence points and decreasing the remaining total by 25 percent. The total sentence points shall be calculated only as a means of determining the lowest permissible sentence. The permissible range for sentencing shall be the lowest permissible sentence up to and including the statutory maximum, as defined in s. 775.082, for the primary offense and any additional offenses before the court for sentencing. The sentencing court may impose such sentences concurrently or consecutively. However, any sentence to state prison must exceed 1 year. If the lowest permissible sentence under the code exceeds the statutory maximum sentence as provided in s. 775.082, the sentence required by the code must be imposed. If the total sentence points are greater than or equal to 363, the court may sentence the offender to life imprisonment. An offender sentenced to life imprisonment under

this section is not eligible for any form of discretionary early release, except executive clemency or conditional medical release under s. 947.149.

Section 44. For the purpose of incorporating the amendment made by this act to section 947.149, Florida Statutes, in a reference thereto, paragraph (b) of subsection (7) of section 944.605, Florida Statutes, is reenacted to read:

944.605 Inmate release; notification; identification card.—

(7)

(b) Paragraph (a) does not apply to inmates who:

1. The department determines have a valid driver license or state identification card, except that the department shall provide these inmates with a replacement state identification card or replacement driver license, if necessary.

2. Have an active detainer, unless the department determines that cancellation of the detainer is likely or that the incarceration for which the detainer was issued will be less than 12 months in duration.

3. Are released due to an emergency release or a conditional medical release under s. 947.149.

4. Are not in the physical custody of the department at or within 180 days before release.

5. Are subject to sex offender residency restrictions, and who, upon release under such restrictions, do not have a qualifying address.

Section 45. For the purpose of incorporating the amendment made by this act to section 947.149, Florida Statutes, in a reference thereto, paragraph (b) of subsection (1) of section 944.70, Florida Statutes, is reenacted to read:

944.70 Conditions for release from incarceration.—

(1)

(b) A person who is convicted of a crime committed on or after January 1, 1994, may be released from incarceration only:

1. Upon expiration of the person’s sentence;

2. Upon expiration of the person’s sentence as reduced by accumulated meritorious or incentive gain-time;

3. As directed by an executive order granting clemency;

4. Upon placement in a conditional release program pursuant to s. 947.1405 or a conditional medical release program pursuant to s. 947.149; or

5. Upon the granting of control release, including emergency control release, pursuant to s. 947.146.

Section 46. For the purpose of incorporating the amendment made by this act to section 947.149, Florida Statutes, in a reference thereto, paragraph (h) of subsection (1) of section 947.13, Florida Statutes, is reenacted to read:

947.13 Powers and duties of commission.—

(1) The commission shall have the powers and perform the duties of:

(h) Determining what persons will be released on conditional medical release under s. 947.149, establishing the conditions of conditional medical release, and determining whether a person has violated the conditions of conditional medical release and taking action with respect to such a violation.

Section 47. For the purpose of incorporating the amendment made by this act to section 947.149, Florida Statutes, in a reference thereto, subsections (1), (2), and (7) of section

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947.141, Florida Statutes, are reenacted to read:

947.141 Violations of conditional release, control release, or conditional medical release or addiction-recovery supervision.—

(1) If a member of the commission or a duly authorized representative of the commission has reasonable grounds to believe that an offender who is on release supervision under s. 947.1405, s. 947.146, s. 947.149, or s. 944.4731 has violated the terms and conditions of the release in a material respect, such member or representative may cause a warrant to be issued for the arrest of the releasee; if the offender was found to be a sexual predator, the warrant must be issued.

(2) Upon the arrest on a felony charge of an offender who is on release supervision under s. 947.1405, s. 947.146, s. 947.149, or s. 944.4731, the offender must be detained without bond until the initial appearance of the offender at which a judicial determination of probable cause is made. If the trial court judge determines that there was no probable cause for the arrest, the offender may be released. If the trial court judge determines that there was probable cause for the arrest, such determination also constitutes reasonable grounds to believe that the offender violated the conditions of the release. Within 24 hours after the trial court judge's finding of probable cause, the detention facility administrator or designee shall notify the commission and the department of the finding and transmit to each a facsimile copy of the probable cause affidavit or the sworn offense report upon which the trial court judge's probable cause determination is based. The offender must continue to be detained without bond for a period not exceeding

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72 hours excluding weekends and holidays after the date of the probable cause determination, pending a decision by the commission whether to issue a warrant charging the offender with violation of the conditions of release. Upon the issuance of the commission's warrant, the offender must continue to be held in custody pending a revocation hearing held in accordance with this section.

(7) If a law enforcement officer has probable cause to believe that an offender who is on release supervision under s. 947.1405, s. 947.146, s. 947.149, or s. 944.4731 has violated the terms and conditions of his or her release by committing a felony offense, the officer shall arrest the offender without a warrant, and a warrant need not be issued in the case.

Section 48. This act shall take effect October 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 1218
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Criminal and Civil Justice); Criminal Justice Committee; and Senator Brandes
SUBJECT:	Public Safety
DATE:	March 5, 2018
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cox	Jones	CJ	**Fav/CS**
2.	Forbes	Sadberry	ACJ	**Recommend: Fav/CS**
3.	Forbes	Hansen	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1218 makes changes to a number of provisions related to public safety and the criminal justice system, including:

- Creating the "Florida Correctional Operations Oversight Council" to oversee the criminal and juvenile justice systems;
- Clarifying that law enforcement mutual aid agreements may be used to increase law enforcement presence in the event of an emergency response or evacuation;
- Requiring sheriffs to provide security to the trial court and coordinate with the chief judge on security matters;
- Requiring each circuit to establish a "Driver License Reinstatement Days Program" (Reinstatement Days Program) involving specified entities and hold events through the Reinstatement Days Program on one or more days where a person can pay specified fees and obtain license reinstatement;
- Prohibiting issuance of an attorney's fee in protective injunctions for repeat, sexual, or dating violence or stalking;
- Increasing the threshold amounts of various theft offenses;
- Expanding the third-degree felony offense of grand theft of commercially farmed animals by including birds that are commercially farmed;
- Making it a third-degree felony for a person to commit any utility theft by removing the application of theft threshold amounts to this offense;

- Limiting the reclassification of specified theft offenses to adult convictions that have occurred a certain number of times within specified time frames;
- Authorizing a court to depart from the imposition of a mandatory minimum sentence in drug trafficking cases if certain circumstances are met;
- Establishing a centralized system of uniform data collection for the entire criminal justice system to ensure data transparency;
- Requiring specified criminal justice entities to collect certain data on a monthly basis and report such data to the Florida Department of Law Enforcement (FDLE) quarterly;
- For data reported pursuant to data transparency provisions, the FDLE must:
  - Establish a unique identifier for every person who is the subject of a criminal case, which will be used for all local and state entities' reported data related to that person in order to track that individual's entire experience in Florida's criminal justice system;
  - Create a publicly accessible and searchable database for the data reported;
- Modifying the sentencing scoresheet to a digital format and requiring information contained in the scoresheet to be reported to the FDLE and included in the publicly available database;
- Creating a pilot program in the 6th Judicial Circuit to ensure program data collected is valid and providing an appropriation, including nine FTEs, within the FDLE to support the implementation of data collection and transparency;
- Authorizing counties to establish a supervised bond program (Bond Program), which allows eligible defendants to be released on active electronic monitoring, continuous alcohol monitoring, or both subsequent to the administration of a risk assessment instrument (RAI) by the county's chief correctional officer (sheriff) and acceptance into the Bond program;
- Creating a Risk Assessment Pilot Program in Hillsborough, Pasco, and Pinellas Counties that requires the counties to administer a RAI to all persons arrested for a felony offense in the county for use in programming and sentencing;
- Requiring transition assistance staff within the Department of Corrections (DOC) to identify industry certifications or job assignment credentialing for which an inmate is eligible;
- Requiring the DOC to provide inmates with a comprehensive community reentry resource directory that includes specified information related to services and portals available in the county to which the inmate is to be released;
- Permitting specified entities to apply with the DOC to be registered to provide inmate reentry services and requiring the DOC to create a process for screening, approving, and registering such entities;
- Authorizing the DOC to contract with specified Veteran's Advocacy Clinics to assist qualified veterans with obtaining services in the community upon release;
- Authorizing the DOC to develop a Prison Entrepreneurship Program that includes education with specified curriculum;
- Creating a "certificate of achievement and employability" application process where the DOC may issue certificates to specified eligible inmates that require licensing agencies to individually consider licensing decisions of certificate holders;
- Prohibiting a licensing agency from denying a professional license to a certificate holder solely on the basis of a criminal conviction;
- Creating two new designations for conditional medical release (CMR) ("inmate with a debilitating illness" and "medically frail inmate") and modifying the current designation of "terminally ill inmate";

- Creating a new "Mandatory Conditional Medical Release" process that requires, rather than permits, the Florida Commission on Offender Review (FCOR) to release an inmate that meets one of four designations if specified factors are met;
- Requiring each circuit to create an alternative sanctions program to handle specified types and occurrences of technical violations of probation or community control outside of a hearing with the judge's concurrence;
- Authorizing a circuit to create a community court program for certain defendants charged with misdemeanors;
- Adding specified data to the information that must be reported in the Office of Program Policy Analysis and Government Accountability's (OPPAGA) annual pretrial programs report (s. 907.043, F.S.);
- Requiring the counties to report use and success of the supervised bond program and community court programs created by the act; and
- Modifying the submission date from October 10th to December 1st for the annual contraband seizure report (s. 932.7061, F.S.).

The bill makes the following appropriations:

- $205,000 from the General Revenue Fund to the Executive Office of the Governor and authorizes one full-time-equivalent position to administer the Florida Correctional Operations Council.
- $1.75 million from the General Revenue Fund to the Department of Law Enforcement and authorizes nine full-time-equivalent positions to crime reporting, and collecting and submitting crime statistics.

The Department of Corrections, the Department of Law Enforcement, and local governments are expected to incur significant costs associated with additional workload and the need for information technology updates for which no funds are provided to implement the provisions of this bill. The Department of Law Enforcement expects to experience a reduction in revenues associated with the criminal history records. See Section V. Fiscal Impact Statement.

The bill takes effect October 1, 2018.

II. Present Situation:

Refer to Section III. Effect of Proposed Changes for discussion of the relevant portions of current law.

III. Effect of Proposed Changes:

Supervised Bond Program (Section 15)

Pretrial Release Subsequent to an Arrest

The Florida Constitution provides that every person charged with a crime is entitled to pretrial release with reasonable conditions.[1] There are three types of pretrial release for a defendant who is awaiting trial: posting of a bail or surety bond, pretrial release conditions, or release on his or her own recognizance.[2]

Bail and Surety Bond

The purpose of a bail determination in criminal proceedings is intended to ensure the defendant's appearance at subsequent proceedings and protect the community against unreasonable danger from the defendant.[3] Bail is a common monetary condition of pretrial release, governed by ch. 903, F.S. [4] For the defendant to be released from jail, a court may require bail by a defendant to provide security, such as cash or a bond to ensure that he or she will return for trial and any other required court appearances.[5]

As an alternative to posting the entire bail amount, a defendant may provide a criminal surety bail bond[6] executed by a bail bond agent. Generally, the defendant or another person on the defendant's behalf pays the bail bond agent a nonrefundable fee equal to 10 percent of the bond amount set by the court with the addition of some type of asset provided to the bond agent as collateral. If the defendant does not appear in court, the bail bond agent is responsible for paying the entire bond amount.[7]

Pretrial Release Conditions

A judge can release a defendant with any combination of the following pretrial release conditions:

- Release on the defendant's own recognizance; [8]
- Execute an unsecured appearance bond in an amount specified by the judge;

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[1] FLA. CONST. art. I, s. 14. This right does not apply to persons charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great. *Id.*

[2] *See* FLA. CONST. art. I, s. 14; *See also* ss. 903.046 and 907.041. F.S.

[3] Section 903.046(1), F.S.

[4] "Bail" Black's Law Dictionary (3rd Pocket Edition). The purpose of a bail bond is to guarantee the defendant's presence in court to face criminal charges.

[5] *Universal Bail Bonds v. State*, 929 So.2d 697, 699 (Fla. 3d DCA 2006).

[6] Sections 903.011 and 903.105, F.S.

[7] OPPAGA, *County Pretrial Release Programs: Calendar Year 2016*, Report No. 17-12, at 2. (Dec. 2017) available at http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1712rpt.pdf (last visited February 23, 2018) (hereinafter cited as "OPPAGA Pretrial Report").

[8] A defendant released on his or her own recognizance (ROR) is released without a monetary requirement and without any conditions of release or supervision of any type. Release on recognizance is defined to mean the pretrial release of an arrested person who promises, usually in writing, but without supplying a surety of posting bond, to appear for trial at a later date. BLACK'S LAW DICTIONARY 606 (3d Pocket ed. 2006).

- Comply with any court-imposed restrictions on travel, association, or place of abode during the period of release;
- Be placed in the custody of a designated person or organization agreeing to supervise the defendant;
- Have a designate execute a bail bond with sufficient solvent sureties, or the deposit of cash in lieu thereof; or
- Comply with any other condition deemed reasonably necessary to assure required appearance, including a condition requiring the defendant to return to custody after specified hours.[9]

A judge also can release a defendant to a pretrial release program. Generally, judges allow a defendant to be released to a pretrial release program without posting a bond; however, a judge can require a defendant to post a bond and participate in the program.[10] Specifically, s. 907.041, F.S., provides a presumption in favor of release on nonmonetary conditions for any person who is granted pretrial release unless such person is charged with a dangerous crime.[11] These programs supervise defendants with various methods, including electronic monitoring[12] or phone contact.[13]

A Court's Determination of Pretrial Release

The judge must consider all available relevant factors during the first appearance hearing to determine what form of release is necessary to assure the defendant's appearance and the community's safety, including factors such as:

- The nature and circumstances of the offense charged.
- The weight of the evidence against the defendant.
- The defendant's family ties, length of residence in the community, employment history, financial resources, and mental condition.
- The defendant's past and present conduct, including any record of convictions, previous flight to avoid prosecution, or failure to appear at court proceedings.
- The nature and probability of danger that the defendant's release poses to the community.[14]

Section 903.047, F.S., provides additional conditions that a defendant must comply with upon release from custody pending trial, including:

- Refrain from criminal activity of any kind;
- Refrain from contact of any type with the victim; and

[9] Rule 3.131(b)(1), Fla. R. Crim. Pro.
[10] *Id.* If a monetary bail is required, the judge must determine a separate amount for each charge or offense. Rule 3.131(b)(2), Fla. R. Crim. Pro.
[11] *See* s. 907.041, F.S., for a list of enumerated felonies that are included in the definition of a dangerous crime.
[12] An electronic monitoring device (EM) is a tamper-resistant device worn on the body that monitors the location of a person at all times of the day. The monitoring agency is notified for various violations of the terms of supervision, such as if the person travels to a location he or she is not authorized to be or if the device is removed by the person. EM systems can be either "passive" or "active" and are typically operated through ratio frequency or global positioning system (GPS) monitoring. Office of Juvenile Justice and Delinquency Prevention, *Home Confinement and Electronic Monitoring*, October, 2014, available at https://www.ojjdp.gov/mpg/litreviews/Home_Confinement_EM.pdf (last visited February 23, 2018).
[13] OPPAGA Pretrial Report, at 9.
[14] Section 903.046(2), F.S. *See also* Rule 3.131(b)(3), Fla. R. Crim. Pro.

- Comply with all conditions of pretrial release.

Standard Bond Schedule

Florida does not have a statewide bond schedule, but each circuit has developed a standard bond schedule. Courts create uniform bail bond schedules to ensure that alleged offenders are provided equal treatment when charged with similar crimes and generally apply to all felonies, misdemeanors and county or municipal ordinance violations as the presumptive bond to be set unless ordered differently by a judge.[15] Even though a county may have an established standard bond schedule, a judge may impose a bond that is above or below such schedule if he or she deems it is necessary based upon circumstances of the case.[16]

Violation of Pretrial Release Conditions

A defendant who does not comply with the terms of the pretrial release can have his or her bond forfeited if certain factors are proven.[17] Under s. 903.0471, F.S., the court may revoke, on its own motion, pretrial release and order pretrial detention if the court finds probable cause to believe that the defendant committed a new crime while on pretrial release.[18]

Supervised Bond Programs in Florida

There is a movement towards bail reform in the United States, with some circuits, including Pinellas County in Florida, implementing a new model for releasing defendants while awaiting trial. The new programs typically require the administration of a RAI, which is then used to determine the release conditions for the defendant.

The Pinellas County supervised bond program has been operating since 2014.[19] Sheriff Gualtieri, the chief correctional officer for Pinellas County, testified in the Senate Criminal Justice Committee on January 8, 2018, that this program was created in an effort to reduce the jail

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[15] Some common ways to address the bond schedules are to either have a standard based on the degree of the offense (for example a $5,000 bond for all second degree felonies, as seen in the Tenth Judicial Circuit) or a specific amount agreed upon for a specific offense, as seen in the Sixth Judicial Circuit. *See* Tenth Judicial Circuit, In and For Hardee, Highlands, and Polk Counties, *Administrative Order IN RE: Uniform Bond Schedule*, available at http://jud10.flcourts.org/sites/all/files/docs/2-49.8.pdf; Sixth Judicial Circuit, In and For Pasco and Pinellas Counties, *Administrative Order NO. 2009-021 PA-CIR, RE: Uniform Bond Schedule – Pasco County*, available at http://www.jud6.org/LegalCommunity/LegalPractice/AOSAndRules/aos/aos2009/2009-021.htm (last visited all sites January 22, 2018).

[16] *Mehaffie v. Rutherford*, 143 So.3d 432 at 434 (Fla. 1st DCA 2014). Under s. 903.286, F.S., the clerk of the court may withhold sufficient funds to pay any unpaid costs of prosecution, costs of representation, court fees, court costs, and criminal penalties from the return of a cash bond posted on behalf of a criminal defendant. If sufficient funds are not available to pay all unpaid costs associated with the criminal case, the clerk of the court must immediately obtain payment from the defendant or enroll the defendant in a payment plan. This section does not apply to the portion that is paid by a licensed bail bond agent.

[17] *See* s. 903.26, F.S.

[18] This discretion is provided regardless of the conditions for granting pretrial release provided for in s. 907.041, F.S.

[19] Presentation by Sheriff Bob Gualtieri, Pinellas County Sheriff's Office, in the Senate Criminal Justice Committee, January 8, 2018 (hereinafter cited as "Committee Presentation"); *See also* Sheriff Bob Gualtieri, PowerPoint Presentation, *ROR and Supervised Bond Presentation* (on file with the Criminal Justice Committee) (hereinafter cited as "Supervised Bond PowerPoint").

population in Pinellas County and avoid the need to build a larger facility.[20] Sheriff Gualtieri reported that while the bond amounts imposed by the court were proper to ensure public safety and compliance, judges could not lower the bail while still ensuring public safety and compliance without more oversight. As a result, a number of defendants remained in custody for months unable to meet the bail amount imposed.[21]

Upon agreement from the judiciary and in partnership with the bail bond industry, the Pinellas County Sheriff's Office established a supervised bond program that requires active electronic monitoring, continuous alcohol monitoring[22] or both.[23]

The Pinellas County Sheriff's Office averages approximately 200 people per day on active supervision through the supervised bond program.[24] Sheriff Gualtieri reported that of all the defendants who have been released on the supervised bond program, 99.5 percent have appeared for required court hearings and 94.9 percent did not commit a new crime while in the program.[25] Of the total cases supervised on the Supervised Bond Program, 45 percent were felonies, 30 percent were misdemeanors, and 25 percent were for felony or misdemeanor driving under the influence.[26] Sheriff Gualtieri reported that these programs have resulted in a $38.9 million annual savings.[27]

Evidence-Based Risk Assessment Tools

RAIs measure a defendant's criminal risk factors and specific needs that, if addressed, will reduce the likelihood of future criminal activity.[28] RAIs consist of a set of questions that guide face-to-face interviews with a defendant, intended to evaluate behaviors and attitudes that research shows are related to criminals reoffending. The questioner typically supplements the interview with an official records check. The RAI then calculates an overall score that classifies a defendant as being at high, moderate, or low risk for reoffending.[29]

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[20] Sheriff Gualtieri testified that the Pinellas County jail was crowded in 2014 with approximately 70 percent of the inmates being pretrial detainees. Supervised Bond PowerPoint, at 3.
[21] Supervised Bond PowerPoint, at 2-4.
[22] Continuous Alcohol Monitoring systems are tamper-resistant automated alcohol-monitoring devices that use transdermal testing to measure the amount of alcohol in person's body, known as transdermal alcohol content (TAC). When alcohol is consumed, ethanol migrates through the skin and is excreted through perspiration. *See* National Institute of Justice, *Secure Continuous Remote Alcohol Monitoring (SCRAM) Technology Evaluability Assessment*, available at https://www.ncjrs.gov/pdffiles1/nij/secure-continuous-remote-alcohol.pdf (last visited February 23, 2018).
[23] *Id*. at 4-5.
[24] Supervised Bond PowerPoint, at 7.
[25] *Id*. at 9.
[26] *Id*. at 10.
[27] *Id*. at 16. This savings takes into account the cost it required to house an additional 900 inmates per day with the current per diem rate and the operational cost.
[28] Congressional Research Service, *Risk and Needs Assessment in the Criminal Justice System*, Nathan James, at 2 (October 13, 2015), available at https://fas.org/sgp/crs/misc/R44087.pdf (last visited February 23, 2018) (hereinafter cited at CRS Report).
[29] *Id*. 2-4.

Research has identified both static and dynamic risk factors that are related to criminal behavior. Static risk factors[30] do not change, while dynamic risk factors[31] either can change on their own or change through an intervention. The Risk-Needs-Responsivity (RNR) model has become the dominant paradigm in risk and needs assessment.[32] The RNR principle refers to predicting which inmates have a higher probability of recidivating, and treating the criminogenic needs of those higher risk inmates with appropriate programming and services based on their level of need. In general, research suggests that the most commonly used assessment instruments can, with a moderate level of accuracy, predict who is at risk for violent recidivism. It also suggests that no single instrument is superior to any other when it comes to predictive validity.[33]

Use of Risk Assessment Instruments by the Department of Corrections

The DOC has created a RAI, known as Spectrum, which is administered to an inmate at reception through motivational interviewing techniques.[34] Spectrum, as well as its predecessor, the Corrections Integrated Needs Assessment System (CINAS), is based on the RNR model and contains responsivity elements.[35] Inmates identified during the assessment as being in need of treatment or services become mandated program participants and are placed on the DOC's centralized statewide-automated priority list for placement in a program.[36]

Spectrum has been independently verified through the School of Criminology at Florida State University.[37]

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[30] Some examples of static factors considered include age at first arrest, gender, past problems with substance or alcohol abuse, prior mental health problems, or a past history of violating terms of supervision. CRS Report, p. 3.

[31] Dynamic risk factors, also called "criminogenic needs," can be affected through interventions and include factors such as current age, education level, or marital status; being currently employed or in substance or alcohol abuse treatment; and having a stable residence. "Criminogenic" is commonly understood to mean factors that can contribute to criminal behavior. CRS Report, at 3.

[32] The risk principle states that high-risk offenders need to be placed in programs that provide more intensive treatment and services while low-risk offenders should receive minimal or even no intervention. The need principle states that effective treatment should focus on addressing needs that contribute to criminal behavior. The responsivity principle states that rehabilitative programming should be delivered in a style and mode that is consistent with the ability and learning style of the offender. CRS Report, at 2 and 6.

[33] *Id*.

[34] DOC, Spectrum Video, available at https://www.youtube.com/watch?v=WRI5ldWf5MY&feature=youtu.be (last visited January 25, 2018) (hereinafter cited as "Spectrum Video"); DOC, *Program Information: Compass 100, Spectrum, Academic & Workforce Education/GED* (on file with the Senate Criminal Justice Committee) (hereinafter cited as "DOC Program Information").

[35] DOC, *Agency Analysis for SB 1222*, p. 2, January 18, 2018 (on file with the Senate Criminal Justice Committee) (hereinafter cited as "The DOC SB 1222 Analysis"). The DOC reports that criminogenic needs are those factors that are associated with recidivism that can be changed (e.g. lack of education, substance abuse, criminal thinking, lack of marketable job skills, etc.). Offenders are not higher risk because they have a particular risk factor, but, rather, because they have multiple risk factors. Accordingly, a range of services and interventions is provided that target the specific crime producing needs of offenders who are higher risk. *See also Id*. and Email from Jared Torres, DOC, Director of Legislative Affairs (January 25, 2018) (on file with Senate Criminal Justice Committee).

[36] Substance Abuse Annual Report, at 6.

[37] Letter from Dr. William D. Bales and Jennifer M. Brown, ABD to DOC Secretary, Julie Jones, (January 19, 2018) (on file with the Senate Criminal Justice Committee). Dr. Bales provides that Spectrum "produces a level of predictive accuracy that is above the conventional threshold of acceptability and is consistent with risk assessment systems used by other correctional systems throughout the United States."

Spectrum hosts an array of assessments and screenings across multiple disciplines including mental health, substance abuse, academic and workforce education.[38] Spectrum calculates an individual's overall risk of returning to prison upon release and identifies needs that can be addressed to reduce his or her risk within seven criminogenic domains and three core program areas.[39] The DOC uses the results from the Spectrum assessment to create an evidence-driven performance plan that matches the inmate's needs with services and programming offered in the DOC. Data collected during administration of Spectrum is also used to assist with transitioning an inmate back into the community upon release through relaying the information to reentry service providers in the local community and community corrections.[40]

Effect of the Bill

The bill creates s. 907.042, F.S., authorizing each county to create a supervised bond program (Bond Program). The terms of each county's Bond Program must be developed with the concurrence of the chief judge of the circuit, the sheriff, the state attorney (SA), and the public defender (PD). However, a county that has already established and implemented a Bond Program may continue to operate without such concurrence if the program complies with the specified program and RAI requirements discussed below.

A Bond Program established pursuant to this bill must, at a minimum:

- Require the sheriff to administer the Bond Program.
- Require the sheriff, or his or her designee, to administer the RAI to a potential defendant.
- Utilize a RAI to determine eligible defendants and determine an appropriate level of supervision for each defendant upon release.
- Review the bond of a defendant who is being accepted into the Bond Program to determine if a reduction of the court-ordered bond, up to its entirety, is appropriate.
- Provide that the findings of the RAI will be used to create an individualized supervision plan for each eligible defendant that is tailored to the defendant's risk level and supervision needs.
- Require, as part of the individualized supervision plan, that any defendant released in the Bond Program must be placed on active electronic monitoring or active continuous alcohol monitoring, or both, dependent upon the level of risk indicated by the RAI.
- Require weekly communication between the sheriff's office and the defendant as part of the individualized supervision plan, which can be satisfied via telephone or in person contact, dependent upon the level of risk indicated by the RAI.
- Establish procedures for reassessing or terminating defendants from the Bond Program who do not comply with the terms of the individualized supervision plan imposed through the program.

[38] DOC Program Information.
[39] The criminogenic domains include social awareness (antisocial personality); criminal associates; substance abuse history; family and marital relationships; wellness; criminal thinking or attitude; and employment and education history. Spectrum Video. The three core program areas include GED, Career & Technical skills (vocation), and substance use treatment and is part of the needs portion of the RNR model as they address criminogenic risk factors. Email from Jared Torres, DOC, Director of Legislative Affairs (January 25, 2018) (on file with the Senate Criminal Justice Committee).
[40] *Id*.

Each county must utilize a RAI that conducts a criminogenic assessment for use in evaluating the proper level of supervision appropriate to ensure compliance with pretrial conditions and safety to the community. The RAI must consider, but need not be limited to, the following criteria:

- The nature and circumstances of the offense the defendant is alleged to have committed.
- The nature and extent of the defendant's prior criminal history, if any.
- Any prior history of the defendant failing to appear in court.
- The defendant's employment history, employability skills, and employment interests.
- The defendant's educational, vocational, and technical training.
- The defendant's background, including his or her family, home, and community environment.
- The defendant's physical and mental health history, including any substance use.
- An evaluation of the defendant's criminal thinking, criminal associates, and social awareness.

Further, a county may use a RAI that the county creates on its own for the purpose of operating a Bond Program and determining appropriateness of pretrial release, the defendant's risk of noncompliance on pretrial release, and risk to the community, that:

- The county has previously developed for a similar purpose;
- The DOC develops or modifies from a RAI that it has already developed;
- Another county has developed for a similar purpose; or
- An independent entity has previously developed for a similar purpose.

If a county opts to use a RAI that is developed by any entity listed above other than the DOC, such RAI must be independently validated by the DOC and contain the criteria listed above.

A county may begin to implement its Bond Program immediately upon securing a contract for the use of, or the completion of development or modification, of a RAI and, if applicable, validation of the RAI. Additionally, a county that has not established a Bond Program, but has created a RAI for a similar purpose as is intended in the act, may implement its Bond Program immediately upon the RAI being validated by the DOC. A county that has already implemented a Bond Program may continue to operate its program while the RAI it utilizes is being validated. Implementation must include training of all county staff that will administer the RAI.

The bill requires each county that establishes a Bond Program, or that has an existing Bond Program that operates in compliance with the act, to provide an annual report to the OPPAGA that details the:

- Results of the administration of the RAI;
- Programming used for defendants who received the assessment and were accepted into the Bond Program;
- Success rate of the Bond Program; and
- Savings realized by the county as a result of defendants being released from custody pending trial through the Bond Program.

The county's annual report must be submitted to the OPPAGA by October 1 each year. The OPPAGA must compile the results of the counties' reports for inclusion in an independent

section of its annual report developed and submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives in accordance with s. 907.044, F.S.[41]

Lastly, the bill also provides several legislative findings supporting the changes made in the act.

Risk Assessment Pilot Program (Section 16)

The bill creates a Risk Assessment Pilot Program. The bill provides the following legislative findings for the program:

- There is a need to use evidence-based methods to reduce recidivism.
- The use of actuarial instruments that classify offenders according to levels of risk to reoffend provides a more consistent and accurate assessment of an offender's risk and needs.
- Research indicates that using accurate risk and needs assessment instruments to identify appropriate interventions and programming for offenders reduces recidivism.

Risk Assessment Instrument Criteria

The bill directs the DOC to develop a RAI that conducts a criminogenic assessment by March 1, 2019, for use in evaluating the proper placement and programming needs for a person who is arrested. The RAI must consider at a minimum the following criteria:

- The nature and circumstances of the offense the person committed.
- The nature and extent of the person's prior criminal history, if any.
- Any prior history of the person failing to appear in court.
- The person's employment history, employability skills, and employment interests.
- The person's educational, vocational, and technical training.
- The person's background, including his or her family, home, and community environment.
- The person's physical and mental health history, including any substance use.
- An evaluation of the person's criminal thinking, criminal associates, and social awareness.

The DOC may use or modify an existing RAI if it contains the above-listed criteria.

Implementation Requirements

The bill authorizes the DOC to begin implementation of the RAI immediately upon completion, but requires implementation, including all staff training, to be completed no later than June 30, 2019.

Administration of the Risk Assessment Instrument

The bill provides that a representative of the sheriff's office must administer the RAI as early as reasonably possible after a person's arrest, but no later than 10 business days after the arrest. The RAI may be conducted via video teleconference. In the event that a person is released from custody on pretrial release before the RAI has been administered, the sheriff or his or her representative must schedule a time for the person to come back to the jail to have the RAI administered. The person must be provided written notice of the appointment upon release.

[41] Section 907.044, F.S., requires the OPPAGA to conduct an annual study to evaluate the effectiveness and cost efficiency of pretrial release programs in Florida. The OPPAGA is required to submit its report to the President of the Senate and the Speaker of the House of Representatives by January 1 of each year.

Upon completion of a RAI report, the report must be provided to the person that had the RAI administered upon him or her, the defense counsel, and the SA.

The DOC must submit the report to the court, but the court may not review the report without the consent of the person who is the subject of the report and his or her legal counsel.

Pilot Program Creation and Requirements

The bill creates a three-year pilot program, contingent upon appropriations and a contract with each participating county and the DOC. The bill provides that the counties eligible for participation include Hillsborough, Pasco, and Pinellas Counties. The sheriff from each participating county must enter into a contract with the DOC to use the RAI developed under the act.

The bill requires the counties participating in the program to administer the RAI to all persons arrested for a felony and use the results of the RAI as a tool for determining appropriate programming and sentencing with the goal of reducing recidivism. By July 1 of each year, each participating county must provide an annual report to the DOC detailing the results of the administration of the RAI, programming used for persons who received the RAI, and the success rate of such programming.

The DOC is required to compile the county reports and submit one annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by October 1 of each year of the pilot program.

Rulemaking Authority

The bill provides rulemaking authority to the DOC to implement the act. The rules must be developed in consultation with the sheriff, chief judge, SA, and PD of each participating county.

Theft Offenses (Section 9, 10, and 37)

There are approximately 3,000 people currently incarcerated in the DOC for felony theft convictions and 31,000 on state community supervision for a felony theft crime in Florida.[42] Since 2000, 37 states have increased the threshold dollar amounts for felony theft crimes.[43] Such increases ensure that associated "criminal sentences don't become more severe over time simply because of natural increases in the prices of consumer goods."[44]

[42] Email from the DOC Staff (March 2, 2018) (on file with Senate Criminal Justice Committee).
[43] Pew Charitable Trusts, The Effects of Changing State Theft Penalties (February 2016), available at http://www.pewtrusts.org/~/media/assets/2016/02/the_effects_of_changing_state_theft_penalties.pdf?la=en (last visited March 2, 2018); *See also* Alison Lawrence, *Making Sense of Sentencing: State Systems and Policies*, National Conference of State Legislatures, http://www.ncsl.org/documents/cj/sentencing.pdf (last visited March 2, 2018).
[44] John Gramlich and Katie Zafft, *Updating State Theft Laws Can Bring Less Incarceration – and Less*, Stateline, Pew Charitable Trusts, http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2016/03/31/updating-state-theft-laws-can-bring-less-incarceration-and-less-crime (March 2, 2018).

The majority of states (30 states) and the District of Columbia set a $1,000-or-greater property value threshold for felony grand theft. Fifteen states have thresholds between $500 and $950, and five states, including Florida, have thresholds below $500. Between 2003 and 2015, nine states, including Alabama, Mississippi, and Louisiana, raised their felony thresholds twice.[45]

Property Theft

Section 812.014, F.S., provides that a person commits theft if he or she knowingly obtains or uses, or endeavors to obtain or use, the property of another with intent to, either temporarily or permanently:

- Deprive the other person of a right to the property or a benefit from the property; or
- Appropriate the property to his or her own use or to the use of any person not entitled to the use of the property.[46]

Second degree petit theft, a second degree misdemeanor, is theft of property valued at less than $100.[47] First degree petit theft, a first degree misdemeanor, is theft of property valued at $100 or more but less than $300.[48] Second degree petit theft incurs greater penalties if there is a prior theft conviction: a first degree misdemeanor if there is one prior conviction,[49] and a third degree felony if there are two or more prior convictions.[50]

Third degree grand theft, a third degree felony,[51] is theft of:

- Property valued at $300 or more, but less than $20,000.
- Specified property including, but not limited to:
  - A will, codicil, or testamentary instrument;
  - A firearm;
  - Any commercially farmed animal, bee colony, aquaculture species or citrus fruit of over 2,000 pieces;
  - Any fire extinguisher;
  - Any stop sign;
  - Property taken from a designated, posted construction site;[52] and
- Property from a dwelling or its unenclosed curtilage if the property is valued at $100 or more, but less than $300.[53]

[45] *Id.*
[46] Section 812.014(1), F.S.
[47] Section 812.014(3)(a), F.S. A second degree misdemeanor is punishable by up to 60 days in jail and a fine of up to $500. Sections 775.082 and 775.083, F.S.
[48] Section 812.014(2)(e), F.S. A first degree misdemeanor is punishable by up to one year in jail and a fine of up to $1,000. Sections 775.082 and 775.083, F.S.
[49] Section 812.014(3)(b), F.S.
[50] Section 812.014(3)(c), F.S.
[51] A third degree felony is punishable by up to 5 years' incarceration and a fine of up to $5,000. Sections 775.082 and 775.083, F.S.
[52] Section 812.014(2)(c), F.S.
[53] Section 812.014(2)(d), F.S.

The last time the Legislature increased the minimum threshold property value for third-degree grand theft was in 1986.[54] The third-degree grand theft provisions related to property taken from a dwelling or its unenclosed curtilage were added in 1996. The petit theft provisions were amended, including the thresholds, in 1996.[55]

Retail Theft

Section 812.015(1)(d), F.S., defines retail theft as:

- The taking possession of or carrying away of merchandise, property, money, or negotiable documents;
- Altering or removing a label, universal product code, or price tag;
- Transferring merchandise from one container to another; or
- Removing a shopping cart, with intent to deprive the merchant of possession, use, benefit, or full retail value.

In part, retail theft is a third degree felony if the theft involves property valued at $300 or more and the person commits the theft in a specified manner (e.g., commits theft from more than one location within a 48-hour period, in which case the amount of each individual theft is aggregated to determine the value of the property stolen).[56]

Retail theft is a second degree felony if the person has previously been convicted of third degree felony retail theft or individually, or in concert with one or more other persons, coordinates the activities of one or more persons in committing the offense of retail theft where the stolen property has a value in excess of $3,000.[57] The statute also requires a fine of not less than $50 and no more than $1,000 for a second or subsequent conviction for petit theft from a merchant, farmer, or transit agency.[58]

The thresholds for third degree felony retail theft were created and set by the Legislature in 2001.[59]

Reclassification of Theft Offenses

Certain theft offenses are reclassified to the next higher degree offense if the person committing the offense has previous theft convictions, including:

- A petit theft offense is reclassified to a third degree felony, if the person has two previous convictions of any theft.[60]
- A third-degree felony retail theft offense is reclassified to a second-degree felony if the person has a previous retail theft in violation of s. 812.015(8), F.S.[61]

[54] Chapter 86-161, s. 1, L.O.F.
[55] Chapter 96-388, s. 49, L.O.F.
[56] Section 812.015(8), F.S.
[57] Section 812.015(9), F.S.
[58] Section 812.015(2), F.S.
[59] Chapter 01-115, s. 3, L.O.F.
[60] Section 812.014(3)(c), F.S.
[61] Section 812.015(9)(a), F.S.

There are no time limits between theft convictions related to theft crime level and penalty enhancements.

Juvenile offenders who are adjudicated delinquent for theft offenses are considered to have been "convicted" of theft and are treated the same as adult offenders for purposes of these penalty enhancements.[62]

Effect of the Bill

Property Theft

The bill increases the minimum threshold amounts for a third-degree felony grand-theft from $300 to $1,000. For property taken from a dwelling or enclosed curtilage, the theft thresholds amounts are modified from $100 or more, but less than $300, to $1,000 or more, but less than $5,000. The first-degree misdemeanor petit theft threshold amount is modified from $100 or more, but less than $300, to $500 or more, but less than $1,000.

The bill also deletes certain items from the list of property that constitute a third-degree grand theft regardless of the value of the property taken, including:

- A will, codicil, or other testamentary instrument;
- Any fire extinguisher;
- Property taken from a designated construction site identified by the posting of a sign as provided for in s. 810.09(2)(d); and
- Any stop sign.[63]

The bill also adds certain items to the list of items that constitute a third-degree grand theft, regardless of the value of the property taken, including birds that are commercially farmed animals and utility theft as defined in s. 812.14, F.S.[64]

Lastly, the bill modifies the enhancement statute providing that a first-degree petit theft becomes a third-degree felony only if:

- The offender has previously been convicted two or more times *as an adult* for any theft; and
- The most recent subsequent petit theft offense occurred within three years of the expiration of the offender's sentence for the most recent theft conviction.

Retail Theft

The bill amends s. 812.015, F.S., to increase the property value of third-degree felony retail theft from $300 or more, to $1,000 or more. The bill enhances retail theft to a second-degree felony only if:

- The offender has previously been convicted of retail theft *as an adult*; and
- The subsequent retail theft offense occurred within three years of the expiration of the offender's sentence for the most recent retail theft conviction.

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[62] *T.S.W. v. State*, 489 So. 2d 1146 (Fla. 2d DCA 1986); *R.D.D. v. State*, 493 So. 2d 534 (Fla. 5th DCA 1986).

[63] These offenses will now be classified by the property value rather than automatically qualifying as a third-degree grand theft.

[64] These offenses will no longer be classified by the value of the property taken, but will automatically qualify as third-degree felony grand theft.

Lastly, the bill amends s. 921.0022, F.S., to conform the Criminal Punishment Code offense severity ranking chart to changes made by the bill.

Drug Trafficking Sentencing Departure (Sections 11 and 36)

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 the schedule classification of a substance are the "potential for abuse"[65] of the substance and whether there is a currently accepted medical use for the substance in the United States.[66]

Drug Trafficking

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 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.[67] The controlled substance involved in the trafficking must meet a specified weight or quantity threshold.

Most drug trafficking offenses are first degree felonies[68] and are subject to a mandatory minimum term of imprisonment[69] and a mandatory fine, which is determined by the weight or quantity range applicable to the weight or quantity of the substance involved in the trafficking.[70] 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.[71] Trafficking in 200 grams or more, but less than 400 grams, of cocaine, a first degree felony, is punishable by a 15-year mandatory minimum term of imprisonment and a mandatory fine of $100,000.[72]

[65] 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.
[66] *See* s. 893.03(1)-(5), F.S.
[67] *See* s. 893.135, F.S., for the substances which are included in the offense if drug trafficking.
[68] 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 and 775.083, F.S.
[69] There are currently 56 mandatory minimum terms of imprisonment in s. 893.135, F.S., which range from three years to life imprisonment.
[70] *See* s. 893.135, F.S.
[71] Section 893.135(b)(1)a., F.S.
[72] Section 893.135(b)(1)b., F.S.

Criminal Punishment Code

The Criminal Punishment Code[73] (Code) is Florida's "primary sentencing policy."[74] Noncapital felonies sentenced under the Code receive an offense severity level ranking (Levels 1-10).[75] 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.[76] Absent mitigation,[77] 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. The statutory maximum sentence for a first-degree felony is 30 years, for a second-degree felony is 15 years, and for a third degree felony is 5 years.[78]

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."[79] 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.[80] The exercise of this discretion may determine whether 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. Further, a prosecutor could move the court to reduce or suspend a sentence if the defendant renders substantial assistance.

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[73] 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.

[74] DOC, *Florida's Criminal Punishment Code: A Comparative Assessment (FY 2012-2013) Executive Summary (Offenses Committed On or After October 1, 1998)*, available at http://www.dc.state.fl.us/pub/sg_annual/1213/executives.html (last visited on February 21, 2018).

[75] 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.

[76] Section 921.0024, F.S. Unless otherwise noted, information on the Code is from this source.

[77] 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.

[78] *See* s. 775.082, F.S.

[79] Fla. R. Crim. P. 3.704(d)(26).

[80] "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).

There are few circumstances in which a court of its own accord can depart from a mandatory minimum term. A court may depart from a mandatory minimum term if the defendant is a youthful offender.[81] 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), 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."[82]

Effect of the Bill

The bill amends s. 893.135, F.S., to authorize a court to depart from a mandatory minimum term of imprisonment and mandatory fine applicable to that offense. The departure is authorized if the court finds on the record that the person did not:

- Engage in a continuing criminal enterprise;[83]
- Use or threaten violence or use a weapon during the commission of the crime; and
- 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 imprisonment).[84]

The bill also amends s. 893.03, F.S., conforming a cross-reference to changes made by this provision.

Probation and Community Control (Sections 31-34)

Forms of Supervision through the Department of Corrections

At sentencing, a judge may place an offender on probation or community control in lieu of or in addition to incarceration.[85] The DOC supervises more than 167,000 offenders on active community supervision. This includes offenders released from prison on parole, conditional release, or conditional medical release and offenders placed on court ordered supervision including probation, drug offender probation, sex offender probation, and community control.[86]

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[81] Section 958.04, F.S.
[82] Section 316.027(2)(g), F.S.
[83] 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.
[84] 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.
[85] Section 948.01, F.S.
[86] DOC, *Introduction to Community Corrections*, available at http://www.dc.state.fl.us/facilities/comcor/ (last visited February 21, 2018).

Probation

Probation is a form of community supervision requiring specified contacts with probation officers and other conditions a court may impose.[87] There are also specialized forms of supervision such as drug offender probation[88] and mental health probation.[89] Section 948.03, F.S., provides that a court must determine the terms and conditions of probation. Standard conditions of probation that are enumerated in s. 948.03, F.S., are not required to be announced on the record, but the court must orally pronounce, as well as provide in writing, any special conditions of probation imposed.

Administrative Probation

Section 948.013, F.S., provides that the DOC may establish procedures for transferring an offender to administrative probation. Administrative probation is defined in s. 948.001(1), F.S. There are specified underlying offenses that are prohibited from being transferred to administrative probation.[90]

Community Control

Section 948.001(3), F.S., defines "community control" as a form of intensive, supervised custody in the community, including surveillance on weekends and holidays, administered by officers with restricted caseloads.[91] The community control program is rigidly structured and designed to accommodate offenders who, in the absence of such a program, will be committed to the custody of the DOC or a county jail.[92] A person on community control (controlee) has an individualized program and is restricted to his or her home or noninstitutional residential placement, unless working, attending school, performing public service hours, participating in treatment or another special activity that has been approved in advance by his or her parole and probation officer.[93]

Conditions of community control are determined by the court when the offender is placed on such supervision. There are standard conditions of community control with which all controlees must comply.[94] A person may be placed on additional terms of supervision as part of his or her community control sentence.[95]

[87] Section 948.001(8), F.S. Terms and conditions of probation are provided in s. 948.03, F.S.
[88] Section 948.001(4), F.S., defines "drug offender probation" as a form of intensive supervision that emphasizes treatment of drug offenders in accordance with individualized treatment plans administered by probation officers with reduced caseloads.
[89] Section 948.001(5), F.S., "mental health probation" means a form of specialized supervision that emphasizes mental health treatment and working with treatment providers to focus on underlying mental health disorders and compliance with a prescribed psychotropic medication regimen in accordance with individualized treatment plans.
[90] *See* Section 948.013(2) and (3), F.S.
[91] Section 948.10(2), F.S., provides that caseloads must be no more than 30 cases per officer.
[92] Section 948.10(1), F.S.
[93] *Id*.
[94] *See* s. 948.101(1), F.S., for the standard conditions of community control.
[95] Section 948.101(2), F.S.

Violations of Probation or Community Control

If an offender violates the terms of his or her probation or community control, the supervision can be revoked in accordance with s. 948.06, F.S.96 A violation of probation (VOP) or violation of community control (VOCC) can be the result of a new violation of law or a technical violation of the conditions imposed. If reasonable grounds exist to believe that an offender on probation or community control has violated his or her terms of supervision in a material respect, an offender may be arrested without a warrant by a:

- Law enforcement officer who is aware of the inmate's supervised community release status;
- Probation officer; or
- County or municipal law enforcement officer upon request by a probation officer.[97]

The offender must be returned to the court granting such probation or community control.[98] Additionally, the committing court judge may issue a warrant, upon the facts being made known to him or her by affidavit of one having knowledge of such facts, for the arrest of the offender.[99]

Upon a finding through a VOP or VOCC hearing, a court may revoke, modify, or continue the supervision. If the court chooses to revoke the supervision, it may impose any sentence originally permissible before placing the offender on supervision.[100] In addition, if an offender qualifies as a violent felony offender of special concern (VFOSC), the court must revoke supervision, unless it makes written findings that the VFSOC does not pose a danger to the community.[101] The VFOSC status also accrues sentence points under the Code, which affects the scoring of the lowest permissible sentence.[102]

Alternative Sanctioning Programs

In FY 2016-17, 18,999 of all resolved violations were technical in nature as were 20,834 of the violations resolved in FY 2015-16. Many of these violations resulted in the offender returning to some form of supervision or serving a county jail sentence.[103] Prior to 2016, the DOC developed and implemented an alternative sanctioning program (ASP) in twelve counties within six judicial circuits.[104] An ASP allows for an alternative resolution of technical violations of probation that ensures a swift and certain response without initiating the court process or arresting and booking the offender. Section 948.06, F.S., was amended during the 2016 Legislative Session to codify ASPs.[105] The use of such programs has substantially increased since enactment of the ASP option. As of February 2018, 13 circuits (including 45 of 67 counties) have established ASPs by

[96] Section 948.10(3), F.S.
[97] Section 948.06(1)(a), F.S.
[98] *Id*.
[99] Section 948.06(1)(b), F.S. The committing trial court judge may also issue a notice to appear if the controlee has never been convicted of committing, and is not currently alleged to have committed, a qualifying offense as enumerated in s. 948.06(8)(c), F.S.
[100] Section 948.06(2)(b), F.S.
[101] *See* s. 948.06(8)(a), F.S., for all VFOSC qualifications and enumerated list of felonies that are considered qualifying offenses. *See also* ch. 2007-2, L.O.F.
[102] Section 921.0024, F.S.
[103] Email from the DOC Staff (February 22, 2018) (on file with Senate Criminal Justice Committee).
[104] DOC, *Agency Analysis HB 1149 (2016)*, at p. 2 (January 20, 2016) (on file with the Senate Criminal Justice Committee).
[105] Ch. 2016-100, L.O.F.

administrative order. These participating jurisdictions have resolved 2,371 violations through the ASP.[106]

Section 948.06(1)(h), F.S., authorizes the chief judge of each judicial circuit to establish an ASP, in consultation with the SA, PD, and the DOC to address technical VOPs and VOCCs. A technical violation is defined to include any alleged violation of supervision that is not a new felony offense, misdemeanor offense, or criminal traffic offense.[107] Once an ASP administrative order is signed establishing the terms[108] of the program, the DOC may enforce specified sanctions for certain technical violations with court approval.

Common sanctions issued through the ASP include increased reporting requirements, which can be in person or via phone, community service hours, imposition or modification of a curfew, electronic monitoring, drug evaluation and treatment, employment searches and workforce training.[109] As of January 2018, two circuits and Brevard had included short jail sentences as a possible ASP sanction through administrative order.[110]

After receiving written notice of an alleged technical violation and disclosure of the evidence supporting the violation, an offender who is eligible for the ASP may elect to either participate in the program or waive participation.[111] If the offender waives participation, the violation proceeds through the court resolution process.[112] If the offender elects to participate, he or she must admit to the technical violation, agree to comply with the probation officer's recommended sanction, and agree to waive the right to:

- Be represented by counsel.
- Require the state to prove his or her guilt.
- Subpoena witnesses and present evidence to a judge in his or her defense.
- Confront and cross-examine witnesses.
- Receive a written statement from a factfinder as to the evidence relied on and the reasons for the sanction imposed.[113]

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[106] Email from the DOC Staff (February 21, 2018). The circuits that have enacted administrative orders include: Third (Columbia, Dixie, Hamilton, Lafayette, Madison, Suwannee and Taylor Counties); Fourth (Duval County); Fifth (Citrus, Hernando, Lake, Marion and Sumter Counties); Sixth (Pasco and Pinellas Counties); Seventh (Flagler, Putnam, St. Johns and Volusia Counties); Eighth (Alachua, Baker, Bradford, Gilchrist, Levy, and Union Counties); Tenth (Hardee, Highlands, and Polk Counties); Twelfth (DeSoto, Manatee, and Sarasota Counties); Thirteenth (Hillsborough County); Fourteenth (Bay, Calhoun, Gulf, Holmes, Jackson and Washington Counties); Fifteenth (Palm Beach County); Eighteenth (Brevard and Seminole Counties); and Nineteenth (Indian River, Martin, Okeechobee and St. Lucie Counties).

[107] Section 946.08(2)(h)1., F.S.

[108] Section 948.06(1)(h)2., F.S., provides that the administrative order must address which technical violations are eligible for alternative sanctioning, offender eligibility criteria, permissible sanctions, and the process for reporting technical violations.

[109] Third Judicial Circuit, *Administrative Order 2016-003, Criminal Alternative Sanctioning Program*, available at http://www.jud3.flcourts.org/Admin_Orders/All/2016-003-Criminal%20Alternative%20Sanctioning%20Program.pdf Thirteenth Judicial Circuit, *Administrative Order S-2016-019, Alternative Sanctioning Program*, available at http://www.fljud13.org/Portals/0/AO/DOCS/S-2016-019.pdf?ver=2016-06-07-104033-303 (all sites last visited February 22, 2018).

[110] Two Circuits offer short county jail time as a sanction and Brevard County offers weekends with the Brevard County Sheriff's Work Farm. Email from the DOC Staff (February 22, 2018) (on file with Senate Criminal Justice Staff).

[111] Section 948.06(1)(h)3., F.S.

[112] Section 948.06(1)(h)3.a., F.S.

[113] Section 948.06(1)(h)3.b., F.S.

Upon the offender admitting to the technical violation and agreeing with the probation officer's recommended sanction, the probation officer must submit the recommended sanction to the court for approval. The submission to the court must include documentation related to the offender's admission to the technical violation and agreement with the recommended sanction. The court may impose the recommended sanction or may direct the DOC to submit a violation report, affidavit, and warrant.[114]

Participation in an ASP is voluntary. Additionally, the offender may elect to waive or discontinue participation in an ASP at any time before the issuance of a court order imposing the recommended sanction. The offender's prior admission to the technical violation may not be used as evidence in subsequent proceedings.[115]

Conditions of Probation in the Florida Crime Information Center

The Florida Crime Information Center (FCIC) is the state's central database for tracking crime related information. Information contained in the FCIC database includes, but is not limited to, statewide information on persons and property, driver's license and registration information, wanted and missing persons, stolen guns, vehicles, and other property, and persons' status files, and computerized criminal history.[116] It is commonly used by law enforcement officers to gather relevant information when responding to a call for service or engaging in a citizen encounter.

Every criminal justice agency[117] within Florida is eligible for access to the FCIC.[118] Access is divided into limited access and full access. With limited access, the user is able to run a query in the system. With full access, the user is able to make modifications in the system.[119] Currently, an officer may run a driver license, warrant, or person query in the FCIC and the results will include information on whether the individual is currently on probation.[120] However, in general, a law enforcement officer will only see that the person is on probation. The FCIC will not include the specific terms of probation.[121]

When probation conditions are ordered, modified, or deleted by the court, that information is forwarded to the DOC via the clerk of the court (clerk).[122] Once the conditions are received by the DOC, they are manually entered into the database.[123] Delays in this process may vary due to

[114] Section 948.06(1)(h)4. and 5., F.S.
[115] Section 948.06(1)(h)6. and 7., F.S
[116] Department of Juvenile Justice, *Florida Department of Juvenile Justice Procedure*, p. 2, available at http://www.djj.state.fl.us/docs/policies/fcic-ncic-cjnet-jis-and-david-access-use-procedures-fdjj-1805p.pdf?sfvrsn=4 (last visited February 22, 2018) (hereinafter cited as "DJJ Procedure").
[117] FDLE defines "criminal justice agency" to include courts and governmental agencies that perform the administration of criminal justice pursuant to a statute or executive order.
[118] DJJ Procedure.
[119] *Id*.
[120] Id.
[121] Email from Florida Sheriffs Association Staff (February 22, 2018) (on file with Senate Criminal Justice Committee).
[122] *Id*.
[123] *Id*.

the volume of information, the manner in which information is received, and the variations in the process among the circuits.[124]

The DOC sends a probationer's data electronically to FDLE through a real time direct data pipeline. To include a probationer's conditions, the DOC will enter the information into a "Miscellaneous Field of the Status Record" field available in the FCIC.[125] However, the DOC reports that it includes a number of special conditions of probation as prioritized by the FDLE, but that the current FDLE system only allows a smaller, specified amount of data and typically does not allot enough space to include all special conditions of probation.[126]

A court has authority to modify or alter conditions of probation based on a probationer's particular circumstances.[127] As a result, a probation officer may have permission to allow certain exceptions to conditions of probation on a case-by-case basis. For example, a court may allow a probation officer to give permission to a probationer to stay out past a designated curfew if the reason is for work, school, or health care emergencies. When this occurs, probation officers may not have access to the DOC databases in order to update in real time any exceptions to the individual's probation in the FCIC.[128]

Effect of the Bill

Alternative Sanctioning Programs

The bill amends s. 948.06, F.S., *requiring* each judicial circuit to establish an ASP and providing specific guidelines for the types of technical violations and sanctions that can be provided for in an ASP. The bill authorizes a court to define additional sanctions or eligibility criteria and specify the process for reporting technical violations. For each instance that a technical VOP or VOCC is alleged to have been committed, the DOC is required to determine whether such person is eligible for the ASP. If eligible, the probation officer may offer the ASP in lieu of filing an affidavit with the court. The bill maintains the same definition for technical violations as is in current law and limits ASPs to resolving technical violations.

The bill classifies technical violations eligible for an ASP as low-risk and moderate risk, specifically:

- A low-risk violation includes:
  - Positive drug or alcohol test result;

[124] *Id*.
[125] Email from the DOC Staff (February 23, 2018) (on file with the Senate Criminal Justice Committee). The DOC currently includes the specified conditions of probation for each probationer in the data it sends to FDLE, including, but not limited to: Sex offender curfew; Curfew for non-sex offenders; Remain confined to approved residence; No unsupervised contact with minors; No work or volunteer work with children; Do not live or work within 1,000 feet of school or bus stop; Submit to search; No driving or driver license revoked or suspended; Driving for employment only; No alcohol or illegal drugs; No contact with victim; No pornographic material; Restrictions to enter or leave a city; No employment that involves handling money; No post office box; and No checking account.
[126] *Id*. This amount of space typically allows for the inclusion of the condition number, a dash and then the description up to 34 bytes per condition reoccurring for a total of 398 bytes. The Special Condition description can be shorter than 34 bytes or up to 34 bytes but the total bytes of all of them combined for each offender can only add up to 398 bytes per offender file sent real time.
[127] Section 948.039, F.S.
[128] Email from the Florida Sheriff's Association Staff (February 23, 2018) (on file with Senate Criminal Justice Staff).

  - Failure to report to the probation office;
  - Failure to report a change in address or other required information;
  - Failure to attend a required class, treatment or counseling session, or meeting;
  - Failure to submit to a drug or alcohol test;
  - Violation of curfew;
  - Failure to meet a monthly quota on any required probation condition, including, but not limited to, making restitution payments, payment of court costs, and completing community service hours;
  - Leaving the county without permission;
  - Failure to report a change in employment;
  - Associating with a person engaged in criminal activity; or
  - Any other violation as determined by administrative order of the chief judge of the circuit.
- A moderate-risk violation includes:
  - A low-risk violation listed above, which is committed by an offender on community control;
  - Failure to remain at an approved residence by an offender on community control;
  - A third violation of a low-risk violation listed above by a probationer within the current term of supervision; or
  - Any other violation as determined by administrative order by the chief judge of the circuit.

The bill excludes certain probationers or offenders on community control from participating in an ASP if any of the following criteria apply:
- The offender is a VFOSC.
- The violation is absconding.
- The violation is of a stay-away order or no-contact order.
- The violation is not identified as low-risk or moderate-risk under the bill or by administrative order.
- He or she has a prior moderate-risk level violation during the current term of supervision.
- He or she has three prior low-risk level violations during the same term of supervision.
- The term of supervision is scheduled to terminate in less than 90 days.
- The terms of the sentence prohibit the use of ASP.

An eligible person who has committed a first or second low-risk technical violation within his or her current term of supervision may be offered one or more of the following as a sanction:
- Up to five days in a county detention facility;
- Up to 50 additional community service hours;
- Counseling or treatment;
- Support group attendance;
- Drug testing;
- Loss of travel or other privileges;
- Curfew for up to 30 days;
- House arrest for up to 30 days; or
- Any other sanction as determined by administrative order by the chief judge of the circuit.

An eligible person who has committed a first time moderate-risk violation within the current term of supervision may be offered, provided the probation officer receives approval from his or her supervisor, one or more of the following as a sanction:

- Up to 21 days in the county detention facility;
- Curfew for up to 90 days;
- House arrest for up to 90 days;
- Electronic monitoring for up to 90 days;
- Residential treatment for up to 90 days;
- Any other sanction available for a low-risk violation; or
- Any other sanction as determined by administrative order of the chief judge of the circuit.

The bill retains current law regarding the ability of an offender to enter or waive his or her participation in the program; process for an offender to acknowledge his or her desire to participate in the program, including the specified rights that must be waived; ability of a court to approve the sanction and the effect of a court not approving the probation officer's recommendation; effect of an offender's discontinued participation in the program; and prohibition on the court using a prior admission to a technical violation as evidence in subsequent proceedings.[129] However, the bill imposes a 90-day deadline for an offender to complete successfully all ordered sanctions from the ASP if the court or probation officer did not specify a timeframe in the imposition of the sanction.

Administrative Probation

The bill amends ss. 948.001(1) and 948.013, F.S., relating to administrative probation to restructure the placement of relevant language. These changes do not appear to have a substantive impact on the laws applicable to administrative probation.

Conditions of Probation in the FCIC

The bill requires the DOC to input into the FCIC all of a probationer's specific conditions of probation as determined by the court. If the court modifies the conditions of probation during the period of probation, the DOC must update the changes in the FCIC.

Reentry and Transitional Services Provisions (Sections 21-27, 39, and 40)

Services Offered to Inmates in the Custody of the DOC

The DOC is required to provide a wide range of transitional services, including in the areas of employment, life skills training, job placement, for the purpose of increasing the likelihood of the inmate's successful reentry into society thereby reducing recidivism.[130]

[129] *See* s. 948.06(1)(h)4.-7., F.S. (2017), for the relevant provisions retained in the bill.
[130] *See* ss. 944.701-708, F.S.

Section 944.704, F.S., requires the DOC to provide a transition assistance specialist at each of its major prison institutions to assist an inmate with specified assistance, including, in part, obtaining job placement information.[131]

Section 944.705, F.S., requires the DOC to establish a standard release orientation program available to every eligible inmate.[132] Release orientation must include instruction addressing:

- Employment skills;
- Money management skills;
- Personal development and planning;
- Special needs;
- Community reentry concerns;
- Community reentry support; and
- Any other appropriate instruction to ensure the inmate's successful reentry into the community.[133]

To provide these services, the DOC may contract with outside public or private entities, including faith-based service groups.[134]

Determining the Appropriate Services for Inmates

All inmates are screened at reception and assessed and placed into programs using the CINAS.[135] As described above, the CINAS is administered to inmates at reception and again at 42 months from release. Additionally, the DOC conducts updates every six months thereafter to evaluate the inmate's progress and ensure enrollment in needed programs. The DOC's use of the CINAS allows for development and implementation of programs that increase the likelihood of successful transition through the selection of services that are matched to the offender's learning characteristics and then to the offender's stage of change readiness.[136] Additionally, the CINAS allows for a flow of information between the DOC's Office of Community Corrections and Office of Institutions, which assist the DOC in better serving the offender and preparing him or her for successful transition back into the community.[137]

[131] Section 944.704, F.S., further provides that correctional officers and correctional probation officers are prohibited from serving in the role of the transition assistance specialist.
[132] Sections 944.703 and 944.7031, F.S., provide that all inmates released from the custody of the DOC are eligible to receive transition services. However, the law instructs the DOC to give priority for these services to substance abuse addicted inmates. The law provides that inmates released from private correctional facilities should be informed of and provided with the same level of transition assistance services as provided by the DOC for an inmate in a state correctional facility.
[133] Section 944.705, F.S.
[134] Section 944.705(5), F.S.
[135] The DOC SB 1222 Analysis, p. 2.
[136] The DOC SB 1222 Analysis, p. 2. The DOC reports that it matches factors that influence an inmate's responsiveness to different types of services with programs that are proven to be effective within an inmate population.
[137] *Id*.

Education for State Prisoners

Section 944.801, F.S., establishes a Correctional Education Program (CEP), which must be composed of the educational facilities and services of all institutions, and facilities housing inmates operated by the DOC.[138] The duties of the CEP, in part, include:

- Developing guidelines for collecting education-related information during the inmate reception process and for disseminating such information to the classification staff of the DOC.[139]
- Approving educational programs of the appropriate levels and types in the correctional institutions and developing procedures for the admission of inmate students into such programs.[140]
- Entering into agreements with public or private school districts, entities, community colleges, junior colleges, colleges, or universities as may be deemed appropriate for the purpose of carrying out the CEP duties.[141]
- Ensuring that such local agreements require minimum performance standards and standards for measurable objectives, in accordance with established Department of Education (DOE) standards.[142]
- Developing and maintaining complete and reliable statistics on the number of high school equivalency diplomas and vocational certificates issued by each institution in each skill area, the change in inmate literacy levels, and the number of inmate admissions to and withdrawals from education courses.[143]

Workforce Training Offered by the DOC

The DOC offers a wide range of career and technical education programs for inmates.[144] In FY 2015-16, the DOC awarded 1,829 vocational certificates and 2,027 industry certificates, and in FY 2016-17, the DOC awarded 1,799 vocational certificates and 1,349 industry certifications. The DOC has since launched new credentialing programs for Canine Obedience and Beekeeping programs, and plans to expand credentialing to construction, horticulture, farm, and culinary programs in 30 institutions.[145]

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[138] Section 944.801(1), F.S.
[139] Section 944.801(3)(a), F.S., also provides that the information collected must include the inmate's areas of educational or vocational interest, vocational skills, and level of education.
[140] Section 944.801(3)(d), F.S.
[141] Section 944.801(3)(e), F.S.
[142] *Id*.
[143] Section 944.801(3)(g), F.S.
[144] The programs include: Air Conditioning, Refrigeration and Heating Technology; Applied Welding Technologies; Automotive Collison Repair and Refinishing; Automotive Technology Career Services; Cabinetmaking; Carpentry; Commercial Class "B" Driving; Computer Systems and Information Technology; Cosmetology; Culinary Arts; Digital Design; Drafting; Electricity; Environmental Design; Environmental Services; Equine Care Technology; Industrial Machine Repair; Janitorial Services; Landscape Management; Masonry, Brick and Block; Plumbing Technology; Printing and Graphic Communications; Technology Support Services; Wastewater/Water Treatment Technologies; and Web Development. *See* DOC, *Annual Report Fiscal Year 2015-2016*, p. 18-19, available at http://www.dc.state.fl.us/pub/annual/1516/FDC_AR2015-16.pdf (last visited February 22, 2018).
[145] DOC, *Agency Analysis of SB 226-Revised*, p. 2 (October 25, 2017) (on file with the Senate Criminal Justice Committee).

Obtaining Professional Licenses Subsequent to a Criminal Conviction

Licensure - Overview

A person may only be denied employment by the state, any of its agencies or political subdivisions, or any municipality, based on a prior conviction for a crime if the crime was a felony or first-degree misdemeanor and directly related to the position of employment sought.[146] However, a person may be denied a license, permit, or certification to pursue, practice, or engage in an occupation, trade, vocation, profession, or business based on a prior conviction for a crime. The crime must be a felony or first-degree misdemeanor and directly relate to the standard determined by the regulatory authority to be necessary and reasonably related to the protection of the public or the welfare of the profession, or business for which the license, permit or certificate is sought.[147] There are a number of professions that require licensure, which may be impacted by a criminal conviction.[148]

Department of Business and Professional Regulation

Chapter 455, F.S., provides the general powers of the Department of Business and Professional Regulation (DBPR) and authorizes the DBPR to regulate the issuance of licensing for specified purposes.[149] However, the DBPR is prohibited from creating a regulation that has an unreasonable effect on job creation or job retention, or a regulation that unreasonably restricts the ability of those who desire to engage in a profession or occupation to find employment.[150] When a person is authorized to engage in a profession or occupation in Florida, the DBPR issues a "permit, registration, certificate, or license" to the licensee.[151] The Division of Professions within the DBPR is responsible for licensing more than 435,500 professionals with a variety of professional licenses.[152]

The DBPR may disqualify an individual from employment if he or she has been arrested for and is awaiting final disposition of, has been found guilty of, or entered a plea of nolo contender or guilty to, or has been adjudicated delinquent and the record has not been sealed or expunged for a number of specified offenses. Applicants for all professions are required to answer questions pertaining to their criminal history when submitting an application for licensure.[153]

The DBPR reports that there are no statutory provisions or departmental rules that prohibit individuals from applying for licensure while they are still incarcerated or under some form of

[146] Section 112.011(1)(a), F.S.
[147] Section 112.011(1)(b), F.S.
[148] These include, but are not limited to, professions regulated by the Department of Health, such as septic tank contractors, health care professionals and pharmacy professionals, and massage therapists. *See* ss. 489.553(4)(a), 456.0635(2)(a), 465.0022, and 480.041(7), F.S.
[149] Section 455.201(2), F.S., provides that the DBPR may engage in the regulation of professions only for the "preservation of the health, safety, and welfare of the public under the police powers of the state."
[150] Section 455.201(4)(b), F.S.
[151] Section 455.01(4) and (5), F.S.
[152] *See* DBPR, *Annual Report, Fiscal Year 2016-2017*, p. 21-22, available at http://www.myfloridalicense.com/dbpr/os/documents/DivisionAnnualReport.pdf?x40199 (last visited February 22, 2018). Of the total 434,574 licensees in the Division of Professions, 21,702 are inactive.
[153] DBPR, *Agency Analysis CS/SB 1114*, February 19, 2018, (on file with the Senate Criminal Justice Committee).

supervised release, nor are individuals charged any additional fees for applying for a license while still incarcerated or on supervised release.[154]

Agency for Health Care Administration

The Agency for Health Care Administration (AHCA), disqualifies an individual from employment in certain facilities regulated by AHCA, such as nursing homes and hospices, based on an applicant's criminal history. Any individual considered for employment in a facility licensed by chs. 400 and 408, F.S., must complete a level 2 background screening pursuant to ss. 435.04(2) and (3), F.S. In addition to the disqualifying offenses listed above for DBPR, the applicant may be disqualified by AHCA for a number of offenses.[155]

Exemption from Disqualification

Florida law provides for exemptions from disqualification for prior criminal offenses. The head of the appropriate agency may grant an employee otherwise disqualified from employment an exemption from disqualification.[156]

A person applying for exemption must pay any outstanding court fee, fine, fund, lien, civil judgment, application, cost of prosecution, trust, or restitution as part of the criminal case prior to being eligible for exemption.[157] To grant an exemption to an applicant, the applicant has the burden to demonstrate by clear and convincing evidence that he or she should not be disqualified from employment.[158]

Prison Entrepreneurship Programs

In 2011, the University of Virginia's Darden School of Business implemented a prison entrepreneurship program at Virginia's Dillwyn Correctional Center, a medium-security prison housing more than 1,000 inmates. The program focuses on entrepreneurship skills, ethics, and business strategy. Students must complete math testing, develop a personal business plan, and complete a final exam.[159]

Similar programs have had success in other states. Texas has a prison entrepreneurship program at the Cleveland Correctional Facility in Houston and approximately 800 inmates graduate from the program annually. Of its graduates, 106 have founded businesses and the recidivism rate of

[154] *Id*.
[155] *See* s. 408.809(4), F.S.
[156] *See* s. 435.07, F.S., for specific statutory exemptions.
[157] Section 435.07(1)(b), F.S.
[158] *See* s. 435.07(3)(a), F.S. Evidence provided may include, but is not limited to: the circumstances surrounding the criminal incident; the time period that has elapsed since the incident; the nature of the harm caused to the victim; applicant's history since the incident; and any other evidence or circumstances indicating that the applicant will not present a danger if employment or continued employment is allowed. The decision of the head of an agency regarding an exemption may be challenged pursuant to ch. 120, F.S.
[159] The Darden Report, *Second Changes: Darden's Fairchild Launches Prison Entrepreneurship Program*, January 4, 2013, available at: https://news.virginia.edu/content/second-chances-darden-s-fairchild-launches-prison-entrepreneurship-program (last visited February 22, 2018).

those inmates is less than 7 percent.[160] Though not statutorily mandated, the DOC partners with several educational institutions to offer inmates job training and readiness skills, including, but not limited to, Stetson University, Florida State University, University of Central Florida, and University of West Florida.[161] Additionally, the DOC operates an entrepreneurship education program at Hardee Correctional Institution.[162]

Effect of the Bill

Transition Assistance Staff

The bill amends s. 944.704, F.S., requiring that transition assistance specialists also provide inmates with information about any job assignment credentialing or industry certifications for which the inmate is eligible.

Release Orientation Program

The bill amends s. 944.705, F.S., requiring that each inmate receive a comprehensive community reentry resource directory organized by the county to which the inmate is being released with specified information related to providers and portals of entry.[163]

The DOC must allow a nonprofit faith-based, business and professional, civic, or community organization to apply to be registered under this section to provide inmate reentry services. The DOC must also adopt policies and procedures for screening, approving, and registering an organization that applies to be registered to provide inmate reentry services. The DOC may deny approval and registration of an organization or a representative from an organization if it determines that the organization or representative does not meet such policies or procedures. The bill defines reentry services as services that include, but are limited to counseling; providing information on housing and job placement; money management assistance; and programs addressing substance abuse, mental health, or co-occurring conditions.

The bill also authorizes the DOC to contract with a public or private educational institution's Veteran's Advocacy Clinic or Veteran's Legal Clinic to assist qualified veteran inmates in applying for veteran's assistance benefits upon release.

Certificates of Achievement and Employability

The bill creates ss. 944.805-8065, F.S., establishing a certificate of achievement and employability (CAE) that may remove most mandatory barriers to licensure and employment for ex-offenders.

Definitions

The bill defines a number of terms applicable to these provisions, including:

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[160] *Id*. *See also* The Prison Entrepreneurship Program, available at http://www.pep.org/releasing-potential/ (last visited February 22, 2018).
[161] Email from the DOC Staff (February 22, 2018) (on file with Senate Criminal Justice Committee).
[162] *Id*. The DOC reports that the course provides an introductory overview of the knowledge and skills needed for the identification, evaluation, and exploitation of opportunities in a variety of circumstances and environments.
[163] The directory must include the name, address, telephone number and a description of services offered of each provider and also include the name, address, and telephone number of existing portals of entry.

- Discretionary civil impact: any Florida statute or rule that creates a penalty, disability, or disadvantage to which all of the following apply:
  - The impact is triggered in whole or in part by a person's conviction of an offense, whether or not the penalty, disability, or disadvantage is included in the judgment or sentence.
  - The impact is imposed on a person, licensing agency, or employer.
  - The impact permits, but does not require, that a convicted person have a license denied or revoked, permits an agency to deny or revoke a license or certification to a convicted person, or permits a business to refuse to employ a convicted person.
- Eligible inmate: a person who is serving a prison term in a state correctional institution or facility; under the supervision of the DOC on probation or community control; or under a post release control sanction; and who is eligible to apply to the DOC for a certificate of achievement and employability.
- Licensing agency: any regulatory or licensing entity with authority to issue, suspend, or revoke any professional license or certification.
- Mandatory civil impact: any Florida statute or rule that creates a penalty, disability, or disadvantage to which all of the following apply:
  - The impact is triggered automatically solely by a person's conviction of an offense, whether or not the penalty, disability, or disadvantage is included in the judgment or sentence.
  - The impact is imposed on a person, licensing agency, or employer.
  - The impact precludes a convicted person from maintaining or obtaining licensure or employment, precludes a licensing agency from issuing a license or certification to a convicted person, or precludes a business from being certified or from employing a convicted person.[164]

Application for Certificate of Achievement and Employability

An eligible inmate may apply to the DOC for a CAE if the inmate:
- Has satisfactorily completed one or more in-prison vocational programs approved by the DOC.
- Has demonstrated exemplary performance as determined by completion of one or more cognitive or behavioral improvement programs approved by the DOC while incarcerated in a state correctional institution or facility or under supervision, or during both periods of time.
- Shows other evidence of achievement and rehabilitation.
- Has never been convicted of a dangerous crime as defined in s. 907.041, F.S., or a violation specified as a predicate offense for registration as a sexual predator under s. 775.21, F.S., or as a sexual offender under s. 943.0435, F.S.

An incarcerated eligible inmate may apply for a CAE from one year prior to the date of his or her release up to the date of release. An eligible inmate in the community may apply anytime while serving the term of probation or community control.

[164] The bill provides that the definitions of mandatory and discretionary civil impact do not include imprisonment, probation, parole, supervised release, forfeiture, restitution, fine, assessment, or costs of prosecution.

The application must specify the mandatory civil impacts for which the eligible inmate is seeking relief. The DOC is required to notify the licensing agency whose mandatory civil impact may be impacted by the issuance of a CAE and provide the licensing agency with a copy of the CAE application and any documentation that the DOC has concerning the eligible inmate. The licensing agency must be given the opportunity to object in writing to the issuance of a CAE.

The DOC must consider the eligible inmate's application and all objections to issuing the CAE and the DOC must issue the CAE if it finds that the inmate is eligible, the application was filed timely, and all objections to issuing the certificate are insufficient. However, a CAE does not affect the mandatory civil impacts under article VI, section 4 of the Florida Constitution, or ss. 775.13, 775.21, 943.0435, and 944.292, F.S.

Effect of the Certificate of Achievement and Employability

A CAE holder that applies to an agency for licensure or certification must be given individualized consideration by the licensing agency. The CAE provides a rebuttable presumption to the CAE holder for purposes of licensure review. The bill provides that the conviction of a CAE holder alone is insufficient evidence that he or she is unfit for the license or certification. However, the licensing agency is still authorized to deny the license or certification if it determines that the CAE holder is unfit for licensure or certification after considering all relevant facts and circumstances.

The bill distinguishes between the effect of an unemployed CAE holder applying to an agency and an employer of an employed CAE applying to an agency. An employer of an employed CAE holder may apply to an agency for the licensure of his or her employee and the bill provides that the CAE reclassifies the mandatory civil impacts into discretionary civil impacts and that the CAE is a rebuttable presumption. However, for an unemployed CAE holder, the CAE only provides a rebuttable presumption and does not reclassify the mandatory civil impacts.

Revocation of the Certificate of Achievement and Employability

The bill requires the DOC to, at a minimum, adopt rules that result in the revocation of a CAE if a certificate holder is convicted of or pleads guilty to a felony offense subsequent to the issuance of the certificate. The DOC must determine which additional offenses require revocation, considering the nature of the offense and the employment of a certificate holder.

Liability and Rulemaking Authority

The bill provides that the DOC is not liable for a claim for damages arising from issuing, denying, or revoking a CAE or for failing to revoke a certificate. The bill also provides the DOC with rulemaking authority to develop any rules necessary to implement the CAE provisions and requires the CAE program be funded within existing resources.

Prison Entrepreneurship Program

The bill amends s. 944.801, F.S., authorizing the CEP to develop a Prison Entrepreneurship Program. The program must include at least 180 days of in-prison education with curriculum that includes a component on developing a business plan, procedures for graduation and certification of successful student inmates, and at least 90 days of transitional and post release continuing

education services. The bill provides transitional and post release continuing education services may be offered to graduate student inmates on a voluntary basis and are not required for completion of the program.

The program must be funded within existing resources and the DOC is required to enter into agreements with public or private community colleges, junior colleges, colleges, universities, or other non-profit entities to implement the program.

Lastly, the bill provides rulemaking authority and authority to adopt procedures for admitting student inmates.

The bill reenacts ss. 447.203 and 944.026, F.S., incorporating changes made by the act.

Conditional Medical Release (Sections 29, 30, and 41-52)

The pronouncement of a sentence that includes a term of imprisonment imposed by a sentencing court reflects the length of actual time to be served. With limited exceptions, such a term of imprisonment may only be lessened by the application of gain-time,[165] and may not be reduced in an amount that results in the defendant serving less than 85 percent of his or her term of imprisonment.[166] One of the exceptions provided for in law is conditional medical release.

Conditional Medical Release

CMR is a discretionary release of inmates who are "terminally ill" or "permanently incapacitated" and who are not a danger to others.[167] The FCOR reviews eligible inmates for release under the CMR program.

Eligible inmates include inmates that are designated by the DOC as a:

- "Permanently incapacitated inmate," which is an inmate who has a condition caused by injury, disease, or illness which, to a reasonable degree of medical certainty, renders the inmate permanently and irreversibly physically incapacitated to the extent that the inmate does not constitute a danger to herself or himself or others; or
- "Terminally ill inmate," which is an inmate who has a condition caused by injury, disease, or illness which, to a reasonable degree of medical certainty, renders the inmate terminally ill to the extent that there can be no recovery and death is imminent, so that the inmate does not constitute a danger to herself or himself or others.[168]

The release of an inmate on CMR is for the remainder of the inmate's sentence and requires periodic medical evaluations at intervals determined by the FCOR at the time of release.[169] Supervision can be revoked and the offender returned to prison if the FCOR determines that a

[165] Section 944.275, F.S., provides for various types of incentive and meritorious gain-time.
[166] Section 921.002(1), F.S.
[167] Chapter 92-310, L.O.F.; FCOR, *Release Types, Post Release*, available at https://www.fcor.state.fl.us/postrelease.shtml#conditionalMedicalRelease (last visited January 8, 2018).
[168] Section 947.149(1), F.S. Inmates sentenced to death are ineligible for CMR.
[169] Section 947.149(4), F.S.

violation of any condition of the release has occurred or his or her medical or physical condition improves to the point that the offender no longer meets the CMR criteria.[170] Section 947.141, F.S., provides a hearing process for determining whether a CMR releasee must be recommitted to the DOC for a violation of release conditions or a change in medical status.

The FCOR has approved and released 55 inmates for CMR in the last three fiscal years.[171] The DOC has recommended 120 inmates for release in the past three fiscal years.[172]

Effect of the Bill

The bill amends s. 947.149, F.S., by creating two new CMR designations and two processes for an inmate to be granted CMR, including "Permissive Conditional Medical Release" and "Mandatory Conditional Medical Release."

Designations

The bill creates two new CMR designations, including a designation entitled:

- Inmate with a debilitating illness: an inmate who is determined to be suffering from a significant and permanent terminal or nonterminal condition, disease, or syndrome that has rendered the inmate so physically or cognitively debilitated or incapacitated as to create a reasonable probability that the inmate does not constitute a danger to herself or himself or others.
- Medically frail inmate: an inmate whose physical or mental health has deteriorated to a point that creates a reasonable probability that the inmate does not constitute a danger to herself or himself or others, as determined by a risk assessment completed by a qualified practitioner, and whose deterioration is the direct result of the inmate's:
    - Impairment of the mental or emotional processes that exercise conscious control of one's actions or of the ability to perceive or understand reality, where such impairment substantially interferes with the person's ability to meet the ordinary demands of living;
    - History of substance abuse, as defined in s. 397.311(45), F.S.; or
    - Requirement of acute long-term medical or mental health treatment or services.

The current designation of terminally ill inmate is amended to apply to inmates whose death is expected within 12 months, rather than imminent. The current designation of permanently incapacitated inmate is not altered.

Permissive Conditional Medical Release

The current CMR process remains substantially the same but is amended to be entitled "Permissive Conditional Medical Release." The bill expands Permissive CMR from current law by permitting any inmate determined to be eligible under any of the four CMR designations described above and referred by the DOC to the FCOR to be considered for release by the FCOR. The FCOR continues to retain sole discretion on the determination of whether to release an inmate under Permissive CMR.

[170] Section 947.149(5), F.S.
[171] This includes 14 people in FY 2016-17; 27 in FY 2015-16; and 14 in FY 2014-15. Email from FCOR Staff (December 15, 2017) (attachment on file with the Senate Committee on Criminal Justice).
[172] *Id*. This includes 34 people FY 2016-17; 51 in FY 2015-16; and 35 in FY 2014-15.

Mandatory Conditional Medical Release

The bill creates a new CMR process, entitled "Mandatory Conditional Medical Release," that imposes eligibility requirements in addition to those required in Permissive CMR. If an inmate meets all of the eligibility requirements of Mandatory CMR, the FCOR is *required* to release the inmate on CMR upon verifying the inmate's eligibility.

For Mandatory CMR, the bill requires the DOC to refer an inmate to the FCOR for release if the inmate meets one of the four CMR designations mentioned above and the inmate has:

- Served at least 50 percent of his or her sentence.
- No current or prior conviction for a capital, life, or first-degree felony; sexual offense; or an offense involving a child.
- Not received a disciplinary report within the previous six months.
- Never received a disciplinary report for a violent act.
- Renounced any gang affiliation.

The FCOR must verify that an inmate meets the above-mentioned eligibility criteria within 60 days of the referral.

Referral of an Inmate

The DOC's referral of an inmate for either Permissive or Mandatory CMR must include:

- The proposed conditional medical release plan.
- Any relevant medical history, including current medical prognosis.
- Criminal history, including:
  - The inmate's claim of innocence, if any;
  - The degree to which the inmate accepts responsibility for his or her actions leading to the conviction of the crime; and
  - How any claim of responsibility has affected the inmate's feelings of remorse.
- Any history of substance abuse and mental health issues, provided the inmate authorizes release when such information is collected in accordance with 42 C.F.R. s. 2.
- Any disciplinary action taken against the inmate while in prison.
- Any participation in prison work and other prison programs.
- Any other information the DOC deems necessary.

Placement Considerations and Release Plan

The bill provides that a determination to approve an inmate's release on CMR must consider conditions such as whether:

- A placement option has been secured for the inmate in the community. A placement option may include, but is not limited to, home confinement or a medical or mental health facility that is not a public institution.[173]
- The placement option secured under this section poses a minimal risk to society.

[173] A placement option need not involve any type of supervision of the inmate by an employee or a private contractor of the DOC or otherwise be considered a secure facility. A placement option may involve the use of an electronic monitoring device as defined in 947.005(6), F.S.

- The DOC has made a reasonable effort to determine whether expenses related to the placement option secured under this subsection are covered by Medicaid, a health care policy, a certificate of insurance, or another source for the payment of medical expenses or whether the inmate has sufficient income or assets to pay for the expenses related to the placement.
- The DOC has provided notice to the prosecutor's office in the county in which the prisoner was sentenced and to each victim entitled to notice under article I, section 16(b) of the Florida Constitution.

The bill requires the DOC to develop a release plan for an inmate released on Permissive or Mandatory CMR and the FCOR is authorized to approve the release plan. The release plan must include periodic medical evaluations and may include supervision with electronic monitoring. An inmate's release on Permissive or Mandatory CMR is for the remainder of the inmate's sentence. However, the bill also applies the above-described process for revocation and recommitment to inmates released on Permissive or Mandatory CMR.

The bill also amends s. 947.005, F.S., adding two new definitions, including:
- Electronic monitoring device: an electronic or telecommunications device that is used to track and supervise the location of a person. Such devices include, but are not limited to, voice tracking systems, position-tracking systems, position location systems, or biometric tracking systems.
- Conditional medical release: the release from a state correctional institution or facility under this chapter for medical or mental health treatment pursuant to s. 947.149, F.S.

Lastly, the bill reenacts ss. 316.1935, 775.084, 775.087, 784.07, 790.235, 794.0115, 893.135, 921.0024, 944.605, 944.70, 947.13, and 947.141, F.S., incorporating changes made by the act.

Criminal Justice Data Collection and Transparency (Sections 12-14, 18, 20, and 28)

Data Collection by Florida's Criminal Justice Agencies

Currently, Florida does not have a publicly accessible website containing comprehensive criminal justice data. Several state departments, local agencies and local offices, including the clerks, SAs, PDs, county jails, and the DOC collect data within the criminal justice system. Each entity collects and maintains data in different ways and for different purposes.

Clerks of the Circuit Courts

The clerks use a secured single point-of-search database portal for statewide court case information, the Comprehensive Case Information System (CCIS).[174] Section 28.2405, F.S., requires all clerks to participate in the CCIS and submit data for criminal, civil, juvenile, probate, and traffic cases.[175] The CCIS provides controlled access to court records for governmental

[174] *See* s. 28.2405, F.S. CCIS access site, available at https://www.flccis.com/ocrs/login.xhtml (last visited February 23, 2018).
[175] *See also* Florida Court Clerks & Comptrollers, *Criminal Court Case Data Collection*, p. 7 (November 14, 2017) (PowerPoint presentation on file with the Senate Criminal Justice Committee).

agencies.[176] Currently, 19 governmental organizations use the CCIS and may use it to search information related to call court cases maintained by the clerks.[177]

The CCIS has more than 45,000 active users. The clerks assign each user or organization a security level that allows them to view certain data on the CCIS. Not all data elements are available to all users and CCIS is not available to the public.[178]

County Detention Facilities

Data collection and storage by county detention facilities varies greatly from county to county.[179] Larger county detention facilities have data systems allowing for direct data input and report generation, while smaller jails have databases using Microsoft Access or other commercially available templates.[180]

Section 951.23(2), F.S., requires administrators of county detention facilities to collect and report certain information to the DOC. The DOC then uses such data to analyze and evaluate county detention facilities.[181] Many jails also collect data relating to jail capacity, per diems, demographic data, criminal charges, custody levels, and medical information.[182] Jail administrators use this data to manage daily operations, verify total jail costs and budgets, and ensure proper staffing and training.[183]

State Attorneys and Public Defenders

There is no statutory requirement for a SA or PD to collect, publish, or report specific data. Many circuits, on their own initiative, collect data elements for internal purposes, but this data is not publicly available or shared among agencies.

Department of Corrections

The DOC uses is the Offender Based Information System (OBIS) to collect and organize data related to sentencing information and scoresheets from the clerks, criminal history information from the FDLE, and background information self-reported by inmates.[184] The DOC uses this information for a variety of operational functions including determining an inmate's custody level and an inmate's release date.[185] The DOC shares the OBIS information with law

[176] *Id.* at 2.
[177] *Id.* at 3 and 6.
[178] *Id.* at 11.
[179] Section 951.23(1)(a), F.S., defines a county detention facility to mean a county jail, county stockade, county work camp, county residential probation center, or any other place, except a municipal detention facility, used by a county or county officer for the detention of persons charged with or convicted of a crime.
[180] Florida Sheriffs Association, *Criminal Justice Data Collection*, p. 5 (November 14, 2017) (PowerPoint presentation on file with the Senate Criminal Justice Committee) (hereinafter cited as "FSA PowerPoint").
[181] Section 951.23(3), F.S.
[182] FSA PowerPoint, at 3.
[183] *Id.* at 6.
[184] Section 20.315(10), F.S., and the DOC, *Overview of FDC Criminal Justice Data*, p. 3-4 (November 14, 2017) (on file with the Senate Criminal Justice Committee).
[185] *Id.* at 5.

enforcement and other state and federal agencies pursuant to relevant statutory authority, federal law, or other directives.[186]

The Bureau of Research and Data Analysis (Bureau) within the DOC analyzes the OBIS data to generate information for the DOC, the Governor, the Legislature, and other state agencies.[187] The Bureau publishes an annual report that includes information regarding inmate population, statistics, and other information relating to the DOC.[188] While annual reports are accessible to the public, users are not permitted to search the data that is collected in OBIS.

Criminal Punishment Code Scoresheet

Section 921.0024, F.S., requires the preparation of a Criminal Punishment Code scoresheet for each defendant who is sentenced for a felony offense. The scoresheet must be developed by the DOC, in consultation with the Office of the State Courts Administrator (OSCA), SAs, and PDs, and submitted to the Supreme Court for approval by June 15 of each year, as necessary. Further, the DOC is required to distribute sufficient copies of the scoresheets to those persons charged with the responsibility for preparing scoresheets.[189]

Effect of the Bill

Data Collection

The bill creates s. 900.05, F.S., specifying Legislative intent of the Legislature to create a model of uniform criminal justice data collection by requiring local and state criminal justice agencies to report complete, accurate, and timely data, and make such data available to the public.

Definitions:

The bill defines the following terms:

- Annual felony caseload: the yearly caseload of each full-time SA and assistant SA (ASA) or PD and assistant PD (APD) for cases assigned to the circuit criminal division, based on the number of felony cases reported to the Supreme Court under s. 25.075, F.S.
- Annual misdemeanor caseload: the yearly caseload of each full-time SA and ASA or PD and APD for cases assigned to the county criminal division, based on the number of misdemeanor cases reported to the Supreme Court under s. 25.075, F.S.[190]
- Attorney assignment date: the date a court-appointed attorney is assigned to the case or, if privately retained, the date an attorney files a notice of appearance with the clerk.
- Attorney withdrawal date: the date the court removes court-appointed counsel from a case or, for a privately retained attorney, the date a motion to withdraw is granted by the court.
- Case number: the identification number assigned by the clerk to a criminal case.

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[186] *Id.* at 6.
[187] DOC, *Bureau of Research and Data Analysis*, available at http://www.dc.state.fl.us/orginfo/research.html (last visited February 23, 2018).
[188] DOC, *Annual Report Fiscal Year 2015-2016*, available at http://www.dc.state.fl.us/pub/annual/1516/FDC_AR2015-16.pdf (last visited February 23, 2018).
[189] Section 921.0024(3)-(5), F.S.
[190] The terms "annual felony caseload" and "annual misdemeanor caseload" do not include the appellate caseload of a PD or APD. Cases reported pursuant to these terms must be associated with a case number and each case number must only be reported once regardless of the number of attorney assignments that occur during the course of litigation

- Case status: whether a case is open, inactive, closed, or reopened due to a VOP or VOCC.
- Charge description: the statement of the conduct that is alleged to have been violated, the associated statutory section establishing such conduct as criminal, and the misdemeanor or felony classification that is provided for in the statutory section alleged to have been violated.
- Charge modifier: an aggravating circumstance of an alleged crime that enhances or reclassifies a charge to a more serious misdemeanor or felony offense level.
- Concurrent or consecutive sentence flag: an indication that a defendant is serving another sentence concurrently or consecutively in addition to the sentence for which data is being reported.
- Daily number of correctional officers: the number of full-time, part-time, and auxiliary correctional officers who are actively providing supervision, protection, care, custody, and control of inmates in a county detention facility or state correctional institution or facility each day.
- Deferred prosecution or pretrial diversion agreement date: the date a contract is signed by the parties regarding a defendant's admission into a deferred prosecution or pretrial diversion program.
- Deferred prosecution or pretrial diversion hearing date: each date that a hearing, including a status hearing, is held on a case that is in a deferred prosecution or pretrial diversion program, if applicable.
- Disciplinary violation and action: any conduct performed by an inmate in violation of the rules of a county detention facility or state correctional institution or facility that results in the initiation of disciplinary proceedings by the custodial entity and the consequences of such disciplinary proceedings.
- Disposition date: the date of final judgment, adjudication, adjudication withheld, dismissal, or nolle prosequi for the case and if different dates apply, the disposition dates of each charge.
- Domestic violence flag: an indication that a charge involves domestic violence as defined in s. 741.28, F.S.
- Gang affiliation flag: an indication that a defendant is involved in or associated with a criminal gang as defined in s. 874.03, F.S.
- Gain-time credit earned: a credit of time awarded to an inmate in a county detention facility in accordance with s. 951.22, F.S., or a state correctional institution or facility in accordance with s. 944.275, F.S.
- Habitual offender flag: an indication that a defendant is a habitual felony offender as defined in s. 775.084, F.S., or a habitual misdemeanor offender as defined in s. 775.0837, F.S.
- Judicial transfer date: a date on which a defendant's case is transferred to another court or presiding judge.
- Number of contract attorneys representing indigent defendants for the office of the public defender: the number of attorneys hired on a temporary basis, by contract, to represent indigent clients who were appointed a PD.
- Pretrial release violation flag: an indication that the defendant has violated the terms of his or her pretrial release.
- Prior incarceration within the state: any prior history of a defendant being incarcerated in a county detention facility or state correctional institution or facility.
- Tentative release date: the anticipated date that an inmate will be released from incarceration after the application of adjustments for any gain-time earned or credit for time served.

- Sexual offender flag: an indication that a defendant is required to register as a sexual predator as defined in s. 775.21, F.S., or as a sexual offender as defined in s. 943.0435, F.S.

Collection

Beginning January 1, 2019, specified entities are required to collect certain data on a monthly basis. Each entity must report the data collected to the FDLE on a quarterly basis.

Each clerk must collect the following data for each criminal case:
- Case number.
- Date that the alleged offense occurred.
- County in which the offense is alleged to have occurred.
- Date of arrest, if such date is different from the date the offense is alleged to have occurred.
- Date that the criminal prosecution of a defendant is formally initiated through the filing, with the clerk of the court, of an information by the SA or an indictment issued by a grand jury.
- Arraignment date.
- Attorney assignment date.
- Attorney withdrawal date.
- Case status.
- Disposition date.
- Information related to each defendant, including:
  - Identifying information, including name, date of birth, age, race or ethnicity, and gender.
  - Zip code of primary residence.
  - Primary language.
  - Citizenship.
  - Immigration status, if applicable.
  - Whether the defendant has been found by a court to be indigent pursuant to s. 27.52, F.S.
- Information related to the formal charges filed against the defendant, including:
  - Charge description.
  - Charge modifier, if applicable.
  - Drug type for each drug charge, if known.
  - Qualification for a flag designation, including a domestic violence flag, gang affiliation flag, sexual offender flag, habitual offender flag, or pretrial release violation flag.
- Information related to bail or bond and pretrial release determinations, including the dates of any such determinations:
  - Pretrial release determination made at a first appearance hearing that occurs within 24 hours of arrest, including all monetary and nonmonetary conditions of release.
  - Modification of bail or bond conditions made by a court, including modifications to any monetary and nonmonetary conditions of release.
  - Cash bail or bond payment, including whether the defendant utilized a bond agent to post a surety bond.
  - Date defendant is released on bail, bond, or pretrial release.
  - Bail or bond revocation due to a new offense, a failure to appear, or a violation of the terms of bail or bond, if applicable.
- Information related to court dates and dates of motions and appearances, including:
  - Date of any court appearance and the type of proceeding scheduled for each date reported.

  - Date of any failure to appear in court, if applicable.
  - Judicial transfer date, if applicable.
  - Trial date.
  - Date that a defendant files a notice to participate in discovery.
  - Speedy trial motion and hearing dates, if applicable.
  - Dismissal motion and hearing dates, if applicable.
- Whether the attorney representing the defendant is court-appointed to, or privately retained by, a defendant or whether the defendant is represented pro se.
- Information related to sentencing, including:
  - Date that a court enters a sentence against a defendant.
  - Sentence type and length imposed by the court.[191]
  - Amount of time served in custody credited to the defendant at the time of disposition.
  - Total amount of court fees imposed by the court at the disposition of the case.
  - Outstanding balance of the defendant's court fees imposed by the court at disposition of the case.
  - Total amount of fines imposed by the court at the disposition of the case.
  - Outstanding balance of the defendant's fines imposed by the court at disposition of the case.
  - Restitution amount ordered, including the amount collected by the court and the amount paid to the victim, if applicable.
  - Digitized sentencing scoresheet prepared in accordance with s. 921.0024, F.S.
- The number of judges or magistrates, or their equivalents, hearing cases in circuit or county criminal divisions of the circuit court.[192]

Each SA must collect the following data:
- Information related to a victims of a criminal offense, including identifying information of the victim, including race or ethnicity, gender, age, and relationship to the offender, if any.
- Number of full-time and part-time prosecutors.
- Annual felony and misdemeanor caseloads.
- Any charge referred to the SA by a law enforcement agency related to an episode of criminal activity.
- Number of cases in which a no-information was filed.
- Information related to each defendant, including:
  - Each charge referred to the SA by a law enforcement agency related to an episode of criminal activity.
  - Drug type for each drug charge, if applicable.
  - Deferred prosecution or pretrial diversion agreement date and hearing dates, if applicable.

Each PD must collect the following data for each criminal case:
- Number of full-time and part-time PDs and APDs.
- Number of contract attorneys representing indigent defendants for the office of the PD.
- Annual felony and misdemeanor caseloads.

[191] This terms includes, but is not limited to, the total duration of imprisonment in a county detention facility or state correctional institution or facility, and conditions probation or community control supervision.
[192] Judges or magistrates, or their equivalents, who solely hear appellate cases from the county criminal division are not to be reported.

The administrator of each county detention facility must collect the following data:

- Maximum capacity for the county detention facility.
- Weekly admissions to the county detention facility for a revocation of probation or community control.
- Daily population of the county detention facility, including the specific number of inmates in the custody of the county that:
  - Are awaiting case disposition.
  - Have been sentenced by a court to a term of imprisonment in the county detention facility.
  - Have been sentenced by a court to a term of imprisonment with the DOC and who are awaiting transportation to the DOC.
  - Have a federal detainer or are awaiting disposition of a case in federal court.
- Information related to each inmate, including:
  - Date a defendant is processed into the county detention facility for an arrest for a new violation of law or for a VOP or VOCC.
  - Qualification for a flag designation, including domestic violence flag, gang affiliation flag, habitual offender flag, pretrial release violation flag, or sexual offender flag.
- Total population of the county detention facility at year-end.[193]
- Per diem rate for a county detention facility bed.
- Daily number of correctional officers for the county detention facility.
- Annual county detention facility budget.[194]
- Revenue generated for the county from the temporary incarceration of federal defendants or inmates.

The DOC is required to collect the following data:

- Information related to each inmate, including:
  - Identifying information, including name, date of birth, race or ethnicity, and identification number assigned by the DOC.
  - Number of children.
  - Education level, including any vocational training.
  - Date the inmate was admitted to the custody of the DOC.
  - Current institution placement and the security level assigned to the institution.
  - Custody level assignment.
  - Qualification for a flag designation, including sexual offender flag, habitual offender flag, gang affiliation flag, or concurrent or consecutive sentence flag.
  - County that committed the prisoner to the custody of the DOC.
  - Whether the reason for admission to the DOC is for a new conviction or a violation of probation, community control, or parole. For an admission for a VOP, VOCC, or parole violation, the DOC must report whether the violation was technical or based on a new violation of law.
  - Specific statutory citation for which the inmate was committed to the DOC, including, for an inmate convicted of drug trafficking under s. 893.135, F.S., and the statutory citation for each specific drug trafficked.

[193] This data must include the same specified classifications required for daily population.
[194] This information only has to be reported once annually at the beginning of the county's fiscal year.

  - Length of sentence or concurrent or consecutive sentences served.
  - Tentative release date.
  - Gain time earned in accordance with s. 944.275, F.S.
  - Prior incarceration within the state.
  - Disciplinary violation and action.
  - Participation in rehabilitative or educational programs while in the custody of the DOC.
- Information about each state correctional institution or facility, including:
  - Budget for each state correctional institution or facility.
  - Daily prison population of all inmates incarcerated in a state correctional institution or facility.
  - Daily number of correctional officers for each state correctional institution or facility.
- Information related to persons supervised by the DOC on probation or community control, including:
  - Identifying information for each person supervised by the DOC on probation or community control, including his or her name, date of birth, race or ethnicity, sex, and DOC-assigned case number.
  - Length of probation or community control sentence imposed and amount of time that has been served on such sentence.
  - Projected termination date for probation or community control.
  - Revocation of probation or community control due to a VOP or VOCC that is technical in nature or the result of a new law violation.
- Per diem rates for prison beds, probation, and community control.[195]

Publishing of Data

The bill requires the FDLE, beginning January 1, 2019, to publish datasets in its possession in a modern, open, electronic format that is machine-readable and readily accessible by the public on the FDLE's website. The bill requires the FDLE, beginning March 1, 2019, to publish the data received pursuant to the bill in the same modern, open, electronic format that is machine-readable and readily accessible to the public on the FDLE's website. The data must be published by the FDLE no later than July 1, 2019.

Data Transparency

The bill creates s. 943.687, F.S., requiring the FDLE to:
- Collect, compile, maintain, and manage the data submitted by local and state entities pursuant to the bill, and coordinate related activities to collect and submit data;
- Create a unique identifier for each criminal case received from the clerks, which identifies the person who is the subject of the criminal case. The unique identifier must be:
  - The same for that person in any court case and used across local and state entities for all information related to that person at any time; and
  - Randomly created without portions of the person's social security number or birth date.
- Promote criminal justice data sharing by making data received under the bill comparable, transferable, and readily usable;

[195] This information only needs to be reported once annually at the time the most recent per diem rate is published.

- Create and maintain an online database of criminal justice data received under the bill in a modern, open, electronic format that is machine-readable and readily accessible through an application program interface;[196]
- Develop written agreements with local, state, and federal agencies to facilitate criminal justice data sharing;
- Establish by rule:
  - Requirements for the entities subject to the data submission requirements under the bill to submit data through an application program interface;
  - A data catalog defining data objects, describing data fields, and detailing the meaning of and options for each data element reported pursuant to the bill;
  - How data collected pursuant to the bill is compiled, processed, structured, used, or shared;[197]
  - Requirements for implementing and monitoring the online database established by the bill; and
  - How information contained in the online database established by the bill is accessed by the public.
- Consult with local, state, and federal criminal justice agencies and other public and private users of the online database on the data elements collected under the bill, the use of such data, and adding data elements to be collected;
- Monitor data collection procedures and test data quality to facilitate the dissemination of accurate, valid, reliable, and complete criminal justice data; and
- Develop methods for archiving data, retrieving archived data, and data editing and verification.

The bill also creates s. 945.041, F.S., requiring the DOC to publish on its website and make available to the public specified information, updated on a quarterly basis:
- Inmate admissions by offense type, specifically reporting separately burglary of a dwelling[198] offenses from all other property crimes; and
- The recidivism rate.[199]

Criminal Punishment Code Scoresheet

The bill amends s. 921.0024, F.S., requiring the Criminal Punishment Code scoresheet to be digitized. The bill also requires such digitized scoresheets to have individual, structured data cells for each data field on the scoresheet.

Pilot Program

The bill creates a pilot program in the Sixth Judicial Circuit for the purpose of ensuring that data submitted under s. 900.05, F.S., is accurate, valid, reliable, and structured. The bill authorizes the entities specified in the data collection and transparency provisions to enter into a memorandum

[196] The database must permit the public to search, at a minimum, by each data element, county, judicial circuit, or unique identifier and the FDLE may not require a license or charge a fee to access or receive information from the database.
[197] The rule must provide for the tagging of all information associated with each case number and unique identifier.
[198] The bill defines "burglary of a dwelling" as offenses enumerated in s. 810.02(2), (3)(a), and (3)(b), F.S.
[199] The bill defines "recidivism" as rearrest, reconviction, reincarceration, and probation revocation in the state within a 3-year time period following release from incarceration

of understanding (MOU) with a national, nonpartisan, not-for-profit entity, which provides data and measurement for county-level criminal justice systems.

The MOU must establish the duties and responsibilities of a data fellow, which must be completely funded by the entity. The data fellow must assist with data extraction, validation, and quality, and publish such data consistent with the terms of the MOU. The data fellow must assist the office or agency in compiling and reporting data pursuant to the data collection and transparency provisions and in compliance with rules promulgated by the FDLE. The pilot project expires in accordance with the terms of the MOU.

Appropriation

For purposes of implementing ss. 900.05(3) and 943.687, F.S., transitioning to incident-based crime reporting, and collecting and submitting crime statistics that meet the requirements of the Federal Bureau of Investigation under the National Incident-Based Reporting System, the bill provides a specific appropriation to the FDLE for FY 2018-19, including nine FTEs with associated salary rate of 476,163, and the recurring sum of $665,884 and the nonrecurring sum of $1,084,116 from the General Revenue Fund.

Driver License Reinstatement Days Program (Section 6)

Florida requires any person operating a motor vehicle on the state's roadways to hold a driver license[200] or be exempt from licensure.[201] Exemptions to the licensure requirement include nonresidents who possess a valid driver license issued by their home states, federal government employees operating a government vehicle for official business, and people operating a road machine, tractor, or golf cart.[202] Both licensed drivers and exempted individuals have a driving privilege in Florida.[203]

The Department of Highway Safety and Motor Vehicles (DHSMV) can revoke or suspend a driver license or driving privilege for several driving-related and non-driving-related reasons. Revocation means the driving privilege is terminated, while suspension means the driving privilege is temporary withdrawn.[204] Both revocations and suspensions can be indefinite or for a defined period of time, but only revocations in certain circumstances can be permanent. The base fee for driver license reinstatement after revocation is $75, and the fee for reinstatement after suspension is $45.[205]

[200] Section 322.03(17), F.S., defines a "driver license" to mean a certificate that, subject to all other requirements of law, authorizes an individual to drive a motor vehicle.
[201] Section 322.03(1), F.S.
[202] Section 322.04, F.S.
[203] *State v. Miller*, 227 So.3d 562, 564 (Fla. 2017) ("the Legislature's use of 'driving privilege' refers to all individuals who may lawfully operate vehicles on Florida's roads, even if they do not possess a Florida driver license").
[204] Section 322.01(36) and (40), F.S., respectively.
[205] DHSMV, *Fees*, available at https://www.flhsmv.gov/fees/ (last visited February 22, 2018).

Failure to Meet Court-Imposed Obligations

The clerks can notify the DHSMV to suspend a license for several reasons, including failure to comply with civil penalties, failure to appear, and failure to pay criminal financial obligations.[206] These suspensions last until the individual is compliant with the court's requirements for reinstatement or, in the case of criminal financial obligations, the court grants relief from the suspension.[207]

Payment Plans, Community Service Options, and Collections

The clerk is required to accept partial payment of court-related fees, service charges, costs, or fines in accordance with the terms of an established payment plan. The court may review the reasonableness of the payment plan. A monthly payment amount is presumed to correspond to the person's ability to pay if the amount does not exceed two percent of the person's annual net income, divided by twelve.[208]

The court may convert a statutory financial obligation in a criminal case or a noncriminal traffic infraction into a requirement to perform community service. The clerk must pursue the collection of any unpaid financial obligations that remain unpaid after 90 days by referring the account to a private attorney or collection agent. The clerk must have attempted to collect the unpaid obligation through a collection court, collections docket, or any other collections process prior to referring the account to a private attorney or collections agent, find the referral to be cost-effective, and follow any applicable procurement processes. A collection fee of up to forty percent of the amount owed at the time the account is referred to the attorney or agent for collection may be added to the outstanding balance.[209]

Reinstatement Clinics

Several counties have held events to assist individuals whose licenses are suspended for financial reasons related to civil penalties or criminal financial obligations. In April 2015, 60 out of 67 counties participated in Operation Green Light: a short-term event in which the clerk waived the forty percent collections surcharge in exchange for full payment of the financial obligation behind a person's driver license suspension.[210] Upon satisfaction of the obligation, the participants' licenses were reinstated. The total statewide cost for the event was less than $133,000, and the clerks collected almost $5.5 million in fees and reinstated almost 1,900 licenses.[211] Several counties have since conducted similar events.[212]

[206] Sections 318.15 and 322.245, F.S.
[207] *Id*.
[208] Section 28.246(4), F.S.
[209] Section 28.264(6), F.S.
[210] Harrison Barrus, *"Operation Green Light" gives ticket payers a break*, NEWS 4 JAX, available at https://www.news4jax.com/news/local/operation-green-light-gives-ticket-payers-a-break (last visited February 22, 2018).
[211] Florida Clerks of Court Operations Corporation, *Statewide Collection Initiative Update*, p. 11-17, available at http://c.ymcdn.com/sites/www.flclerks.com/resource/resmgr/Statewide_Collection_Initiat.pdf (last visited February 22, 2018).
[212] Wayne K. Roustan, *Operation Green Light to offer amnesty on unpaid fines, fees in Broward*, SUN SENTINEL (April 21, 2017), available at http://www.sun-sentinel.com/news/transportation/fl-sb-broward-ticket-amnesty-20170421-story.html; Karl Etters, *Clinic hopes to restore driver's licenses*, Tallahassee Democrat (May 30, 2017), available at http://www.tallahassee.com/story/news/2017/05/30/clinic-hopes-restore-drivers-licenses/102055664/; 11th Judicial Circuit,

Effect of the Bill

The bill creates s. 322.75, F.S., requiring each judicial circuit to establish a Driver License Reinstatement Days program that must include participation from the DHSMV, the SAs office, the PDs office, the circuit and county courts, the clerks, and any interested community organization. The clerk, in consultation with above-listed participants, must select one or more days for an event where an event attendee may have his or her driver license reinstated. A person must pay the full license reinstatement fee, but the clerk is authorized to reduce or waive other fees and costs to facilitate reinstatement.

The bill provides that a person is eligible for reinstatement under the program if his or her license was suspended due to:

- Driving without a valid driver license;
- Driving with a suspended driver license;
- Failing to make a payment on penalties in collection;
- Failing to appear in court for a traffic violation; or
- Failing to comply with provisions of chs. 318 or 322, F.S.

A person is eligible for reinstatement under the program if the period of suspension or revocation has elapsed, the person has completed any course or program required of him or her,[213] and the person is otherwise eligible for reinstatement.

However, a person is ineligible for reinstatement under the program if his or her driver license is suspended or revoked:

- Because the person failed to fulfill a court-ordered child support obligation;
- For a violation of s. 316.193, F.S., or a traffic related felony;
- Because the person has not completed a required course or program; or
- Because the person is a habitual traffic offender under s. 322.264, F.S.

Lastly, the bill requires the clerk and the DHSMV to verify any information necessary for reinstatement of a driver license under the program at the event.

Community Court Programs (Section 35)

Problem-solving courts are specialized, non-traditional courts addressing the underlying causes of crime to reduce recidivism and promote rehabilitation. Problem-solving courts build relationships in the community, address each defendant individually, and typically include:

- A problem-solving team including judges, case managers, prosecutors, defense attorneys, treatment professionals, law enforcement officers, corrections personnel, and other community stakeholders.

Driver License Reinstatement Event Flyer, available at https://www.jud11.flcourts.org/DesktopModules/EasyDNNNews/DocumentDownload.ashx?portalid=0&moduleid=599&articleid=2744&documentid=11 (all articles last visited February 22, 2018).

[213] The bill provides that these courses may include a driver training program, driver improvement course, or alcohol or substance abuse education or evaluation program as required under ss. 316.192, 316.193, 322.2616, 322.271, or 322.264, F.S.

- A non-adversarial approach.
- Individualized treatment services.
- Judicial leadership and interaction.
- Responses to defendant compliance.[214]

Today, Florida has over 170 problem-solving courts, including, but not limited to adult and juvenile drug courts, veterans' courts, mental health courts, DUI courts, and permanency courts.

Effect of the Bill

The bill creates s. 948.081, F.S., authorizing each judicial circuit to establish a community court program for defendants charged with certain misdemeanor offenses, which at a minimum:

- Adopts a nonadversarial approach.
- Establishes an advisory committee to recommend solutions and sanctions in each case.
- Considers the needs of the victim.
- Considers individualized treatment services for the defendant.
- Provides for judicial leadership and interaction.
- Monitors the defendant's compliance.

The chief judge in each county that elects to establish a community court program must issue an administrative order specifying the misdemeanors that are eligible for the program. In making such determination, the chief judge must consider the particular needs and concerns of the communities within the judicial circuit. The DOC, Department of Juvenile Justice (DJJ), Department of Health, FDLE, DOE, law enforcement agencies, and other government entities involved in the criminal justice system are required to support any community court programs established.

Participation in the community court program must be voluntary and each program shall have a resource coordinator who:

- Coordinates the responsibilities of the participating agencies and service providers;
- Provides case management services;
- Monitors compliance by defendants with court requirements; and
- Manages the collection of data for program evaluation and accountability.

Additionally, the chief judge of the judicial circuit must appoint an advisory committee for each community court. Membership must include, at a minimum the chief judge or a community court judge designated by the chief judge, who shall serve as chair, the SA, the PD, and the community court resource coordinator.[215]

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[214] The Florida Courts, *Problem-Solving Courts*, available at http://www.flcourts.org/resources-and-services/court-improvement/problem-solving-courts/index.stml (last visited February 22, 2018). Florida created the first drug court in the United States in Miami-Dade County in 1989.

[215] The committee may also include community stakeholders, treatment representatives, and other persons the chair deems appropriate.

The advisory committee's duties, in part, are to review each defendant's case and each committee member is permitted to make a recommendation to the judge, including appropriate sanctions and treatment solutions for the defendant. The judge must consider recommendations made by the advisory committee in determining sanctions and treatment with respect to each defendant.

The bill requires each judicial circuit that establishes a community court program to report client-level and programmatic data to the OSCA annually for program evaluation.[216]

Community court program funding must be secured from sources other than the state for costs not assumed by the state under s. 29.004, F.S. However, a program is not precluded from using funds provided for treatment and other services through state executive branch agencies.

Oversight Council (Sections 1 and 2)

The Florida Corrections Commission

The Florida Corrections Commission (Commission) was established by the Legislature in 1994[217] and abolished in 2006.[218] The Commission was housed within the DOC, but acted as an independent body[219] that reviewed the DOC and looked at policies of the entire criminal justice system affecting corrections.[220] The Commission consisted of nine members appointed by the Governor and subject to confirmation by the Senate.[221] The membership of the Commission was required to represent equally all geographic areas of the state, and each member had to be a citizen and registered to vote. The term for each Commission member was four-years.[222]

The primary functions of the Commission included, but were not limited to:
- Recommending major correctional policies and assuring proper execution of approved policies and revisions;
- Periodically reviewing the status of the state correctional system and recommending improvements to the Legislature and the Governor;
- Monitoring the overall financial status of the DOC, including management of revenue and bond proceeds;
- Reviewing annual budget requests, the comprehensive correctional master plan, and the tentative construction program for compliance with laws and policies of the DOC; and
- Regularly evaluating the efficiency, productivity, and management of the DOC.[223]

[216] The bill provides that client-level data includes primary offenses resulting in the community court referral or sentence, treatment compliance, completion status, reasons for failing to complete the program, offenses committed during treatment and sanctions imposed, frequency of court appearances, and units of service; and programmatic data includes referral and screening procedures, eligibility criteria, type and duration of treatment offered, and residential treatment resources.
[217] Chapter 94-117, L.O.F.
[218] Chapter 06-32, L.O.F.
[219] Section 20.315(6)(a)3., F.S. (2005).
[220] Section 20.315(6)(a)1., F.S. (2005).
[221] Section 20.315(6)(a)2., F.S. (2005).
[222] *Id*.
[223] Section 20.315(6)(b), F.S. (2005).

The Commission was specifically prohibited from interfering with the day-to-day operations of the DOC.[224]

The Commission held regular meetings, which were required to be noticed in accordance with Florida's public meetings laws.[225] The Commission was also required to appoint an executive staff that served under the direction of the Commission.[226]

Office of the Inspector General

In 1994, the Florida Legislature created the Office of the Chief Inspector General and an Office of Inspector General in each state agency.[227] Every state agency has an inspector general who achieves their mission through conducting professional and independent investigations, audits, and reviews with the goal of enhancing the public trust in government.[228]

The Office of the Chief Inspector General is responsible for promoting accountability, integrity, and efficiency in the Executive Office of the Governor (EOG) and in agencies under the jurisdiction of the Governor.[229] The Chief Inspector General serves as the Inspector General for the EOG and reports directly to the Governor.[230] The duties of the Office of the Chief Inspector General include, in part, conducting audits, investigations, and other activities.[231]

Councils

Section 20.03(7), F.S., defines a "council" as an advisory body created by specific statutory enactment and appointed to function on a continuing basis for the study of the problems arising in a specified functional or program area of state government and to provide recommendations and policy alternatives.

Florida has established a number of councils that address a wide variety of public policy topics, such as the Suicide Prevention Coordinating Council, Statewide Council on Human Trafficking, Regional Planning Councils, and Council on Arts and Culture.[232] Statutes that create councils at a minimum typically include provisions designating the specified number of members, procedures for appointing such members, and the purpose for and duties of the council.[233]

Effect of the Bill

The bill establishes the Florida Correctional Operations Oversight Council (Oversight Council) within the Office of the Chief Inspector General. The Office of the Chief Inspector General must provide administrative support to the Oversight Council; however, the Oversight Council is not

[224] Section 20.315(6)(c), F.S. (2005).
[225] Article I, s. 24(b) of the Florida Constitution and s. 286.011, F.S., require all state, county, or municipal meetings to be open and noticed to the public.
[226] Section 20.315(6)(e), F.S. (2005).
[227] Chapter 94-235, L.O.F.
[228] Florida Inspectors General, available at http://www.floridaoig.com/default.htm (last visited February 24, 2018).
[229] Executive Office of the Governor (Chief Inspector General), *2016-2017 Annual Report*, available at http://www.floridaoig.com/library/Annual_rpts/2016-17-CIG-Annual-Report.pdf (last visited February 24, 2018).
[230] Sections 14.32(4), F.S.
[231] Section 14.32(2), F.S.
[232] *See* ss. 14.20195, 16.617, 265.285, F.S.
[233] *See Id*. for examples of common purposes, duties, and membership structure of councils.

under the control, supervision, or direction of the Office of the Chief Inspector General in the performance of its duties. Further, the Oversight Council is prohibited from interfering with the day-to-day operations of the DOC or the DJJ.

The Oversight Council will operate as a council as such term is defined in s. 20.03, F.S., with the specific purpose of overseeing matters relating to the corrections and juvenile justice continuum with an emphasis on the safe and effective operations of major institutions and facilities under the purview of the DOC and the DJJ. The bill also requires the council to make recommendations and findings on the policies of other components of the criminal justice system if such policies affect corrections or the juvenile justice continuum.

The Oversight Council is comprised of nine members of whom the Governor, President of the Senate, and the Speaker of the House of Representatives are each authorized to appoint three members. All members must be initially appointed by October 1, 2018. The term length will be four-years; however, one appointee of each appointing entity must be appointed to an initial two-year term to achieve staggered terms. Members will serve without compensation, but may receive reimbursement for per diem and travel expenses as provided in s. 112.061, F.S.[234]

The bill requires that members are Florida residents and emphasizes, but does not require, that members have a background in prison operations, jail management, or the juvenile justice continuum of services. Appointments must be made in a manner that provides equitable representation to all geographic regions of the state. Members must provide representation to the state in its entirety and not conduct themselves in a manner that benefits a particular region.

A person is prohibited from being appointed as a member of the Oversight Council if he or she has an immediate family member that is employed by the DOC, the DJJ, a private institution, facility, or provider under contract with the DOC or the DJJ; or a direct or indirect interest in a contract, subcontract, franchise, privilege, or other benefit that can be awarded by either the DOC or the DJJ during the term of service.

The Oversight Council's primary duties include:

- Evaluating, investigating, and overseeing the daily operations of correctional and juvenile facilities and conducting announced and unannounced inspections of correctional and juvenile facilities,[235] including entering any facility housing prisoners, residents, or juveniles. Members must be provided immediate access to places requested and given the ability to communicate with any prisoner, resident, or juvenile privately with adequate security in place.
- Identifying and monitoring high-risk and problematic correctional or juvenile facilities and reporting findings and recommendations relating to these facilities.
- Providing technical assistance when appropriate.

[234] Section 112.061, F.S., establishes standardized travel reimbursement rates, procedures, and limitations, with specified exceptions, that apply to all public officers, employees, and authorized persons whose travel is authorized and paid for by a public agency. Per diem and travel expenses cover costs such as lodging, meals, vehicle rental, gas, plane fare, tolls, or parking fees. Rates are dependent upon factors such as whether the business travel requires an overnight stay or day trip and the length of time away from official headquarters.

[235] This provision applies to facilities operated by the state or a private contractor.

- Submitting an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by November 1, that includes statutory, budgetary, and operational recommendations to the Legislature that address problems identified by the council.[236]
- Conducting confidential interviews with staff, officers, inmates, juveniles, volunteers, and public officials relating to the operations and conditions of correctional and juvenile facilities.
- Developing and implementing a monitoring tool that will be used to assess the performance of each correctional and juvenile facility.
- Conducting regular on-site visits to correctional and juvenile facilities.

Additionally, the Oversight Council must appoint an executive director to serve under the direction of the members. The bill provides that the executive director position will be governed by the classification plan and salary and benefits plan approved by the EOG.

The bill provides a specific appropriation of $168,074 recurring General Revenue funds and $37,855 nonrecurring General Revenue funds, and creates one FTE for the purpose of administering the Oversight Council at an authorized salary rate of $70,000.

Mutual Aid Agreements (Section 3)

The Florida Mutual Aid Act was established to ensure adequate coordination and preparations amongst law enforcement and other specified entities in the event of natural or manmade disasters or emergencies and other major law enforcement problems.[237] Section 23.1225, F.S., provides that mutual aid agreements are agreements between two or more law enforcement agencies to permit voluntary cooperation in routine matters or to render assistance in the event of a law enforcement emergency. A mutual aid agreement must generally be in writing and specify:

- The nature of the assistance to be rendered;
- The agency or entity that will bear liability in certain situations;
- Procedures for requesting and authorizing assistance;
- The agency or entity in charge of supervision;
- The time limit for the agreement;
- The terms of compensation; and
- Any other terms necessary to give effect to the agreement.[238]

Effect of the Bill

The bill amends s. 23.1225, F.S., specifying that in the event the Governor declares a state of emergency pursuant to ch. 252, F.S., a mutual aid agreement may be used to increase the presence of law enforcement to aid in traffic and crowd control, emergency response, and evacuation support.

[236] If the bill becomes law, the first report is due by November 1, 2019.
[237] Section 23.121, F.S.
[238] Section 23.1225(1), F.S. If the Governor declares a state of emergency pursuant to ch. 252, F.S., the requirement that an agreement to render emergency assistance be in writing may be waived by the participating agencies for up to 90 days after the Governor's declaration.

Courthouse Security Provided by Sheriffs (Section 4)

Sheriffs

The Florida Constitution establishes five specific county officers, including the county sheriff. Each sheriff is elected by county voters for a four-year term. Abolishing the office of sheriff or revising the manner in which the sheriff is chosen may be provided by county charter or special law approved by a vote of the electors of the county under certain circumstances.[239]

Section 30.15, F.S., provides for the powers and duties of sheriffs. Some of the duties a sheriff, or his or her deputies, must perform within their respective counties include:

- Execute all process of the courts and board of county commissioners;
- Execute other writs, processes, warrants, and papers;
- Act as conservators of the peace and apprehend any person disturbing the peace; and
- Attend sessions of the circuit court and county court.

If a sheriff fails to attend a session of the court, either in person or by deputy, the judge may appoint an interim sheriff to assume the sheriff's responsibilities and duties.[240] The sheriff is the executive officer of the county court and circuit court of the county.[241]

Judicial Administration

The Florida Constitution provides that the chief judge of each judicial circuit is responsible for the administrative supervision of the circuit courts and county courts in the circuit.[242] Some duties over which the chief judge has authority include:

- Regulate the use of courtrooms;
- Supervise dockets and calendars;
- Delegate to the trial court administrator the authority to bind the circuit in contract;
- Promote the prompt and efficient administration of justice; and
- Manage, operate, and oversee the jury system.[243]

Failure of any judge, clerk, SA, PD, or other officer of the court to comply with an order or directive of the chief judge under s. 43.26, F.S., constitutes neglect of duty.[244] Additionally, the Rules of Judicial Administration provides that the chief judge regulates the use of court facilities and directs the formation and implementation of policies and priorities for the operation of all courts and officers within the circuit.[245]

[239] FLA. CONST. art. III, s. 1.
[240] Section 30.12, F.S.
[241] Sections 26.49 and 34.07, F.S.
[242] FLA. CONST. art. V, s. 2(d).
[243] Section 43.26, F.S.; *See also* s. 40.001, F.S.
[244] Section 43.26(4), F.S.
[245] Fla. R. Jud. Admin. 2.215(b).

Effect of the Bill

The bill amends s. 30.15, F.S., requiring the sheriff and the governing board of the county to provide security for trial court facilities located within each county of a judicial circuit. The sheriff and the county must coordinate with the chief judge of the applicable judicial circuit on security matters for such facilities, but the sheriff and county retain operational control over the manner in which security is provided, as applicable, in such facilities. The bill provides that these provisions do not affect or erode the authority of counties under Article V, s. 14 of the Florida Constitution or s. 29.008, F.S., to provide and fund the security of facilities as defined s. 29.008(1)(e), F.S.[246] Additionally, the bill provides that sheriffs and their deputies, employees, and contractors are officers of the court when providing security for trial court facilities.

The chief judge of the judicial circuit retains decision-making authority to ensure the protection of due process rights, including, but not limited to, the scheduling and conduct of trials and other judicial proceedings, as part of his or her responsibility for the administrative supervision of the trial courts pursuant to s. 43.26, F.S.

Attorney's Fees in Specific Injunction Cases (Sections 5, 7 and 8)

Protective Injunctions

Protective injunctions are available under Florida law for victims of domestic violence, repeat violence, sexual violence, dating violence, and stalking.[247]

A protective injunction may prohibit a person from:
- Going to or being within 500 feet of the petitioner's residence, school, place of employment, or other specified place;
- Committing an act of violence against the petitioner;
- Telephoning, contacting, or otherwise communicating with the petitioner; and
- Knowingly and intentionally coming within 100 feet of the petitioner's motor vehicle.[248]

Violation of a protective injunction is a first-degree misdemeanor, punishable by up to one year in jail and a $1,000 fine.[249]

Procedure for Obtaining an Injunction

The process for obtaining an injunction in any of the above-mentioned circumstances is very similar and requires that the victim file a sworn petition for injunction that alleges:
- He or she is a victim of domestic violence; repeat, sexual, or dating violence; or stalking; or
- In the case of a petition for a domestic violence injunction, he or she has reasonable cause to believe he or she is in imminent danger of such violence.[250]

[246] These provisions address judicial funding.
[247] Sections 741.30, 784.046, and 784.0485, F.S.
[248] Sections 741.31, 784.047, and 784.0487, F.S.
[249] *Id*.
[250] Sections 741.30, 784.046, and 784.0485, F.S.

As soon as possible following the filing of the petition, a court must set a hearing to determine whether an immediate and present danger of the violence alleged exists. Upon finding an immediate and present danger, the court may grant an ex parte temporary injunction for 15 days. A court must then set a hearing with notice to the respondent, and upon such hearing with notice, may grant protective injunctive relief as it deems proper.[251]

Attorney's Fees

A court must award a reasonable attorney's fee to be paid by the losing party and the losing party's attorney on any claim or defense during a civil proceeding or action if the court finds that the losing party or losing party's attorney knew or should have known that a claim:

- Was not supported by the material facts necessary to establish the claim or defense; or
- Would not be supported by the application of then-existing law to those material facts.[252]

Florida law prohibits attorney fee awards stemming from domestic violence injunction proceedings; however, there is no such explicit prohibition for repeat violence, sexual violence, dating violence, or stalking injunction proceedings. In *Lopez v. Hall*, the Florida Supreme Court held that an award of attorney's fees was permissible in dating, repeat, and sexual violence injunction proceedings, as they were not explicitly prohibited by statute.[253]

Effect of the Bill

The bill amends ss. 57.105, 784.046, and 784.0485, F.S., prohibiting the award of attorney's fees in injunction proceedings for repeat violence, sexual violence, sexual violence, and stalking.

Reporting Provisions (Sections 17, 19, and 38)

Reports Concerning Seized or Forfeited Property

The Florida Contraband Forfeiture Act (act)[254] provides for the seizure and civil forfeiture of property related to criminal and non-criminal violations of law.[255] Contraband and other property may be seized when utilized during a violation of, or for the purpose of violating, the act. Property constituting a "contraband article" includes, but is not limited to, a controlled substance as defined in ch. 893, F.S., any gambling paraphernalia being used or attempted to be used in violation of the state's gambling laws, and any motor fuel upon which the motor fuel tax has not been paid as required by law.[256]

Currently, any contraband article, vessel, motor vehicle, aircraft, other personal property, or real property used in violation of any provision of the act, or in, upon, or by means of which any violation of the act has taken or is taking place, may be seized and forfeited subject to the act.[257]

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[251] *Id*.
[252] Section 57.105, F.S.
[253] No. SC16-1921 (Slip. Op.) (January 11, 2018).
[254] *See* ss. 932.701-932.7062, F.S.,
[255] Section 932.701(1), F.S.
[256] *See* s. 932.701(2)(a)1.-12., F.S.
[257] Section 932.703(1)(a), F.S.

If the court finds that the seizure occurred lawfully[258] and that probable cause exists for the seizure, the forfeiture may proceed as set forth in the act.[259]

When a seizing agency obtains a final judgment granting forfeiture of real or personal property, it may elect to:

- Retain the property for the agency's use;
- Sell the property at public auction or by sealed bid to the highest bidder;[260] or
- Salvage, trade, or transfer the property to any public or nonprofit organization.[261]

Section 932.7061, F.S., requires every law enforcement agency to submit an annual report by October 10 indicating whether the agency has seized or forfeited property under the act.[262] In the event that a law enforcement agency received or expended forfeited property or proceeds from the sale of forfeited property in accordance with the act, the annual report must document such receipts and expenditures.

An agency that is in noncompliance with the reporting requirements in s. 932.7061, F.S., must be notified by the FDLE. Such agency has 60 days within receipt of the notification of noncompliance to comply with the reporting requirements. An agency that fails to comply within 60 days is subject to a civil fine of $5,000. The fine is determined by the Chief Financial Officer (CFO) and payable to the General Revenue Fund.[263] The FDLE must submit any substantial noncompliance to the CFO, which will then be responsible for the enforcement of the fine.[264]

The fiscal year for sheriff departments runs from October 1-September 30, making it difficult to gather all required information and submit it by October 10 to comply with the statutory mandate.

Effect of the Bill

The bill changes the deadline for the submission of such report to December 1. The bill also reenacts s. 932.7062, F.S., incorporating changes made by the act.

Pretrial Release Annual Report

Current law requires each pretrial release program[265] to submit an annual report no later than March 31 for the previous calendar year that contains information about each program, including, but not limited to, the amount of fees paid by defendants to the pretrial release program and the number of persons employed by the program.[266]

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[258] Section 932.703(1)(a), F.S., sets forth the circumstances that permit for a lawful seizure of property.
[259] Section 932.703(2)(c), F.S.
[260] Real property should be listed on the market and sold in a commercially reasonable manner after appraisal. Section 932.7055(1)(b), F.S.
[261] Section 932.7055(1)(a)-(c), F.S.
[262] Section 932.7061(1), F.S.
[263] Section 932.7062, F.S.
[264] *Id.*
[265] "Pretrial release program" means an entity, public or private, that conducts investigations of pretrial detainees, makes pretrial release recommendations to a court, and electronically monitors and supervises pretrial defendants. Section 907.043(2)(b), F.S.
[266] Section 907.043(4), F.S.

Effect of the Bill

The bill requires the following additional information to be contained in the annual report:

- The number of defendants accepted into a pretrial release program who paid a surety or cash bail or bond;
- The number of defendants for whom a risk assessment tool was used in determining whether the defendant should be released pending the disposition of the case and the number of defendants for whom a risk assessment tool was not used;
- The type of each criminal charge of a defendant accepted into a pretrial release program including, at a minimum, the number of defendants charged with dangerous crimes as defined in s. 907.041, F.S., nonviolent felonies, and misdemeanors only.
- The number of defendants accepted into a pretrial release program with no prior criminal conviction.

The bill defines "nonviolent felony" to exclude the commission of, an attempt to commit, or a conspiracy to commit any of the following:

- An offense enumerated in s. 775.084(1)(c), F.S.;
- An offense that requires a person to register as a sexual predator in accordance with s. 775.21, F.S., or as a sexual offender in accordance with s. 943.0435, F.S.;
- Failure to register as a sexual predator in violation of s. 775.21, F.S., or as a sexual offender in violation of s. 943.0435, F.S.;
- Facilitating or furthering terrorism in violation of s. 775.31, F.S.;
- A forcible felony as described in s. 776.08, F.S.;
- False imprisonment in violation of s. 787.02, F.S.;
- Burglary of a dwelling or residence in violation of s 810.02(3), F.S.;
- Abuse, aggravated abuse, and neglect of an elderly person or disabled adult in violation of s. 825.102, F.S.;
- Abuse, aggravated abuse, and neglect of a child in violation of s. 827.03, F.S.;
- Poisoning of food or water in violation of s. 859.01, F.S.;
- Abuse of a dead human body in violation of s. 872.06, F.S.;
- A capital offense in violation of ch. 893, F.S.;
- An offense that results in serious bodily injury or death to another human; or
- A felony offense in which the defendant used a weapon or firearm in the commission of the offense.

The bill is effective October 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The county or municipality mandates provision of article VII, section 18 of the Florida Constitution may apply because of several provisions in the bill, including the requirement that all county-operated detention facilities collect and transmit data elements to the FDLE, each county develop an ASP, and each county establish a Driver License Reinstatement Days, require counties to expend funds.

Article VII, s. 18(a) of the Florida Constitution provides, in pertinent part, that "no county or municipality shall be bound by any general law requiring such county or municipality to spend funds or take an action requiring the expenditure of funds unless the legislature has determined that such law fulfills an important state interest and unless the law requiring such expenditure is approved by two-thirds of the membership in each house of the legislature."

The bill does not contain a legislative finding that the act fulfills an important state interest.

These requirements do not apply[267] to laws that have an insignificant fiscal impact, [268] which for fiscal year 2017-2018 is $2.05 million or less.[269]

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:

Certificate of Achievement and Employability

The bill may result in a greater number of state inmates being able to find employment upon release from incarceration which could have an indeterminate positive impact on the private sector.

Attorney's Fees

The bill prohibits the court from awarding attorney fees in proceedings for protective injunctions for repeat, sexual, or dating violence or stalking. This change may have an indeterminate, but likely insignificant, impact on attorneys.

[267] FLA. CONST. art. VII, s. 18(d).
[268] 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.
[269] Based on the Demographic Estimating Conference's population adopted on Dec. 5, 2017. The conference packet is available at http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf.

Pretrial Release Programs

To the extent that pretrial release programs use vendors to monitor released defendants, there may be a fiscal impact to collect additional data that is not currently collected by these vendors.

C. Government Sector Impact:

Supervised Bond Program

Local governments may experience reduced costs as a result of the implementation of the Bond Program. A county may implement a supervised bond program, which allows an eligible defendant to be released on active supervision and some form of bond or ROR while awaiting trial. As a result, the county's costs to supervise the participants may be decreased from the full daily county jail per diem to the much lower per diem rates for active electronic monitoring or continuous alcohol monitoring technologies, or both.

Drug Trafficking Sentencing Departure

The Criminal Justice Impact Conference (CJIC) estimates that the provisions of the bill relating to departure from drug trafficking mandatory minimum sentences will have a "negative significant" prison bed impact (i.e., a decrease of more than 25 prison beds).[270]

Theft

The CJIC estimates that the provisions of the bill relating to theft offenses will have a "negative significant" prison bed impact (i.e., a decrease of more than 25 prison beds).[271]

Risk Assessment Pilot Program

The bill creates a Risk Assessment Pilot Program that utilizes a RAI to ensure better programming for defendants after arrest. To the extent that this program reduces recidivism, the bill may reduce the need for jail beds and prison beds.

The DOC estimates it will cost $321,584 and 4 FTE to implement the requirements of this bill. Staff will be needed at each of the county pilot sites for implementation, training, monitoring the data and assessment environments to identify and resolve issues onsite. Staff will also be required to be project managers and will be used to ensure communication, monitor overall logistics, conduct analysis and prepare and submit necessary reports.[272] In addition, the DOC also estimates it will cost $763,575 for technology-related costs associated with a modified version of the spectrum assessment system.[273]

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[270] 2018 Conference Results (through February 12, 2018), CJIC, available at http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/CJIC18.xls (last visited on March 5, 2018).
[271] *Id*.
[272] DOC, *Agency Analysis for SB 1218*, p. 5, January 26, 2018 (on file with Senate Criminal Justice Committee).
[273] *Id*. at 7.

Data Collection

Local Detention Facilities

The bill will have an indeterminate impact on local administrators of county detention facilities by requiring the reporting and transmission of data from the facilities to the FDLE on a weekly basis. According to the Florida Sheriffs Association, the fiscal impact will be significant as each jail operates an independent jail management system. Additionally, not all systems currently collect the data elements required by the bill and interfacing the jail management systems with the FDLE may be problematic and may require additional technology upgrades to resolve.[274] Depending on the size of the facility and current data capabilities, some counties may need to hire additional positions to input and maintain the data and the requirements may involve technology upgrades or installing new systems.

Counties that operate a pretrial release program may also have an indeterminate fiscal impact due to the additional data elements that must be collected and reported to the FDLE.

Clerks of the Court

The clerks report that the bill will have a significant fiscal impact on the clerks. The clerks in the Sixth Judicial Circuit (Pinellas and Pasco Counties) indicate they will need to modify their individual case management systems (CMS) for missing data elements. Additionally, CCIS will need to be modified to transmit information to the FDLE. The clerks estimate the cost to implement the bill for the Sixth Judicial Circuit is approximately $2 million for the first year of implementation and approximately $600,000 of recurring funds will be needed for subsequent years.[275] Other circuits will likely have similar fiscal impacts.

Department of Corrections

The bill will have a fiscal impact on the DOC. The requirements of reporting additional budget information will require one additional full time employee (Senior Management Analyst II) to implement at a cost of approximately $93,000 per year.

In order to create the digitized scoresheet and provide the additional data information requested there will be significant technology impact, which will include developing new applications to create the digitized scoresheet, and completing programming changes and development to the OBIS related to offender tracking and information screens. According to the DOC, these changes will cost approximate $340,000. However, it is anticipated that this could be updated at minimal cost given that there is already an electronic version of the scoresheet in existence.[276]

[274] Email from Florida Sheriffs Association Staff (February 23, 2018) (on file with Senate Criminal Justice Committee).
[275] The Clerks of the Court, *HB 7071 Criminal Justice Data Transparency Pilot Initiation Analysis – Sixth Judicial Circuit*, p. 1, provided by the Florida Clerks of Court Operations Corporation (Feb. 8, 2018).
[276] DOC, *Agency Analysis of 2018 House Bill 7071*, p. 8, February 8, 2018 (on file with Senate Criminal Justice Staff).

Florida Department of Law Enforcement

The bill will have a significant fiscal impact on the FDLE for receiving, publishing, maintaining, and storing the data. The bill requires upkeep and maintenance of the data. The FDLE may need to contract with other vendors to facilitate the publicly available website, allow users to determine their research parameters and data elements to explore, and download the data in a format of their choice.

The bill authorizes nine FTE positions with associated salary rate of 476,163 and appropriates the recurring sum of $665,884 and the nonrecurring sum of $1,084,116 from the General Revenue Fund to the FDLE to accomplish the goals of the bill and to begin the transition to incident-based reporting to the FBI. In addition to the FY 2018-19 appropriation, the FDLE reports it will need three FTE with a cost of $276,069 in year one for salary, benefits, expense, and human resources services and $264,804 in recurring years. Additionally, the FDLE recommends developing a new information system that will make data specified in the bill accessible to the public through the FDLE website. The FDLE estimates the cost to be $6.4 million over the next 24 months to cover the technology impact of the bill with a recurring cost to manage the database of approximately $319,000.[277]

The FDLE does not yet have a specific fiscal impact estimate, but expects the impact to be significant. If the bill passes, the FDLE anticipates holding a series of workshops with the clerks, SAs, PDs, sheriffs and county detention facility administrators, and the DOC. The FDLE anticipates submitting a legislative budget request to address the significant fiscal impact created by this bill.[278]

Additionally, the FDLE reports that there will likely be a loss in revenue that is normally collected under s. 943.053(3)(e), F.S., which authorizes the FDLE, for a fee of $24 per record to the public or reduced for certain state agencies, to provide criminal history information. The provisions of the bill creating s. 900.05, F.S., are in direct conflict with s. 943.053, F.S., due to the lack of fee charged for information that is similar in nature to that which is obtained through a criminal background check for a fee. This could negatively affect the amount of record checks requested and reduce revenue to the FDLE.[279]

State Attorneys and Public Defenders

The bill will have an indeterminate, but potentially significant, fiscal impact on the SAs and PDs. It is unknown how much of the information required by the bill is currently collected by these entities. The additional data and weekly transmission requirements may require more staff for the twenty SA and PD offices, as well as updated or new technology.

[277] *See* FDLE, *Agency Analysis of HB 7071 (Draft)*, p. 2-4, February 13, 2018 (on file with Senate Criminal Justice Committee) (hereinafter cited as "The FDLE HB 7071 Analysis").
[278] *Id*., p. 4.
[279] *Id*. at 6.

Reinstatement Days Program

The bill requires counties to establish a Reinstatement Days Program to assist persons in obtaining a reinstatement of a driver license. To the extent that this provision increases workload to the specified entities that are required to participate, the local governments may incur additional but indeterminate costs.

Court Security

Currently, a sheriff must provide security at any court facility, which includes office space relating to court administration. The bill limits this duty to securing "trial court facilities." Therefore, the bill may reduce the fiscal impact to local governments.

Probation Provisions

The CJIC considered HB 7089, which has these identical provisions, on February 19, 2018, and determined that creating statewide ASPs will have a negative significant impact on the prison population (i.e. decrease of more than 25 prison beds). The CJIC reports that in FY 2016-17, 5,443 technical violators were sentenced to prison.[280] The ASP would apply to certain technical violators and result in greater non-prison sanctions for these violators.

However, one of the ASP sanctions included in the bill is up to 5 days incarceration in a county detention facility for a low-risk violation and up to 21 days for a moderate-risk violation. This section will likely result in increased but indeterminate costs on local government.

The bill requires the DOC to submit additional information to the FCIC if the court modifies conditions of probation. This requirement will cost the DOC a nonrecurring amount of $6,800 to modify their existing data feed to the FDLE and a nonrecurring amount of $13,600 to modify the OBIS. [281] It is anticipated that these fiscal impacts can be absorbed within existing resources.

Reentry Provisions

Transition Assistance

The bill has a fiscal impact to the DOC for the provisions relating to transition assistance. The DOC indicates that Transition Assistant Specialists have not been funded since 2003. To implement the provisions in the bill, the DOC indicates a need for 13 Correctional Services Assistant Consultant positions at a total cost of $834,119 ($774,982 recurring; $59,137 nonrecurring). [282]

[280] Economic and Demographic Research (EDR), Criminal Justice Impact Conference, February 19, 2018, available at http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/PCBJDC1803.pdf (last visited February 22, 2018).
[281] The DOC HB 7089 Analysis, p. 8.
[282] DOC, *Agency Analysis of HB 7089*, p. 3 (February 20, 2018) (on file with Senate Criminal Justice Committee) (hereinafter cited as "The DOC HB 7089 Analysis").

Currently, the DOC does not have the programming capability to provide for nonprofit faith-based, business and professional, civic or community organizations to apply to be registered to provide inmate reentry services. In order to accomplish this, a new system/web portal would need to be created or purchased. The DOC indicates that the cost to create a new system/web portal is indeterminate and may require a procurement to identify possible solutions.[283]

Entrepreneurship Program

The bill allows the DOC to develop an entrepreneurship program. If the DOC elects to do so, the bill requires the program to be implemented within existing resources. In its analysis, the DOC identifies the need to have one Correctional Services Consultant to coordinate program services at a total cost of $68,989 ($64,440 recurring; $4,549 nonrecurring) and a recurring cost of $200,000 to implement and provide services at one location.[284]

Certificates of Achievement and Employability

The bill requires the DOC to fund the CAE program within existing resources. The DOC indicates it will cost $207,825 to develop a system to transmit the necessary information to the various licensing agencies in the state including the DBPR and the ACHA.

Conditional Medical Release

The bill expands CMR by creating new CMR designations and modifying current designations, which will likely cause an increased number of inmates to be referred to the FCOR for CMR. Additionally, the bill requires the FCOR to release inmates that qualify for release under the Mandatory CMR process. However, it is unknown how many additional inmates will be eligible for release under the new provisions of the bill. To the extent that the bill increases the number of inmates released on CMR, the bill will likely result in a negative indeterminate prison bed impact (i.e., an unquantifiable decrease in prison beds).

Oversight Council

The bill provides a specific appropriation of $168,074 recurring General Revenue funds and $37,855 nonrecurring General Revenue funds, and creates one FTE for the purpose of administering the Oversight Council at an authorized salary rate of $70,000.

Additionally, to the extent that creating the Oversight Council improves the corrections and juvenile justice continuum systems, the bill may result in cost savings.

VI. Technical Deficiencies:

None.

[283] *Id*. at 8.
[284] *Id*. at 4.

VII. Related Issues:

Lines 477-517: The bill creates a Reinstatement Days Program and provides that the events may be held on one or more days. However, the bill language does not indicate if these events are to be recurring events or just one time. The bill may need clarification if the intent is to require counties to hold these events on an annual basis.

Lines 775-777: The definition of "prior incarceration with the state" includes reporting any prior history of a defendant being incarcerated in a county detention facility. This may need to be clarified to indicate whether this reporting requirement applies to only post-disposition sentencing to a county jail or also incarceration in a county jail while awaiting trial.

Lines 677-919: There is no data collection requirement that will capture cases that are assigned to regional conflict counsels or private attorneys that are appointed by the court to handle indigent clients.

Lines 1022-1033: The FDLE reports that it is unable to meet the July 1, 2019, date to publish all data received under the bill and recommends the effective date be moved to July 1, 2020.[285]

Lines 1610-1615: The definition of "eligible inmate" is not clear as to what makes a person eligible. Additionally, the title of this definition may be confusing as it applies to eligible persons who are out of custody on supervision and eligible persons who are incarcerated with the DOC, whereas the term inmate tends to be associated solely with persons who are incarcerated.

Lines 1697-1723: The bill attempts to create a process whereby specified eligible inmates can provide a CAE to a state agency and receive an individualized review for purposes of obtaining licensure or certification. However, the language related to the effect of a CAE for an unemployed certificate holder does not appear to have an impact. The bill provides that the CAE provides a rebuttable presumption, but does not impact the status of the mandatory civil impacts. Without reclassifying the mandatory civil impact to a discretionary civil impact, an agency will be bound by the requirement to deny licensure to a person that has a criminal conviction.

Lines 1724-1734: The DOC does not monitor inmates after release from prison, unless there is a specific judicial order of post-release supervision. The bill requires the DOC to revoke a certificate of achievement and employability, if the certificate holder is convicted or pleads guilty to a felony. Unless a court sentences the certificate holder to prison or state probation, the DOC may not know of a new felony conviction.

Lines 1953-1973: The language of the bill seems to not have a substantive impact. Courts are provided specific authority for sentencing which includes placing an offender on probation. However, probation and administrative probation are defined independently and it does not appear that anything would change for sentencing options without a specific reference. If the language is intended to permit courts to sentence an offender to administrative probation, the bill needs to provide a specific reference to administrative probation.

[285] *Id.*

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 14.32, 23.1225, 30.15, 57.105, 784.046, 784.0485, 893.135, 907.043, 921.0024, 932.7061, 944.704, 944.705, 944.801, 947.005, 947.149, 948.001, 948.013, 948.03, and 948.06.

This bill creates the following sections of the Florida Statutes: 322.75, 900.05, 907.042, 907.0421, 943.687, 944.805, 944.8055, 944.806, 944.8065, 945.041, and 948.081.

The bill reenacts the following sections of the Florida Statutes: 447.203, 944.206, 316.1935, 775.084, 775.087, 784.07, 790.235, 794.0115, 893.135, 921.0024, 944.605, 944.70, 947.13, and 947.141.

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 March 2, 2018:
The committee substitute:

- Creates the "Florida Correctional Operations Oversight Council" to oversee the criminal and juvenile justice systems, including an appropriation with one FTE position in the Executive Office of the Governor to operate the oversight council;
- Clarifies that law enforcement mutual aid agreements may be used to increase law enforcement presence in the event of an emergency response or evacuation;
- Requires sheriffs to provide security to the trial court and coordinate with the chief judge on security matters;
- Requires each circuit to establish a Reinstatement Days Program involving specified entities and hold events through the program on one or more days where a person can pay specified fees and obtain license reinstatement;
- Prohibits issuance of an attorney's fee in protective injunctions for repeat, sexual, or dating violence or stalking;
- Increases the threshold amounts of various theft offenses;
- Expands the third-degree felony offense of grand theft of commercially farmed animals by including birds that are commercially farmed;
- Makes it a third-degree felony for a person to commit any utility theft by removing the application of theft threshold amounts to this offense;
- Limits the reclassification of specified theft offenses to adult convictions that have occurred a certain number of times within specified time frames;
- Authorizes a court to depart from the imposition of a mandatory minimum sentence in drug trafficking cases if certain circumstances are met;
- Establishes a centralized system of uniform data collection for the entire criminal justice system to ensure data transparency;
- Requires specified criminal justice entities to collect certain data on a monthly basis and report such data to the FDLE quarterly;
- Requires that, for data reported pursuant to data transparency provisions, the FDLE:

  - Establish a unique identifier for every person who is the subject of a criminal case, which will be used for all local and state entities' reported data related to that person in order to track that individual's entire experience in Florida's criminal justice system;
  - Create a publicly accessible and searchable database for the data reported;
- Modifies the sentencing scoresheet to a digital format and requiring information contained in the scoresheet to be reported to the FDLE and included in the publicly available database;
- Creates a pilot program in the 6th Judicial Circuit to ensure program data collected is valid and providing an appropriation, including nine FTEs, within the FDLE to support the implementation of data collection and transparency;
- Authorizes counties to establish a Bond Program, which allows eligible defendants to be released on active electronic monitoring, continuous alcohol monitoring, or both subsequent to the administration of a RAI by the county's sheriff and acceptance into the Bond program;
- Creates a Risk Assessment Pilot Program in Hillsborough, Pasco, and Pinellas Counties that requires the counties to administer a RAI to all persons arrested for a felony offense in the county for use in programming and sentencing;
- Requires transition assistance staff within the DOC to identify industry certifications or job assignment credentialing for which an inmate is eligible;
- Requires the DOC to provide inmates with a comprehensive community reentry resource directory that includes specified information related to services and portals available in the county to which the inmate is to be released;
- Permits specified entities to apply with the DOC to be registered to provide inmate reentry services and requiring the DOC to create a process for screening, approving, and registering such entities;
- Authorizes the DOC to contract with specified Veteran's Advocacy Clinics to assist qualified veterans with obtaining services in the community upon release;
- Authorizes the DOC to develop a Prison Entrepreneurship Program that includes education with specified curriculum;
- Creates a "certificate of achievement and employability" application process where the DOC may issue certificates to specified eligible inmates that require licensing agencies to individually consider licensing decisions of certificate holders;
- Prohibits a licensing agency from denying a professional license to a certificate holder solely on the basis of a criminal conviction;
- Creates two new designations for CMR ("inmate with a debilitating illness" and "medically frail inmate") and modifying the current designation of "terminally ill inmate";
- Creates a new "Mandatory Conditional Medical Release" process that requires, rather than permits, the FCOR to release an inmate that meets one of four designations if specified factors are met;
- Requires each circuit to create an alternative sanctions program to handle specified types and occurrences of technical violations of probation or community control outside of a hearing with the judge's concurrence;
- Authorizes a circuit to create a community court program for certain defendants charged with misdemeanors;

- Adds specified data to the information that must be reported in the OPPAGA's annual pretrial programs report (s. 907.043, F.S.);
- Requires the counties to report use and success of the supervised bond program and community court programs created by the act; and
- Modifies the submission date from October 10th to December 1st for the annual contraband seizure report (s. 932.7061, F.S.).

CS by Criminal Justice on January 29, 2018:
The committee substitute removes all provisions related to the charitable bail program and clarifies that the office of the county chief correctional officer will administer the RAI to persons arrested for a felony in the participating county.

B. Amendments:

None.

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

By the Committee on Criminal Justice; and Senator Brandes

591-02583-18 20181218c1

A bill to be entitled

An act relating to persons awaiting trial; creating s. 907.042, F.S.; providing legislative findings; requiring the Department of Corrections to develop a risk assessment instrument; authorizing the department to use or modify an existing risk assessment instrument; requiring the department to develop or modify the risk assessment instrument by a certain date; specifying requirements for the use, implementation, and distribution of the risk assessment instrument; creating the Risk Assessment Pilot Program for a specified period; specifying the participating counties; requiring each participating county's chief correctional officer to contract with the department to administer the risk assessment instrument; requiring all counties to administer the risk assessment instrument to all persons arrested for a felony; requiring each participating county to submit a report annually by a certain date to the department with specified information; requiring the department to compile the information of the findings from the participating counties and submit an annual report by a certain date to the Governor and the Legislature; authorizing the department, in consultation with specified persons, to adopt rules; providing an effective date.

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

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

591-02583-18 20181218c1

Section 1. Section 907.042, Florida Statutes, is created to read:

907.042 Risk Assessment Pilot Program.—

(1) LEGISLATIVE FINDINGS.—The Legislature finds that there is a need to use evidence-based methods to reduce recidivism. The Legislature finds that the use of actuarial instruments that classify offenders according to levels of risk to reoffend provides a more consistent and accurate assessment of an offender's risk and needs. The Legislature also finds that research indicates that using accurate risk and needs assessment instruments to identify appropriate interventions and programming for offenders reduces recidivism.

(2) RISK ASSESSMENT INSTRUMENT.—

(a) The Department of Corrections shall develop a risk assessment instrument that conducts a criminogenic assessment for use in evaluating the proper placement and programming needs for a person who is arrested. The risk assessment instrument must consider, but need not be limited to, the following criteria:

1. The nature and circumstances of the offense the person committed.

2. The nature and extent of the person's prior criminal history, if any.

3. Any prior history of the person failing to appear in court.

4. The person's employment history, employability skills, and employment interests.

5. The person's educational, vocational, and technical training.

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

6. The person's background, including his or her family, home, and community environment.

7. The person's physical and mental health history, including any substance use.

8. An evaluation of the person's criminal thinking, criminal associates, and social awareness.

(b) The Department of Corrections may use or modify an existing risk assessment instrument, if the instrument contains the criteria enumerated in paragraph (a).

(c) The Department of Corrections shall complete the development or modification of a risk assessment instrument no later than March 1, 2019. The department may begin to implement the risk assessment instrument immediately upon completion. Implementation, including training all staff that will administer the risk assessment instrument, must be completed by June 30, 2019.

(d) A representative of the county's chief correctional officer shall administer the risk assessment instrument as early as reasonably possible after a person's arrest, but no later than 10 business days after the arrest. If a person is released from jail pursuant to chapter 903 before the administration of the risk assessment instrument, the chief correctional officer, or his or her representative, must schedule and provide written notification of a date and time for the person to return to the jail for the administration of the risk assessment instrument. The date and time must be provided in writing upon the person's pretrial release. The risk assessment instrument may be conducted by video teleconference.

(e) A risk assessment instrument report must be made

available to the person to whom the instrument is administered, his or her legal counsel, and the state attorney upon completion of the report. The Department of Corrections shall submit to the court the risk assessment instrument report, but the court may not review it without the consent of the person who is the subject of the report and his or her legal counsel.

(3) CREATION.—Contingent upon appropriations and a contract with each participating county, it is the intent of the Legislature to establish a 3-year Risk Assessment Pilot Program to perform a risk assessment evaluation on all persons arrested for a felony in participating counties.

(4) PARTICIPATING COUNTIES.—Participation in the pilot program is limited to Hillsborough, Pasco, and Pinellas Counties. Each participating county's chief correctional officer shall enter into a 3-year contract with the Department of Corrections for the ability to utilize the risk assessment instrument that is developed in accordance with this section.

(5) PILOT PROGRAM REQUIREMENTS.—

(a) The participating counties shall administer the risk assessment instrument to all persons arrested for a felony and utilize the results of such risk assessment instrument as a tool for determining appropriate programming and sentencing with the goal of reducing recidivism.

(b) Each county participating in the pilot program shall provide an annual report to the Department of Corrections by July 1 of each year of the pilot program which details the results of the administration of the risk assessment instrument, programming used for persons who received the assessment, and the success rate of such programming. The department shall

compile the county reports and submit one annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by October 1 of each year of the pilot program.

(6) RULEMAKING.—The Department of Corrections, in consultation with a participating county's chief correctional officer, chief judge, state attorney, and public defender, may adopt rules to administer this section.

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

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 22, 2018

I respectfully request that **Senate Bill #1218**, relating to **Persons Awaiting Trial**, 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)

3.3.18
Meeting Date

1218
Bill Number (if applicable)

Late Substitute
Amendment Barcode (if applicable)

Topic Persons Awaiting Trial

Amendment

Name Barney Bishop

Job Title CEO

Address 204 S. Monroe
Street

Phone 510.9922

Tall — FL — 32301
City — *State* — *Zip*

Email Barney@BarneyBishop.com

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)

3/2/18
Meeting Date

1218
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic THEFT

Name NANCY STEPHENS

Amendments 606820 and 786578

Job Title

Address 1625 SUMMIT LAKE DR
Street

Phone

TALLAHASSEE FL 32317
City State Zip

Email

Speaking: ☐ For ☐ Against ☒ Information

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

Representing MANUFACTURERS ASSOCIATION OF FL and FLORIDA POULTRY 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.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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3-2-18
Meeting Date

1218
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Skylar Zander

Job Title Deputy State Director

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Street

Tallahassee FL 32301
City *State* *Zip*

Phone 850-728-4522

Email szander@afphq.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Americans for Prosperity

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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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)

3/2/2018
Meeting Date

1218
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Criminal Justice

Name Sal Nuzzo

Job Title VP Policy

Address 100 N Duval Street
Street
Tallahassee FL 32301
City *State* *Zip*

Phone 850-322-9941

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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3/2/18
Meeting Date

1218
Bill Number (if applicable)

Topic CJ

Amendment Barcode (if applicable)

Name CHELSEA MURPHY

Job Title DIRECTOR

Address 824 N DUVAL
Street

TALL FL 32303
City *State* *Zip*

Phone 954-557-0016

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

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3/2/18
Meeting Date

1218
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Jeff Kottkamp

Job Title _____

Address _____ Phone _____

Street

Tallahassee FL

City *State* *Zip*

Email _____

Speaking: ☐ For ☑ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against

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

Representing Financial Casualty & Surety

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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3-2-18
Meeting Date

1218
Bill Number (if applicable)

Topic Criminal & Civil Justice

Amendment Barcode (if applicable)

Name Leah Courtney

Job Title Communications Coordinator

Address 106 N. Bronough
Street

Tallahassee FL 32301
City *State* *Zip*

Phone 850-222-5052

Email lcourtney@floridataxwatch,org

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

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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)

3-2-18
Meeting Date

1218
Bill Number (if applicable)

Topic Persons Awaiting Trial

Amendment Barcode (if applicable)

Name Matthew Jones

Job Title President

Address 312 Mary St
Street

Phone

Punta Gorda FL 33950
City *State* *Zip*

Email

Speaking: ☐ For ☐ Against ☒ Information

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

Representing Florida Bail Agents 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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3-2-18
Meeting Date

1218
Bill Number (if applicable)

Topic Persons Awaiting Trial

Amendment Barcode (if applicable)

Name Mike Harrison

Job Title

Address 3039 Crawfordville Hwy
Street

Phone 850-926-2299

Crawfordville FL 32327
City *State* *Zip*

Email Harrison Bail Bonds [redacted] @ AOL.com

Speaking: ☐ For ☑ Against ☐ Information

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

Representing Florida Bail Agents 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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3.3.18
Meeting Date

1218
Bill Number (if applicable)

Topic Persons Awaiting Trial

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title CEO

Address 204 S. Monroe
Street

Tall FL 32301
City *State* *Zip*

Phone 510.9922

Email BarneyBishop.com

Speaking: ☐ For ☑ Against ☐ Information

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

Representing Florida Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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3.3.18
Meeting Date

1218
Bill Number (if applicable)

C1 ~~[illegible]~~
Amendment Barcode (if applicable)

Topic Person's Awaiting Trial - Risk Assessment Instrument

Name Barney Bishop

Job Title CEO

Address 204 S. Monroe
Street

Tall | FL | 32301
City | *State* | *Zip*

Phone 510.9922

Email Barney@BarneyBishop.com

Speaking: ☐ For ☑ Against ☐ Information

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

Representing Florida Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/2/18
Meeting Date

1218
Bill Number (if applicable)

786578
Amendment Barcode (if applicable)

Topic _____

Name Tim Nungesser

Job Title Legislative Director

Address 110 E. Jefferson St. Phone 850-445-5367
Street

Tallahassee FL 32301 Email _____
City *State* *Zip*

Speaking: ☐ For ☒ Against ☐ Information

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

Representing NFIB

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)

3/2/18
Meeting Date

1218
Bill Number (if applicable)

485622
Amendment Barcode (if applicable)

Topic CJ

Name Chelsea Murphy

Job Title Director

Address 824 N Duval St
Street

Phone 954-557-0016

Tall 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

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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)

3/2/2018
Meeting Date

1218
Bill Number (if applicable)

485622
Amendment Barcode (if applicable)

Topic Criminal Justice

Name Sal Nuzzo

Job Title VP Policy

Address 100 N Duval Street
Street
Tallahassee FL 32301
City *State* *Zip*

Phone 850-322-9941

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

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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)

3/2/18
Meeting Date

SB 1218
Bill Number (if applicable)

711458
Amendment Barcode (if applicable)

Topic Felony Threshold

Name Melissa Ramba

Job Title Vice President

Address 227 S. Adams St.
Street
Tallahassee, FL 32301
City *State* *Zip*

Phone 850-570-0269

Email melissa@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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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3/2/18
Meeting Date

1218
Bill Number (if applicable)

786578 SA
Amendment Barcode (if applicable)

Topic Felony Threshold

Name Melissa Ramba

Job Title VP

Address 227 S Adams St.
Street

Phone 850-570-0269

Tallahassee FL 32311
City *State* *Zip*

Email Melissa@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

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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 1254
INTRODUCER:	Appropriations Committee; Education Committee; and Senators Passidomo and Book
SUBJECT:	Early Learning
DATE:	March 5, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bouck	Graf	ED	**Fav/CS**
2.	Davis	Cibula	JU	**Favorable**
3.	Sikes	Hansen	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1254 modifies provisions relating to the school readiness program. Specifically, the bill:

- Requires the Office of Early Learning (OEL) to:
  - Identify observation-based child assessments for use by providers at least three times a year.
  - Adopt a program assessment that measures the quality of teacher-child interactions including classroom organization and instructional supports for children ages birth to 5 years.
  - Develop a differential payment program for providers based on teacher-child interaction quality measures.
  - Revise the standard statewide provider contract to include contracted slots, quality improvement strategies, and program assessment requirements.
  - Modify the single statewide information system to provide access to a parent to monitor the development of his or her child and enable analysis at the state, regional, and local level to measure child growth.
  - Modify the annual report to include specified data regarding school readiness program provider compliance with requirements relating to the program assessment.
- Revises Early Learning Coalitions (ELC) plans to add information regarding:
  - An assessment of local priorities based on the needs of families and provider capacity using available community data.

  - Local eligibility priorities for children, the use of contracted slots in the ELC's procedures for program implementation, a payment rate schedule, and a description of quality improvement strategies in the ELC's quality activities and services.
- Modifies school readiness program eligibility, provider standards, and funding to:
  - Revise the child eligibility priorities for participation in the school readiness program based on the ELC's local priorities; and also revise the definition of "at-risk" children for eligibility purposes.
  - Revise provider eligibility requirements to specify that the providers must participate in a program assessment that measures the quality of teacher-child interactions.
  - Authorize the award of grants and financial supports to providers and instructors to also meet program assessment requirements.

The bill appropriates $6 million for the 2018-2019 fiscal year from the Child Care and Development Block Grant Trust Fund to the OEL to implement the program assessment for school readiness program providers.

The bill takes effect July 1, 2018.

II. Present Situation:

Established in 1999,[1] the school readiness program provides subsidies for child care services and early childhood education for children of low-income families; children in protective services who are at risk of abuse, neglect, or abandonment; and children with disabilities.[2] The school readiness program offers financial assistance for child care to support working families and children to develop skills for success in school and provides developmental screening and referrals to health and education specialists where needed.

The school readiness program is a state-federal partnership between the Office of Early Learning (OEL)[3] and the Office of Child Care of the United States Department of Health and Human Services.[4] Early learning coalitions (ELCs) administer the school readiness program at the county or regional level.[5] The OEL administers the program at the state level, including statewide coordination of the ELCs.[6]

[1] Ch. 99-357, s. 1 Laws of Fla.
[2] Section 1002.87, F.S.
[3] In 2013, the Legislature established the Office of Early Learning in the Office of Independent Education and Parental Choice within the Department of Education (DOE).The office is administered by an executive director and is fully accountable to the Commissioner of Education but shall independently exercise all powers, duties, and functions prescribed by law, as well as adopt rules for the establishment and operation of the school readiness program and the VPK Program. Ch. 2013-252, s. 1, Laws of Fla., codified as s. 1001.213, F.S.
[4] *See* U.S. Department of Health and Human Services, *Child Care and Development Fund Fact Sheet*, http://www.acf.hhs.gov/programs/occ/fact-sheet-occ (last visited Feb. 2, 2018).
[5] Section 1002.83, F.S.
[6] Section 1001.213(3), F.S.

Office of Early Learning

The OEL is the lead agency in Florida for administering the federal Child Care and Development Block Grant Trust Fund (CCDF).[7] The school readiness program is funded primarily by the CCDF.[8]

The OEL is required to focus on improving the educational quality of all program providers participating in the school readiness program while preserving parental choice by permitting parents to choose from a variety of child care categories.[9] Other OEL duties include, but are not limited to, requirements to:

- Enter into a memorandum of understanding with local licensing agencies and the Department of Children and Families (DCF) for inspections of school readiness program providers to monitor and verify compliance with program provider standards and OEL's health and safety checklist.[10]
- Develop and adopt standards and benchmarks that address the age-appropriate progress of children in the development of school readiness skills.[11]
- Select assessments that are valid, reliable, and developmentally appropriate for use as preassessment and postassessment.[12] The assessments must be designed to measure progress in the domains of the performance standards and be administered by qualified individuals.[13]
- Adopt, by rule, a standard statewide provider contract to be used with each school readiness program provider that includes, at a minimum, provisions for provider probation, termination for cause, and emergency termination for those actions or inactions of a provider that pose an immediate and serious danger to the health, safety, or welfare of the children.[14]
- Monitor and evaluate the performance of each ELC in administering the school readiness program.[15]
- Establish a single statewide information system that each ELC must use for the purposes of managing the single point of entry, tracking children's progress, coordinating services among stakeholders, determining eligibility of children, tracking child attendance, and streamlining administrative processes for providers and ELCs.[16]

- Review each ELC's school readiness program plan every 2 years.[17]

The OEL is also required to publish annually, by January 1, a report that includes:

- A summary of early learning coalition annual reports;

[7] Section 1002.82(1), F.S.
[8] The Office of Early Learning, 2016-2018 Child Care Development Fund State Plan, http://www.floridaearlylearning.com/oel_resources/ccdf_plan.aspx (last visited Feb. 2, 2018).
[9] Section 1002.82(1) and (2)(a)-(b), F.S. Care and curriculum by a faith-based provider must not be limited or excluded in any of these categories. *Id.*
[10] Section 1002.82(2)(i), F.S.
[11] Section 1002.82(2)(j), F.S.
[12] Section 1002.82(2)(k), F.S.
[13] Section 1002.82(2)(k),F.S.
[14] Section 1002.82(2)(m), F.S.
[15] Section 1002.82(2)(p), F.S.
[16] Section 1002.82(2)(n), F.S.
[17] Section 1002.82(2)(e), F.S.

- A statewide summary; and
- An analysis of early learning activities throughout the state, including the school readiness program, which includes student disenrollment and reasons for disenrollment, providers by type, and actions on provider contracts.[18]

Early Learning Coalitions

The OEL governs the day-to-day operations of statewide early learning programs and administers federal and state child care funds. Across the state, 30 regional ELCs and the Redlands Christian Migrant Association are responsible for delivering local services.[19] Each ELC is governed by a board of directors comprised of various stakeholders and community representatives.[20]

In order to participate in the school readiness program, each ELC must submit a school readiness plan to the OEL for approval.[21] The plan must include, but is not limited to:[22]

- The ELC's operations, including its membership and business organization.
- The minimum number of children to be served by care level.
- The procedures for implementing program requirements such as single point of entry, uniform waiting list, eligibility and enrollment, sliding fee scale, and payment rate.
- A detailed description of the ELC's quality activities and services.
- A detailed budget outlining the estimated expenditures for state, federal, and local matching funds.
- A detailed accounting of all revenues and expenditures during the previous state fiscal year[23]
- Policies and procedures governing procurement, maintenance of tangible personal property, maintenance of records, information technology security, and disbursement controls.
- A description of the procedures for monitoring school readiness program providers, including the process for responding to a parental complaint.
- Documentation that the coalition has solicited and considered comments regarding the proposed school readiness plan from the local community.

School Readiness Program

School Readiness Eligibility and Enrollment

Florida law specifies that ELCs must admit children into the school readiness program according to the following priorities:[24]

[18] Section 1002.82(5), F.S.
[19] The Office of Early Learning, *Coalitions*, http://www.floridaearlylearning.com/coalitions.aspx (last visited Feb 2, 2018). *See also* 1002.83(1), F.S.
[20] Section 1002.83(3), F.S.
[21] Section 1002.85(2), F.S.
[22] *Id.*
[23] Section 1002.85(2)(a)-(i), F.S.
[24] Section 1002.87(1), F.S.

- **First priority** is a child younger than 13 years of age from families in which an adult is receiving temporary cash assistance[25] and subject to federal work requirements.[26]
- **Second priority** is a child younger than the age of 9 who is at-risk.
- **Third priority** is a child, birth to beginning of the school year for which the child is eligible for kindergarten, from a working family that is economically disadvantaged[27] and may include such a child's eligible siblings who are eligible to enter kindergarten through the summer before sixth grade, provided that the ELC uses local revenues first.
- **Fourth priority** is a child¸ from birth through the summer before kindergarten, whose parent transitions from the work program into employment.
- **Fifth priority** is an at-risk child, at least 9 years of age but younger than 13. The child is given priority over other children if his or her sibling is enrolled in the school readiness program under eligibility priorities 1, 2, or 3.
- **Sixth priority** is a child younger than 13 years of age from a working family that is economically disadvantaged. The child is given priority over other children if his or her sibling is enrolled in the school readiness program under eligibility priority 3.
- **Seventh priority** is a child under age 13 whose parent transitions from the work program into employment.
- **Eighth priority** is a child ages 3-5 years of age who has a current individual education plan with a Florida school district. The child is eligible until he or she is old enough for kindergarten admission.
- **Last priority** is a child who is also concurrently enrolled in the Head Start program and the VPK Program.[28]

A child is considered to be "at risk" if, among other things, the child is in the custody of a parent who is a victim of domestic violence residing in a certified domestic violence center.[29]

School Readiness Program Provider Standards

In order to be eligible to deliver the school readiness program, a provider must be:[30]

- A licensed child care facility;
- A licensed or registered family day care home;
- A licensed large family child care home;
- A public school or nonpublic school;
- A license-exempt faith-based child care provider;
- A before-school or after-school program; or

[25] Temporary cash assistance under chapter 414. Section 1002.87(1)(a), F.S.
[26] Federal work requirements require a state to meet or exceed minimum rates of recipients participating in "work activities," *e.g.*, employment, education, job search, community service, and vocational training. 42 U.S.C. s. 607(a)-(d). Under Florida law, the maximum number of hours a recipient of subsidized child care, who is not otherwise exempt from work activity, may be required to work is 40 hours per week. Section 445.024(2), F.S.
[27] "Economically disadvantaged" means having a family income that does not exceed 150 percent of the federal poverty level. Section 1002.81(7), F.S.
[28] Section 1002.87(1), F.S.
[29] At-risk children can also include children who are homeless or who may be experiencing abuse, neglect, abandonment or exploitation. *See* s. 1002.81(1), F.S., for the definition of "at-risk child".
[30] Section 1002.88(1), F.S.

- An authorized informal child care provider.[31]

Provider responsibilities include, but are not limited to, a requirement to:[32]

- Provide instruction and activities to enhance the age-appropriate progress of each child in attaining the child development standards.
- Provide basic health and safety of its premises and facilities and compliance with requirements for age-appropriate immunizations of children enrolled in the school readiness program.
- Employ child care personnel who have satisfied background screening and training requirements.
- Provide activities to foster brain development in infants and toddlers in an environment rich in language and music and visual, tactile, auditory, and linguistic stimulation and including 30 minutes of reading to children each day.
- Execute the standard statewide provider contract adopted by the OEL.
- Implement a character development program.

School Readiness Funding

Funding for the school readiness program is allocated among the ELCs according to law and the General Appropriations Act.[33] State, federal, and local matching funds provided to an ELC for purposes of the school readiness program must be used for implementation of its approved school readiness program plan, including the hiring of staff to effectively operate the school readiness program.[34]

Costs must be kept to the minimum necessary for the efficient and effective administration of the school readiness program with the highest priority of expenditure being direct services for eligible children. Among the administrative costs and nondirect services authorized for expenditure of funds as specified in law,[35] allowable activities to improve the quality of child care[36, 37] include:

- Awarding grants and providing financial support to school readiness program providers and their staff to assist them in meeting applicable state requirements for child care performance standards,
- Implementing developmentally appropriate curricula and related classroom resources that support curricula,
- Providing literacy supports, and
- Providing continued professional development and training.

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[31] Section 1002.88(1)(a). Generally speaking, informal child care is care provided by a relative. *See* Florida Office of Early Learning, *Child Care and Development Fund (CCDF) Plan FFY 2016-2018* (2016) at 99, *available at* http://www.floridaearlylearning.com/sites/www/Uploads/14-Draft-FY2016-2018%20CCDF%20Plan%20Preprint%20%2012-17-15_final_markup_SC_Comments_CLEAN_PDF_ADA.pdf.
[32] Section 1002.88(1), F.S.
[33] Section 1002.89(1), F.S.
[34] Section 1002.89(5), F.S.
[35] Section 1002.89(6)(a) and (c), F.S.
[36] Section 1002.89(6)(b)2, F.S.
[37] 45 C.F.R. s. 98.51.

For Fiscal Year 2017-2018, a total of $608.4 million was appropriated for the school readiness program from state and federal funds, including $140.6 million from the General Revenue Fund, $370.7 million from the CCDF block grant, $500,000 from Federal Grants Trust Fund, and $96.6 million from the Welfare Transition Trust Fund.[38]

III. Effect of Proposed Changes:

This bill modifies provisions relating to the school readiness program. Specifically, the bill:

- Requires the Office of Early Learning (OEL) to:
  - Identify observation-based child assessments for use by providers at least three times a year.
  - Adopt a program assessment that measures the quality of teacher-child interactions including classroom organization and instructional supports for children ages birth to 5 years.
  - Develop a differential payment program for providers based on teacher-child interaction quality measures.
  - Revise the statewide provider contract to include contracted slots, quality improvement strategies, and program assessment requirements.
  - Modify the single statewide information system to provide access to a parent to monitor the development of his or her child and enable analysis at the state, regional, and local level to measure child growth.
  - Modify the annual report to include specified data regarding school readiness program provider compliance with requirements relating to the program assessment.
- Revises Early Learning Coalitions (ELC) plans to add information regarding:
  - An assessment of local priorities based on the needs of families and provider capacity using available community data.
  - Local eligibility priorities for children, the use of contracted slots in the ELC's procedures for program implementation, a payment rate schedule, and a description of quality improvement strategies in the ELC's quality activities and services.
- Modifies school readiness program eligibility, provider standards, and funding to:
  - Revise the child eligibility priorities for participation in the school readiness program based on the ELC's local priorities; and also revise the definition of "at-risk" children for eligibility purposes.
  - Revise provider eligibility requirements to specify that the providers must participate in a program assessment that measures the quality of teacher-child interactions.
  - Authorize the award of grants and financial supports to providers and instructors to also meet program assessment requirements.

Office of Early Learning (Section 2)

Section 2 amends s. 1002.82, F.S., to require the OEL to adopt a program assessment for providers participating in the school readiness program that measures the quality of teacher-child interactions, including emotional and behavioral support, engaged support for learning, classroom organization, and instructional support for children ages birth to 5 years. Program assessment requirements adopted by OEL must include, at a minimum, quality measures, a

[38] Specific Appropriation 84, ch. 2017-70, s. 2, Laws of Fla.

minimum threshold for contracting purposes, requirements for provider participation, frequency of program assessment, granting of exemptions, and the achievement of improvement through the completion of an improvement plan.

This section requires the OEL to identify observation-based child assessments for use by providers a minimum three times a year. The assessments must:

- Provide interval level and criterion-referenced data that measures equivalent levels of growth across core domains of early childhood development.
- Measure progress in the performance standards.
- Provide for appropriate accommodations for children with disabilities and English language learners and be administered by qualified individuals.
- Coordinate with the performance standards for the Voluntary Prekindergarten Education Program.
- Provide data in a format for use in the single statewide information system.

This section also requires the OEL to develop a differential payment program based on teacher-child interaction quality measures. The differential payment may not exceed 15 percent for each care level and unit of child care for a provider that scores above the minimum threshold on the quality measures. The section provides that no more than 5 percent of the 15 percent total differential may be provided to providers who submit valid and reliable data to the statewide information system in the domains of language and executive functioning using the OEL-identified observation-based child assessments. Providers below the minimum threshold are ineligible for the differential payment.

Additionally, section 2 requires the OEL to revise the standard statewide provider contract for school readiness program providers to include the following provisions:

- Contracted slots, if applicable;
- Quality improvement strategies, if applicable;[39]
- Program assessment requirements; and
- Provisions for termination for cause, which must include a provider's failure to meet the minimum quality measures adopted as a part of the program assessment for a period of up to 5 years, unless the ELC determines that the provider is essential to meeting capacity needs and the provider has an active improvement plan as a part of the program assessment.

Section 2 requires that, by July 1, 2019, the single statewide information system must allow a parent to monitor the development of his or her child as the child moves among programs and enable analysis at the state, regional, and local level to measure child growth over time, program impact, and quality improvement and investment decisions.

Finally, this section requires the OEL to revise its annual report to include the number of school readiness program providers who have completed the program assessment requirement, the number of providers who have not met the minimum quality measures to be eligible for a contract, and the number of providers that have an active improvement plan based on the results of the program assessment.

[39] Section 658(c)(2)(a) of the Child Care and Development Block Grant Act of 2014.

Early Learning Coalitions (Section 4)

Section 4 amends s. 1002.85, F.S., to require each ELC plan to include:

- An assessment of local priorities within the county or multicounty region based on the needs of families and provider capacity using available community data.
- Local eligibility priorities for children and a payment rate schedule as a part of the ELC's procedures for implementation of the school readiness program.
- The use of contracted slots, as applicable, based on the results of the completed community needs assessment.
- A description of quality improvement strategies utilized by the ELC to strengthen teaching practices and improve child outcomes.

School Readiness Program

School Readiness Eligibility and Enrollment (Sections 1 and 5)

Section 1 amends s. 1002.81, F.S., to revise the definition of an "at-risk child" to specify that an at-risk child means a child in the custody of a parent who is considered a victim of domestic violence and is receiving services through a certified domestic violence center. Under current law, an "at-risk" child means a child in the custody of a parent who is a victim of domestic violence residing in a certified domestic violence center. This section broadens the definition of an "at-risk child" since it does not require a parent who is a victim of domestic violence to reside in the certified domestic violence center for the child to be considered at-risk.

Section 5 amends s. 1002.87, F.S., to revise child eligibility priorities and criteria by requiring ELCs, after serving children in the first two child priority categories, to prioritize services for children in subsequent categories based on the ELC's community needs assessment. Additionally, this section modifies the subsequent priority category relating to a child who is younger than 13 years of age from a working family that is economically disadvantaged to remove the requirement for priority enrollment in that category for such child who has a sibling enrolled in the school readiness program.

School Readiness Provider Standards (Section 6)

Section 6 amends s. 1002.88, F.S., to require school readiness program providers to participate in a program assessment identified by the OEL as an eligibility requirement to deliver the school readiness program.

School Readiness Funding (Section 7)

Section 7 amends s. 1002.89, F.S., to include implementation of the program assessment adopted by OEL as an allowable quality improvement activity for the awarding of grants and providing financial support to school readiness program providers.

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 requires school readiness program providers to participate in program assessment and quality improvement strategies as a condition of participation in the program, subject to legislative appropriation.[40]

C. Government Sector Impact:

The bill appropriates $6 million for the 2018-2019 fiscal year from the Child Care and Development Block Grant Trust Fund to the Office of Early Learning to implement the program assessment for school readiness program providers.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 1002.81, 1002.82, 1002.84, 1002.85, 1002.87, 1002.88, 1002.89, and 1002.92.

The bill creates an undesignated section of Florida Law.

[40] Florida Department of Education, Office of Early Learning, *2017 Agency Bill Analysis for SB 1254* (Dec. 19, 2017).

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 March 2, 2018:
The committee substitute maintains the substance of the bill with the following modifications:

- Requires the Office of Early Learning (OEL) to identify an observation-based child assessments for use at least 3 times a year, and specifies requirements related to such assessments.
- Adds a requirement to the single statewide information system to, by July 1, 2019, allow parents to monitor child development and enable analysis at state, regional, local levels of child growth and program impact and quality improvement.
- Specifies the program assessment is for children birth to age 5, and specifies components of the program assessment.
- Requires the OEL to develop, by July 1, 2019, a differential payment program not to exceed 15 percent based on the quality measures in the program assessment, with no more than 5 percent provided to providers who submit valid and reliable data regarding observation-based child assessment; and specifies that providers below the minimum threshold for contracting are ineligible for the differential payment.
- Specifies that the $6 million appropriation from the Child Care and Development Block Grant Trust to the OEL is to implement the program assessment.

CS by Education on January 29, 2018:
The committee substitute maintains the substance of the bill with some modifications. Specifically, the committee substitute:

- Modifies the definition of an "at-risk" child to mean a child who is in the custody of a parent who is considered a victim of domestic violence and who is receiving services through a certified domestic violence center. The bill defined such child to mean a child in the custody of a parent who is a victim of domestic violence as verified by a certified domestic violence center.
- Removes from the bill, the provision requiring a triennial evaluation of accrediting agencies for school readiness program providers.
- Revises from 20 percent to 10 percent, the differential payment for providers who meet specified criteria.
- Removes from the bill, the provision requiring the standard statewide contract to include health and safety provisions.
- Adds a provision to specify that provisions for termination for cause must include failure to meet the minimum quality standards adopted as a part of the program assessment for a period of 5 years, unless the coalition determines that the provider is essential to meeting capacity needs based on the specified local priority assessment and the provider has an active improvement plan.

B. Amendments:

None.

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

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/02/2018	.	
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The Committee on Appropriations (Passidomo) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Paragraph (e) of subsection (1) of section 1002.81, Florida Statutes, is amended to read:

1002.81 Definitions.—Consistent with the requirements of 45 C.F.R. parts 98 and 99 and as used in this part, the term:

(1) "At-risk child" means:

(e) A child in the custody of a parent who is considered a

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victim of domestic violence and is receiving services through ~~residing in~~ a certified domestic violence center.

Section 2. Present paragraphs (n) through (x) of subsection (2) of section 1002.82, Florida Statutes, are redesignated as paragraphs (p) through (z), respectively, paragraphs (k) and (m) and present paragraph (n) of subsection (2) and paragraph (a) of subsection (5) of that section are amended, and new paragraphs (n) and (o) are added to subsection (2) of that section, to read:

1002.82 Office of Early Learning; powers and duties.—

(2) The office shall:

(k) Identify observation-based child ~~Select~~ assessments that are valid, reliable, and developmentally appropriate for use at least three times a year ~~for use as preassessment and postassessment for the age ranges specified in the coalition plans~~. The assessments must:

1. Provide interval level and criterion-referenced data that measures equivalent levels of growth across the core domains of early childhood development and that can be used for determining developmentally appropriate learning gains.

2. Measure progress in the performance standards adopted pursuant to paragraph (j).

3. Provide for appropriate accommodations for children with disabilities and English language learners and be administered by qualified individuals, consistent with the developer's instructions.

4. Coordinate with the performance standards adopted by the department under s. 1002.67(1) for the Voluntary Prekindergarten Education Program.

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5. Provide data in a format for use in the single statewide information system to meet the requirements of paragraph (q) ~~be designed to measure progress in the domains of the performance standards adopted pursuant to paragraph (j), provide appropriate accommodations for children with disabilities and English language learners, and be administered by qualified individuals, consistent with the publisher's instructions~~.

(m) Adopt by rule a standard statewide provider contract to be used with each school readiness program provider, with standardized attachments by provider type. The office shall publish a copy of the standard statewide provider contract on its website. The standard statewide contract shall include, at a minimum, contracted slots, if applicable, in accordance with the Child Care and Development Block Grant Act of 2014, 45 C.F.R. parts 98 and 99; quality improvement strategies, if applicable; program assessment requirements; and provisions for provider probation, termination for cause, and emergency termination for those actions or inactions of a provider that pose an immediate and serious danger to the health, safety, or welfare of the children. The standard statewide provider contract shall also include appropriate due process procedures. During the pendency of an appeal of a termination, the provider may not continue to offer its services. Any provision imposed upon a provider that is inconsistent with, or prohibited by, law is void and unenforceable. Provisions for termination for cause must also include failure to meet the minimum quality measures established under paragraph (n) for a period of up to 5 years, unless the coalition determines that the provider is essential to meeting capacity needs based on the assessment under s. 1002.85(2)(j)

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and the provider has an active improvement plan pursuant to paragraph (n).

(n) Adopt a program assessment for school readiness program providers that measures the quality of teacher-child interactions, including emotional and behavioral support, engaged support for learning, classroom organization, and instructional support for children ages birth to 5 years. The program assessment must also include:

1. Quality measures, including a minimum threshold for contracting purposes and program improvement through an improvement plan.

2. Requirements for program participation, frequency of program assessment, and exemptions.

(o) No later than July 1, 2019, develop a differential payment program based on the quality measures adopted by the office under paragraph (n). The differential payment may not exceed a total of 15 percent for each care level and unit of child care for a child care provider. No more than 5 percent of the 15 percent total differential may be provided to providers who submit valid and reliable data to the statewide information system in the domains of language and executive functioning using a child assessment identified pursuant to paragraph (k). Providers below the minimum threshold for contracting purposes are ineligible for such payment.

(q) ~~(n)~~ Establish a single statewide information system that each coalition must use for the purposes of managing the single point of entry, tracking children's progress, coordinating services among stakeholders, determining eligibility of children, tracking child attendance, and streamlining

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administrative processes for providers and early learning coalitions. By July 1, 2019, the system, subject to ss. 1002.72 and 1002.97, shall:

1. Allow a parent to monitor the development of his or her child as the child moves among programs within the state.

2. Enable analysis at the state, regional, and local level to measure child growth over time, program impact, and quality improvement and investment decisions.

(5) By January 1 of each year, the office shall annually publish on its website a report of its activities conducted under this section. The report must include a summary of the coalitions' annual reports, a statewide summary, and the following:

(a) An analysis of early learning activities throughout the state, including the school readiness program and the Voluntary Prekindergarten Education Program.

1. The total and average number of children served in the school readiness program, enumerated by age, eligibility priority category, and coalition, and the total number of children served in the Voluntary Prekindergarten Education Program.

2. A summary of expenditures by coalition, by fund source, including a breakdown by coalition of the percentage of expenditures for administrative activities, quality activities, nondirect services, and direct services for children.

3. A description of the office's and each coalition's expenditures by fund source for the quality and enhancement activities described in s. 1002.89(6)(b).

4. A summary of annual findings and collections related to

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provider fraud and parent fraud.

5. Data regarding the coalitions' delivery of early learning programs.

6. The total number of children disenrolled statewide and the reason for disenrollment.

7. The total number of providers by provider type.

8. The number of school readiness program providers who have completed the program assessment required under paragraph (2)(n); the number of providers who have not met the minimum threshold for contracting established under that paragraph; and the number of providers that have an active improvement plan based on the results of the program assessment under that paragraph.

9.~~8.~~ The total number of provider contracts revoked and the reasons for revocation.

Section 3. Subsection (4) of section 1002.84, Florida Statutes, is amended to read:

1002.84 Early learning coalitions; school readiness powers and duties.—Each early learning coalition shall:

(4) Establish a regional Warm-Line as directed by the office pursuant to s. 1002.82(2)(t) ~~s. 1002.82(2)(r)~~. Regional Warm-Line staff shall provide onsite technical assistance, when requested, to assist child care facilities and family day care homes with inquiries relating to the strategies, curriculum, and environmental adaptations the child care facilities and family day care homes may need as they serve children with disabilities and other special needs.

Section 4. Paragraphs (c) and (d) of subsection (2) of section 1002.85, Florida Statutes, are amended, and paragraph

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(j) is added to that subsection, to read:

1002.85 Early learning coalition plans.—

(2) Each early learning coalition must biennially submit a school readiness program plan to the office before the expenditure of funds. A coalition may not implement its school readiness program plan until it receives approval from the office. A coalition may not implement any revision to its school readiness program plan until the coalition submits the revised plan to and receives approval from the office. If the office rejects a plan or revision, the coalition must continue to operate under its previously approved plan. The plan must include, but is not limited to:

(c) The coalition's procedures for implementing the requirements of this part, including:

1. Single point of entry.

2. Uniform waiting list.

3. Eligibility and enrollment processes and local eligibility priorities for children pursuant to s. 1002.87.

4. Parent access and choice.

5. Sliding fee scale and policies on applying the waiver or reduction of fees in accordance with s. 1002.84(8).

6. Use of preassessments and postassessments, as applicable.

7. Payment rate schedule.

8. Use of contracted slots, as applicable, based on the results of the assessment required under paragraph (j).

(d) A detailed description of the coalition's quality activities and services, including, but not limited to:

1. Resource and referral and school-age child care.

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2. Infant and toddler early learning.

3. Inclusive early learning programs.

4. Quality improvement strategies that strengthen teaching practices and increase child outcomes.

(j) An assessment of local priorities within the county or multi-county region based on the needs of families and provider capacity using available community data.

Section 5. Subsections (1), (2), (3), and (7) of section 1002.87, Florida Statutes, are amended to read:

1002.87 School readiness program; eligibility and enrollment.—

(1) Each early learning coalition shall give priority for participation in the school readiness program as follows:

(a) Priority shall be given first to a child younger than 13 years of age from a family that includes a parent who is receiving temporary cash assistance under chapter 414 and subject to the federal work requirements.

(b) Priority shall be given next to an at-risk child younger than 9 years of age.

(c) Subsequent priority shall be given , based on the early learning coalition's local priorities identified under s. 1002.85(2)(j), to children who meet the following criteria: ~~next to~~

1. A child from birth to the beginning of the school year for which the child is eligible for admission to kindergarten in a public school under s. 1003.21(1)(a)2. who is from a working family that is economically disadvantaged, and may include such child's eligible siblings, beginning with the school year in which the sibling is eligible for admission to kindergarten in a

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public school under s. 1003.21(1)(a)2. until the beginning of the school year in which the sibling is eligible to begin 6th grade, provided that the first priority for funding an eligible sibling is local revenues available to the coalition for funding direct services.

2.~~(d) Priority shall be given next to~~ A child of a parent who transitions from the work program into employment as described in s. 445.032 from birth to the beginning of the school year for which the child is eligible for admission to kindergarten in a public school under s. 1003.21(1)(a)2.

3.~~(e) Priority shall be given next to~~ An at-risk child who is at least 9 years of age but younger than 13 years of age. An at-risk child whose sibling is enrolled in the school readiness program within an eligibility priority category listed in paragraphs (a) and (b) and subparagraph (c)1.~~, (c)~~ shall be given priority over other children who are eligible under this paragraph.

4.~~(f) Priority shall be given next to~~ A child who is younger than 13 years of age from a working family that is economically disadvantaged. ~~A child who is eligible under this paragraph whose sibling is enrolled in the school readiness program under paragraph (c) shall be given priority over other children who are eligible under this paragraph.~~

5.~~(g) Priority shall be given next to~~ A child of a parent who transitions from the work program into employment as described in s. 445.032 who is younger than 13 years of age.

6.~~(h) Priority shall be given next to~~ A child who has special needs, has been determined eligible as a student with a disability, has a current individual education plan with a

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Florida school district, and is not younger than 3 years of age. A special needs child eligible under this paragraph remains eligible until the child is eligible for admission to kindergarten in a public school under s. 1003.21(1)(a)2.

7.~~(i) Notwithstanding paragraphs (a)-(d), priority shall be given last to~~ A child who otherwise meets one of the eligibility criteria in paragraphs (a) and (b) and subparagraphs (c)1. and 2.,~~-(d)~~ but who is also enrolled concurrently in the federal Head Start Program and the Voluntary Prekindergarten Education Program.

(2) A school readiness program provider may be paid only for authorized hours of care provided for a child in the school readiness program. A child enrolled in the Voluntary Prekindergarten Education Program may receive care from the school readiness program if the child is eligible according to the eligibility priorities and criteria established in subsection (1) ~~this section~~.

(3) Contingent upon the availability of funds, a coalition shall enroll eligible children, including those from its waiting list, according to the eligibility priorities and criteria established in subsection (1) ~~this section~~.

(7) If a coalition disenrolls children from the school readiness program, the coalition must disenroll the children in reverse order of the eligibility priorities and criteria listed in subsection (1) beginning with children from families with the highest family incomes. A notice of disenrollment must be sent to the parent and school readiness program provider at least 2 weeks before disenrollment to provide adequate time for the parent to arrange alternative care for the child. However, an

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at-risk child may not be disenrolled from the program without the written approval of the Child Welfare Program Office of the Department of Children and Families or the community-based lead agency.

Section 6. Paragraphs (h) through (q) of subsection (1) of section 1002.88, Florida Statutes, are redesignated as paragraphs (i) through (r), respectively, present paragraphs (m) and (o) of that subsection are amended, and a new paragraph (h) is added to that subsection, to read:

1002.88 School readiness program provider standards; eligibility to deliver the school readiness program.—

(1) To be eligible to deliver the school readiness program, a school readiness program provider must:

(h) Participate in the program assessment under s. 1002.82(2)(n).

(n)~~(m)~~ For a provider that is an informal provider, comply with the provisions of paragraph (m) ~~paragraph (l)~~ or maintain homeowner's liability insurance and, if applicable, a business rider. If an informal provider chooses to maintain a homeowner's policy, the provider must obtain and retain a homeowner's insurance policy that provides a minimum of $100,000 of coverage per occurrence and a minimum of $300,000 general aggregate coverage. The office may authorize lower limits upon request, as appropriate. An informal provider must add the coalition as a named certificateholder and as an additional insured. An informal provider must provide the coalition with a minimum of 10 calendar days' advance written notice of cancellation of or changes to coverage. The general liability insurance required by this paragraph must remain in full force and effect for the

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entire period of the provider's contract with the coalition.

(p) ~~(o)~~ Notwithstanding paragraph (m) ~~paragraph (l)~~, for a provider that is a state agency or a subdivision thereof, as defined in s. 768.28(2), agree to notify the coalition of any additional liability coverage maintained by the provider in addition to that otherwise established under s. 768.28. The provider shall indemnify the coalition to the extent permitted by s. 768.28.

Section 7. Paragraph (b) of subsection (6) of section 1002.89, Florida Statutes, is amended to read:

1002.89 School readiness program; funding.—

(6) Costs shall be kept to the minimum necessary for the efficient and effective administration of the school readiness program with the highest priority of expenditure being direct services for eligible children. However, no more than 5 percent of the funds described in subsection (5) may be used for administrative costs and no more than 22 percent of the funds described in subsection (5) may be used in any fiscal year for any combination of administrative costs, quality activities, and nondirect services as follows:

(b) Activities to improve the quality of child care as described in 45 C.F.R. s. 98.51, which shall be limited to the following:

1. Developing, establishing, expanding, operating, and coordinating resource and referral programs specifically related to the provision of comprehensive consumer education to parents and the public to promote informed child care choices specified in 45 C.F.R. s. 98.33.

2. Awarding grants and providing financial support to

school readiness program providers and their staff to assist them in meeting applicable state requirements for the program assessment required under s. 1002.82(2)(n), child care performance standards, implementing developmentally appropriate curricula and related classroom resources that support curricula, providing literacy supports, and providing continued professional development and training. Any grants awarded pursuant to this subparagraph shall comply with ss. 215.971 and 287.058.

3. Providing training, technical assistance, and financial support to school readiness program providers, staff, and parents on standards, child screenings, child assessments, child development research and best practices, developmentally appropriate curricula, character development, teacher-child interactions, age-appropriate discipline practices, health and safety, nutrition, first aid, cardiopulmonary resuscitation, the recognition of communicable diseases, and child abuse detection, prevention, and reporting.

4. Providing, from among the funds provided for the activities described in subparagraphs 1.-3., adequate funding for infants and toddlers as necessary to meet federal requirements related to expenditures for quality activities for infant and toddler care.

5. Improving the monitoring of compliance with, and enforcement of, applicable state and local requirements as described in and limited by 45 C.F.R. s. 98.40.

6. Responding to Warm-Line requests by providers and parents, including providing developmental and health screenings to school readiness program children.

Section 8. Paragraph (a) of subsection (3) of section 1002.92, Florida Statutes, is amended to read:

1002.92 Child care and early childhood resource and referral.—

(3) Child care resource and referral agencies shall provide the following services:

(a) Identification of existing public and private child care and early childhood education services, including child care services by public and private employers, and the development of a resource file of those services through the single statewide information system developed by the office under s. 1002.82(2)(p) ~~s. 1002.82(2)(n)~~. These services may include family day care, public and private child care programs, the Voluntary Prekindergarten Education Program, Head Start, the school readiness program, special education programs for prekindergarten children with disabilities, services for children with developmental disabilities, full-time and part-time programs, before-school and after-school programs, vacation care programs, parent education, the temporary cash assistance program, and related family support services. The resource file shall include, but not be limited to:

1. Type of program.

2. Hours of service.

3. Ages of children served.

4. Number of children served.

5. Program information.

6. Fees and eligibility for services.

7. Availability of transportation.

Section 9. For the 2018-2019 fiscal year, the sum of $6

481844

million in nonrecurring funds from the Child Care and Development Block Grant Trust Fund is appropriated to the Office of Early Learning to implement the program assessment required by s. 1002.82(2)(n), Florida Statutes.

Section 10. 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 early learning; amending s. 1002.81, F.S.; revising the definition of "at-risk child"; amending s. 1002.82, F.S.; revising the duties of the Office of Early Learning; revising the requirements for certain assessments; revising the standard statewide contract for providers; providing that failing to meet certain measures for a specified period is cause for termination of a provider; providing for the development of a program assessment for school readiness providers; providing program assessment requirements; requiring the office to set a payment differential for certain providers; providing requirements for such payment differential; revising requirements for a certain single statewide information system; revising the requirement for an analysis of early learning activities throughout the state; amending s. 1002.84, F.S.; conforming a cross-reference; amending s. 1002.85, F.S.; revising the

481844

required contents of the school readiness program plan each early learning coalition must submit; amending s. 1002.87, F.S.; revising the priority criteria for participation in the school readiness program; amending s. 1002.88, F.S.; revising school readiness provider requirements for program participation; conforming cross-references; amending s. 1002.89, F.S.; providing for the use of specified funds for a required assessment; amending s. 1002.92, F.S.; conforming a cross-reference; providing an appropriation; providing an effective date.

By the Committee on Education; and Senators Passidomo and Book

581-02590-18 20181254c1

A bill to be entitled

An act relating to early learning; amending s. 1002.81, F.S.; revising the definition of "at-risk child"; amending s. 1002.82, F.S.; revising the duties of the Office of Early Learning; revising the standard statewide contract for providers; providing that failing to meet certain measures for a specified period is cause for termination of a provider; providing for the development of a program assessment for school readiness providers; providing program assessment requirements; requiring the office to set a payment differential for certain providers; revising the requirement for an analysis of early learning activities throughout the state; amending s. 1002.84, F.S.; conforming a cross-reference; amending s. 1002.85, F.S.; revising the required contents of the school readiness program plan each early learning coalition must submit; amending s. 1002.87, F.S.; revising the priority criteria for participation in the school readiness program; amending s. 1002.88, F.S.; revising school readiness provider requirements for program participation; conforming cross-references; amending s. 1002.89, F.S.; providing for the use of specified funds for a required assessment; amending s. 1002.92, F.S.; conforming a cross-reference; providing an appropriation; providing an effective date.

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

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

581-02590-18 20181254c1

Section 1. Paragraph (e) of subsection (1) of section 1002.81, Florida Statutes, is amended to read:

1002.81 Definitions.—Consistent with the requirements of 45 C.F.R. parts 98 and 99 and as used in this part, the term:

(1) "At-risk child" means:

(e) A child in the custody of a parent who is considered a victim of domestic violence and is receiving services through ~~residing in~~ a certified domestic violence center.

Section 2. Present paragraphs (n) through (x) of subsection (2) of section 1002.82, Florida Statutes, are redesignated as paragraphs (p) through (z), respectively, paragraph (m) of subsection (2) and paragraph (a) of subsection (5) of that section are amended, and new paragraphs (n) and (o) are added to subsection (2) of that section, to read:

1002.82 Office of Early Learning; powers and duties.—

(2) The office shall:

(m) Adopt by rule a standard statewide provider contract to be used with each school readiness program provider, with standardized attachments by provider type. The office shall publish a copy of the standard statewide provider contract on its website. The standard statewide contract shall include, at a minimum, contracted slots, if applicable, in accordance with the Child Care and Development Block Grant Act of 2014, 45 C.F.R. parts 98 and 99; quality improvement strategies, if applicable; program assessment requirements; and provisions for provider probation, termination for cause, and emergency termination for those actions or inactions of a provider that pose an immediate and serious danger to the health, safety, or welfare of the

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

children. The standard statewide provider contract shall also include appropriate due process procedures. During the pendency of an appeal of a termination, the provider may not continue to offer its services. Any provision imposed upon a provider that is inconsistent with, or prohibited by, law is void and unenforceable. Provisions for termination for cause must include failure to meet the minimum quality measures established under paragraph (n) for a period of up to 5 years, unless the coalition determines that the provider is essential to meeting capacity needs based on the assessment under s. 1002.85(2)(j) and the provider has an active improvement plan pursuant to paragraph (n).

(n) Adopt a program assessment for school readiness program providers that measures the quality of teacher-child interactions, including emotional and behavioral support, engaged support for learning, classroom organization, and instructional support. The program assessment must also include the adoption of quality measures, including a minimum threshold for contracting purposes; a process for program participation; exemptions; and improvement through the completion of an improvement plan.

(o) Subject to appropriation, provide for a differential payment, based on the quality measures adopted by the office under paragraph (n), of up to 10 percent for each care level and unit of child care for a child care provider that has completed a program assessment and scored above the minimum threshold for contracting purposes.

(5) By January 1 of each year, the office shall annually publish on its website a report of its activities conducted

under this section. The report must include a summary of the coalitions' annual reports, a statewide summary, and the following:

(a) An analysis of early learning activities throughout the state, including the school readiness program and the Voluntary Prekindergarten Education Program.

1. The total and average number of children served in the school readiness program, enumerated by age, eligibility priority category, and coalition, and the total number of children served in the Voluntary Prekindergarten Education Program.

2. A summary of expenditures by coalition, by fund source, including a breakdown by coalition of the percentage of expenditures for administrative activities, quality activities, nondirect services, and direct services for children.

3. A description of the office's and each coalition's expenditures by fund source for the quality and enhancement activities described in s. 1002.89(6)(b).

4. A summary of annual findings and collections related to provider fraud and parent fraud.

5. Data regarding the coalitions' delivery of early learning programs.

6. The total number of children disenrolled statewide and the reason for disenrollment.

7. The total number of providers by provider type.

8. The number of school readiness program providers who have completed the program assessment required under paragraph (2)(n); the number of providers who have not met the minimum threshold for contracting established under to paragraph (2)(n);

and the number of providers that have an active improvement plan based on the results of the program assessment under paragraph (2)(n).

9.~~8.~~ The total number of provider contracts revoked and the reasons for revocation.

Section 3. Subsection (4) of section 1002.84, Florida Statutes, is amended to read:

1002.84 Early learning coalitions; school readiness powers and duties.—Each early learning coalition shall:

(4) Establish a regional Warm-Line as directed by the office pursuant to s. 1002.82(2)(t) ~~s. 1002.82(2)(r)~~. Regional Warm-Line staff shall provide onsite technical assistance, when requested, to assist child care facilities and family day care homes with inquiries relating to the strategies, curriculum, and environmental adaptations the child care facilities and family day care homes may need as they serve children with disabilities and other special needs.

Section 4. Paragraphs (c) and (d) of subsection (2) of section 1002.85, Florida Statutes, are amended, and paragraph (j) is added to that subsection, to read:

1002.85 Early learning coalition plans.—

(2) Each early learning coalition must biennially submit a school readiness program plan to the office before the expenditure of funds. A coalition may not implement its school readiness program plan until it receives approval from the office. A coalition may not implement any revision to its school readiness program plan until the coalition submits the revised plan to and receives approval from the office. If the office rejects a plan or revision, the coalition must continue to

operate under its previously approved plan. The plan must include, but is not limited to:

(c) The coalition's procedures for implementing the requirements of this part, including:

1. Single point of entry.

2. Uniform waiting list.

3. Eligibility and enrollment processes and local eligibility priorities for children pursuant to s. 1002.87.

4. Parent access and choice.

5. Sliding fee scale and policies on applying the waiver or reduction of fees in accordance with s. 1002.84(8).

6. Use of preassessments and postassessments, as applicable.

7. Payment rate schedule.

8. Use of contracted slots, as applicable, based on the results of the assessment required under paragraph (j).

(d) A detailed description of the coalition's quality activities and services, including, but not limited to:

1. Resource and referral and school-age child care.

2. Infant and toddler early learning.

3. Inclusive early learning programs.

4. Quality improvement strategies that strengthen teaching practices and increase child outcomes.

(j) An assessment of local priorities within the county or multicounty region based on the needs of families and provider capacity using available community data.

Section 5. Subsections (1), (2), (3), and (7) of section 1002.87, Florida Statutes, are amended to read:

1002.87 School readiness program; eligibility and

enrollment.—

(1) Each early learning coalition shall give priority for participation in the school readiness program as follows:

(a) Priority shall be given first to a child younger than 13 years of age from a family that includes a parent who is receiving temporary cash assistance under chapter 414 and subject to the federal work requirements.

(b) Priority shall be given next to an at-risk child younger than 9 years of age.

(c) Subsequent priority shall be given, based on the early learning coalition's local priorities identified under s. 1002.85(2)(j), to children who meet the following criteria: ~~next to~~

1. A child from birth to the beginning of the school year for which the child is eligible for admission to kindergarten in a public school under s. 1003.21(1)(a)2. who is from a working family that is economically disadvantaged, and may include such child's eligible siblings, beginning with the school year in which the sibling is eligible for admission to kindergarten in a public school under s. 1003.21(1)(a)2. until the beginning of the school year in which the sibling is eligible to begin 6th grade, provided that the first priority for funding an eligible sibling is local revenues available to the coalition for funding direct services.

2.~~(d) Priority shall be given next to~~ A child of a parent who transitions from the work program into employment as described in s. 445.032 from birth to the beginning of the school year for which the child is eligible for admission to kindergarten in a public school under s. 1003.21(1)(a)2.

3.~~(e) Priority shall be given next to~~ An at-risk child who is at least 9 years of age but younger than 13 years of age. An at-risk child whose sibling is enrolled in the school readiness program within an eligibility priority category listed in paragraphs (a) and (b) and subparagraph (c)1. ~~(a)-(c)~~ shall be given priority over other children who are eligible under this paragraph.

4.~~(f) Priority shall be given next to~~ A child who is younger than 13 years of age from a working family that is economically disadvantaged. ~~A child who is eligible under this paragraph whose sibling is enrolled in the school readiness program under paragraph (c) shall be given priority over other children who are eligible under this paragraph.~~

5.~~(g) Priority shall be given next to~~ A child of a parent who transitions from the work program into employment as described in s. 445.032 who is younger than 13 years of age.

6.~~(h) Priority shall be given next to~~ A child who has special needs, has been determined eligible as a student with a disability, has a current individual education plan with a Florida school district, and is not younger than 3 years of age. A special needs child eligible under this paragraph remains eligible until the child is eligible for admission to kindergarten in a public school under s. 1003.21(1)(a)2.

7.~~(i) Notwithstanding paragraphs (a)-(d), priority shall be given last to~~ A child who otherwise meets one of the eligibility criteria in paragraphs (a) and (b) and subparagraphs (c)1. and 2. ~~(a)-(d)~~ but who is also enrolled concurrently in the federal Head Start Program and the Voluntary Prekindergarten Education Program.

(2) A school readiness program provider may be paid only for authorized hours of care provided for a child in the school readiness program. A child enrolled in the Voluntary Prekindergarten Education Program may receive care from the school readiness program if the child is eligible according to the eligibility priorities and criteria established in subsection (1) ~~this section~~.

(3) Contingent upon the availability of funds, a coalition shall enroll eligible children, including those from its waiting list, according to the eligibility priorities and criteria established in subsection (1) ~~this section~~.

(7) If a coalition disenrolls children from the school readiness program, the coalition must disenroll the children in reverse order of the eligibility priorities and criteria listed in subsection (1) beginning with children from families with the highest family incomes. A notice of disenrollment must be sent to the parent and school readiness program provider at least 2 weeks before disenrollment to provide adequate time for the parent to arrange alternative care for the child. However, an at-risk child may not be disenrolled from the program without the written approval of the Child Welfare Program Office of the Department of Children and Families or the community-based lead agency.

Section 6. Present paragraphs (h) through (q) of subsection (1) of section 1002.88, Florida Statutes, are redesignated as paragraphs (i) through (r), respectively, present paragraphs (m) and (o) of subsection (1) of that section are amended, and a new paragraph (h) is added to subsection (1) of that section, to read:

1002.88 School readiness program provider standards; eligibility to deliver the school readiness program.—

(1) To be eligible to deliver the school readiness program, a school readiness program provider must:

(h) Participate in the program assessment under s. 1002.82(2)(n).

(n)~~(m)~~ For a provider that is an informal provider, comply with the provisions of paragraph (m) ~~(l)~~ or maintain homeowner's liability insurance and, if applicable, a business rider. If an informal provider chooses to maintain a homeowner's policy, the provider must obtain and retain a homeowner's insurance policy that provides a minimum of $100,000 of coverage per occurrence and a minimum of $300,000 general aggregate coverage. The office may authorize lower limits upon request, as appropriate. An informal provider must add the coalition as a named certificateholder and as an additional insured. An informal provider must provide the coalition with a minimum of 10 calendar days' advance written notice of cancellation of or changes to coverage. The general liability insurance required by this paragraph must remain in full force and effect for the entire period of the provider's contract with the coalition.

(p)~~(o)~~ Notwithstanding paragraph (m) ~~(l)~~, for a provider that is a state agency or a subdivision thereof, as defined in s. 768.28(2), agree to notify the coalition of any additional liability coverage maintained by the provider in addition to that otherwise established under s. 768.28. The provider shall indemnify the coalition to the extent permitted by s. 768.28.

Section 7. Paragraph (b) of subsection (6) of section 1002.89, Florida Statutes, is amended to read:

1002.89 School readiness program; funding.—

(6) Costs shall be kept to the minimum necessary for the efficient and effective administration of the school readiness program with the highest priority of expenditure being direct services for eligible children. However, no more than 5 percent of the funds described in subsection (5) may be used for administrative costs and no more than 22 percent of the funds described in subsection (5) may be used in any fiscal year for any combination of administrative costs, quality activities, and nondirect services as follows:

(b) Activities to improve the quality of child care as described in 45 C.F.R. s. 98.51, which shall be limited to the following:

1. Developing, establishing, expanding, operating, and coordinating resource and referral programs specifically related to the provision of comprehensive consumer education to parents and the public to promote informed child care choices specified in 45 C.F.R. s. 98.33.

2. Awarding grants and providing financial support to school readiness program providers and their staff to assist them in meeting applicable state requirements for the program assessment required under s. 1002.82(2)(n), child care performance standards, implementing developmentally appropriate curricula and related classroom resources that support curricula, providing literacy supports, and providing continued professional development and training. Any grants awarded pursuant to this subparagraph shall comply with ss. 215.971 and 287.058.

3. Providing training, technical assistance, and financial

support to school readiness program providers, staff, and parents on standards, child screenings, child assessments, child development research and best practices, developmentally appropriate curricula, character development, teacher-child interactions, age-appropriate discipline practices, health and safety, nutrition, first aid, cardiopulmonary resuscitation, the recognition of communicable diseases, and child abuse detection, prevention, and reporting.

4. Providing, from among the funds provided for the activities described in subparagraphs 1.-3., adequate funding for infants and toddlers as necessary to meet federal requirements related to expenditures for quality activities for infant and toddler care.

5. Improving the monitoring of compliance with, and enforcement of, applicable state and local requirements as described in and limited by 45 C.F.R. s. 98.40.

6. Responding to Warm-Line requests by providers and parents, including providing developmental and health screenings to school readiness program children.

Section 8. Paragraph (a) of subsection (3) of section 1002.92, Florida Statutes, is amended to read:

1002.92 Child care and early childhood resource and referral.—

(3) Child care resource and referral agencies shall provide the following services:

(a) Identification of existing public and private child care and early childhood education services, including child care services by public and private employers, and the development of a resource file of those services through the

single statewide information system developed by the office under s. 1002.82(2)(p) ~~s. 1002.82(2)(n)~~. These services may include family day care, public and private child care programs, the Voluntary Prekindergarten Education Program, Head Start, the school readiness program, special education programs for prekindergarten children with disabilities, services for children with developmental disabilities, full-time and part-time programs, before-school and after-school programs, vacation care programs, parent education, the temporary cash assistance program, and related family support services. The resource file shall include, but not be limited to:

1. Type of program.
2. Hours of service.
3. Ages of children served.
4. Number of children served.
5. Program information.
6. Fees and eligibility for services.
7. Availability of transportation.

Section 9. For the 2018-2019 fiscal year, the sum of $6 million from the Child Care and Development Block Grant Trust Fund is appropriated to the Office of Early Learning to implement the provisions of s. 1002.82(2)(n), Florida Statutes, established by this act.

Section 10. 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 9, 2018

I respectfully request that **Senate Bill #1254**, relating to Early Learning, 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)

3/2/18
Meeting Date

1254
Bill Number (if applicable)

Topic EARLY LEARNING

Amendment Barcode (if applicable)

Name JESSICA SCHER

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing United Way of Miami-Dade

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

03/02/2018
Meeting Date

1254
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic EARLY LEARNING

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing FLORIDA CHILDREN'S 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)

3-2-18
Meeting Date

1254
Bill Number (if applicable)

Topic Early Learning

Amendment Barcode (if applicable)

Name Natalie King

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing Helios Education Foundation

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on 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 1314 (188068)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Transportation, Tourism, and Economic Development); Commerce and Tourism Committee; and Senator Brandes
SUBJECT:	Florida Capital Formation Act
DATE:	February 26, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harmsen	McKay	CM	**Fav/CS**
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/CS/SB 1314 creates the Institute for Commercialization of Florida Technology (institute) to increase the availability of seed and early stage investment capital in Florida without requiring an ongoing state expenditure for such support.

The institute will replace the Institute for Commercialization of Public Research (ICPR). The institute will differ from the ICPR in several ways. Namely, the institute will:

- Be operated by a private fund manager who will be paid from fees based on the institute's investment activities, rather than a professional staff;
- No longer partner with publicly supported universities or research institutes to support their commercialization efforts; and
- Not be supported by or function under the Department of Economic Opportunity (department).

Like the ICPR, however, the institute will partner with innovation and target industry businesses to foster investment funding, especially in seed-stage, startup, and early stage companies; advise companies about successful management, operations, and development processes; and provide opportunities to attract further investment.

The bill has minimal impact on state expenditures.

The bill takes effect July 1, 2018.

II. Present Situation:

Venture Capital and Early Stage Business Investments

Venture capital is money provided by investors who choose to fund young companies that have the potential to develop into profitable businesses. Venture capital is an important source of equity for startup companies because its investment does not typically require security (such as a guarantee of repayment) from the business.[1]

Venture capital investments are typically made in lieu of traditional bank loans because the start-up or expansion-oriented companies they fund have a higher level of investment risk. The investor may eventually share in the risk of a failed business or the reward of a successful one. These investments are also characterized by a higher level of equity participation in the business by the investor, including mentorship or networking to assist the company with management and other obstacles.[2]

Investment in a technology or idea that has not yet been developed into a fully-fledged product or business is also known as "seed investing" or "early-stage investing."[3]

As of September 2017, one Florida website lists approximately 38 venture capital firms in the state.[4] Although the venture capital industry has grown in the last 20 years, it has done so only in limited geographic regions – generally limiting the investment of capital in businesses in or near those regions.[5]

Florida Capital Formation Act

In 2007, the Florida Capital Formation Act was enacted to address the need to increase the availability of seed capital and early stage venture capital for emerging Florida companies.[6] The act created the Florida Opportunity Fund and the Institute for the Commercialization of Public Research.

The intent of the act, in part, is to "mobilize private investment in a broad variety of venture capital partnerships in diversified industries and geographies" and "mobilize venture equity

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[1] National Venture Capital Association, *Funding Innovation: How Venture Funded Startups Grow, Transform and Impact the U.S. Economy*, available at https://nvca.org/ecosystem/funding-innovation/ (last visited Feb. 16, 2018).
[2] *Id*.
[3] Florida Office of Economic and Demographic Research, *Return-on-Investment of the Florida Microfinance Loan and Microfinance Guarantee Programs*, p. 37, (Jan. 2018), *available at* http://edr.state.fl.us/Content/returnoninvestment/MicrofinanceLoanandGuaranteeProgams.pdf (last visited Feb. 15, 2018).
[4] Florida Trend, *Business FLORIDA: Business Assistance and Funding, Florida's Venture Capital Firms*, (Sept. 22, 2017) available at http://www.floridatrend.com/article/17615/floridas-venture-capital-firms--2015 (last visited Feb. 15, 2018).
[5] Cromwell Schmisseur, *Program Evaluation of the US Department of Treasury State Small Business Credit Initiative*, p. 61 (Oct. 2016), available at https://www.treasury.gov/resource-center/sb-programs/Documents/SSBCI_pe2016_Full_Report.pdf (last visited Feb. 16, 2018).
[6] Chapter 2007-189, L.O.F., codified as ss. 288.9621-288.9625, F.S.

capital for investment in such a manner as to result in a significant potential to create new businesses and jobs in this state."[7]

The Opportunity Fund was created to invest in seed and early stage venture capital funds (fund of funds), focusing on opportunities in Florida, and it can also make direct investments, including loans, in individual businesses and infrastructure projects. Enterprise Florida, Inc., facilitates the fund.

Further, the Legislature intended to create an institute "to mentor, market, and attract capital to such commercialization ventures throughout the state." The Institute for the Commercialization of Public Research (ICPR) assists in the commercialization of products developed by research and development activities of innovation businesses, publicly supported universities and colleges, research institutes, and other publicly supported organizations within Florida.[8]

Institute for the Commercialization of Public Research

The ICPR is a private-public partnership that operates as a nonprofit corporation. It administers company support services and seed capital funding programs to help early-stage businesses or ideas for businesses grow and thrive in Florida.[9] The ICPR operates with the support of mentors, advisors, and donors, and the Division of Strategic Business Development of the department provides support for and works closely with the ICPR.[10]

The ICPR has two primary locations, one at the University of Florida in Gainesville and the other at Florida Atlantic University in Boca Raton. A board of directors governs the ICPR and is responsible for managing the ICPR's funds, presenting the ICPR's annual report, and overseeing the ICPR's general affairs.[11] The board of directors is composed of the executive director of the department (or designee); the president of the university where the ICPR is located, or when the ICPR is located at multiple universities, the presidents' agreed upon designee; and three directors appointed by the Governor.[12]

The ICPR matches commercially viable technologies with management talent and capital. Additionally, the ICPR focuses on technologies and companies that originate from publicly supported organizations across the state and companies in Florida's innovation businesses and target industries.[13]

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[7] Section 288.9622, F.S.
[8] Department of Economic Opportunity, *Long Range Program Plan Fiscal Year 2018-2019 through 2022-2023*, p. 21 (September 29, 2017), available at http://floridafiscalportal.state.fl.us/Document.aspx?ID=17087&DocType=PDF (last visited Feb. 16, 2018).
[9] Department of Economic Opportunity, *Long Range Program Plan* at p. 21. Institute for Commercialization of Public Research, *Who We Are*, available at http://www.florida-institute.com/who-we-are (last visited Feb. 16, 2018).
[10] Section 20.60, F.S. Department of Economic Opportunity, *Long Range Program Plan* at pp. 19 and 42.
[11] Section 288.9625, F.S. Institute for Commercialization of Public Research, *Who We Are: Board of Directors*, available at http://www.florida-institute.com/about/board-of-directors (last visited Feb. 15, 2018).
[12] Section 288.9625(4), F.S.
[13] Sections 288.0189 and 288.106(2)(q), F.S., sets forth the innovation businesses and target industries. Institute for the Commercialization of Public Research, *Annual Report Brochure FY 2016-2017* (Nov. 22, 2017), available at http://www.florida-institute.com/news/florida-institutes-2016-17-brochure (last visited Feb. 17, 2018).

Before the institute facilitates a company or organization's efforts to commercialize its products, it must be accepted by the institute through an application process. Publicly supported organizations may recommend that a company attempting to commercialize its research, technology, or patents be accepted by the institute. Upon acceptance by the institute, a company receives mentoring and other services, which includes developing marketing information on the company, using institute resources to attract capital investment into the company, and other resources that may encourage effective management, growth, capitalization technology protection, or marketing or business success.[14]

Current law prohibits the ICPR from charging for its services unless they are provided to a private company, as compared to a state university or its affiliated organizations.

Since 2007, the Legislature has appropriated an estimated total of $33 million in state funds to the ICPR for operating costs, grants, loans, and seed stage funds.[15] The ICPR did not receive any funding in Fiscal Year 2017-2018.

Florida Technology Seed Capital Fund[16]

The ICPR also administers the Florida Technology Seed Capital Fund as a corporate subsidiary. The fund was preceded by the Florida Research Commercialization Matching Grant Program, which expired in 2013, and the Seed Capital Accelerator Program (SCAP).[17]

The fund was established to "foster greater private-sector investment funding, to encourage seed-stage investments in start-up companies, and to advise companies about how to restructure existing management, operation, or production to attract advantageous business opportunities."[18] Proceeds from sale of equity or debt repayments are returned to the fund for reinvestment.

A company at the initial seed-stage investment is eligible to receive investment from the fund only after undergoing a peer-reviewed process undertaken by the fund's investor advisory board. The ICRP will invest in a company if:[19]

- The company's overall health and ability for growth is strong, including its intellectual property position, management capability, paths to market or commercialization, growth-potential, and ability to leverage additional funding;
- The company was identified by a publicly funded research institution;
- The company is a target industry business;
- The company was identified by a private-sector lead investor who has performed industry-standard due diligence; and
- The advisory board and fund manager reviewed and recommended the company's proposal.

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[14] *See* Institute for Commercialization of Public Research, *For Entrepreneurs: Frequently Asked Questions*, available at http://www.florida-institute.com/about/faq (last visited Feb. 17, 2018).
[15] Office of Economic and Demographic Research, *Return-on-Investment of the Florida Microfinance Loan and Microfinance Guarantee Programs* (Jan. 2018), p. 43-45, available at http://edr.state.fl.us/Content/returnoninvestment/MicrofinanceLoanandGuaranteeProgams.pdf (last visited Feb. 18, 2018).
[16] Section 288.96255, F.S. Institute for Commercialization of Public Research, *For Entrepreneurs: Company Funding*, available at http://www.florida-institute.com/programs/company-funding (last visited Feb. 5, 2018).
[17] *See* s. 288.9552, F.S. (*2011*), and s. 39, ch. 2011-76, L.O.F.
[18] Section 288.26255(1), F.S.
[19] Section 288.96255(3)-(4), F.S.

Through the fund, the ICPR provides seed funding in amounts of $50,000 up to $300,000 to qualified companies, either as debt or equity. A cumulative investment of $500,000 is the maximum the ICPR will invest in a single company before it requires a 2:1, private sector match of the investment. The ICPR has invested in a total of 66 companies through this program.[20]

III. Effect of Proposed Changes:

Institute for Commercialization of Florida Technology

The bill creates the Institute for Commercialization of Florida Technology (institute) as a successor to the ICPR. The institute differs from the ICPR in several ways. Namely, the institute: (1) will be operated by a private fund manager rather than a professional staff; (2) will no longer partner with publicly supported universities or research institutes to support their commercialization efforts; and (3) will not be supported by or function under the department.

Section 3 amends s. 288.9622, F.S., to evince legislative intent to permit the use of a private asset manager familiar with the seed and early stage investment industry in Florida to reduce the operational costs of the Florida Technology Seed Capital Fund (Technology Fund) and the SCAP. It is the goal of the Legislature to operate these entities without requiring ongoing state expenditures.

Section 5 amends s. 288.9655, F.S., to replace the ICPR with the Institute for Commercialization of Florida Technology. The purpose of the institute is to assist in the commercialization of products developed by innovation businesses; advise the businesses about how to restructure existing management, operations, product development, or service development to attract further business opportunities; foster greater private sector investment funding; and encourage seed stage investments in startup and early stage companies.[21]

Creation of the Institute

Section 1 amends s. 20.60, F.S. to remove management of the ICPR and promotion of the commercialization of products, services, or ideas developed in public universities or institutions from the department's duties and purposes. The bill specifies that the institute is not a direct-support organization of the department.

Section 5 amends s. 288.9625(1), F.S., to provide that the institute is not subject to the control, supervision, or direction by the department in any manner. The section also amends s. 288.9625(3), F.S., to remove the requirement that the institute's articles of incorporation be approved by the department.

Board of Directors

Section 5 reorganizes the Board of Directors to consist of three members instead of five and provides for currently appointed directors of the ICPR to finish out their terms. Going forward,

[20] Institute for Commercialization of Public Research, *For Entrepreneurs: Company Funding*, available at http://www.florida-institute.com/programs/company-funding (last visited Feb. 5, 2018).
[21] See lines 206-213 and 415-424 of the bill.

to replace a vacant board position the private fund manager will submit three recommendations to the board for consideration. The board and the private fund manager each have a vote to select a new board member from the recommended list or "from a new list of three nominees that were not included on the previous list." It is unclear who nominates the new list.

The board's duties include oversight of the private fund manager's activities; performance of duties as outlined by the institute's bylaws; and provision of an annual report of the institute's activities to the Governor, President of the Senate, and Speaker of the House.

The directors must have expertise in selecting and supervising early stage investment managers or in fiduciary management of investment funds and other pertinent areas of expertise.

The directors may not receive compensation for their service but may be reimbursed for expenses as approved by the private fund manager pursuant to s. 112.061, F.S. Additionally, the directors may not have a financial interest in any investment in any of the institute's portfolio companies and are subject to any restriction on conflicts of interest as specified in the institute's organizational documents. The institute must indemnify its directors and the private fund manager to the broadest extent possible.

Private Fund Manager

The bill states that the "purpose of the institute's use of a private fund manager is to alleviate the state's burden of the continued and future operational and management costs related to the [Technology Fund] and [SCAP] program."

Eligibility

Section 5 provides that the private fund manager (fund manager) must be a for-profit limited liability company or a for-profit corporation that was formed and is governed and operated in accordance with ch. 605 or 607, F.S. Additionally, the fund manager may not be a public corporation or instrumentality of the state; is not a state agency; cannot claim sovereign immunity; is not subject to ch. 287, F.S., regarding procurement of goods and services; and is not governed by code of ethics provisions in part III of ch. 112, F.S.

The fund manager must be experienced in the field and must specifically have:

- Expertise and experience in the management and operation of early stage companies in Florida;
- Experience with early stage business ventures investments in Florida;
- Working knowledge and understanding of the institute's investment portfolio and relevant industries of those companies; and
- Individuals in its employ who have knowledge of the institute's investment portfolio and its companies, as well as financial, technical, and business expertise to manage the Technology Fund activity.

Duties

Section 5 provides for the fund manager's duties as they relate to the institute; **section 6** provides for the duties as they relate to the Technology Fund. They are substantially the same duties.

The fund manager is required to manage the investment-related affairs of the institute, including management of the assets of the institute's Technology Fund and SCAP investment portfolios; and conduct activities on the institute's behalf in accordance with law.

The fund manager must also issue an annual report to the Board of Directors by November 1 each year. The annual report is a public record, and must include:
- Information on any assistance provided to an innovation business;
- Description of the benefits that accrue to the state as a result of the institute's activity; and
- Independently audited financial statements, including information related to the receipt and calculation of the net profits of the investment portfolio.

The fund manager is authorized to:
- Negotiate terms of investment, sale, and liquidation with portfolio and nonportfolio companies;
- Execute contracts and contract amendments with portfolio and nonportfolio companies;
- Seek new qualified companies to participate in the Technology Fund;
- Receive and remit investment capital from the sale or liquidation of any part of the institute's investment portfolio, loan proceeds, or other investment returns;
- Mentor, assist with the development of marketing information or business plans, and assist with attracting capital investment and other resources to a portfolio company in order to foster its growth, marketing, or business success;
- Market the Technology Fund and accelerator program to potential investors;
- Facilitate meetings between prospective investors and the institute's portfolio companies; and
- Collaborate with publicly supported organizations that may be able to provide further resources or special knowledge to the institute's portfolio companies.

The fund manager is paid reasonable fees consistent with the standard practices of the fund management industry, consisting of:
- An operational management fee, including reimbursement of expenses that is paid from the proceeds of loans repaid to the SCAP or other capital, proceeds, and returns available in the Technology Fund;
- A portfolio fee paid from proceeds of each sale or asset liquidation from the institute's investment portfolio; and
- A closing fee paid from the investment amount paid by the Technology Fund to a company at the closing of each investment.

Florida Technology Seed Capital Fund

Section 5 outlines the institute's mission, which is to develop partnerships with, in particular, "innovation businesses" as defined in s. 288.1089, F.S., relating to the Innovation Incentive Program.

Section 6 provides that the institute must also strive to invest in target industry businesses, as defined in s. 288.106(2)(q), F.S., which represent diverse and stable markets.

Section 6 amends s. 288.96255, F.S., the Technology Fund, to revise the authorized investments and requirements for investment. The institute may select a company or organization for partnership with the institute or for funding from the Technology Fund only after the fund manager, using processes modeled on the investment industry's standard practices, has evaluated whether the company meets the statutory requirements, which are similar to current law. The fund manager must complete due diligence before approving a company for investment.

The bill repeals statutory limitations on investments from the fund – specifically the current limitation of initial investments of $50,000-$300,000, a cumulative maximum of $500,000, and a required 2:1 match for additional investment.

Net profits from proceeds of sale or liquidation of assets or portions of assets of the investment portfolio will be returned to the Technology Fund for reinvestment, after payment of applicable costs, professional fees, expenses, fees paid to the private fund manager, and disbursement to private investors.

Fees paid to the private fund manager include are for performing due diligence and an investment closing fee, in addition to reasonable attorney fees, the operational management fee, the portfolio fee, the closing fee, and other costs in connection with making the investment.

The institute or the private fund manager can disburse payments to private investors if the institute or the private fund manager decides to transfer any portion of the Technology Fund into a private fund or special purpose vehicle. Such private fund or special purpose vehicle can receive additional private investment. The disbursement from such private fund or special purpose vehicle back to the Technology Fund or private investors is the respective pro rata portion of any net profits from the sale or liquidation of assets in the private fund or special purpose vehicle.

Public Records and Meetings Exemption

Section 7 amends s. 288.9627, F.S., to transfer the public records and meetings exemption that previously applied to the ICPR to the institute.

This section makes the following materials held by the institute exempt from disclosure pursuant to s. 119.07(1), F.S., and s. 24(a), Art. I of the Florida Constitution:

- Documents and materials that related to a business' methods of manufacture or production, potential trade secrets, or patentable material that is provided to the institute by a proprietor;
- Information that would identify an anonymous investor or potential investor;
- Information received from another person, state, nation, or the federal government, which is confidential or exempt pursuant to the originator's laws; and
- Proprietary confidential business information.

Additionally, the bill exempts from Florida's public meetings laws those portions of the institute's meetings wherein information that is confidential and exempt according to Florida law is discussed.

Miscellaneous

Section 2 makes conforming changes to s. 288.9621, F.S., the short title for the Florida Capital Formation Act.

Section 4 provides definitions for terms used in the Florida Capital Formation Act.

Section 8 provides an effective date of July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

The bill transfers the current public records and meetings exemptions for the ICPR to the institute. The bill also expands the scope and authority of the institute to make investments in seed and early stage businesses. It is unclear if the amendments made by the bill to ss. 288.9625 and 288.96255, F.S., would be an expansion of the current public records and meetings exemptions.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Depending on the financial performance of the Technology Fund and the institute, there may be a reduction in the funds available for investment in private businesses that seek investment capital.

C. Government Sector Impact:

The ICPR did not receive an appropriation in Fiscal Year 2017-2018. The bill attempts to reduce future appropriations to the successor institute for its investment, management, and related expenses, by permitting the institute to fund itself through its activities. According to the most recent independent audit of the ICPR completed in Fiscal Year 2016 filed with the Florida Auditor General, the total program expenses were

$3,732,937.[22] The fund manager will require expenditures pursuant to statute, but these will be made from profits of the institute, rather than state appropriation.

University and other publicly funded research institutes may see a reduction in funds available for the commercialization of their technologies because of the privatization of the institute.

The Department of Economic Opportunity may experience minimal cost savings by eliminating the contracting and related oversight responsibilities of the department over the institute.

VI. Technical Deficiencies:

It is unclear whether the duties outlined in s. 288.9625(5), F.S., apply to the Board of Directors or the fund manager.

VII. Related Issues:

The bill refers to the SCAP or "Accelerator Program." The Accelerator Program expired in 2013, and therefore does not require any ongoing operational funding. The Accelerator Program, however, does have outstanding loans that will not be due until December 2019, and therefore may require actions by the fund manager for purposes of collection and reinvestment of the funds.[23]

The bill provides that the institute must create the Fund; the Legislature could directly create the Fund.

The bill requires that a company or organization be "based in" Florida to receive assistance from the institute. This term may need to be defined to provide clarity in interpretation.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 20.60, 288.9621, 288.9622, 288.9623, 288.9625, 288.96255, and 288.9627.

[22] Florida Auditor General, *Institute for Commercialization of Public Research: 2015-16 Fiscal Year*, available at https://flauditor.gov/pages/nonprofit_forprofit%20pages/institute%20for%20the%20commercialization%20of%20public%20research.htm (last visited Feb. 16, 2018).
[23] *Id*. at p. 21.

IX. Additional Information:

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

Recommended CS/CS by Appropriations Subcommittee on Transportation, Tourism, and Economic Development on February 21, 2018:
The committee substitute:

- Restores a portion of current law legislative intent related to the Florida Opportunity Fund;
- Adds a provision that the Institute for Commercialization of Florida Technology is not subject to the control, supervision, or direction of the DEO; and
- Corrects a grammar issue.

CS by Commerce and Tourism on February 6, 2018:
The CS clarifies the terms for directors appointed before July 1, 2018, and the succession of any director appointed thereafter.

B. Amendments:

None.

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

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

A bill to be entitled

An act relating to the Florida Capital Formation Act; amending s. 20.60, F.S.; deleting the requirement that the Department of Economic Opportunity manage certain activities related to the commercialization of specified products, services, and ideas; specifying that the Institute for Commercialization of Florida Technology is not an appropriate direct-support organization; amending s. 288.9621, F.S.; including s. 288.96255, F.S., in the Florida Capital Formation Act; amending s. 288.9622, F.S.; revising legislative intent; amending s. 288.9623, F.S.; defining terms; amending s. 288.9625, F.S.; redesignating the Institute for the Commercialization of Public Research as the Institute for Commercialization of Florida Technology; specifying that the institute is not subject to control, supervision, or direction by the department; deleting provisions regarding the institute's responsibilities; requiring that the investment-related affairs of the institute be managed by the private fund manager and overseen by the board of directors; restructuring the board of directors and the selection process for the board of directors; specifying term limits of the board members under certain circumstances; requiring the board of directors to amend the bylaws of the institute under

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certain circumstances; providing that a director is subject to restrictions on certain conflicts of interest; prohibiting a director from having a financial interest in certain investments; authorizing a director to be reimbursed for certain expenses; granting the institute certain powers; requiring the institute to indemnify certain persons; delegating certain duties to the board of directors; revising to whom the board must provide a copy of the annual report and who may require and receive supplemental data relative to the institute's operation; specifying that certain requirements be met before the private fund manager is authorized to make an investment in a company, on behalf of the institute; deleting provisions relating to certain duties of the institute; deleting provisions relating to certain fees charged by the institute and the prohibition on using capital in support of certain entities; specifying that the annual report is considered a public record subject to certain exemptions; revising the requirements of the institute's annual report; listing requirements and prohibitions for the private fund manager; stating the purpose of the institute's use of the private fund manager; requiring the private fund manager to assume the management of certain assets; authorizing the private fund manager to act on behalf of the institute for certain purposes; requiring that the private fund manager be paid certain fees; authorizing the private fund manager to

undertake certain activities on behalf of the institute; requiring the private fund manager to issue an annual report to the board of directors by a specific date; specifying that the annual report is considered a public record subject to certain exemptions; requiring that the report contain certain information; amending s. 288.96255, F.S.; requiring that certain proceeds be returned to the Florida Technology Seed Capital Fund after the payment of certain costs and fees; requiring the institute to employ a private fund manager; requiring the private fund manager to perform specific duties; requiring that the private fund manager receive certain fees and costs at a specified time; requiring the private fund manager to use a certain process to evaluate a proposal; requiring the private fund manager to consider certain factors when approving a company for investment; deleting specific requirements for the investment of funds; authorizing the private fund manager, in addition to the institute, to perform certain tasks; amending s. 288.9627, F.S.; conforming provisions to changes made by this act; providing an effective date.

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

Section 1. Paragraph (e) of subsection (4) and paragraph (b) of subsection (9) of section 20.60, Florida Statutes, are amended to read:

20.60 Department of Economic Opportunity; creation; powers and duties.—

(4) The purpose of the department is to assist the Governor in working with the Legislature, state agencies, business leaders, and economic development professionals to formulate and implement coherent and consistent policies and strategies designed to promote economic opportunities for all Floridians. To accomplish such purposes, the department shall:

(e) Manage the activities of public-private partnerships and state agencies in order to avoid duplication and promote coordinated and consistent implementation of programs in areas including, but not limited to, tourism; international trade and investment; business recruitment, creation, retention, and expansion; minority and small business development; rural community development; ~~commercialization of products, services, or ideas developed in public universities or other public institutions;~~ and the development and promotion of professional and amateur sporting events.

(9) The executive director shall:

(b) Serve as the manager for the state with respect to contracts with Enterprise Florida, Inc., ~~the Institute for the Commercialization of Public Research,~~ and all applicable direct-support organizations. To accomplish the provisions of this section and applicable provisions of chapter 288, and notwithstanding the provisions of part I of chapter 287, the director shall enter into specific contracts with Enterprise Florida, Inc., ~~the Institute for the Commercialization of Public Research,~~ and other appropriate direct-support organizations. Such contracts may be for multiyear terms and must ~~shall~~ include

specific performance measures for each year. For purposes of this section, the Florida Tourism Industry Marketing Corporation and the Institute for Commercialization of Florida Technology are not ~~is not an~~ appropriate direct-support organizations ~~organization~~.

Section 2. Section 288.9621, Florida Statutes, is amended to read:

288.9621 Short title.—Sections 288.9621-288.96255 ~~Sections 288.9621-288.9625~~ may be cited as the "Florida Capital Formation Act."

Section 3. Section 288.9622, Florida Statutes, is amended to read:

288.9622 Findings and intent.—

(1) The Legislature finds and declares that there is a need to increase the availability of seed capital and early stage investment ~~venture equity~~ capital for emerging companies in the state, including, without limitation, businesses ~~enterprises~~ in life sciences, information technology, advanced manufacturing processes, aviation and aerospace, and homeland security and defense, as well as other industries of strategic importance to this state ~~strategic technologies~~.

(2) It is the intent of the Legislature that ss. 288.9621-288.96255 ~~ss. 288.9621-288.9625~~ serve to mobilize private investment in a broad variety of ~~venture capital~~ partnerships in diversified industries and geographies; retain private sector investment criteria focused on rate of return; allow the Institute for Commercialization of Florida Technology to use ~~the services of~~ highly qualified private fund managers experienced in the seed and early stage development industry in this state;

outline the use, qualifications, and activities of the private management by a private fund manager of the assets of the Seed Capital Accelerator Program and the Florida Technology Seed Capital Fund investment portfolio of the Institute for Commercialization of Florida Technology ~~venture capital industry regardless of location~~; facilitate the organization of the Florida Opportunity Fund as an investor in seed and early stage businesses, infrastructure projects, venture capital funds, and angel funds; and precipitate capital investment and extensions of credit to and in the Florida Opportunity Fund.

(3) It is the intent of the Legislature to mobilize investment ~~venture equity~~ capital ~~for investment~~ in such a manner as to result in a significant potential to create new businesses and jobs in this state which ~~that~~ are based on high growth potential technologies, products, or services and which ~~that~~ will further diversify the economy of this state.

(4) It is the intent of the Legislature to reduce the ongoing operational cost and burden of managing the Florida Technology Seed Capital Fund and the Seed Capital Accelerator Program to this state by engaging a private asset management entity in this state which is familiar with the seed and early stage investment industry in this state. This entity would be responsible for the management of the assets of the Seed Capital Accelerator Program and the Florida Technology Seed Capital Fund investment portfolio without requiring ongoing budget expenditures by this state ~~that an institute be created to mentor, market, and attract capital to such commercialization ventures throughout the state~~.

Section 4. Section 288.9623, Florida Statutes, is amended

to read:

288.9623 Definitions.—As used in ss. 288.9621-288.96255, the term ~~ss. 288.9621-288.9625~~:

(1) "Accelerator program" means the Seed Capital Accelerator Program managed by the institute.

(2)~~(1)~~ "Board" means the board of directors of the Florida Opportunity Fund.

(3)~~(2)~~ "Fund" means the Florida Opportunity Fund.

(4) "Institute" means the Institute for Commercialization of Florida Technology.

(5) "Investment portfolio" means individual or collective investment assets held under the technology fund.

(6) "Net profits" means the total gross proceeds received from the sale or liquidation of an asset of the investment portfolio less any costs, legal fees, professional fees, consulting fees, government fees, brokerage fees, taxes, management fees pursuant to s. 288.9625(12)(b), disbursement to private investors pursuant to s. 288.96255(6), or other fees, costs, and expenses incurred in the sale or liquidation of any of the investment portfolio assets.

(7) "Portfolio companies" means the companies who are part of the Florida Technology Seed Capital Fund investment portfolio.

(8) "Private fund manager" means the private entity, or its designee, selected to manage the investment portfolio on behalf of the institute.

(9) "Technology fund" means the Florida Technology Seed Capital Fund managed by the institute.

Section 5. Section 288.9625, Florida Statutes, is amended

to read:

288.9625 Institute for ~~the~~ Commercialization of Florida Technology ~~Public Research~~. ~~There is established at a public university or research center in this state the Institute for the Commercialization of Public Research~~.

(1) The institute is ~~shall be~~ a nonprofit ~~not-for-profit~~ corporation registered, incorporated, and operated in accordance with chapter 617. The institute is not subject to control, supervision, or direction by the department in any manner, including, but not limited to, personnel, purchasing, transactions involving real or personal property, and budgetary matters.

(2) The purpose of the institute is to assist in the commercialization of products developed by the research and development activities of an innovation business, including, but not limited to, those ~~as~~ defined in s. 288.1089~~; a publicly supported college, university, or research institute; or any other publicly supported organization in this state~~. The institute shall fulfill its purpose in the best interests of the state. The institute:

(a) Is a corporation primarily acting as an instrumentality of the state pursuant to s. 768.28(2), for the purposes of sovereign immunity;

(b) Is not an agency within the meaning of s. 20.03(11);

(c) Is subject to the open records and meetings requirements of s. 24, Art. I of the State Constitution, chapter 119, and s. 286.011;

(d) Is not subject to ~~the provisions of~~ chapter 287;

(e) Is ~~Shall be~~ governed by the code of ethics for public

officers and employees as set forth in part III of chapter 112; and

(f) May create corporate subsidiaries. ~~;~~

~~(g) Shall support existing commercialization efforts at state universities; and~~

~~(h) May not supplant, replace, or direct existing technology transfer operations or other commercialization programs, including incubators and accelerators.~~

(3) The articles of incorporation of the institute must ~~be approved in a written agreement with the department. The agreement and the articles of incorporation shall~~:

(a) Provide that the institute shall provide equal employment opportunities for all persons regardless of race, color, religion, gender, national origin, age, handicap, or marital status;

(b) Provide that the institute is subject to the public records and meeting requirements of s. 24, Art. I of the State Constitution;

(c) Provide that all officers, directors, and employees of the institute are ~~shall be~~ governed by the code of ethics for public officers and employees as set forth in part III of chapter 112;

(d) Provide that members of the board of directors of the institute are responsible for the prudent use of all public and private funds and that they will ensure that the use of funds is in accordance with all applicable laws, bylaws, and contractual requirements; and

(e) Provide that the fiscal year of the institute is from July 1 to June 30.

(4) The investment-related affairs of the institute shall be managed by the private fund manager, and overseen by a board of directors who shall serve without compensation. Each director shall have only one vote. The chair of the board of directors shall be selected by a majority vote of the directors, a quorum being present. ~~The board of directors shall consist of the following five members:~~

~~(a) The executive director of the department, or the director's designee.~~

~~(b) The president of the university where the institute is located or the president's designee unless multiple universities jointly sponsor the institute, in which case the presidents of the sponsoring universities shall agree upon a designee.~~

(a) ~~(c)~~ The board of directors shall consist of three directors appointed pursuant to the procedures and requirements of this section ~~by the Governor~~ to 3-year staggered terms, to which the directors may be reappointed.

(b) For any director appointed before July 1, 2018, the term of service for that director may continue through the end of his or her current term. The vacancy created by the expiration of such term must be filled pursuant to the procedures and requirements of this section.

(c) The bylaws of the institute shall be amended accordingly by the board of directors to reflect the requirements of this section.

(d) Upon vacancy, or within 90 days before an anticipated vacancy by the expiration of a term of a director, the private fund manager shall submit a list of three eligible nominees, which may include the incumbent director, to replace the

outgoing director. The board of directors, voting along with the private fund manager, may appoint a director from the nominee list or may request and appoint a director from a new list of three nominees that were not included on the previous list.

(e) The persons appointed as replacement directors must include persons who have expertise in the area of the selection and supervision of early stage investment managers or in the fiduciary management of investment funds and other areas of expertise as considered appropriate.

(f) Directors are subject to any restrictions on conflicts of interest specified in the organizational documents and may not have a financial interest in any venture capital investment in any portfolio company.

(g) Directors may be reimbursed for all reasonable, necessary, and actual expenses as determined and approved by the private fund manager pursuant to s. 112.061.

(h) The institute shall have all powers granted under its organizational documents and shall indemnify its directors and the private fund manager to the broadest extent permissible under the laws of this state.

(5) The board of directors shall oversee the private fund manager to ensure consistency with the Florida Capital Formation Act, perform those duties as may be delegated to it in the bylaws of the institute, and provide a copy of the institute's annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives~~, and the president of the university at which the institute is located~~.

(6) The ~~department, the president and the board of trustees of the university where the institute is located, the~~ Auditor

General~~,~~ and the Office of Program Policy Analysis and Government Accountability may require and receive from the institute or its independent auditor any detail or supplemental data relative to the operation of the institute.

(7) To the extent funds for investment are available in the technology fund, the private fund manager, on behalf of the institute, may make an investment in a company or organization if all of the following requirements are met:

(a) Before providing assistance, the institute accepted ~~To be eligible for assistance,~~ the company or organization attempting to commercialize its product based on the guidelines under s. 288.96255(4) ~~must be accepted by the institute before receiving the institute's assistance~~.

(b) The company or organization is based in this state ~~institute shall receive recommendations from any publicly supported organization that a company that is commercializing the research, technology, or patents from a qualifying publicly supported organization should be accepted into the institute~~.

~~(c) The institute shall thereafter review the business plans and technology information of each such recommended company. If accepted, the institute shall mentor the company, develop marketing information on the company, and use its resources to attract capital investment into the company, as well as bring other resources to the company which may foster its effective management, growth, capitalization, technology protection, or marketing or business success.~~

~~(8) The institute shall:~~

~~(a) Maintain a centralized location to showcase companies and their technologies and products;~~

~~(b) Develop an efficient process to inventory and publicize companies and products that have been accepted by the institute for commercialization;~~

~~(c) Routinely communicate with private investors and venture capital organizations regarding the investment opportunities in its showcased companies;~~

~~(d) Facilitate meetings between prospective investors and eligible organizations in the institute;~~

~~(c) Hire full-time staff who understand relevant technologies needed to market companies to the angel investors and venture capital investment community; and~~

~~(f) Develop cooperative relationships with publicly supported organizations all of which work together to provide resources or special knowledge that is likely to be helpful to institute companies.~~

(8)~~(9)~~ Except as provided under s. 288.96255, the institute may not develop or accrue any ownership, royalty, patent, or other such rights over or interest in companies or products in the institute except in connection with financing provided directly to client companies and shall maintain the confidentiality of proprietary information.

~~(10) The institute may not charge for services provided to state universities and affiliated organizations, community colleges, or state agencies; however, the institute may deliver and charge for services to private companies and affiliated organizations if providing a service does not interfere with the core mission of the institute. The institute may not use its capital in support of private companies or affiliated organizations whose products were not developed by research and~~

~~development activities of a publicly supported college, university, or research institute, or any other organization.~~

(9)~~(11)~~ By December 1 of each year, the institute shall issue an annual report concerning its activities to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The annual report shall be considered a public record, as provided in paragraph (3)(b), subject to any appropriate exemptions under s. 288.9627. The annual report must ~~shall~~ include the following:

(a) Information on any assistance provided by the institute to an innovation business, as defined in s. 288.1089~~; a publicly supported college, university, or research institute; or any other publicly supported organization in the state~~.

(b) A description of the benefits to this state resulting from the institute, including the number of businesses created, associated industries started, the number of jobs created, and the growth of related projects.

(c) Independently audited financial statements, including statements that show receipts and expenditures during the preceding fiscal year for personnel, management fees, administration, and operational costs of the institute.

(10) The private fund manager:

(a) Must be a for-profit limited liability company or a for-profit corporation formed, governed, and operated in accordance with chapter 605 or chapter 607, respectively.

(b) Shall conduct activities on behalf of the institute which are consistent with the purposes set forth in this section.

(c) Must have expertise and experience in the management

and operation of early stage companies in this state.

(d) Must have experience with investment in early stage ventures in this state and have a working knowledge and understanding of the investment portfolio and the relevant industries of the portfolio companies in this state.

(e) Shall employ personnel and professionals who have knowledge of the investment portfolio and portfolio companies of the institute, as well as financial, technical, and business expertise to manage the technology fund activity.

(f) May not be a public corporation or instrumentality of the state.

(g) Is not a corporation primarily acting as an instrumentality of the state pursuant to s. 768.28(2), for the purposes of sovereign immunity.

(h) Is not an agency within the meaning of s. 20.03(11).

(i) Is not subject to chapter 287.

(j) May not be governed by the code of ethics for public officers and employees as set forth in part III of chapter 112.

(11) The purpose of the institute's use of a private fund manager is to alleviate the state's burden of the continued and future operational and management costs related to the technology fund and accelerator program, while allowing the institute, through the activities of the private fund manager, to continue to foster greater private-sector investment funding, to encourage seed-stage investments in startup and early stage companies, and to advise companies about how to restructure existing management, operations, product development, or service development to attract advantageous business opportunities.

(12) The private fund manager shall assume the management

of the assets of the accelerator program and the technology fund investment portfolios associated with the institute.

(a) The private fund manager has the authority on behalf of the institute to:

1. Negotiate investment, sale, and liquidation terms with portfolio and nonportfolio companies;

2. Develop and execute contracts, or amendments thereto, with portfolio and nonportfolio companies;

3. Seek new qualified companies for the investment of funds from the technology fund;

4. Receive, on behalf of the institute, investment capital from the sale or liquidation of any portion of the investment portfolio, loan proceeds, or other investment returns, and remit such capital, proceeds, and returns to the technology fund pursuant to s. 288.96255, except as otherwise provided in this section and s. 288.96255; and

5. Perform additional duties set forth in s. 288.96255.

(b) The private fund manager shall be paid reasonable fees consistent with industry fund management practices and consisting of:

1. An operational management fee, including the reimbursement of expenses, paid from the proceeds of the repayment of loans from the accelerator program or other capital, proceeds, and returns available in the technology fund;

2. A portfolio fee paid from the proceeds of each sale or liquidation of assets or portions of the assets of the investment portfolio; and

3. A closing fee paid from the investment amount paid by the technology fund to a company at the closing of each

investment.

(13) The private fund manager may undertake the following activities on behalf of the institute:

(a) Mentor, assist with the development of marketing information, and assist with attracting capital investment, as well as bring other resources to the company which may foster its effective management, growth, capitalization, technology protection, or marketing or business success;

(b) Communicate with private investors and venture capital organizations regarding investment opportunities in the portfolio companies of the technology fund and accelerator program;

(c) Facilitate meetings between prospective investors and the companies; and

(d) Develop cooperative relationships with publicly supported organizations that work together to provide resources or special knowledge likely to be helpful to portfolio companies.

(14) By November 1 of each year, the private fund manager shall issue an annual report to the board of directors of the institute concerning the activities the private fund manager conducted which relate to existing accelerator program and technology fund investments in order for the board to be in compliance with its report obligations under subsection (9). The annual report provided by the private fund manager shall be considered a public record, as provided in paragraph (3)(b), subject to any appropriate exemptions under s. 288.9627. The annual report, at a minimum, must include:

(a) A description of the benefits to this state resulting

from the assets of the accelerator program and technology fund, including the number of jobs created, the amount of capital the companies raised, and other benefits relating to increased research expenditures and company growth.

(b) Independently audited financial statements related to the receipt and calculation of the net profits of the investment portfolio.

Section 6. Subsection (1) and subsections (3) through (7) of section 288.96255, Florida Statutes, are amended to read:

288.96255 Florida Technology Seed Capital Fund; creation; duties.—

(1) The Institute for ~~the~~ Commercialization of Florida Technology ~~Public Research~~ shall create the Florida Technology Seed Capital Fund as a corporate subsidiary. The purpose of the technology fund is to foster greater private-sector investment funding, to encourage seed-stage investments in start-up companies, and to advise companies about how to restructure existing management, operation, or production to attract advantageous business opportunities. The net profits of the proceeds of each sale or liquidation of assets or portions of the assets of the investment portfolio must ~~a sale of the equity held by the fund shall~~ be returned to the technology fund for reinvestment after payment of the applicable costs, professional fees, expenses, fees pursuant to s. 288.9625(12)(b), and disbursement to private investors pursuant to paragraph (6)(e).

(3) The institute shall employ a private fund manager pursuant to s. 288.9625 ~~professionals who have both technical and business expertise~~ to manage the investment portfolio and technology fund activity. The private fund manager ~~institute~~

~~shall establish an investor advisory board comprised of venture capital professionals and early-stage investors from this and other states who~~ shall advise the institute and guide the ~~fund~~ management of the technology fund and make funding recommendations, provided that capital for investment is available in the technology fund. The private fund manager shall receive reasonable fees consistent with industry practices for performing due diligence and an investment closing fee paid out of the technology fund at the closing of each investment in addition to reasonable attorney fees, other fees prescribed in s. 288.9625(12)(b), and other costs in connection with making an investment. ~~Administrative costs paid out of the fund shall be determined by the investor advisory board.~~

(4) The private fund manager ~~institute~~ shall use a thorough and detailed process that is modeled after investment industry practices ~~the best practices of the investment industry~~ to evaluate a proposal. In order to approve a company for investment, the private fund manager, on behalf of the institute, must consider if:

(a) The company has a strong intellectual property position, a capable management team, readily identifiable paths to market or commercialization, significant job-growth potential, the ability to provide other sources of capital to leverage the state's investment, and the potential to attract additional funding;

(b) The private fund manager has had an opportunity to complete due diligence to its satisfaction ~~company has been identified by a publicly funded research institution~~;

(c) The ~~start-up~~ company is a target industry business as

defined in s. 288.106(2); and

(d) ~~The company has been identified by~~ An approved private-sector lead investor who has demonstrated due diligence typical of start-up investments in evaluating the potential of the company has identified the company.~~; and~~

~~(c) The advisory board and fund manager have reviewed the company's proposal and recommended it.~~

(5) ~~(a) Seed~~ Funds from the technology fund may be invested if the institute approves a company and the initial seed-stage investment. ~~The initial seed-stage investment must be at least $50,000, but no more than $300,000. The initial seed-stage investment requires a one-to-one, private-sector match of investment.~~

~~(b) Additional seed funds may be invested in a company if approved by the institute. The cumulative total of investment in a single company may not exceed $500,000. Any additional investment amount requires a two-to-one, private-sector match of investment.~~

(6) The institute or private fund manager may:

(a) Provide a company with value-added support services in the areas of business plan development and strategy, the preparation of investor presentations, and other critical areas identified by the private fund manager ~~institute~~ to increase its chances for long-term viability and success;

(b) Encourage appropriate investment funds to become preapproved to match investment funds;

(c) Market the attractiveness of the state as an early-stage investment location; ~~and~~

(d) Collaborate with state economic-development

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organizations, national associations of seed and angel funds, and other innovation-based associations to create an enhanced state entrepreneurial ecosystem; and~~.~~

(e) Transfer any portion of the assets of the investment portfolio, on behalf of the institute, into a private fund or special purpose vehicle, receive additional private investment in the private fund or special purpose vehicle, manage the private fund or special purpose vehicle, and distribute to the technology fund and the private investors the respective pro rata portion of any net profits from the sale or liquidation of the assets of such private fund or special purpose vehicle.

~~(7) The institute shall annually evaluate the activities and results of the funding, taking into consideration that seed investment horizons span from 3 to 7 years.~~

Section 7. Section 288.9627, Florida Statutes, is amended to read:

288.9627 Exemptions from public records and public meetings requirements for the Institute for ~~the~~ Commercialization of Florida Technology ~~Public Research~~.—

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

(a) "Institute for ~~the~~ Commercialization of Florida Technology ~~Public Research~~" or "institute" means the institute established by s. 288.9625.

(b)1. "Proprietary confidential business information" means information that has been designated by the proprietor when provided to the institute as information that is owned or controlled by a proprietor; that is intended to be and is treated by the proprietor as private, the disclosure of which would harm the business operations of the proprietor and has not

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been intentionally disclosed by the proprietor unless pursuant to a private agreement that provides that the information will not be released to the public except as required by law or legal process, or pursuant to law or an order of a court or administrative body; and that concerns:

a. Trade secrets as defined in s. 688.002.

b. Financial statements and internal or external auditor reports of a proprietor corporation, partnership, or person requesting confidentiality under this statute, unless publicly released by the proprietor.

c. Meeting materials related to financial, operating, investment, or marketing information of the proprietor corporation, partnership, or person.

d. Information concerning private investors in the proprietor corporation, partnership, or person.

2. "Proprietary confidential business information" does not include:

a. The identity and primary address of the proprietor's principals.

b. The dollar amount and date of the financial commitment or contribution made by the institute.

c. The dollar amount, on a fiscal-year-end basis, of cash repayments or other fungible distributions received by the institute from each proprietor.

d. The dollar amount, if any, of the total management fees and costs paid on an annual fiscal-year-end basis by the institute.

(c) "Proprietor" means a corporation, partnership, or person that has applied for or received assistance, financial or

otherwise, from the institute and that controls or owns the proprietary confidential business information.

(2) PUBLIC RECORDS EXEMPTION.—

(a) The following records held by the institute are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

1. Materials that relate to methods of manufacture or production, potential trade secrets, or patentable material received, generated, ascertained, or discovered during the course of research or through research projects conducted by universities and other publicly supported organizations in this state and that are provided to the institute by a proprietor.

2. Information that would identify an investor or potential investor who desires to remain anonymous in projects reviewed by the institute for assistance.

3. Any information received from a person from another state or nation or the Federal Government which is otherwise confidential or exempt pursuant to the laws of that state or nation or pursuant to federal law.

4. Proprietary confidential business information for 7 years after the termination of the institute's financial commitment to the company.

(b) At the time any record made confidential and exempt by this subsection, or portion thereof, is legally available or subject to public disclosure for any other reason, that record, or portion thereof, shall no longer be confidential and exempt and shall be made available for inspection and copying.

(3) PUBLIC MEETINGS EXEMPTION.—

(a) That portion of a meeting of the institute's board of

directors at which information is discussed which is confidential and exempt under subsection (2) is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution.

(b) Any exempt portion of a meeting shall be recorded and transcribed. The board of directors shall record the times of commencement and termination of the meeting, all discussion and proceedings, the names of all persons present at any time, and the names of all persons speaking. An exempt portion of any meeting may not be off the record.

(c) A transcript and minutes of exempt portions of meetings are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(4) REQUEST TO INSPECT OR COPY A RECORD.—

(a) Records made confidential and exempt by this section may be released, upon written request, to a governmental entity in the performance of its official duties and responsibilities.

(b) Notwithstanding the provisions of paragraph (2)(a), a request to inspect or copy a public record that contains proprietary confidential business information shall be granted if the proprietor of the information fails, within a reasonable period of time after the request is received by the institute, to verify the following to the institute through a written declaration in the manner provided by s. 92.525:

1. That the requested record contains proprietary confidential business information and the specific location of such information within the record;

2. If the proprietary confidential business information is a trade secret, a verification that it is a trade secret as defined in s. 688.002;

694 3. That the proprietary confidential business information
695 is intended to be and is treated by the proprietor as private,
696 is the subject of efforts of the proprietor to maintain its
697 privacy, and is not readily ascertainable or publicly available
698 from any other source; and
699 4. That the disclosure of the proprietary confidential
700 business information to the public would harm the business
701 operations of the proprietor.
702 (c)1. Any person may petition a court of competent
703 jurisdiction for an order for the public release of those
704 portions of any record made confidential and exempt by
705 subsection (2).
706 2. Any action under this subsection must be brought in Palm
707 Beach County or Alachua County, and the petition or other
708 initial pleading shall be served on the institute and, if
709 determinable upon diligent inquiry, on the proprietor of the
710 information sought to be released.
711 3. In any order for the public release of a record under
712 this subsection, the court shall make a finding that:
713 a. The record or portion thereof is not a trade secret as
714 defined in s. 688.002;
715 b. A compelling public interest is served by the release of
716 the record or portions thereof which exceed the public necessity
717 for maintaining the confidentiality of such record; and
718 c. The release of the record will not cause damage to or
719 adversely affect the interests of the proprietor of the released
720 information, other private persons or business entities, or the
721 institute.
722 (5) PENALTIES.—Any person who willfully and knowingly

723 violates this section commits a misdemeanor of the first degree,
724 punishable as provided in s. 775.082 or s. 775.083.
725 Section 8. 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 1314
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Transportation, Tourism, and Economic Development); Commerce and Tourism Committee; and Senator Brandes
SUBJECT:	Florida Capital Formation Act
DATE:	March 5, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harmsen	McKay	CM	**Fav/CS**
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/CS/SB 1314 creates the Institute for Commercialization of Florida Technology (institute) to increase the availability of seed and early stage investment capital in Florida without requiring an ongoing state expenditure for such support.

The institute will replace the Institute for Commercialization of Public Research (ICPR). The institute will differ from the ICPR in several ways. Namely, the institute will:

- Be operated by a private fund manager who will be paid from fees based on the institute's investment activities, rather than a professional staff;
- No longer partner with publicly supported universities or research institutes to support their commercialization efforts; and
- Not be supported by or function under the Department of Economic Opportunity (department).

Like the ICPR, however, the institute will partner with innovation and target industry businesses to foster investment funding, especially in seed-stage, startup, and early stage companies; advise companies about successful management, operations, and development processes; and provide opportunities to attract further investment.

The bill has minimal impact on state expenditures.

The bill takes effect July 1, 2018.

II. Present Situation:

Venture Capital and Early Stage Business Investments

Venture capital is money provided by investors who choose to fund young companies that have the potential to develop into profitable businesses. Venture capital is an important source of equity for startup companies because its investment does not typically require security (such as a guarantee of repayment) from the business.[1]

Venture capital investments are typically made in lieu of traditional bank loans because the start-up or expansion-oriented companies they fund have a higher level of investment risk. The investor may eventually share in the risk of a failed business or the reward of a successful one. These investments are also characterized by a higher level of equity participation in the business by the investor, including mentorship or networking to assist the company with management and other obstacles.[2]

Investment in a technology or idea that has not yet been developed into a fully-fledged product or business is also known as "seed investing" or "early-stage investing."[3]

As of September 2017, one Florida website lists approximately 38 venture capital firms in the state.[4] Although the venture capital industry has grown in the last 20 years, it has done so only in limited geographic regions – generally limiting the investment of capital in businesses in or near those regions.[5]

Florida Capital Formation Act

In 2007, the Florida Capital Formation Act was enacted to address the need to increase the availability of seed capital and early stage venture capital for emerging Florida companies.[6] The act created the Florida Opportunity Fund and the Institute for the Commercialization of Public Research.

The intent of the act, in part, is to "mobilize private investment in a broad variety of venture capital partnerships in diversified industries and geographies" and "mobilize venture equity

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[1] National Venture Capital Association, *Funding Innovation: How Venture Funded Startups Grow, Transform and Impact the U.S. Economy*, available at https://nvca.org/ecosystem/funding-innovation/ (last visited Feb. 16, 2018).
[2] *Id*.
[3] Florida Office of Economic and Demographic Research, *Return-on-Investment of the Florida Microfinance Loan and Microfinance Guarantee Programs*, p. 37, (Jan. 2018), *available at* http://edr.state.fl.us/Content/returnoninvestment/MicrofinanceLoanandGuaranteeProgams.pdf (last visited Feb. 15, 2018).
[4] Florida Trend, *Business FLORIDA: Business Assistance and Funding, Florida's Venture Capital Firms*, (Sept. 22, 2017) available at http://www.floridatrend.com/article/17615/floridas-venture-capital-firms--2015 (last visited Feb. 15, 2018).
[5] Cromwell Schmisseur, *Program Evaluation of the US Department of Treasury State Small Business Credit Initiative*, p. 61 (Oct. 2016), available at https://www.treasury.gov/resource-center/sb-programs/Documents/SSBCI_pe2016_Full_Report.pdf (last visited Feb. 16, 2018).
[6] Chapter 2007-189, L.O.F., codified as ss. 288.9621-288.9625, F.S.

capital for investment in such a manner as to result in a significant potential to create new businesses and jobs in this state."[7]

The Opportunity Fund was created to invest in seed and early stage venture capital funds (fund of funds), focusing on opportunities in Florida, and it can also make direct investments, including loans, in individual businesses and infrastructure projects. Enterprise Florida, Inc., facilitates the fund.

Further, the Legislature intended to create an institute "to mentor, market, and attract capital to such commercialization ventures throughout the state." The Institute for the Commercialization of Public Research (ICPR) assists in the commercialization of products developed by research and development activities of innovation businesses, publicly supported universities and colleges, research institutes, and other publicly supported organizations within Florida.[8]

Institute for the Commercialization of Public Research

The ICPR is a private-public partnership that operates as a nonprofit corporation. It administers company support services and seed capital funding programs to help early-stage businesses or ideas for businesses grow and thrive in Florida.[9] The ICPR operates with the support of mentors, advisors, and donors, and the Division of Strategic Business Development of the department provides support for and works closely with the ICPR.[10]

The ICPR has two primary locations, one at the University of Florida in Gainesville and the other at Florida Atlantic University in Boca Raton. A board of directors governs the ICPR and is responsible for managing the ICPR's funds, presenting the ICPR's annual report, and overseeing the ICPR's general affairs.[11] The board of directors is composed of the executive director of the department (or designee); the president of the university where the ICPR is located, or when the ICPR is located at multiple universities, the presidents' agreed upon designee; and three directors appointed by the Governor.[12]

The ICPR matches commercially viable technologies with management talent and capital. Additionally, the ICPR focuses on technologies and companies that originate from publicly supported organizations across the state and companies in Florida's innovation businesses and target industries.[13]

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[7] Section 288.9622, F.S.
[8] Department of Economic Opportunity, *Long Range Program Plan Fiscal Year 2018-2019 through 2022-2023*, p. 21 (September 29, 2017), available at http://floridafiscalportal.state.fl.us/Document.aspx?ID=17087&DocType=PDF (last visited Feb. 16, 2018).
[9] Department of Economic Opportunity, *Long Range Program Plan* at p. 21. Institute for Commercialization of Public Research, *Who We Are*, available at http://www.florida-institute.com/who-we-are (last visited Feb. 16, 2018).
[10] Section 20.60, F.S. Department of Economic Opportunity, *Long Range Program Plan* at pp. 19 and 42.
[11] Section 288.9625, F.S. Institute for Commercialization of Public Research, *Who We Are: Board of Directors*, available at http://www.florida-institute.com/about/board-of-directors (last visited Feb. 15, 2018).
[12] Section 288.9625(4), F.S.
[13] Sections 288.0189 and 288.106(2)(q), F.S., sets forth the innovation businesses and target industries. Institute for the Commercialization of Public Research, *Annual Report Brochure FY 2016-2017* (Nov. 22, 2017), available at http://www.florida-institute.com/news/florida-institutes-2016-17-brochure (last visited Feb. 17, 2018).

Before the institute facilitates a company or organization's efforts to commercialize its products, it must be accepted by the institute through an application process. Publicly supported organizations may recommend that a company attempting to commercialize its research, technology, or patents be accepted by the institute. Upon acceptance by the institute, a company receives mentoring and other services, which includes developing marketing information on the company, using institute resources to attract capital investment into the company, and other resources that may encourage effective management, growth, capitalization technology protection, or marketing or business success.[14]

Current law prohibits the ICPR from charging for its services unless they are provided to a private company, as compared to a state university or its affiliated organizations.

Since 2007, the Legislature has appropriated an estimated total of $33 million in state funds to the ICPR for operating costs, grants, loans, and seed stage funds.[15] The ICPR did not receive any funding in Fiscal Year 2017-2018.

Florida Technology Seed Capital Fund[16]

The ICPR also administers the Florida Technology Seed Capital Fund as a corporate subsidiary. The fund was preceded by the Florida Research Commercialization Matching Grant Program, which expired in 2013, and the Seed Capital Accelerator Program (SCAP).[17]

The fund was established to "foster greater private-sector investment funding, to encourage seed-stage investments in start-up companies, and to advise companies about how to restructure existing management, operation, or production to attract advantageous business opportunities."[18] Proceeds from sale of equity or debt repayments are returned to the fund for reinvestment.

A company at the initial seed-stage investment is eligible to receive investment from the fund only after undergoing a peer-reviewed process undertaken by the fund's investor advisory board. The ICRP will invest in a company if:[19]

- The company's overall health and ability for growth is strong, including its intellectual property position, management capability, paths to market or commercialization, growth-potential, and ability to leverage additional funding;
- The company was identified by a publicly funded research institution;
- The company is a target industry business;
- The company was identified by a private-sector lead investor who has performed industry-standard due diligence; and
- The advisory board and fund manager reviewed and recommended the company's proposal.

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[14] *See* Institute for Commercialization of Public Research, *For Entrepreneurs: Frequently Asked Questions*, available at http://www.florida-institute.com/about/faq (last visited Feb. 17, 2018).
[15] Office of Economic and Demographic Research, *Return-on-Investment of the Florida Microfinance Loan and Microfinance Guarantee Programs* (Jan. 2018), p. 43-45, available at http://edr.state.fl.us/Content/returnoninvestment/MicrofinanceLoanandGuaranteeProgams.pdf (last visited Feb. 18, 2018).
[16] Section 288.96255, F.S. Institute for Commercialization of Public Research, *For Entrepreneurs: Company Funding*, available at http://www.florida-institute.com/programs/company-funding (last visited Feb. 5, 2018).
[17] *See* s. 288.9552, F.S. (*2011*), and s. 39, ch. 2011-76, L.O.F.
[18] Section 288.26255(1), F.S.
[19] Section 288.96255(3)-(4), F.S.

Through the fund, the ICPR provides seed funding in amounts of $50,000 up to $300,000 to qualified companies, either as debt or equity. A cumulative investment of $500,000 is the maximum the ICPR will invest in a single company before it requires a 2:1, private sector match of the investment. The ICPR has invested in a total of 66 companies through this program.[20]

III. Effect of Proposed Changes:

Institute for Commercialization of Florida Technology

The bill creates the Institute for Commercialization of Florida Technology (institute) as a successor to the ICPR. The institute differs from the ICPR in several ways. Namely, the institute: (1) will be operated by a private fund manager rather than a professional staff; (2) will no longer partner with publicly supported universities or research institutes to support their commercialization efforts; and (3) will not be supported by or function under the department.

Section 3 amends s. 288.9622, F.S., to evince legislative intent to permit the use of a private asset manager familiar with the seed and early stage investment industry in Florida to reduce the operational costs of the Florida Technology Seed Capital Fund (Technology Fund) and the SCAP. It is the goal of the Legislature to operate these entities without requiring ongoing state expenditures.

Section 5 amends s. 288.9655, F.S., to replace the ICPR with the Institute for Commercialization of Florida Technology. The purpose of the institute is to assist in the commercialization of products developed by innovation businesses; advise the businesses about how to restructure existing management, operations, product development, or service development to attract further business opportunities; foster greater private sector investment funding; and encourage seed stage investments in startup and early stage companies.[21]

Creation of the Institute

Section 1 amends s. 20.60, F.S. to remove management of the ICPR and promotion of the commercialization of products, services, or ideas developed in public universities or institutions from the department's duties and purposes. The bill specifies that the institute is not a direct-support organization of the department.

Section 5 amends s. 288.9625(1), F.S., to provide that the institute is not subject to the control, supervision, or direction by the department in any manner. The section also amends s. 288.9625(3), F.S., to remove the requirement that the institute's articles of incorporation be approved by the department.

Board of Directors

Section 5 reorganizes the Board of Directors to consist of three members instead of five and provides for currently appointed directors of the ICPR to finish out their terms. Going forward,

[20] Institute for Commercialization of Public Research, *For Entrepreneurs: Company Funding*, available at http://www.florida-institute.com/programs/company-funding (last visited Feb. 5, 2018).
[21] See lines 206-213 and 415-424 of the bill.

to replace a vacant board position the private fund manager will submit three recommendations to the board for consideration. The board and the private fund manager each have a vote to select a new board member from the recommended list or "from a new list of three nominees that were not included on the previous list." It is unclear who nominates the new list.

The board's duties include oversight of the private fund manager's activities; performance of duties as outlined by the institute's bylaws; and provision of an annual report of the institute's activities to the Governor, President of the Senate, and Speaker of the House.

The directors must have expertise in selecting and supervising early stage investment managers or in fiduciary management of investment funds and other pertinent areas of expertise.

The directors may not receive compensation for their service but may be reimbursed for expenses as approved by the private fund manager pursuant to s. 112.061, F.S. Additionally, the directors may not have a financial interest in any investment in any of the institute's portfolio companies and are subject to any restriction on conflicts of interest as specified in the institute's organizational documents. The institute must indemnify its directors and the private fund manager to the broadest extent possible.

Private Fund Manager

The bill states that the "purpose of the institute's use of a private fund manager is to alleviate the state's burden of the continued and future operational and management costs related to the [Technology Fund] and [SCAP] program."

Eligibility

Section 5 provides that the private fund manager (fund manager) must be a for-profit limited liability company or a for-profit corporation that was formed and is governed and operated in accordance with ch. 605 or 607, F.S. Additionally, the fund manager may not be a public corporation or instrumentality of the state; is not a state agency; cannot claim sovereign immunity; is not subject to ch. 287, F.S., regarding procurement of goods and services; and is not governed by code of ethics provisions in part III of ch. 112, F.S.

The fund manager must be experienced in the field and must specifically have:

- Expertise and experience in the management and operation of early stage companies in Florida;
- Experience with early stage business ventures investments in Florida;
- Working knowledge and understanding of the institute's investment portfolio and relevant industries of those companies; and
- Individuals in its employ who have knowledge of the institute's investment portfolio and its companies, as well as financial, technical, and business expertise to manage the Technology Fund activity.

Duties

Section 5 provides for the fund manager's duties as they relate to the institute; **section 6** provides for the duties as they relate to the Technology Fund. They are substantially the same duties.

The fund manager is required to manage the investment-related affairs of the institute, including management of the assets of the institute's Technology Fund and SCAP investment portfolios; and conduct activities on the institute's behalf in accordance with law.

The fund manager must also issue an annual report to the Board of Directors by November 1 each year. The annual report is a public record, and must include:
- Information on any assistance provided to an innovation business;
- Description of the benefits that accrue to the state as a result of the institute's activity; and
- Independently audited financial statements, including information related to the receipt and calculation of the net profits of the investment portfolio.

The fund manager is authorized to:
- Negotiate terms of investment, sale, and liquidation with portfolio and nonportfolio companies;
- Execute contracts and contract amendments with portfolio and nonportfolio companies;
- Seek new qualified companies to participate in the Technology Fund;
- Receive and remit investment capital from the sale or liquidation of any part of the institute's investment portfolio, loan proceeds, or other investment returns;
- Mentor, assist with the development of marketing information or business plans, and assist with attracting capital investment and other resources to a portfolio company in order to foster its growth, marketing, or business success;
- Market the Technology Fund and accelerator program to potential investors;
- Facilitate meetings between prospective investors and the institute's portfolio companies; and
- Collaborate with publicly supported organizations that may be able to provide further resources or special knowledge to the institute's portfolio companies.

The fund manager is paid reasonable fees consistent with the standard practices of the fund management industry, consisting of:
- An operational management fee, including reimbursement of expenses that is paid from the proceeds of loans repaid to the SCAP or other capital, proceeds, and returns available in the Technology Fund;
- A portfolio fee paid from proceeds of each sale or asset liquidation from the institute's investment portfolio; and
- A closing fee paid from the investment amount paid by the Technology Fund to a company at the closing of each investment.

Florida Technology Seed Capital Fund

Section 5 outlines the institute's mission, which is to develop partnerships with, in particular, "innovation businesses" as defined in s. 288.1089, F.S., relating to the Innovation Incentive Program.

Section 6 provides that the institute must also strive to invest in target industry businesses, as defined in s. 288.106(2)(q), F.S., which represent diverse and stable markets.

Section 6 amends s. 288.96255, F.S., the Technology Fund, to revise the authorized investments and requirements for investment. The institute may select a company or organization for partnership with the institute or for funding from the Technology Fund only after the fund manager, using processes modeled on the investment industry's standard practices, has evaluated whether the company meets the statutory requirements, which are similar to current law. The fund manager must complete due diligence before approving a company for investment.

The bill repeals statutory limitations on investments from the fund – specifically the current limitation of initial investments of $50,000-$300,000, a cumulative maximum of $500,000, and a required 2:1 match for additional investment.

Net profits from proceeds of sale or liquidation of assets or portions of assets of the investment portfolio will be returned to the Technology Fund for reinvestment, after payment of applicable costs, professional fees, expenses, fees paid to the private fund manager, and disbursement to private investors.

Fees paid to the private fund manager include are for performing due diligence and an investment closing fee, in addition to reasonable attorney fees, the operational management fee, the portfolio fee, the closing fee, and other costs in connection with making the investment.

The institute or the private fund manager can disburse payments to private investors if the institute or the private fund manager decides to transfer any portion of the Technology Fund into a private fund or special purpose vehicle. Such private fund or special purpose vehicle can receive additional private investment. The disbursement from such private fund or special purpose vehicle back to the Technology Fund or private investors is the respective pro rata portion of any net profits from the sale or liquidation of assets in the private fund or special purpose vehicle.

Public Records and Meetings Exemption

Section 7 amends s. 288.9627, F.S., to transfer the public records and meetings exemption that previously applied to the ICPR to the institute.

This section makes the following materials held by the institute exempt from disclosure pursuant to s. 119.07(1), F.S., and s. 24(a), Art. I of the Florida Constitution:

- Documents and materials that related to a business' methods of manufacture or production, potential trade secrets, or patentable material that is provided to the institute by a proprietor;
- Information that would identify an anonymous investor or potential investor;
- Information received from another person, state, nation, or the federal government, which is confidential or exempt pursuant to the originator's laws; and
- Proprietary confidential business information.

Additionally, the bill exempts from Florida's public meetings laws those portions of the institute's meetings wherein information that is confidential and exempt according to Florida law is discussed.

Miscellaneous

Section 2 makes conforming changes to s. 288.9621, F.S., the short title for the Florida Capital Formation Act.

Section 4 provides definitions for terms used in the Florida Capital Formation Act.

Section 8 provides an effective date of July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

The bill transfers the current public records and meetings exemptions for the ICPR to the institute. The bill also expands the scope and authority of the institute to make investments in seed and early stage businesses. It is unclear if the amendments made by the bill to ss. 288.9625 and 288.96255, F.S., would be an expansion of the current public records and meetings exemptions.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Depending on the financial performance of the Technology Fund and the institute, there may be a reduction in the funds available for investment in private businesses that seek investment capital.

C. Government Sector Impact:

The ICPR did not receive an appropriation in Fiscal Year 2017-2018. The bill attempts to reduce future appropriations to the successor institute for its investment, management, and related expenses, by permitting the institute to fund itself through its activities. According to the most recent independent audit of the ICPR completed in Fiscal Year 2016 filed with the Florida Auditor General, the total program expenses were

$3,732,937.[22] The fund manager will require expenditures pursuant to statute, but these will be made from profits of the institute, rather than state appropriation.

University and other publicly funded research institutes may see a reduction in funds available for the commercialization of their technologies because of the privatization of the institute.

The Department of Economic Opportunity may experience minimal cost savings by eliminating the contracting and related oversight responsibilities of the department over the institute.

VI. Technical Deficiencies:

It is unclear whether the duties outlined in s. 288.9625(5), F.S., apply to the Board of Directors or the fund manager.

VII. Related Issues:

The bill refers to the SCAP or "Accelerator Program." The Accelerator Program expired in 2013, and therefore does not require any ongoing operational funding. The Accelerator Program, however, does have outstanding loans that will not be due until December 2019, and therefore may require actions by the fund manager for purposes of collection and reinvestment of the funds.[23]

The bill provides that the institute must create the Fund; the Legislature could directly create the Fund.

The bill requires that a company or organization be "based in" Florida to receive assistance from the institute. This term may need to be defined to provide clarity in interpretation.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 20.60, 288.9621, 288.9622, 288.9623, 288.9625, 288.96255, and 288.9627.

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 March 2, 2018:
The committee substitute:

- Restores a portion of current law legislative intent related to the Florida Opportunity Fund;

[22] Florida Auditor General, *Institute for Commercialization of Public Research: 2015-16 Fiscal Year*, available at https://flauditor.gov/pages/nonprofit_forprofit%20pages/institute%20for%20the%20commercialization%20of%20public%20research.htm (last visited Feb. 16, 2018).
[23] *Id*. at p. 21.

- Adds a provision that the Institute for Commercialization of Florida Technology is not subject to the control, supervision, or direction of the DEO; and
- Corrects a grammar issue.

CS by Commerce and Tourism on February 6, 2018:
The CS clarifies the terms for directors appointed before July 1, 2018, and the succession of any director appointed thereafter.

B. Amendments:

None.

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

By the Committee on Commerce and Tourism; and Senator Brandes

577-02897-18 20181314c1

A bill to be entitled

An act relating to the Florida Capital Formation Act; amending s. 20.60, F.S.; deleting the requirement that the Department of Economic Opportunity manage certain activities related to the commercialization of specified products, services, and ideas; specifying that the Institute for Commercialization of Florida Technology is not an appropriate direct-support organization; amending s. 288.9621, F.S.; including s. 288.96255, F.S., in the Florida Capital Formation Act; amending s. 288.9622, F.S.; revising legislative intent; amending s. 288.9623, F.S.; defining terms; amending s. 288.9625, F.S.; redesignating the Institute for the Commercialization of Public Research as the Institute for Commercialization of Florida Technology; deleting provisions regarding the institute's responsibilities; requiring that the investment-related affairs of the institute be managed by the private fund manager and overseen by the board of directors; restructuring the board of directors and the selection process for the board of directors; specifying term limits of the board members under certain circumstances; requiring the board of directors to amend the bylaws of the institute under certain circumstances; providing that a director is subject to restrictions on certain conflicts of interest; prohibiting a director from having a financial interest in certain investments; authorizing a director to be reimbursed for certain expenses;

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granting the institute certain powers; requiring the institute to indemnify certain persons; delegating certain duties to the board of directors; revising to whom the board must provide a copy of the annual report and who may require and receive supplemental data relative to the institute's operation; specifying that certain requirements be met before the private fund manager is authorized to make an investment in a company, on behalf of the institute; deleting provisions relating to certain duties of the institute; deleting provisions relating to certain fees charged by the institute and the prohibition on using capital in support of certain entities; specifying that the annual report is considered a public record subject to certain exemptions; revising the requirements of the institute's annual report; listing requirements and prohibitions for the private fund manager; stating the purpose of the institute's use of the private fund manager; requiring the private fund manager to assume the management of certain assets; authorizing the private fund manager to act on behalf of the institute for certain purposes; requiring that the private fund manager be paid certain fees; authorizing the private fund manager to undertake certain activities on behalf of the institute; requiring the private fund manager to issue an annual report to the board of directors by a specific date; specifying that the annual report is considered a public record subject to certain

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exemptions; requiring that the report contain certain information; amending s. 288.96255, F.S.; requiring that certain proceeds be returned to the Florida Technology Seed Capital Fund after the payment of certain costs and fees; requiring the institute to employ a private fund manager; requiring the private fund manager to perform specific duties; requiring that the private fund manager receive certain fees and costs at a specified time; requiring the private fund manager to use a certain process to evaluate a proposal; requiring the private fund manager to consider certain factors when approving a company for investment; deleting specific requirements for the investment of funds; authorizing the private fund manager, in addition to the institute, to perform certain tasks; amending s. 288.9627, F.S.; conforming provisions to changes made by this act; providing an effective date.

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

Section 1. Paragraph (e) of subsection (4) and paragraph (b) of subsection (9) of section 20.60, Florida Statutes, are amended to read:

20.60 Department of Economic Opportunity; creation; powers and duties.—

(4) The purpose of the department is to assist the Governor in working with the Legislature, state agencies, business leaders, and economic development professionals to formulate and

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implement coherent and consistent policies and strategies designed to promote economic opportunities for all Floridians. To accomplish such purposes, the department shall:

(e) Manage the activities of public-private partnerships and state agencies in order to avoid duplication and promote coordinated and consistent implementation of programs in areas including, but not limited to, tourism; international trade and investment; business recruitment, creation, retention, and expansion; minority and small business development; rural community development; ~~commercialization of products, services, or ideas developed in public universities or other public institutions;~~ and the development and promotion of professional and amateur sporting events.

(9) The executive director shall:

(b) Serve as the manager for the state with respect to contracts with Enterprise Florida, Inc., ~~the Institute for the Commercialization of Public Research,~~ and all applicable direct-support organizations. To accomplish the provisions of this section and applicable provisions of chapter 288, and notwithstanding the provisions of part I of chapter 287, the director shall enter into specific contracts with Enterprise Florida, Inc., ~~the Institute for the Commercialization of Public Research,~~ and other appropriate direct-support organizations. Such contracts may be for multiyear terms and must ~~shall~~ include specific performance measures for each year. For purposes of this section, the Florida Tourism Industry Marketing Corporation and the Institute for Commercialization of Florida Technology are not ~~is not an~~ appropriate direct-support organizations ~~organization~~.

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Section 2. Section 288.9621, Florida Statutes, is amended to read:

288.9621 Short title.—Sections 288.9621-288.96255 ~~Sections 288.9621-288.9625~~ may be cited as the "Florida Capital Formation Act."

Section 3. Section 288.9622, Florida Statutes, is amended to read:

288.9622 Findings and intent.—

(1) The Legislature finds and declares that there is a need to increase the availability of seed capital and early stage investment ~~venture equity~~ capital for emerging companies in the state, including, without limitation, businesses ~~enterprises~~ in life sciences, information technology, advanced manufacturing processes, aviation and aerospace, and homeland security and defense, as well as other industries of strategic importance to this state ~~strategic technologies~~.

(2) It is the intent of the Legislature that ss. 288.9621-288.96255 ~~ss. 288.9621-288.9625~~ serve to mobilize private investment in a broad variety of ~~venture capital~~ partnerships in diversified industries and geographies; retain private sector investment criteria focused on rate of return; allow the use ~~the services~~ of highly qualified private fund managers experienced in the seed and early stage development industry in this state; and outline the use, qualifications, and activities of the private management by a private fund manager of the assets of the Seed Capital Accelerator Program and the Florida Technology Seed Capital Fund investment portfolio of the Institute for Commercialization of Florida Technology ~~venture capital industry regardless of location; facilitate the organization of the~~

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~~Florida Opportunity Fund as an investor in seed and early stage businesses, infrastructure projects, venture capital funds, and angel funds; and precipitate capital investment and extensions of credit to and in the Florida Opportunity Fund~~.

(3) It is the intent of the Legislature to mobilize investment ~~venture equity~~ capital ~~for investment~~ in such a manner as to result in a significant potential to create new businesses and jobs in this state which ~~that~~ are based on high growth potential technologies, products, or services and which ~~that~~ will further diversify the economy of this state.

(4) It is the intent of the Legislature to reduce the ongoing operational cost and burden of managing the Florida Technology Seed Capital Fund and the Seed Capital Accelerator Program to this state by engaging a private asset management entity in this state which is familiar with the seed and early stage investment industry in this state. This entity would be responsible for the management of the assets of the Seed Capital Accelerator Program and the Florida Technology Seed Capital Fund investment portfolio without requiring ongoing budget expenditures by this state ~~that an institute be created to mentor, market, and attract capital to such commercialization ventures throughout the state~~.

Section 4. Section 288.9623, Florida Statutes, is amended to read:

288.9623 Definitions.—As used in ss. 288.9621-288.96255, the term ~~ss. 288.9621-288.9625~~:

(1) "Accelerator program" means the Seed Capital Accelerator Program managed by the institute.

(2) ~~(1)~~ "Board" means the board of directors of the Florida

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Opportunity Fund.

(3)~~(2)~~ "Fund" means the Florida Opportunity Fund.

(4) "Institute" means the Institute for Commercialization of Florida Technology.

(5) "Investment portfolio" means individual or collective investment assets held under the technology fund.

(6) "Net profits" means the total gross proceeds received from the sale or liquidation of an asset of the investment portfolio less any costs, legal fees, professional fees, consulting fees, government fees, brokerage fees, taxes, management fees pursuant to s. 288.9625(12)(b), disbursement to private investors pursuant to s. 288.96255(6), or other fees, costs, and expenses incurred in the sale or liquidation of any of the investment portfolio assets.

(7) "Portfolio companies" means the companies who are part of the Florida Technology Seed Capital Fund investment portfolio.

(8) "Private fund manager" means the private entity, or its designee, selected to manage the investment portfolio on behalf of the institute.

(9) "Technology fund" means the Florida Technology Seed Capital Fund managed by the institute.

Section 5. Section 288.9625, Florida Statutes, is amended to read:

288.9625 Institute for ~~the~~ Commercialization of Florida Technology ~~Public Research~~.~~—~~There is established ~~at a public university or research center~~ in this state the Institute for ~~the~~ Commercialization of Florida Technology ~~Public Research~~.

(1) The institute shall be a nonprofit ~~not-for-profit~~

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corporation registered, incorporated, and operated in accordance with chapter 617.

(2) The purpose of the institute is to assist in the commercialization of products developed by the research and development activities of an innovation business, including, but not limited to, those ~~as~~ defined in s. 288.1089~~; a publicly supported college, university, or research institute; or any other publicly supported organization in this state~~. The institute shall fulfill its purpose in the best interests of the state. The institute:

(a) Is a corporation primarily acting as an instrumentality of the state pursuant to s. 768.28(2), for the purposes of sovereign immunity;

(b) Is not an agency within the meaning of s. 20.03(11);

(c) Is subject to the open records and meetings requirements of s. 24, Art. I of the State Constitution, chapter 119, and s. 286.011;

(d) Is not subject to ~~the provisions of~~ chapter 287;

(e) Is ~~Shall be~~ governed by the code of ethics for public officers and employees as set forth in part III of chapter 112; and

(f) May create corporate subsidiaries.~~;~~

~~(g) Shall support existing commercialization efforts at state universities; and~~

~~(h) May not supplant, replace, or direct existing technology transfer operations or other commercialization programs, including incubators and accelerators.~~

(3) The articles of incorporation of the institute must ~~be approved in a written agreement with the department. The~~

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~~agreement and the articles of incorporation shall~~:

(a) Provide that the institute shall provide equal employment opportunities for all persons regardless of race, color, religion, gender, national origin, age, handicap, or marital status;

(b) Provide that the institute is subject to the public records and meeting requirements of s. 24, Art. I of the State Constitution;

(c) Provide that all officers, directors, and employees of the institute are ~~shall be~~ governed by the code of ethics for public officers and employees as set forth in part III of chapter 112;

(d) Provide that members of the board of directors of the institute are responsible for the prudent use of all public and private funds and that they will ensure that the use of funds is in accordance with all applicable laws, bylaws, and contractual requirements; and

(e) Provide that the fiscal year of the institute is from July 1 to June 30.

(4) The investment-related affairs of the institute shall be managed by the private fund manager, and overseen by a board of directors who shall serve without compensation. Each director shall have only one vote. The chair of the board of directors shall be selected by a majority vote of the directors, a quorum being present. ~~The board of directors shall consist of the following five members:~~

~~(a) The executive director of the department, or the director's designee.~~

~~(b) The president of the university where the institute is~~

~~located or the president's designee unless multiple universities jointly sponsor the institute, in which case the presidents of the sponsoring universities shall agree upon a designee.~~

(a) ~~(c)~~ The board of directors shall consist of three directors appointed pursuant to the procedures and requirements of this section ~~by the Governor~~ to 3-year staggered terms, to which the directors may be reappointed.

(b) For any director appointed before July 1, 2018, the term of service for that director may continue through the end of his or her current term. The vacancy created by the expiration of such term must be filled pursuant to the procedures and requirements of this section.

(c) The bylaws of the institute shall be amended accordingly by the board of directors to reflect the requirements of this section.

(d) Upon vacancy, or within 90 days before an anticipated vacancy by the expiration of a term of a director, the private fund manager shall submit a list of three eligible nominees, which may include the incumbent director, to replace the outgoing director. The board of directors, voting along with the private fund manager, may appoint a director from the nominee list or may request and appoint a director from a new list of three nominees that were not included on the previous list.

(e) The persons appointed as replacement directors must include persons who have expertise in the area of the selection and supervision of early stage investment managers or in the fiduciary management of investment funds and other areas of expertise as considered appropriate.

(f) Directors are subject to any restrictions on conflicts

of interest specified in the organizational documents and may not have a financial interest in any venture capital investment in any portfolio company.

(g) Directors may be reimbursed for all reasonable, necessary, and actual expenses as determined and approved by the private fund manager pursuant to s. 112.061.

(h) The institute shall have all powers granted under its organizational documents and shall indemnify its directors and the private fund manager to the broadest extent permissible under the laws of this state.

(5) The board of directors shall oversee the private fund manager to ensure consistency with the Florida Capital Formation Act, to perform those duties as may be delegated to it in the bylaws of the institute, and to provide a copy of the institute's annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives~~, and the president of the university at which the institute is located~~.

(6) The ~~department, the president and the board of trustees of the university where the institute is located, the~~ Auditor General~~,~~ and the Office of Program Policy Analysis and Government Accountability may require and receive from the institute or its independent auditor any detail or supplemental data relative to the operation of the institute.

(7) To the extent funds for investment are available in the technology fund, the private fund manager, on behalf of the institute, may make an investment in a company or organization if all of the following requirements are met:

(a) Before providing assistance, the institute accepted ~~To be eligible for assistance,~~ the company or organization

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attempting to commercialize its product based on the guidelines under s. 288.96255(4) ~~must be accepted by the institute before receiving the institute's assistance~~.

(b) The company or organization is based in this state ~~institute shall receive recommendations from any publicly supported organization that a company that is commercializing the research, technology, or patents from a qualifying publicly supported organization should be accepted into the institute~~.

~~(c) The institute shall thereafter review the business plans and technology information of each such recommended company. If accepted, the institute shall mentor the company, develop marketing information on the company, and use its resources to attract capital investment into the company, as well as bring other resources to the company which may foster its effective management, growth, capitalization, technology protection, or marketing or business success.~~

~~(8) The institute shall:~~

~~(a) Maintain a centralized location to showcase companies and their technologies and products;~~

~~(b) Develop an efficient process to inventory and publicize companies and products that have been accepted by the institute for commercialization;~~

~~(c) Routinely communicate with private investors and venture capital organizations regarding the investment opportunities in its showcased companies;~~

~~(d) Facilitate meetings between prospective investors and eligible organizations in the institute;~~

~~(e) Hire full-time staff who understand relevant technologies needed to market companies to the angel investors~~

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~~and venture capital investment community; and~~

~~(f) Develop cooperative relationships with publicly supported organizations all of which work together to provide resources or special knowledge that is likely to be helpful to institute companies.~~

(8)~~(9)~~ Except as provided under s. 288.96255, the institute may not develop or accrue any ownership, royalty, patent, or other such rights over or interest in companies or products in the institute except in connection with financing provided directly to client companies and shall maintain the confidentiality of proprietary information.

~~(10) The institute may not charge for services provided to state universities and affiliated organizations, community colleges, or state agencies; however, the institute may deliver and charge for services to private companies and affiliated organizations if providing a service does not interfere with the core mission of the institute. The institute may not use its capital in support of private companies or affiliated organizations whose products were not developed by research and development activities of a publicly supported college, university, or research institute, or any other organization.~~

(9)~~(11)~~ By December 1 of each year, the institute shall issue an annual report concerning its activities to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The annual report shall be considered a public record, as provided in paragraph (3)(b), subject to any appropriate exemptions under s. 288.9627. The annual report must ~~shall~~ include the following:

(a) Information on any assistance provided by the institute

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to an innovation business, as defined in s. 288.1089~~; a publicly supported college, university, or research institute; or any other publicly supported organization in the state~~.

(b) A description of the benefits to this state resulting from the institute, including the number of businesses created, associated industries started, the number of jobs created, and the growth of related projects.

(c) Independently audited financial statements, including statements that show receipts and expenditures during the preceding fiscal year for personnel, management fees, administration, and operational costs of the institute.

(10) The private fund manager:

(a) Must be a for-profit limited liability company or a for-profit corporation formed, governed, and operated in accordance with chapter 605 or chapter 607, respectively.

(b) Shall conduct activities on behalf of the institute which are consistent with the purposes set forth in this section.

(c) Must have expertise and experience in the management and operation of early stage companies in this state.

(d) Must have experience with investment in early stage ventures in this state and have a working knowledge and understanding of the investment portfolio and the relevant industries of the portfolio companies in this state.

(e) Shall employ personnel and professionals who have knowledge of the investment portfolio and portfolio companies of the institute, as well as financial, technical, and business expertise to manage the technology fund activity.

(f) May not be a public corporation or instrumentality of

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the state.

(g) Is not a corporation primarily acting as an instrumentality of the state pursuant to s. 768.28(2), for the purposes of sovereign immunity.

(h) Is not an agency within the meaning of s. 20.03(11).

(i) Is not subject to chapter 287.

(j) May not be governed by the code of ethics for public officers and employees as set forth in part III of chapter 112.

(11) The purpose of the institute's use of a private fund manager is to alleviate the state's burden of the continued and future operational and management costs related to the technology fund and accelerator program, while allowing the institute, through the activities of the private fund manager, to continue to foster greater private-sector investment funding, to encourage seed-stage investments in startup and early stage companies, and to advise companies about how to restructure existing management, operations, product development, or service development to attract advantageous business opportunities.

(12) The private fund manager shall assume the management of the assets of the accelerator program and the technology fund investment portfolios associated with the institute.

(a) The private fund manager has the authority on behalf of the institute to:

1. Negotiate investment, sale, and liquidation terms with portfolio and nonportfolio companies;

2. Develop and execute contracts, or amendments thereto, with portfolio and nonportfolio companies;

3. Seek new qualified companies for the investment of funds from the technology fund;

4. Receive, on behalf of the institute, investment capital from the sale or liquidation of any portion of the investment portfolio, loan proceeds, or other investment returns, and remit such capital, proceeds, and returns to the technology fund pursuant to s. 288.96255, except as otherwise provided in this section and s. 288.96255; and

5. Perform additional duties set forth in s. 288.96255.

(b) The private fund manager shall be paid reasonable fees consistent with industry fund management practices and consisting of:

1. An operational management fee, including the reimbursement of expenses, paid from the proceeds of the repayment of loans from the accelerator program or other capital, proceeds, and returns available in the technology fund;

2. A portfolio fee paid from the proceeds of each sale or liquidation of assets or portions of the assets of the investment portfolio; and

3. A closing fee paid from the investment amount paid by the technology fund to a company at the closing of each investment.

(13) The private fund manager may undertake the following activities on behalf of the institute:

(a) Mentor, assist with the development of marketing information, and assist with attracting capital investment, as well as bring other resources to the company which may foster its effective management, growth, capitalization, technology protection, or marketing or business success;

(b) Communicate with private investors and venture capital organizations regarding investment opportunities in the

portfolio companies of the technology fund and accelerator program;

(c) Facilitate meetings between prospective investors and the companies; and

(d) Develop cooperative relationships with publicly supported organizations that work together to provide resources or special knowledge likely to be helpful to portfolio companies.

(14) By November 1 of each year, the private fund manager shall issue an annual report to the board of directors of the institute concerning the activities the private fund manager conducted which relate to existing accelerator program and technology fund investments in order for the board to be in compliance with its report obligations under subsection (9). The annual report provided by the private fund manager shall be considered a public record, as provided in paragraph (3)(b), subject to any appropriate exemptions under s. 288.9627. The annual report, at a minimum, must include:

(a) A description of the benefits to this state resulting from the assets of the accelerator program and technology fund, including the number of jobs created, the amount of capital the companies raised, and other benefits relating to increased research expenditures and company growth.

(b) Independently audited financial statements related to the receipt and calculation of the net profits of the investment portfolio.

Section 6. Subsection (1) and subsections (3) through (7) of section 288.96255, Florida Statutes, are amended to read:

288.96255 Florida Technology Seed Capital Fund; creation;

duties.—

(1) The Institute for ~~the~~ Commercialization of Florida Technology ~~Public Research~~ shall create the Florida Technology Seed Capital Fund as a corporate subsidiary. The purpose of the technology fund is to foster greater private-sector investment funding, to encourage seed-stage investments in start-up companies, and to advise companies about how to restructure existing management, operation, or production to attract advantageous business opportunities. The net profits of the proceeds of each sale or liquidation of assets or portions of the assets of the investment portfolio must ~~a sale of the equity held by the fund shall~~ be returned to the technology fund for reinvestment after payment of the applicable costs, professional fees, expenses, fees pursuant to s. 288.9625(12)(b), and disbursement to private investors pursuant to paragraph (6)(e).

(3) The institute shall employ a private fund manager pursuant to s. 288.9625 ~~professionals who have both technical and business expertise~~ to manage the investment portfolio and technology fund activity. The private fund manager ~~institute shall establish an investor advisory board comprised of venture capital professionals and early-stage investors from this and other states who~~ shall advise the institute and guide the ~~fund~~ management of the technology fund and make funding recommendations, provided that capital for investment is available in the technology fund. The private fund manager shall receive reasonable fees consistent with industry practices for performing due diligence and an investment closing fee paid out of the technology fund at the closing of each investment in addition to reasonable attorney fees, other fees prescribed in

s. 288.9625(12)(b), and other costs in connection with making an investment. ~~Administrative costs paid out of the fund shall be determined by the investor advisory board.~~

(4) The private fund manager ~~institute~~ shall use a thorough and detailed process that is modeled after investment industry practices ~~the best practices of the investment industry~~ to evaluate a proposal. In order to approve a company for investment, the private fund manager, on behalf of the institute, must consider if:

(a) The company has a strong intellectual property position, a capable management team, readily identifiable paths to market or commercialization, significant job-growth potential, the ability to provide other sources of capital to leverage the state's investment, and the potential to attract additional funding;

(b) The private fund manager has had an opportunity to complete due diligence to its satisfaction ~~company has been identified by a publicly funded research institution~~;

(c) The ~~start-up~~ company is a target industry business as defined in s. 288.106(2); and

(d) ~~The company has been identified by~~ An approved private-sector lead investor who has demonstrated due diligence typical of start-up investments in evaluating the potential of the company has identified the company.~~; and~~

~~(c) The advisory board and fund manager have reviewed the company's proposal and recommended it.~~

(5) ~~(a) Seed~~ Funds from the technology fund may be invested if the institute approves a company and the initial seed-stage investment. ~~The initial seed-stage investment must be at least~~

~~$50,000, but no more than $300,000. The initial seed-stage investment requires a one-to-one, private-sector match of investment.~~

~~(b) Additional seed funds may be invested in a company if approved by the institute. The cumulative total of investment in a single company may not exceed $500,000. Any additional investment amount requires a two-to-one, private-sector match of investment.~~

(6) The institute or private fund manager may:

(a) Provide a company with value-added support services in the areas of business plan development and strategy, the preparation of investor presentations, and other critical areas identified by the private fund manager ~~institute~~ to increase its chances for long-term viability and success;

(b) Encourage appropriate investment funds to become preapproved to match investment funds;

(c) Market the attractiveness of the state as an early-stage investment location; ~~and~~

(d) Collaborate with state economic-development organizations, national associations of seed and angel funds, and other innovation-based associations to create an enhanced state entrepreneurial ecosystem; and~~.~~

(e) Transfer any portion of the assets of the investment portfolio, on behalf of the institute, into a private fund or special purpose vehicle, receive additional private investment in the private fund or special purpose vehicle, manage the private fund or special purpose vehicle, and distribute to the technology fund and the private investors the respective pro rata portion of any net profits from the sale or liquidation of

the assets of such private fund or special purpose vehicle.

~~(7) The institute shall annually evaluate the activities and results of the funding, taking into consideration that seed investment horizons span from 3 to 7 years.~~

Section 7. Section 288.9627, Florida Statutes, is amended to read:

288.9627 Exemptions from public records and public meetings requirements for the Institute for ~~the~~ Commercialization of Florida Technology ~~Public Research~~.—

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

(a) "Institute for ~~the~~ Commercialization of Florida Technology ~~Public Research~~" or "institute" means the institute established by s. 288.9625.

(b)1. "Proprietary confidential business information" means information that has been designated by the proprietor when provided to the institute as information that is owned or controlled by a proprietor; that is intended to be and is treated by the proprietor as private, the disclosure of which would harm the business operations of the proprietor and has not been intentionally disclosed by the proprietor unless pursuant to a private agreement that provides that the information will not be released to the public except as required by law or legal process, or pursuant to law or an order of a court or administrative body; and that concerns:

a. Trade secrets as defined in s. 688.002.

b. Financial statements and internal or external auditor reports of a proprietor corporation, partnership, or person requesting confidentiality under this statute, unless publicly released by the proprietor.

c. Meeting materials related to financial, operating, investment, or marketing information of the proprietor corporation, partnership, or person.

d. Information concerning private investors in the proprietor corporation, partnership, or person.

2. "Proprietary confidential business information" does not include:

a. The identity and primary address of the proprietor's principals.

b. The dollar amount and date of the financial commitment or contribution made by the institute.

c. The dollar amount, on a fiscal-year-end basis, of cash repayments or other fungible distributions received by the institute from each proprietor.

d. The dollar amount, if any, of the total management fees and costs paid on an annual fiscal-year-end basis by the institute.

(c) "Proprietor" means a corporation, partnership, or person that has applied for or received assistance, financial or otherwise, from the institute and that controls or owns the proprietary confidential business information.

(2) PUBLIC RECORDS EXEMPTION.—

(a) The following records held by the institute are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

1. Materials that relate to methods of manufacture or production, potential trade secrets, or patentable material received, generated, ascertained, or discovered during the course of research or through research projects conducted by

universities and other publicly supported organizations in this state and that are provided to the institute by a proprietor.

2. Information that would identify an investor or potential investor who desires to remain anonymous in projects reviewed by the institute for assistance.

3. Any information received from a person from another state or nation or the Federal Government which is otherwise confidential or exempt pursuant to the laws of that state or nation or pursuant to federal law.

4. Proprietary confidential business information for 7 years after the termination of the institute's financial commitment to the company.

(b) At the time any record made confidential and exempt by this subsection, or portion thereof, is legally available or subject to public disclosure for any other reason, that record, or portion thereof, shall no longer be confidential and exempt and shall be made available for inspection and copying.

(3) PUBLIC MEETINGS EXEMPTION.—

(a) That portion of a meeting of the institute's board of directors at which information is discussed which is confidential and exempt under subsection (2) is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution.

(b) Any exempt portion of a meeting shall be recorded and transcribed. The board of directors shall record the times of commencement and termination of the meeting, all discussion and proceedings, the names of all persons present at any time, and the names of all persons speaking. An exempt portion of any meeting may not be off the record.

(c) A transcript and minutes of exempt portions of meetings

are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(4) REQUEST TO INSPECT OR COPY A RECORD.—

(a) Records made confidential and exempt by this section may be released, upon written request, to a governmental entity in the performance of its official duties and responsibilities.

(b) Notwithstanding the provisions of paragraph (2)(a), a request to inspect or copy a public record that contains proprietary confidential business information shall be granted if the proprietor of the information fails, within a reasonable period of time after the request is received by the institute, to verify the following to the institute through a written declaration in the manner provided by s. 92.525:

1. That the requested record contains proprietary confidential business information and the specific location of such information within the record;

2. If the proprietary confidential business information is a trade secret, a verification that it is a trade secret as defined in s. 688.002;

3. That the proprietary confidential business information is intended to be and is treated by the proprietor as private, is the subject of efforts of the proprietor to maintain its privacy, and is not readily ascertainable or publicly available from any other source; and

4. That the disclosure of the proprietary confidential business information to the public would harm the business operations of the proprietor.

(c)1. Any person may petition a court of competent jurisdiction for an order for the public release of those

portions of any record made confidential and exempt by subsection (2).

2. Any action under this subsection must be brought in Palm Beach County or Alachua County, and the petition or other initial pleading shall be served on the institute and, if determinable upon diligent inquiry, on the proprietor of the information sought to be released.

3. In any order for the public release of a record under this subsection, the court shall make a finding that:

a. The record or portion thereof is not a trade secret as defined in s. 688.002;

b. A compelling public interest is served by the release of the record or portions thereof which exceed the public necessity for maintaining the confidentiality of such record; and

c. The release of the record will not cause damage to or adversely affect the interests of the proprietor of the released information, other private persons or business entities, or the institute.

(5) PENALTIES.—Any person who willfully and knowingly violates this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 8. 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)

3/2/18
Meeting Date

SB 1314
Bill Number (if applicable)

Topic FLORIDA CAPITAL FORMATION ACT

Amendment Barcode (if applicable)

Name DR. LAWRENCE TINKER

Job Title ENTREPRENEUR IN RESIDENCE

Address 4910 N MONROE ST. F202
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Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL INSTITUTE for the Commercialization of Public Research

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons 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 1396 (535720)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Criminal and Civil Justice); Judiciary Committee and Senators Steube and Brandes
SUBJECT:	Judgeships
DATE:	March 1, 2018
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cibula	Cibula	JU	**Fav/CS**
2.	Harkness	Sadberry	ACJ	**Recommend: Fav/CS**
3.	Harkness	Hansen	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 1396 increases the number of trial court judgeships authorized by statute by two circuit court judgeships and five county court judgeships. The bill also permits Supreme Court justices permanently residing outside of Leon County to be paid subsistence and travel expenses when conducting business at the headquarters of the Supreme Court in Tallahassee. In addition, the bill increases the jurisdiction of county court to include actions at law with an amount in which the matter in controversy does not exceed $50,000, rather than the current limit of $15,000.

The bill's provisions increasing trial court judgeships and reimbursing justices' subsistence and travel expenses will increase state expenditures by $2.5 million in Fiscal Year 2018-2019. *See* Section V. Fiscal Impact Statement.

The bill is effective July 1, 2018.

II. Present Situation:

Headquarters of the Supreme Court

Article II, section 2 of the Florida Constitution designates Tallahassee as the seat of state government "where the *offices* of the governor, lieutenant governor, cabinet members and *the*

supreme court shall be maintained and the sessions of the legislature shall be held[.]"[1] Article V, section 3 of the Florida Constitution provides that the Supreme Court will consist of seven justices, and that each of the five appellate districts "shall have at least one justice elected or appointed from the district at the time of the original appointment or election." The chambers of all seven justices are on the fourth floor of the Florida Supreme Court building,[2] and all official Supreme Court business is conducted in Tallahassee.[3] The justices are not required to move from their residences in the appellate districts to Tallahassee.

Headquarters for Purposes of Travel Reimbursement

Section 112.061, F.S., concerns the reimbursement of travel expenses to public employees and officers. To that end, s. 112.061(4), F.S., provides that while "[t]he official headquarters of an officer or employee assigned to an office shall be the city or town in which the office is located," there are some exceptions:

(a) The official headquarters of a person located in the field shall be the city or town nearest to the area where the majority of the person's work is performed, or such other city, town, or area as may be designated by the agency head provided that in all cases such designation must be in the best interests of the agency and not for the convenience of the person.

(b) When any state employee is stationed in any city or town for a period of over 30 continuous workdays, such city or town shall be deemed to be the employee's official headquarters, and he or she shall not be allowed per diem or subsistence, as provided in this section, after the said period of 30 continuous workdays has elapsed, unless this period of time is extended by the express approval of the agency head or his or her designee.

(c) A traveler may leave his or her assigned post to return home overnight, over a weekend, or during a holiday, but any time lost from regular duties shall be taken as annual leave and authorized in the usual manner. The traveler shall not be reimbursed for travel expenses in excess of the established rate for per diem allowable had he or she remained at his or her assigned post. However, when a traveler has been temporarily assigned away from his or her official headquarters for an approved period extending beyond 30 days,

[1] FLA. CONST. art. II, s. 2 (emphasis added).
[2] Florida Supreme Court, Manual of Internal Operating Procedures, *Section 1. Court Structure*, p. 1 (Rev. Sept. 21, 2016), http://www.floridasupremecourt.org/pub_info/documents/IOPs.pdf (last visited Feb. 14, 2018).
[3] "[T]he Florida Supreme Court, comprised of its Justices, has only one "office" — the Supreme Court Building, located in the Northern District." *Castro v. Labarga*, 16-22297-CIV, 2016 WL 6565946, at *5 (S.D. Fla. Nov. 3, 2016) (citing FLA. CONST. art. II, s. 2). "In my view, the mere fact that a Florida Supreme Court justice may periodically travel outside of the Northern District of Florida to attend bar functions or educational seminars and obtains travel reimbursements does not translate the trip into an 'official duty' trip sufficient to generate venue in the other districts." *Id.* "If the Florida Supreme Court maintained major offices, courtrooms or staff in other districts, then the result about venue and venue discovery might be different. But those significant facts, which Castro relies on when citing other cases, are absent here." *Id.* (holding the proper venue of a disgruntled bar candidate suing the Florida Supreme Court is the northern district of Florida). *See also Uberoi v. Labarga*, 8:16-CV-1821-T-33JSS, 2016 WL 5914922, at *2 (M.D. Fla. Oct. 11, 2016) (transferring another disgruntled bar candidate's case to the Northern District based a motion to dismiss filed by Justice Labarga noting that official acts by the Florida Supreme Court concerning the candidate's admission to the bar are done in Tallahassee; citing FLA. CONST. art. II, s. 2, noting that Tallahassee "is where the offices of the Florida Supreme Court shall be maintained.").

> he or she shall be entitled to reimbursement for travel expenses at the established rate of one round trip for each 30-day period actually taken to his or her home in addition to pay and allowances otherwise provided.[4]

Additionally, s. 112.061(1)(b)1., F.S., provides that

> To preserve the standardization established by this law . . . [t]he provisions of this section shall prevail over any conflicting provisions in a general law, present or future, to the extent of the conflict; but if any such general law contains a specific exemption from this section, including a specific reference to this section, such general law shall prevail, but only to the extent of the exemption.

Section 112.061, F.S. applies to the court system. In particular, a district court of appeal—the headquarters of which is defined by the Legislature, not the Constitution[5]—is authorized by the current version of s. 35.05(2), F.S. to "designate other locations within its district as branch headquarters for the conduct of the business of the court and as the official headquarters of its officers or employees pursuant to s. 112.061."[6] However, a prior version of s. 35.05, F.S. contained no such authorization and designated one city as the headquarters for each district court of appeal.[7]

On the other hand, prior versions of s. 112.061(4), in particular the 1973 version, is substantially similar if not identical to the current version of the statute.[8] The reason this matters is that the 1973 version of s. 112.061(4) was interpreted by the Attorney General's office to mean that a district court of appeal judge could *not* designate the city of his or her residence as his or her official headquarters for purposes of travel expenses.[9] As explained by the AG opinion:

> Section 112.061, F.S., has been uniformly interpreted by this office as authorizing reimbursement for travel expense only from the official headquarters of the public officer or employee; and, as defined in subsection 112.061(4), the official headquarters "of an officer or employee assigned to an office shall be the city or town in which the office is located . . . ." (The provisions of paragraphs (4)(a), (b), and (c), relating to public officers or employees "located in the field" or "stationed" in another city or town, are not applicable her for obvious reasons.) The official headquarters of each district court of appeal is designated by statute, s. 35.05, F.S., and that is where the majority of the work of the court is performed.[10]

Notably, the AG Opinion relied on the fact that s. 35.05, F.S., designated the official headquarters of each district court of appeal in specific cities. However, as already noted, s. 35.05, F.S., has since been amended and now permits a district court of appeal to "designate

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[4] Section 112.061(4)(a)-(c), F.S.
[5] Section 35.05(1), F.S. (designating the city in which the headquarters for each appellate district must be located).
[6] Section 35.05(2), F.S.
[7] *See* s. 35.05, F.S., http://fall.law.fsu.edu/FlStatutes/docs/1973/1973TVC35.pdf (last visited Feb. 15, 2018).
[8] *See* s. 112.061, F.S., http://fall.law.fsu.edu/FlStatutes/docs/1973/1973TXC112.pdf (last visited Feb. 15, 2018).
[9] Op. Att'y Gen. Fla. 74-132 (1974).
[10] *Id.*

other locations within its district as branch headquarters for the conduct of the business of the court and as the official headquarters of its officers or employees pursuant to s. 112.061."[11]

Currently, it appears that only the Second District Court of Appeal has designated a second branch office, in Tampa on the Stetson University campus.[12] However, the Second District's clerk's office is at the official headquarters in Lakeland.[13]

Neither justices of the Supreme Court nor judges for the district courts of appeal residing outside the city where their respective courts are headquartered receive travel and subsistence reimbursement.

Certification of Need for Additional Judges

Article V, s. 9 of the Florida Constitution requires the Florida Supreme Court to submit recommendations to the Legislature when there is a need to increase or decrease the number of judges.[14] The constitutional provision further directs the Court to base its recommendations on uniform criteria adopted by court rule.

The Court's rule setting forth criteria for assessing judicial need at the trial court level is based primarily upon the application of case weights to circuit and county court caseload statistics.[15] These weights are a quantified measure of judicial time spent on case-related activity. The judicial workload is then based on judicial caseloads adjusted in the relative complexity of various case types.

In addition to the statistical information, the Court, in weighing the need for trial court judges, will also consider the factors below which primarily relate to the resources available to a judicial circuit:

(i) The availability and use of county court judges in circuit court.

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[11] Section 35.05(2), F.S.

[12] Florida Second District Court of Appeal, http://www.2dca.org/Directions/tampa.shtml (last visited Feb. 15, 2018).

[13] *Id.*

[14] FLA. CONST. art. V, s. 9. states:

> **Determination of number of judges.**—The supreme court shall establish by rule uniform criteria for the determination of the need for additional judges except supreme court justices, the necessity for decreasing the number of judges and for increasing, decreasing or redefining appellate districts and judicial circuits. If the supreme court finds that a need exists for increasing or decreasing the number of judges or increasing, decreasing or redefining appellate districts and judicial circuits, it shall, prior to the next regular session of the legislature, certify to the legislature its findings and recommendations concerning such need. Upon receipt of such certificate, the legislature, at the next regular session, shall consider the findings and recommendations and may reject the recommendations or by law implement the recommendations in whole or in part; provided the legislature may create more judicial offices than are recommended by the supreme court or may decrease the number of judicial offices by a greater number than recommended by the court only upon a finding of two-thirds of the membership of both houses of the legislature, that such a need exists. A decrease in the number of judges shall be effective only after the expiration of a term. If the supreme court fails to make findings as provided above when need exists, the legislature may by concurrent resolution request the court to certify its findings and recommendations and upon the failure of the court to certify its findings for nine consecutive months, the legislature may, upon a finding of two-thirds of the membership of both houses of the legislature that a need exists, increase or decrease the number of judges or increase, decrease or redefine appellate districts and judicial circuits.

[15] Fla. R. Jud. Adm. 2.240(b)(1)(A).

(ii) The availability and use of senior judges to serve on a particular court.
(iii) The availability and use of magistrates and hearing officers.
(iv) The extent of use of alternative dispute resolution.
(v) The number of jury trials.
(vi) Foreign language interpretations.
(vii) The geographic size of a circuit, including travel times between courthouses in a particular jurisdiction.
(viii) Law enforcement activities in the court's jurisdiction, including any substantial commitment of additional resources for state attorneys, public defenders, and local law enforcement.
(ix) The availability and use of case-related support staff and case management policies and practices.
(x) Caseload trends.[16]

In addition to the weighted caseload statistics, the Court will also consider the time to perform other judicial activities, such as reviewing appellate decisions, reviewing petitions and motions for post-conviction relief, hearing and disposing motions, and participating in meetings with those involved in the justice system.[17] Finally, the Court will consider any request for an increase or decrease in the number of judges that the chief judge of the circuit "feels are required."[18]

Certification of Need for Additional Judges for FY 2018-2019

Following its criteria for determining the need for judges, the Florida Supreme Court recently issued an order certifying the need for additional judges for the 2018-2019 fiscal year.[19] In the order, the Court requested two additional judgeships for the Ninth Judicial Circuit, which encompasses Orange and Osceola Counties, and two additional county court judgeships in Hillsborough County.[20] The Court also decertified the need for 13 county court judgeships as follows: one from Escambia County, two from Pasco County, one from Putnam County, one from Alachua County, one from Polk County, one from Monroe County, three from Brevard County, one from Charlotte County, and one from Collier County.[21]

Judicial Nominating Commissions

Unless otherwise provided by law, the Governor fills a newly created judgeship by appointing a judge from among three to six persons nominated by a judicial nominating commission.[22] Once a vacancy occurs, a judicial nominating commission must submit its nominations to the Governor within 30 days, but the Governor may grant an extension to the commission of up to 30 days.[23]

[16] Fla. R. Jud. Admin. 2.240(b)(1)(B).
[17] Fla. R. Jud. Admin. 2.240(c).
[18] Fla. R. Jud. Admin. 2.240(d).
[19] *In Re: Certification of Need for Additional Judges*, 2017 WL 5623576 (Fla. 2017).
[20] *Id.* at *3.
[21] *Id.* at *4.
[22] FLA. CONST. art. V, s. 11; *Hoy v. Firestone*, 453 So. 2d 814 (Fla. 1984) (recognizing that the Legislature may provide for newly created judgeships to be filled by election or appointment).
[23] Fla. Const. art. V, s. 11(c). The judicial vacancies created by the bill do not occur until its effective date of July 1, 2018. However, "nothing in the Florida Constitution prevents the relevant judicial nominating commission ("JNC") from beginning

Within 60 days after receiving the nominations, the Governor must make an appointment to fill the vacancy.[24]

The appointee's term will end "on the first Tuesday after the first Monday in January of the year following the next primary and general election occurring at least one year after the date of appointment." Thus, the initial term of a judgeship created during the 2018 Session will end on January 12, 2021. At the end of the appointed term, the judicial offices will be filled by election.[25]

Legislative Powers Concerning Court Jurisdiction

The Constitution confers some authority over the jurisdiction of the courts to the Legislature. Although the territorial and subject matter jurisdiction of the Florida Supreme Court is primarily defined by the Constitution, the Legislature has constitutional authority to provide for the territorial jurisdiction and the subject matter jurisdiction of the courts.[26] For example, the Legislature is granted broad authority to define the jurisdiction[27] of the county courts: "The county courts shall exercise the jurisdiction *prescribed by general law*. Such jurisdiction shall be uniform throughout the state."[28]

Because the jurisdiction of the circuit court is limited by the jurisdiction of the county courts under the Constitution, the Legislature's authority to define the jurisdiction of the circuit courts is also fairly broad:

> The circuit courts shall have original jurisdiction not vested in the county courts, and jurisdiction of appeals *when provided by general law*. They shall have the power to issue writs of mandamus, quo warranto, certiorari, prohibition and habeas corpus, and all writs necessary or proper to the complete exercise of their jurisdiction. Jurisdiction of the circuit court shall be uniform throughout the state. They shall have the power of direct review of administrative action *prescribed by general law*.[29]

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the process of nominating … before the vacancy actually occurs." *Advisory Opinion to the Governor re Judicial Vacancy Due to Mandatory Retirement*, 940 So. 2d 1090, 1095 (Fla. 2006) (Cantero, J., concurring).

[24] *Id.*

[25] FLA. CONST. art V, s. 11(b).

[26] "Jurisdiction" is defined as "[a] government's general power to exercise authority over all persons and things within its territory; esp., a state's power to create interests that will be recognized under common-law principles as valid in other states <New Jersey's jurisdiction>." BLACK'S LAW DICTIONARY (10th ed. 2014). For courts, jurisdiction is defined as "[a] court's power to decide a case or issue a decree <the constitutional grant of federal-question jurisdiction>." *Id.* Additionally, jurisdiction is defined geographically: "A geographic area within which political or judicial authority may be exercised <the accused fled to another jurisdiction>." *Id.*

[27] *See Alexdex Corp. v. Nachon Enterprises, Inc.*, 641 So. 2d 858, 861 (Fla. 1994) ("The jurisdiction of the courts of the state is broadly defined by our State Constitution; however, the legislature may further define a court's jurisdiction so long as the jurisdiction, as redefined, is not in conflict with the Constitution. . . . Absent a constitutional prohibition or restriction, the legislature is free to vest courts with exclusive, concurrent, original, appellate, or final jurisdiction.") (citing *State v. Sullivan*, 95 Fla. 191, 116 So. 255 (1928)).

[28] FLA. CONST. art. V, s. 6(b) (emphasis added). Additionally, the Legislature establishes the number of judges to serve in each county. *Id.* at s. 6(a).

[29] FLA. CONST. art. V, s. 5(b) (emphasis added).

County Court Jurisdiction

As provided by the Legislature in s. 34.01, F.S., the county court is a trial court that has jurisdiction over the following subject matters within its jurisdictional (monetary) amount of $15,000:

- All criminal misdemeanor cases not cognizable by the circuit courts;
- All violations of municipal and county ordinances;
- All actions at law involving damages up to $15,000, not including interest, costs, and attorney's fees, unless the cause of action is within the exclusive jurisdiction of the circuit courts;
- Concurrent jurisdiction with the circuit courts over disputes between homeowners' associations and parcel owners;
- Concurrent jurisdiction with circuit courts to hear uncontested dissolution of marriage petitions under the simplified dissolution procedures;
- Any subject matter jurisdiction previously exercised by the county courts prior to the adoption of the 1968 Constitution, including that of the small claims courts; and
- Any matter in equity (such as an eviction)[30] that is within the jurisdictional amount of the county court, $15,000.

The Legislature has increased the jurisdictional amount of county court three times since 1980. Before July 1, 1980, the amount was $2,500; on July 1, 1980, it changed to $5,000; on July 1, 1990, to $10,000; and on July 1, 1992, to $15,000. According to the Consumer Price Index, $15,000 in July 1992 had the same buying power as $26,319 in December 2017.

The National Center for State Courts reports that jurisdictional amounts for courts comparable to Florida's county courts range from $5,000 to $200,000.[31] Florida is one of four states with a limit of $15,000. Four states have a jurisdictional limit of $25,000; 22 states use $30,000 or less; one uses $40,000; and five use more than $40,000, with four of those greater than $50,000.[32]

Circuit Court Jurisdiction

Because the circuit courts have exclusive jurisdiction over "all actions at law not cognizable by the county courts," the circuit court's current jurisdictional amount is $15,000 or above for cases demanding money judgments.[33]

Additionally, with two exceptions, the circuit court has appellate jurisdiction over county court cases. Under the two exceptions, the district court of appeal has appellate jurisdiction over a county court case when a county court either declares a statue or constitutional provision invalid

[30] Section 34.011, F.S. (providing that county and circuit courts generally have concurrent jurisdiction over landlord tenant cases, although county court will have exclusive jurisdiction over proceedings relating to the right of possession so long as matter is under $15,000.).
[31] National Center for State Courts, *Civil Jurisdiction Thresholds*, available at http://www.ncsc.org/~/media/files/pdf/topics/civil%20procedure/civil%20jurisdiction%20thresholds%20history.ashx (last visited Feb. 9, 2018).
[32] Not all states provided data to the National Center for State Courts and some states have a single-tier trial court or threshold ranges.
[33] Section 26.012(2)(a), F.S.

or certifies a question of great public importance.[34] Additionally, if the law applied by the circuit court sitting in its appellate capacity is in question, a party may seek review by the appropriate district court of appeal by filing a petition of writ of certiorari.[35]

Notably, foreclosure cases, which are cases in equity, are not one of the subject areas statutorily defined as being within the exclusive jurisdiction of the circuit court.[36] Rather, the Florida Supreme Court in *Alexdex Corp. v. Nachon Enterprises, Inc.*, concluded in resolving a conflict between the statutes setting forth the county court's and the circuit court's equity jurisdiction in foreclosure cases, "the legislature intended to provide concurrent equity jurisdiction in circuit and county courts, except that equity cases filed in county courts must fall within the county court's monetary jurisdiction, as set by statute."[37]

III. Effect of Proposed Changes:

Section 1 creates s. 25.025, F.S., to permit a Supreme Court justice permanently residing outside of Leon County to be paid subsistence and travel expenses, at a rate established by the Chief Justice, when conducting business at the headquarters of the Supreme Court in Tallahassee. A justice who resides outside of Leon County is authorized to designate an official headquarters in the District Court of Appeal district in which he or she resides, located in a district court of appeal courthouse, county courthouse or other appropriate facility. A justice will be paid travel expenses when travelling between his or her official headquarters and Tallahassee on official business and reimbursed subsistence for each day or partial day he or she is in Tallahassee. The Supreme Court may not use state funds to lease space in a facility to establish an official headquarters for a justice.

Section 2 amends s. 26.031, Florida Statutes, to add two circuit court judgeships to the Ninth Judicial Circuit Court, which includes Orange and Osceola Counties. The newly created judgeships will be filled by the Governor from among nominees by the Ninth Circuit Judicial Nominating Commission.

Section 3 amends s. 34.01, Florida Statutes, to expand the jurisdiction of county court to include actions at law with an amount in which the matter in controversy does not exceed $50,000, rather than the current limit of $15,000. The new limit applies to actions filed on or after January 1, 2020. The bill requires that the Legislature adjust the limit every 5 years to reflect the rate of inflation or deflation as indicated in the Consumer Price Index.

The bill also provides that parties shall pay the filing fees in the same amounts and in the same manner as current law. In other words, if the amount in controversy exceeds $15,000 but is less than the new limit of $50,000, the party would pay the filing fees associated with circuit court

[34] Section 26.012(1), F.S.
[35] FLA. CONST. art. V, s. 4(b)(3) (authorizing district courts of appeal to issue writs of certiorari among others). Philip J. Padovano, *Appellate Practice*, 2 Fla. Prac.,§ 30:5 (2017 ed.) ("A party may file a petition for writ of certiorari to review . . . an appellate decision of a lower court[.]"). On petition for writ of certiorari, the district court reviews for whether the circuit court departed from the essential requirements of the law; or, put another way, whether the circuit court "(1) afforded the parties due process of law[,] and (2) applied the correct law." *Id.*
[36] Section 26.012(2), F.S.
[37] 641 So. 2d 858, 862 (Fla. 1994).

even though the case would now reside in county court. This provision ensures that there will be no change to state revenues resulting from the bill.

Section 4 amends s. 34.002, Florida Statutes, to add five new county judgeships – two in Hillsborough County, and one each in Citrus, Columbia and Flagler counties. The newly created judgeships will be filled by the Governor from among nominees by the appropriate judicial nominating commissions.

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:

Addition of Judges Not Certified by the Florida Supreme Court- In order to create the three additional county court judgeships in Citrus, Columbia, and Flagler Counties, article V, section 9 of the Florida Constitution requires that these additions be approved by a two-thirds vote of each house.

Headquarters of the Florida Supreme Court Justices- It is unclear whether the Legislature has the authority to authorize the Chief Justice of the Florida Supreme Court to establish "headquarters" under s. 112.061, F.S., for any justice outside of Tallahassee, even if it is within the justice's district.

Article II, section 2 of the Florida Constitution designates Tallahassee as the seat of state government "where the *offices* of the governor, lieutenant governor, cabinet members and *the supreme court shall be maintained* and the sessions of the legislature shall be held[.]"[38] Under the rule of construction, "expressio unius est exclusio alterius" (the expression of one thing is the exclusion of the other), it appears by excluding the word "offices" for the legislature and only requiring that session be held in Tallahassee, the drafters of article II, section 2 understood that legislators must have offices within their districts around the state. However, the word "offices" is specifically used in reference to the governor, lieutenant governor, cabinet members, and the Florida Supreme Court in

[38] FLA. CONST. art. II, s. 2 (emphasis added).

article II, section 2, and specifically requires that those offices be located at the seat of government in Tallahassee.

While permitting a justice to work remotely or establish a private chamber in another courthouse in the state does not appear to be problematic, it appears that another "headquarters" outside of Tallahassee may not be constitutionally permissible.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

In the jurisdictions where the bill creates new judgeships, litigants may have their cases resolved more quickly.

C. Government Sector Impact:

State Government

Supreme Court Travel Expenses (Section 1)

According to the Office of the State Court Administrator, the travel and subsistence provisions have an annual fiscal impact of $209,930 in recurring general revenue funds. Supreme Court travel costs are based on official state mileage, assuming 40 round trips yearly per justice between Tallahassee and the DCA headquarters in the justice's home appellate district. Subsistence costs assume 77 meeting days at $131 per day and 80 travel days at $98.25 per day, or $17,947 per justice.[39]

New Circuit Court Judgeships (Section 2)

When circuit court judgeships are created, other costs must be incurred in addition to the salary and benefits for each new judge. The largest of these costs are for the salary and benefits of a judicial assistant and a law clerk for each judge. According to the Office of the State Courts Administrator, the total costs to fund the addition of the two circuit court judgeships created by the bill are $815,862 from the General Revenue Fund, of which $14,394 are non-recurring costs.[40]

New County Court Judgeships (Section 4)

When county court judgeships are created, the state must incur other costs in addition to the salary and benefits of each new judge. The largest of these costs are for the salary and benefits for a judicial assistant for each judge. Based on figures from the Office of the

[39] Office of the State Court Administrator, *Supreme Court Headquarter Travel Analysis* (on file with the Senate Appropriations Subcommittee on Criminal and Civil Justice).
[40] Office of the State Courts Administrator, *Judicial Impact Statement* (Nov. 22, 2017) (on file with the Senate Committee on Judiciary).

State Courts Administrator, the total costs to fund the addition of the five county court judgeships created by the bill are $1,556,890 from the General Revenue Fund, of which $23,990 are non-recurring costs.

Local Government

Under article V section 14(c) of the Florida Constitution and s. 29.008, F.S., counties are required to provide the court system, including the state attorney and the public defender, with facilities, security, and communication services, including information technology. Under the bill, the counties will incur an indeterminate amount of costs associated with providing those services to the new judges and judicial staff. The clerks of the court will also be required to provide additional services to the new judges.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 25.025, Florida Statutes, and substantially amends the following sections of the Florida Statutes: 26.031, 34.01, and 34.022.

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:

- Permits Supreme Court justices permanently residing outside of Leon County to be paid subsistence and travel expenses;
- Increases the jurisdiction of county court to include actions at law with an amount in which the matter in controversy does not exceed $50,000, rather than the current limit of $15,000; and,
- Increases the number of county judgeships in the bill from two judgeships to five judgeships.

CS by Judiciary on January 25, 2018:
The committee substitute no longer includes a provision that would have reduced the number of county court judges in Monroe County.

B. Amendments:

None.

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

830072

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/02/2018	.	
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	.	
	.	

The Committee on Appropriations (Steube) recommended the following:

Senate Amendment (with title amendment)

Delete line 149
and insert:
Section 5. Effective upon this act becoming a law, subsection (3) of section 105.031, Florida Statutes, is amended to read:
105.031 Qualification; filing fee; candidate’s oath; items required to be filed.—
(3) QUALIFYING FEE.—

830072

(a) Each candidate qualifying for election to a judicial office or the office of school board member, except write-in judicial or school board candidates, shall, during the time for qualifying, pay to the officer with whom he or she qualifies a qualifying fee, which shall consist of a filing fee and an election assessment, or qualify by the petition process. The amount of the filing fee is 3 percent of the annual salary of the office sought. The amount of the election assessment is 1 percent of the annual salary of the office sought. Except as provided in paragraph (b), the Department of State shall transfer all filing fees to the Department of Legal Affairs for deposit in the Elections Commission Trust Fund and~~.~~ the supervisor of elections shall forward all filing fees to the Elections Commission Trust Fund. The election assessment shall be deposited into the Elections Commission Trust Fund. The annual salary of the office for purposes of computing the qualifying fee shall be computed by multiplying 12 times the monthly salary authorized for such office as of July 1 immediately preceding the first day of qualifying. This paragraph ~~subsection~~ does not apply to candidates qualifying for retention to judicial office.

(b) Not later than 20 days after the close of qualifying, the Department of State or the supervisor of elections, as appropriate, shall refund the full amount of the qualifying fee to a candidate for the office of circuit court judge or county court judge who is unopposed at the time the qualifying period closes.

Section 6. Except as otherwise expressly provided in this act and except for this section, which shall take effect upon

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becoming a law, 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 lines 2 - 33

and insert:

An act relating to the judicial branch; creating s. 25.025, F.S.; authorizing certain Supreme Court Justices to have an appropriate facility in their district of residence designated as their official headquarters; providing that an official headquarters may serve only as a justice's private chambers; providing that such justices are eligible for a certain subsistence allowance and reimbursement for certain transportation expenses; requiring that such allowance and reimbursement be made to the extent appropriated funds are available, as determined by the Chief Justice; requiring the Chief Justice to coordinate with certain persons in implementing designations of official headquarters; providing that a county is not required to provide space for a justice in a county courthouse; authorizing counties to enter into agreements with the Supreme Court for the use of county courthouse space; prohibiting the Supreme Court from using state funds to lease space in a facility to allow a justice to establish an official headquarters; amending s. 26.031, F.S.; adding judges to the Ninth Judicial Circuit Court; amending s. 34.01, F.S.; increasing the limit of the amount in

830072

controversy in certain actions at law under which the county court has original jurisdiction of such actions; providing for adjustments to the limit at specified intervals due to inflation or deflation; specifying filing fees, services charges, and a requirement for the clerk of court's remittal of such fees in actions in which the amount in controversy exceeds a specified amount; amending s. 34.022, F.S.; adding judges to certain county courts; amending s. 105.031, F.S.; requiring the appropriate qualifying officer to refund the qualifying fee to an unopposed candidate for the office of circuit court judge or county court judge by a specified date; providing effective dates.

554532

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/02/2018	.	
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	.	
	.	

The Committee on Appropriations (Steube) recommended the following:

Senate Amendment (with title amendment)

Between lines 80 and 81
insert:
Section 3. Subsection (4) is added to section 30.15, Florida Statutes, to read:
30.15 Powers, duties, and obligations.—
(4)(a) Sheriffs, in their respective counties, shall provide security for trial court facilities. Sheriffs shall coordinate with the chief judge of the judicial circuit in which

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their county is located on all security matters for such facilities, but shall retain operational control over the manner in which security is provided. The chief judge of the judicial circuit shall retain decision-making authority to ensure the protection of due process rights, including, but not limited to, the scheduling and conduct of trials and other judicial proceedings, as part of his or her responsibility for the administrative supervision of the trial courts under s. 43.26.

(b) Sheriffs and their deputies, employees, and contractors are officers of the court when providing security for trial court facilities under this subsection.

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

And the title is amended as follows:

Delete line 23

and insert:

Circuit Court; amending s. 30.15, F.S.; requiring sheriffs to provide security for trial court facilities; requiring sheriffs to coordinate with a certain the chief judge on security matters for trial court facilities and to retain operational control over how they provide security for such facilities; specifying that the chief judge has certain decision-making authority as part of his or her administrative supervision responsibility; specifying that sheriffs and their deputies, employees, and contractors are officers of the court when providing security for trial court facilities; amending s. 34.01, F.S.; increasing the

225404

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/02/2018	.	
	.	
	.	
	.	

The Committee on Appropriations (Steube) recommended the following:

Senate Amendment (with title amendment)

Between lines 80 and 81
insert:

Section 1. Subsection (1) of section 29.008, Florida Statutes, is amended to read:

29.008 County funding of court-related functions.—

(1) Counties are required by s. 14, Art. V of the State Constitution to fund the cost of communications services, existing radio systems, existing multiagency criminal justice

information systems, and the cost of construction or lease, maintenance, utilities, and security of facilities for the circuit and county courts, public defenders' offices, state attorneys' offices, guardian ad litem offices, and the offices of the clerks of the circuit and county courts performing court-related functions. For purposes of this section, the term "circuit and county courts" includes the offices and staffing of the guardian ad litem programs, and the term "public defenders' offices" includes the offices of criminal conflict and civil regional counsel. The county designated under s. 35.05(1) as the headquarters for each appellate district shall fund these costs for the appellate division of the public defender's office in that county. For purposes of implementing these requirements, the term:

(a) "Facility" means reasonable and necessary buildings and office space and appurtenant equipment and furnishings, structures, real estate, easements, and related interests in real estate, including, but not limited to, those for the purpose of housing legal materials for use by the general public and personnel, equipment, or functions of the circuit or county courts, public defenders' offices, state attorneys' offices, and court-related functions of the office of the clerks of the circuit and county courts and all storage. The term "facility" includes all wiring necessary for court reporting services. The term also includes access to parking for such facilities in connection with such court-related functions that may be available free or from a private provider or a local government for a fee. The office space provided by a county may not be less than the standards for space allotment adopted by the Department

of Management Services, except this requirement applies only to facilities that are leased, or on which construction commences, after June 30, 2003. County funding must include physical modifications and improvements to all facilities as are required for compliance with the Americans with Disabilities Act. Upon mutual agreement of a county and the affected entity in this paragraph, the office space provided by the county may vary from the standards for space allotment adopted by the Department of Management Services.

1. As of July 1, 2005, equipment and furnishings shall be limited to that appropriate and customary for courtrooms, hearing rooms, jury facilities, and other public areas in courthouses and any other facility occupied by the courts, state attorneys, public defenders, guardians ad litem, and criminal conflict and civil regional counsel. Court reporting equipment in these areas or facilities is not a responsibility of the county.

2. Equipment and furnishings under this paragraph in existence and owned by counties on July 1, 2005, except for that in the possession of the clerks, for areas other than courtrooms, hearing rooms, jury facilities, and other public areas in courthouses and any other facility occupied by the courts, state attorneys, and public defenders, shall be transferred to the state at no charge. This provision does not apply to any communications services as defined in paragraph (f).

(b) "Construction or lease" includes, but is not limited to, all reasonable and necessary costs of the acquisition or lease of facilities for all judicial officers, staff, jurors,

volunteers of a tenant agency, and the public for the circuit and county courts, the public defenders' offices, state attorneys' offices, and for performing the court-related functions of the offices of the clerks of the circuit and county courts. This includes expenses related to financing such facilities and the existing and future cost and bonded indebtedness associated with placing the facilities in use.

(c) "Maintenance" includes, but is not limited to, all reasonable and necessary costs of custodial and groundskeeping services and renovation and reconstruction as needed to accommodate functions for the circuit and county courts, the public defenders' offices, and state attorneys' offices and for performing the court-related functions of the offices of the clerks of the circuit and county court and for maintaining the facilities in a condition appropriate and safe for the use intended.

(d) "Utilities" means all electricity services for light, heat, and power; natural or manufactured gas services for light, heat, and power; water and wastewater services and systems, stormwater or runoff services and systems, sewer services and systems, all costs or fees associated with these services and systems, and any costs or fees associated with the mitigation of environmental impacts directly related to the facility.

(e) "Security" includes but is not limited to, all reasonable and necessary costs of services of law enforcement officers or licensed security guards and all electronic, cellular, or digital monitoring and screening devices necessary to ensure the safety and security of all persons visiting or working in a facility; to provide for security of the facility,

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including protection of property owned by the county or the state; and for security of prisoners brought to any facility. This includes bailiffs while providing courtroom and other security for each judge and other quasi-judicial officers.

(f) "Communications services" are defined as any reasonable and necessary transmission, emission, and reception of signs, signals, writings, images, and sounds of intelligence of any nature by wire, radio, optical, audio equipment, or other electromagnetic systems and includes all facilities and equipment owned, leased, or used by judges, clerks, public defenders, state attorneys, guardians ad litem, criminal conflict and civil regional counsel, and all staff of the state courts system, state attorneys' offices, public defenders' offices, and clerks of the circuit and county courts performing court-related functions. Such system or services shall include, but not be limited to:

1. Telephone system infrastructure, including computer lines, telephone switching equipment, and maintenance, and facsimile equipment, wireless communications, cellular telephones, pagers, and video teleconferencing equipment and line charges. Each county shall continue to provide access to a local carrier for local and long distance service and shall pay toll charges for local and long distance service.

2. All computer networks, systems and equipment, including computer hardware and software, modems, printers, wiring, network connections, maintenance, support staff or services including any county-funded support staff located in the offices of the circuit court, county courts, state attorneys, public defenders, guardians ad litem, and criminal conflict and civil

regional counsel; training, supplies, and line charges necessary for an integrated computer system to support the operations and management of the state courts system, the offices of the public defenders, the offices of the state attorneys, the guardian ad litem offices, the offices of criminal conflict and civil regional counsel, and the offices of the clerks of the circuit and county courts; and the capability to connect those entities and reporting data to the state as required for the transmission of revenue, performance accountability, case management, data collection, budgeting, and auditing purposes. The integrated computer system shall be operational by July 1, 2006, and, at a minimum, permit the exchange of financial, performance accountability, case management, case disposition, and other data across multiple state and county information systems involving multiple users at both the state level and within each judicial circuit and be able to electronically exchange judicial case background data, sentencing scoresheets, and video evidence information stored in integrated case management systems over secure networks. Once the integrated system becomes operational, counties may reject requests to purchase communications services included in this subparagraph not in compliance with standards, protocols, or processes adopted by the board established pursuant to former s. 29.0086.

3. Courier messenger and subpoena services.

4. Auxiliary aids and services for qualified individuals with a disability which are necessary to ensure access to the courts. Such auxiliary aids and services include, but are not limited to, sign language interpretation services required under the federal Americans with Disabilities Act other than services

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required to satisfy due-process requirements and identified as a state funding responsibility pursuant to ss. 29.004, 29.005, 29.006, and 29.007, real-time transcription services for individuals who are hearing impaired, and assistive listening devices and the equipment necessary to implement such accommodations.

(g) "Existing radio systems" includes, but is not limited to, law enforcement radio systems that are used by the circuit and county courts, the offices of the public defenders, the offices of the state attorneys, and for court-related functions of the offices of the clerks of the circuit and county courts. This includes radio systems that were operational or under contract at the time Revision No. 7, 1998, to Art. V of the State Constitution was adopted and any enhancements made thereafter, the maintenance of those systems, and the personnel and supplies necessary for operation.

(h) "Existing multiagency criminal justice information systems" includes, but is not limited to, those components of the multiagency criminal justice information system as defined in s. 943.045, supporting the offices of the circuit or county courts, the public defenders' offices, the state attorneys' offices, or those portions of the offices of the clerks of the circuit and county courts performing court-related functions that are used to carry out the court-related activities of those entities. This includes upgrades and maintenance of the current equipment, maintenance and upgrades of supporting technology infrastructure and associated staff, and services and expenses to assure continued information sharing and reporting of information to the state. The counties shall also provide

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additional information technology services, hardware, and software as needed for new judges and staff of the state courts system, state attorneys' offices, public defenders' offices, guardian ad litem offices, and the offices of the clerks of the circuit and county courts performing court-related functions.

This subsection applies only to matters relating to court funding and may not be construed to enhance, limit, or define the authority of any court.

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

And the title is amended as follows:

Delete line 23

and insert:

Circuit Court; amending s. 29.008, F.S.; providing applicability and construction; amending s. 34.01, F.S.; increasing the

576-03258-18

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

A bill to be entitled

An act relating to courts; creating s. 25.025, F.S.; authorizing certain Supreme Court Justices to have an appropriate facility in their district of residence designated as their official headquarters; providing that an official headquarters may serve only as a justice's private chambers; providing that such justices are eligible for a certain subsistence allowance and reimbursement for certain transportation expenses; requiring that such allowance and reimbursement be made to the extent appropriated funds are available, as determined by the Chief Justice; requiring the Chief Justice to coordinate with certain persons in implementing designations of official headquarters; providing that a county is not required to provide space for a justice in a county courthouse; authorizing counties to enter into agreements with the Supreme Court for the use of county courthouse space; prohibiting the Supreme Court from using state funds to lease space in a facility to allow a justice to establish an official headquarters; amending s. 26.031, F.S.; adding judges to the Ninth Judicial Circuit Court; amending s. 34.01, F.S.; increasing the limit of the amount in controversy in certain actions at law under which the county court has original jurisdiction of such actions; providing for adjustments to the limit at specified intervals due to

576-03258-18

inflation or deflation; specifying filing fees, services charges, and a requirement for the clerk of court's remittal of such fees in actions in which the amount in controversy exceeds a specified amount; amending s. 34.022, F.S.; adding judges to certain county courts; providing an effective date.

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

Section 1. Section 25.025, Florida Statutes, is created to read:

25.025 Headquarters.—

(1)(a) A Supreme Court justice who permanently resides outside Leon County shall, if he or she so requests, have a district court of appeal courthouse, a county courthouse, or other appropriate facility in his or her district of residence designated as his or her official headquarters pursuant to s. 112.061. This official headquarters may serve only as the justice's private chambers.

(b) A justice for whom an official headquarters is designated in his or her district of residence under this subsection is eligible for subsistence at a rate to be established by the Chief Justice for each day or partial day that the justice is at the headquarters of the Supreme Court for the conduct of the business of the court. In addition to the subsistence allowance, a justice is eligible for reimbursement for transportation expenses as provided in s. 112.061(7) for travel between the justice's official headquarters and the headquarters of the Supreme Court for the conduct of the

business of the court.

(c) Payment of subsistence and reimbursement for transportation expenses relating to travel between a justice's official headquarters and the headquarters of the Supreme Court shall be made to the extent appropriated funds are available, as determined by the Chief Justice.

(2) The Chief Justice shall coordinate with each affected justice and other state and local officials as necessary to implement paragraph (1)(a).

(3)(a) This section does not require a county to provide space in a county courthouse for a justice. A county may enter into an agreement with the Supreme Court governing the use of space in a county courthouse.

(b) The Supreme Court may not use state funds to lease space in a district court of appeal courthouse, county courthouse, or other facility to allow a justice to establish an official headquarters pursuant to subsection (1).

Section 2. Subsection (9) of section 26.031, Florida Statutes, is amended to read:

26.031 Judicial circuits; number of judges.—The number of circuit judges in each circuit shall be as follows:

JUDICIAL CIRCUIT	TOTAL
(9) Ninth	45 ~~43~~

Section 3. Section 34.01, Florida Statutes, is amended to read:

34.01 Jurisdiction of county court.—

(1) County courts shall have original jurisdiction:

(a) In all misdemeanor cases not cognizable by the circuit

courts.~~;~~

(b) Of all violations of municipal and county ordinances.~~;~~

(c)1. Of all actions at law filed on or before December 31, 2019, in which the matter in controversy does not exceed the sum of $15,000, exclusive of interest, costs, and attorney ~~attorney's~~ fees, except those within the exclusive jurisdiction of the circuit courts.~~; and~~

2. Of all actions at law filed on or after January 1, 2020, in which the matter in controversy does not exceed the sum of $50,000, exclusive of interest, costs, and attorney fees, except those within the exclusive jurisdiction of the circuit courts. This limit must be adjusted every 5 years after January 1, 2020, to reflect the rate of inflation or deflation as indicated in the Consumer Price Index for All Urban Consumers, U.S. City Average, All Items, or successor reports as reported by the United States Department of Labor, Bureau of Labor Statistics, or its successor. Such adjustments must be rounded to the nearest $5,000.

(d) Of disputes occurring in the homeowners' associations as described in s. 720.311(2)(a), which shall be concurrent with jurisdiction of the circuit courts.

The party instituting an action at law under subparagraph (c)2. in which the amount in controversy exceeds $15,000 shall pay the filing fees and service charges in the same amounts and in the same manner as provided in s. 28.241, and the party appealing any judgment on such action shall pay the filing fees and service charges in the same amounts and in the same manner as provided in s. 35.22. The clerk of court shall remit the fees as

provided in those sections.

(2) The county courts shall have jurisdiction previously exercised by county judges' courts other than that vested in the circuit court by s. 26.012, except that county court judges may hear matters involving dissolution of marriage under the simplified dissolution procedure pursuant to the Florida Family Law Rules of Procedure or may issue a final order for dissolution in cases where the matter is uncontested, and the jurisdiction previously exercised by county courts, the claims court, small claims courts, small claims magistrates courts, magistrates courts, justice of the peace courts, municipal courts, and courts of chartered counties, including but not limited to the counties referred to in ss. 9, 10, 11, and 24, Art. VIII of the State Constitution of 1885, as preserved by s. (6)(e), Art. VIII of the State Constitution of 1968.

(3) Judges of county courts shall also be committing trial court judges. Judges of county courts shall be coroners unless otherwise provided by law or by rule of the Supreme Court.

(4) Judges of county courts may hear all matters in equity involved in any case within the jurisdictional amount of the county court, except as otherwise restricted by the State Constitution or the laws of Florida.

(5) A county court is a trial court.

Section 4. Subsections (9), (12), (17), and (28) of section 34.022, Florida Statutes, are amended to read:

34.022 Number of county court judges for each county.—The number of county court judges in each county shall be as follows:

COUNTY	TOTAL
(9) Citrus	2 ~~1~~
(12) Columbia	2 ~~1~~
(17) Flagler	2 ~~1~~
(28) Hillsborough	19 ~~17~~

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/CS/SB 1396
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Criminal and Civil Justice); Judiciary Committee; and Senators Steube and Brandes
SUBJECT:	Judicial Branch
DATE:	March 6, 2018
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cibula	Cibula	JU	**Fav/CS**
2.	Harkness	Sadberry	ACJ	**Recommend: Fav/CS**
3.	Harkness	Hansen	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1396 revises a number of statutes affecting the judicial branch. The primary changes in the bill:

- Raise the county court's jurisdictional amount for civil cases demanding money from $15,000 to $50,000, effective January 1, 2020. The ceiling on the county court's jurisdiction is also the floor of the circuit court's monetary jurisdiction.
- Add two circuit judges to the ninth circuit, add two county court judges in Hillsborough County, and add one county court judge in each of the following counties: Citrus, Columbia, and Flagler Counties. The cost to fund these seven judgeships and support staff is $2.37 million in recurring general revenue funds.
- Authorize a supreme court justice who resides outside of Tallahassee to maintain his or her headquarters in a district court of appeal courthouse, a county courthouse, or other appropriate facility in the justice's district and be reimbursed for travel and subsistence while in Tallahassee.
- Clarify that sheriffs when providing security in court facilities remain in operational control over the manner in which security is provided.

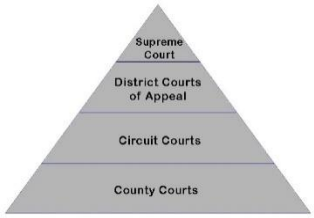
The first three main components of the bill which are described above will increase state government expenditures and reduce state trust fund revenues. *See* Section V. Fiscal Impact Statement.

II. Present Situation:

Florida's Court System

The Florida Constitution vests all judicial power in:

- The supreme court;
- The district courts of appeal;
- The circuit courts; and
- The county courts.[1]



The Constitution provides that "[n]o other courts may be established by the state, any political subdivision or any municipality."[2] Additionally, the Constitution vests the Florida Supreme Court with broad authority to administer the State court system and establish court rules of procedure.[3]

Legislative Powers Concerning Court Jurisdiction

The constitution confers some authority over the jurisdiction of the courts to the Legislature. Although the territorial and subject matter jurisdiction of the Florida Supreme Court is primarily defined by the Constitution, the Legislature has constitutional authority to provide for the territorial jurisdiction and the subject matter jurisdiction of the courts.[4]

Territorial Jurisdiction

The Legislature is constitutionally required to establish the territorial or geographic jurisdiction of the appellate court districts and the judicial circuits "following county lines."[5] Currently, there are five district courts of appeal,[6] 20 judicial circuits, and 67 county courts, one in each of Florida's 67 counties[7] as constitutionally required.[8]

The following maps illustrate the territorial jurisdictions of these courts:[9]

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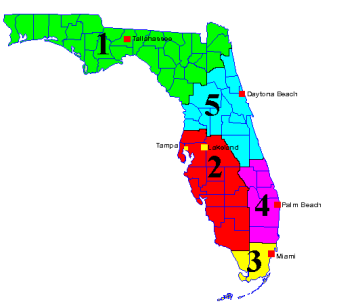
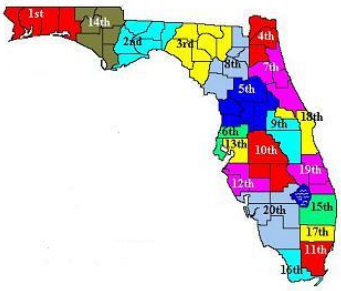
[1] Art. V, s. 1, FLA. CONST.
[2] *Id.* (although the Constitution permits the Legislature to establish quasi-judicial, administrative courts and a civil traffic infraction hearing officer system).
[3] FLA. CONST. art. V, s. 2.
[4] "Jurisdiction" is defined as "[a] government's general power to exercise authority over all persons and things within its territory; esp., a state's power to create interests that will be recognized under common-law principles as valid in other states <New Jersey's jurisdiction>." BLACK'S LAW DICTIONARY (10th ed. 2014). For courts, jurisdiction is defined as "[a] court's power to decide a case or issue a decree <the constitutional grant of federal-question jurisdiction>." *Id.* Additionally, jurisdiction is defined geographically: "A geographic area within which political or judicial authority may be exercised <the accused fled to another jurisdiction>." *Id.*
[5] FLA. CONST. art. V, s. 1.
[6] Florida Courts, *Court System Organization & Structure*, http://www.flcourts.org/florida-courts/ (last visited Feb. 7, 2018). The First District sits in Tallahassee; the Second District sits in Lakeland; the Third District sits in Miami; the Fourth District sits in West Palm Beach; and the Fifth District sits in Dayton Beach. *Id.*
[7] Florida Courts, *Court System Organization & Structure*, http://www.flcourts.org/florida-courts/ (last visited Feb. 7, 2018).
[8] FLA. CONST. art. V, s. 6(a) ("There shall be a county court in each county.").
[9] Rick Scott, 45th Governor of Florida, Judicial and Judicial Nominating Commission Information, *The Florida Court System*, https://www.flgov.com/judicial-and-judicial-nominating-commission-information/ (last visited Feb. 7, 2018).





Five District Courts of Appeal Twenty Judicial Circuits Sixty-Seven Counties

Subject Matter Jurisdiction

The Legislature's authority over the subject matter jurisdiction of the Florida Supreme Court and district courts of appeal is fairly limited. With a few exceptions,[10] the Constitution sets out the subject matter jurisdiction of the Supreme Court and the appellate courts.

On the other hand, under the Constitution, the Legislature is granted broad authority to define the jurisdiction[11] of the county courts: "The county courts shall exercise the jurisdiction *prescribed by general law*. Such jurisdiction shall be uniform throughout the state."[12]

Because the jurisdiction of the circuit court is limited by the jurisdiction of the county courts under the Constitution, the Legislature's authority to define the jurisdiction of the circuit courts is also fairly broad:

> The circuit courts shall have original jurisdiction not vested in the county courts, and jurisdiction of appeals *when provided by general law*. They shall have the power to issue writs of mandamus, quo warranto, certiorari, prohibition and habeas corpus, and all writs necessary or proper to the complete exercise of their jurisdiction. Jurisdiction of the circuit court shall be uniform throughout the state. They shall have the power of direct review of administrative action *prescribed by general law*.[13]

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[10] *See* Art. V, s. 3(b)(2), FLA. CONST. ("When provided by *general law*, [the supreme court] shall hear appeals from final judgments entered in proceedings for the validation of bonds or certificates of indebtedness and shall review action of statewide agencies relating to rates or service of utilities providing electric, gas, or telephone service.") (emphasis added); FLA. CONST. art. V, s. 4(b)(2) ("District courts of appeal shall have the power of direct review of administrative action, *as prescribed by general law*.") (emphasis added).

[11] *See Alexdex Corp. v. Nachon Enterprises, Inc.*, 641 So. 2d 858, 861 (Fla. 1994) ("The jurisdiction of the courts of the state is broadly defined by our State Constitution; however, the legislature may further define a court's jurisdiction so long as the jurisdiction, as redefined, is not in conflict with the Constitution. . . . Absent a constitutional prohibition or restriction, the legislature is free to vest courts with exclusive, concurrent, original, appellate, or final jurisdiction.") (citing *State v. Sullivan*, 95 Fla. 191, 116 So. 255 (1928)).

[12] FLA. CONST. art. V, s. 6(b) (emphasis added). Additionally, the Legislature establishes the number of judges to serve in each county. *Id.* at s. 6(a).

[13] FLA. CONST. art. V, s. 5(b) (emphasis added).

County Court Jurisdiction

As provided by the Legislature in s. 34.01, F.S., the county court is a trial court that has jurisdiction over the following subject matters within its jurisdictional (monetary) amount of $15,000:

- All criminal misdemeanor cases not cognizable by the circuit courts;
- All violations of municipal and county ordinances;
- All actions at law involving damages up to $15,000, not including interest, costs, and attorney's fees, unless the cause of action is within the exclusive jurisdiction of the circuit courts;
- Concurrent jurisdiction with the circuit courts over disputes between homeowners' associations and parcel owners;
- Concurrent jurisdiction with circuit courts to hear uncontested dissolution of marriage petitions under the simplified dissolution procedures;
- Any subject matter jurisdiction previously exercised by the county courts prior to the adoption of the 1968 Constitution, including that of the small claims courts; and
- Any matter in equity (such as an eviction)[14] that is within the jurisdictional amount of the county court, $15,000.

The effective date of the last increase to the monetary limit on the jurisdiction of the county courts was July 1, 1992.[15] If adjusted for inflation to December 2017, the $15,000 jurisdictional limit would be $26,319.29 as of December 2017.[16]

The county court is also the small claims court. Small claims courts are not separate, constitutionally recognized courts;[17] rather, they are the county courts functioning under the Florida Small Claims Rules of procedure adopted by Supreme Court.[18] The goal of the Small Claims Rules is to "reach a 'simple, speedy, and inexpensive' resolution of [small claims] cases" in which the parties often represent themselves.[19] The court rules apply to civil actions in county courts where money is demanded,[20] and set the jurisdictional limit of small claims demands at

[14] Section 34.011, F.S. (providing that county and circuit courts generally have concurrent jurisdiction over landlord tenant cases, although county court will have exclusive jurisdiction over proceedings relating to the right of possession so long as matter is under $15,000.).
[15] Chapter 90-269, Laws of Fla.
[16] The inflation adjusted figure was determined by the Bureau of Labor Statistics, United States Department of Labor, CPI Inflation Calculator, which is available at https://www.bls.gov/data/inflation_calculator.htm.
[17] *LaSalla v. Pools by George of Pinellas County, Inc.*, 125 So. 3d 1016, 1016 (Fla. 2d DCA 2013) ("[F]or purposes of the concept of subject matter jurisdiction, a county court that applies the Florida Small Claims Rules in a particular proceeding is not a separate court from a county court that applies the Florida Rules of Civil Procedure. This is true even if a county court has elected to create a 'small claims division' to handle cases under the Florida Small Claims Rules. To the extent that *Tax Certificate Redemption's, Inc. v. Meitz*, 705 So. 2d 64 (Fla. 4th DCA 1997), discusses the 'jurisdiction' of a small claims court as distinct from the jurisdiction of county court, we believe that discussion is incorrect.").
[18] *Id.* at 1017 (The Small Claims Rules "do not create a 'small claims court.' They simply create rules of procedure for use in county court when the amount in controversy is small."). When the amount in controversy exceeds the jurisdictional limits of the Small Claims Rules, the more complex requirements of the Rules of Civil Procedure apply. *See Hilton v. Florio*, 317 So. 2d 83 (Fla. 3d DCA 1975).
[19] *In re Amendments to Florida Small Claims Rule 7.090*, 64 So. 3d 1196 (Fla. 2011); Fla. Sm. Cl. R. 7.010(a).
[20] *In re Amendments to Florida Small Claims Rules*, 123 So. 3d 41, 43 (Fla. 2013) (amending Fla. Sm. Cl. R. 7.010).

$5,000[21] where it has remained since January 1, 1997.[22] If adjusted for inflation to December 2017, the jurisdictional limit of the Small Claims Rules would be $7,747.15.[23]

Circuit Court Jurisdiction

Because the circuit courts have exclusive jurisdiction over "all actions at law not cognizable by the county courts," the circuit court's current jurisdictional amount is $15,000 or above for cases demanding money judgments.[24]

Additionally, with two exceptions, the circuit court has appellate jurisdiction over county court cases. Under the two exceptions, the district court of appeal has appellate jurisdiction over a county court case when a county court either declares a statue or constitutional provision invalid or certifies a question of great public importance.[25] Additionally, if the law applied by the circuit court sitting in its appellate capacity is in question, a party may seek review by the appropriate district court of appeal by filing a petition for writ of certiorari.[26]

Notably, foreclosure cases, which are cases in equity, are not one of the subject areas statutorily defined as being within the exclusive jurisdiction of the circuit court.[27] Rather, the Florida Supreme court in *Alexdex Corp. v. Nachon Enterprises, Inc.,* concluded in resolving a conflict between the statutes setting forth the county court's and the circuit court's equity jurisdiction in foreclosure cases, "the legislature intended to provide concurrent equity jurisdiction in circuit and county courts, except that equity cases filed in county courts must fall within the county court's monetary jurisdiction, as set by statute."[28]

Filing Fees

Filing fees are constitutionally required to fund the clerks of the circuit and county courts,[29] and vary depending on the court. In **county court**, the filing fee for civil actions at law demanding money judgments vary based on the amount:

- For all claims less than $100……..…… $50.
- For all claims of $100 or more but not more than $500……..…… $75.
- For all claims of more than $500 but not more than $2,500…… $170.
- For all claims of more than $2,500……..…… $295.[30]

[21] Fla. Sm. Cl. R. 7.010(b).
[22] *In re Amendments to the Florida Small Claims Rules*, 682 So. 2d 1075, 1076 (Fla. 1996) (raising amount from $2,500 to $5,000).
[23] The inflation adjusted figure was determined by the Bureau of Labor Statistics, United States Department of Labor, CPI Inflation Calculator, which is available at https://www.bls.gov/data/inflation_calculator.htm.
[24] Section 26.012(2)(a), F.S.
[25] Section 26.012(1), F.S.
[26] FLA. CONST. art. V, s. 4(b)(3) (authorizing district courts of appeal to issue writs of certiorari among others). Philip J. Padovano, *Appellate Practice*, 2 Fla. Prac.,§ 30:5 (2017 ed.) ("A party may file a petition for writ of certiorari to review . . . an appellate decision of a lower court[.]"). On petition for writ of certiorari, the district court reviews for whether the circuit court departed from the essential requirements of the law; or, put another way, whether the circuit court "(1) afforded the parties due process of law[,] and (2) applied the correct law." *Id.*
[27] Section 26.012(2), F.S.
[28] 641 So. 2d 858, 862 (Fla. 1994).
[29] FLA. CONST. art. V, s. 14(b) (requiring that all funding for clerks of circuit and county courts come from adequate filing fees).
[30] Section 34.041(1)(a), F.S.

The clerk of court also collects an additional $4 filing fee.[31]

When the clerk of court collects the $295 filing fee, the fee is allocated as follows:
- The first $15 of the filing fee is deposited in the State Courts Revenue Trust Fund.
- $3.50 is transferred to the Department of Revenue (DOR) for deposit in the Court Education Trust Fund.
- Another $0.50 is transferred to the DOR for deposit into the Administrative Trust Fund within the Department of Financial Services to fund clerk education provided by the Florida Clerks of Court Operations Corporation.[32]

Additionally, any portion of fees for court functions collected in excess of one-twelfth of the clerk's total budget from the prior month is transferred to the DOR for deposit into the Clerks of the Court Trust Fund.[33]

In **circuit court**, the filing fee for civil actions at law demanding money judgments vary based on the type of action filed[34] and the number of defendants, but is generally $395 for the first five defendants.[35] Additionally, there are graduated filing fees for real property and mortgage foreclosure cases which can reach as high as $1,900 for claims valued at $250,000 and higher.[36] The filing fee collected by the clerk of court is allocated as follows:
- Of the first $200 in filing fees, $195 must be remitted to the DOR for deposit into the State Courts Revenue Trust Fund.
- $4 must be remitted to the DOR for deposit into the Administrative Trust Fund within the Department of Financial Services and used to fund the contract with the Florida Clerks of Court Operations Corporation.
- $1 must be remitted to the DOR for deposit into the Administrative Trust Fund within the Department of Financial Services to fund audits of individual clerks' court-related expenditures conducted by the Department of Financial Services.[37]

Additionally, like the county court, the circuit court must transfer any portion of fees for court functions collected in excess of one-twelfth of the clerk's total budget from the prior month to the DOR for deposit into the Clerks of the Court Trust Fund.[38]

The clerk of court also collects an additional $4 fee. Of that $4 fee, $3.50 is transferred to the DOR for deposit into the Court Education Trust Fund, and the other $0.50 is also transferred to the DOR for deposit into the Administrative Trust Fund within the Department of Financial

[31] Section 34.041(1)(b), F.S.
[32] *Id.*
[33] *Id.*
[34] Section 28.421(a)1.a., F.S. The filing fee is only $295 for civil suits filed under chapters 39 (dependency), 61 (family law), 741 (domestic violence), 742 (determination of parentage), 747 (conservatorship), 752 (grandparental visitation rights), or 753 (supervised visitation). Section 28.421(a)1.b., F.S. Additionally, there are graduated filing fees for real property and mortgage foreclosure cases which can reach as high as $1,900 for claims valued at $250,000 and higher. Section 28.421(a)2, F.S..
[35] *Id.* It is $2.50 per defendant in excess of five. *Id.*
[36] Section 28.421(a)2., F.S.
[37] *Id.*
[38] *Id.*

Services to fund clerk education provided by the Florida Clerks of Court Operations Corporation.[39]

For **appeals** from the **county to the circuit court**, the clerk of the circuit court may collect up to $280.[40]

For appeals to the **district court of appeal**, the circuit court charges a $100 fee for filing a notice of appeal,[41] and the clerk of the district court of appeal collects a filing fee of $300 for civil cases.[42] Of the district court filing fee, $50 is deposited into the State Courts Revenue Trust Fund and the remainder is deposited into the State Treasury to be credited to the General Revenue Fund.[43]

Legislative Powers Concerning Certification of Need for Additional Judges

Article V, s. 9 of the Florida Constitution requires the Florida Supreme Court to submit recommendations to the Legislature when there is a need to increase or decrease the number of judges.[44] The constitutional provision further directs the Court to base its recommendations on uniform criteria adopted by court rule.[45]

The Legislature may, after considering the Court's recommendations and findings, either implement or reject those findings. If the Legislature rejects the Court's findings and

[39] Section 28.421(a)1.c., F.S.
[40] Section 28.421(2), F.S.
[41] *Id.*
[42] Section 35.22(2)(a), F.S.
[43] Section 35.22(5), F.S. The clerk of the district court of appeal also collects $295 for cross-appeals or additional parties, and this fee is remitted entirely to the DOR for deposit into the General Revenue fund. Section 35.255(2)(b), F.S.
[44] FLA. CONST. art. V, s. 9.
[45] *Id.* The Court's rule setting forth criteria for assessing judicial need at the trial court level is based primarily upon the application of case weights to circuit and county court caseload statistics. *See* Fla. R. Jud. Adm. 2.240(b)(1)(A). These weights are a quantified measure of judicial time spent on case-related activity. The judicial workload is then based on judicial caseloads adjusted in the relative complexity of various case types. In addition to the statistical information, the Court, in weighing the need for trial court judges, will also consider the factors below which primarily relate to the resources available to a judicial circuit:

(i) The availability and use of county court judges in circuit court.
(ii) The availability and use of senior judges to serve on a particular court.
(iii) The availability and use of magistrates and hearing officers.
(iv) The extent of use of alternative dispute resolution.
(v) The number of jury trials.
(vi) Foreign language interpretations.
(vii) The geographic size of a circuit, including travel times between courthouses in a particular jurisdiction.
(viii) Law enforcement activities in the court's jurisdiction, including any substantial commitment of additional resources for state attorneys, public defenders, and local law enforcement.
(ix) The availability and use of case-related support staff and case management policies and practices.
(x) Caseload trends.

See Fla. R. Jud. Admin. 2.240(b)(1)(B). In addition to the weighted caseload statistics, the Court will also consider the time to perform other judicial activities, such as reviewing appellate decisions, reviewing petitions and motions for post-conviction relief, hearing and disposing motions, and participating in meetings with those involved in the justice system. *See* Fla. R. Jud. Admin. 2.240(c). Finally, the Court will consider any request for an increase or decrease in the number of judges that the chief judge of the circuit "feels are required." *See* Fla. R. Jud. Admin. 2.240(d).

recommendations by legislation creating additional judgeships in jurisdictions not requested by the Court, the legislation must be approved by two-thirds of the membership of both houses.[46]

Certification of Need for Additional Judges for FY 2018-2019

Following its criteria for determining the need for judges, the Florida Supreme Court recently issued an order certifying the need for additional judges for the 2018-2019 fiscal year.[47] In the order, the Court requested two additional judgeships for the Ninth Judicial Circuit, which encompasses Orange and Osceola Counties, and two additional county court judgeships in Hillsborough County.[48]

The Court also *decertified* the need for 13 county court judgeships as follows: one from Escambia County, two from Pasco County, one from Putnam County, one from Alachua County, one from Polk County, one from Monroe County, three from Brevard County, one from Charlotte County, and one from Collier County.[49]

Supreme Court Headquarters

Article II, s. 2 of the Florida Constitution designates Tallahassee as the seat of state government "where the *offices* of the governor, lieutenant governor, cabinet members and *the supreme court shall be maintained* and the sessions of the legislature shall be held[.]"[50] Article V, s. 3 of the Florida Constitution provides that the Supreme Court will consist of seven justices, and that each of the five appellate districts "shall have at least one justice elected or appointed from the district at the time of the original appointment or election." The chambers of all seven justices are on the fourth floor of the Florida Supreme Court building,[51] and all official Supreme Court business is conducted in Tallahassee.[52]

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[46] *In re Advisory Opinion to the Governor Request of June 29, 1979*, 374 So. 2d 959 (Fla. 1979); Article V, s. 9 of the Florida Constitution provides in pertinent part:

> **Determination of number of judges.**— . . . Upon receipt of such certificate, the legislature, at the next regular session, shall consider the findings and recommendations and may reject the recommendations or by law implement the recommendations in whole or in part; provided the legislature may create more judicial offices than are recommended by the supreme court or may decrease the number of judicial offices by a greater number than recommended by the court only upon a finding of two-thirds of the membership of both houses of the legislature, that such a need exists. A decrease in the number of judges shall be effective only after the expiration of a term. If the supreme court fails to make findings as provided above when need exists, the legislature may by concurrent resolution request the court to certify its findings and recommendations and upon the failure of the court to certify its findings for nine consecutive months, the legislature may, upon a finding of two-thirds of the membership of both houses of the legislature that a need exists, increase or decrease the number of judges or increase, decrease or redefine appellate districts and judicial circuits.

[47] *In Re: Certification of Need for Additional Judges*, 2017 WL 5623576 (Fla. 2017).

[48] *Id.* at *3.

[49] *Id.* at *4.

[50] FLA. CONST. art. II, s. 2 (emphasis added).

[51] Florida Supreme Court, Manual of Internal Operating Procedures, *Section 1. Court Structure*, p. 1 (Rev. Sept. 21, 2016), http://www.floridasupremecourt.org/pub_info/documents/IOPs.pdf (last visited Feb. 14, 2018).

[52] "[T]he Florida Supreme Court, comprised of its Justices, has only one "office" — the Supreme Court Building, located in the Northern District." *Castro v. Labarga*, 16-22297-CIV, 2016 WL 6565946, at *5 (S.D. Fla. Nov. 3, 2016) (citing FLA. CONST. art. II, s. 2). "In my view, the mere fact that a Florida Supreme Court justice may periodically travel outside of the Northern District of Florida to attend bar functions or educational seminars and obtains travel reimbursements does not translate the trip into an 'official duty' trip sufficient to generate venue in the other districts." *Id.* "If the Florida Supreme

Headquarters for Purposes of Travel Reimbursement

Section 112.061, F.S., concerns the reimbursement of travel expenses to public employees and officers. To that end, s. 112.061(4), F.S. provides that while "[t]he official headquarters of an officer or employee assigned to an office shall be the city or town in which the office is located," there are some exceptions:

(a) The official headquarters of a person located in the field shall be the city or town nearest to the area where the majority of the person's work is performed, or such other city, town, or area as may be designated by the agency head provided that in all cases such designation must be in the best interests of the agency and not for the convenience of the person.

(b) When any state employee is stationed in any city or town for a period of over 30 continuous workdays, such city or town shall be deemed to be the employee's official headquarters, and he or she shall not be allowed per diem or subsistence, as provided in this section, after the said period of 30 continuous workdays has elapsed, unless this period of time is extended by the express approval of the agency head or his or her designee.

(c) A traveler may leave his or her assigned post to return home overnight, over a weekend, or during a holiday, but any time lost from regular duties shall be taken as annual leave and authorized in the usual manner. The traveler shall not be reimbursed for travel expenses in excess of the established rate for per diem allowable had he or she remained at his or her assigned post. However, when a traveler has been temporarily assigned away from his or her official headquarters for an approved period extending beyond 30 days, he or she shall be entitled to reimbursement for travel expenses at the established rate of one round trip for each 30-day period actually taken to his or her home in addition to pay and allowances otherwise provided.[53]

Additionally, s. 112.061(1)(b)1., F.S., provides that

> To preserve the standardization established by this law . . . The provisions of this section shall prevail over any conflicting provisions in a general law, present or future, to the extent of the conflict; but if any such general law contains a specific exemption from this section, including a specific reference to this section, such general law shall prevail, but only to the extent of the exemption.

Court maintained major offices, courtrooms or staff in other districts, then the result about venue and venue discovery might be different. But those significant facts, which Castro relies on when citing other cases, are absent here." *Id.* (holding the proper venue of a disgruntled bar candidate suing the Florida Supreme Court is the northern district of Florida). *See also Uberoi v. Labarga*, 8:16-CV-1821-T-33JSS, 2016 WL 5914922, at *2 (M.D. Fla. Oct. 11, 2016) (transferring another disgruntled bar candidate's case to the Northern District based a motion to dismiss filed by Justice Labarga noting that official acts by the Florida Supreme Court concerning the candidate's admission to the bar are done in Tallahassee; citing FLA. CONST. art. II, s. 2, noting that Tallahassee "is where the offices of the Florida Supreme Court shall be maintained.").

[53] Section 112.061(4)(a)-(c), F.S.

Section 112.061, F.S. applies to the court system. In particular, a district court of appeal—the headquarters of which is defined by the Legislature, not the Constitution[54]—is authorized by the current version of s. 35.05(2), F.S. to "designate other locations within its district as branch headquarters for the conduct of the business of the court and as the official headquarters of its officers or employees pursuant to s. 112.061."[55] However, a prior version of s. 35.05, F.S. contained no such authorization and designated one city as the headquarters for each district court of appeal.[56]

On the other hand, prior versions of s. 112.061(4), in particular the 1973 version, is substantially similar if not identical to the current version of the statute.[57] The reason this matters is that the 1973 version of s. 112.061(4) was interpreted by the Attorney General's office to mean that a district court of appeal judge could *not* designate the city of his or her residence as his or her official headquarters for purposes of travel expenses.[58] As explained by the AG opinion:

> Section 112.061, F.S., has been uniformly interpreted by this office as authorizing reimbursement for travel expense only from the official headquarters of the public officer or employee; and, as defined in subsection 112.061(4), the official headquarters "of an officer or employee assigned to an office shall be the city or town in which the office is located . . . ." (The provisions of paragraphs (4)(a), (b), and (c), relating to public officers or employees "located in the field" or "stationed" in another city or town, are not applicable here for obvious reasons.) The official headquarters of each district court of appeal is designated by statute, s. 35.05, F.S., and that is where the majority of the work of the court is performed.[59]

Notably, the AG Opinion relied on the fact that s. 35.05, F.S., designated the official headquarters of each district court of appeal in specific cities. However, as already noted, s. 35.05, F.S., has since been amended and now permits a district court of appeal to "designate other locations within its district as branch headquarters for the conduct of the business of the court and as the official headquarters of its officers or employees pursuant to s. 112.061."[60]

Currently, it appears that only the Second District Court of Appeal has designated a second branch office, in Tampa on the Stetson University campus.[61] However, the Second District's clerk's office is at the official headquarters in Lakeland.[62]

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[54] Section 35.05(1), F.S. (designating the city in which the headquarters for each appellate district must be located).
[55] Section 35.05(2), F.S.
[56] *See* s. 35.05, F.S., http://fall.law.fsu.edu/FlStatutes/docs/1973/1973TVC35.pdf (last visited Feb. 15, 2018).
[57] *See* s. 112.061, F.S., http://fall.law.fsu.edu/FlStatutes/docs/1973/1973TXC112.pdf (last visited Feb. 15, 2018).
[58] Op. Att'y Gen. Fla. 74-132 (1974).
[59] *Id.*
[60] Section 35.05(2), F.S.
[61] Florida Second District Court of Appeal, http://www.2dca.org/Directions/tampa.shtml (last visited Feb. 15, 2018).
[62] *Id.*

As of 2015, justices of the Florida Supreme Court and the judges for the district courts of appeal residing outside the city where their respective courts are headquartered were not receiving travel and subsistence reimbursement.[63]

Qualifying for Judicial Elections; Fees

A person seeking to become a candidate for a judicial office must qualify with the Division of Elections of the Department of State between noon of the 120th day and noon of the 116th day before the primary election.[64] To qualify as a candidate, the person must file the required paperwork[65] and submit a check for the qualifying fee. This fee consists of a filing fee in the amount of 3 percent of the annual salary for the office sought and an election assessment in the amount of 1 percent of the annual salary for the office sought. The qualifying fees are deposited into the Elections Commission Trust Fund which are used by the Florida Elections Commission to investigate violations of the Election Code and campaign financing laws.[66]

County Responsibilities for Funding Court-Related Functions

Under Article V, s. 14 of the Florida Constitution, the state is responsible for most of the costs of the state courts system. However, the Constitution requires counties to:

> …fund the cost of communications services, existing radio systems, existing multi-agency criminal justice information systems, and the cost of construction or lease, maintenance, utilities, and security of facilities for the trial courts, public defenders' offices, state attorneys' offices, and the offices of the clerks of the circuit and county courts performing court-related functions.[67]

The constitutional responsibility for counties to fund court-related functions is implemented in s. 29.008, F.S., which also defines many of the key terms from the constitutional provision above.

A recent appellate court opinion relied on the definitions of "facility" and "security" in s. 29.008, F.S., as the basis for allowing the chief judge of a circuit court to order the sheriff to secure a building used by the court.[68] This building did not include courtrooms. The Sheriff objected to the amount of control that the chief judge exerted over the Sheriff and potential funding issues caused by the security requirements in the judge's order.

[63] SB 2506 (2015 Reg. Session) (proposing creation of s. 25.025, F.S.; died on calendar).
[64] Section 105.031, F.S.
[65] The required paperwork includes: the candidate's oath, which states that the candidate meets the constitutional and statutory requirements for the judicial office and that he or she will support the Constitution of the United States and the Constitution of the State of Florida; a loyalty oath; forms related to the appointment of a campaign treasurer and the designation of a campaign depository, including a statement that the candidate has read and understands the Florida Code of Judicial Conduct; and a full and public disclosure of financial interests.
[66] Sections 106.24(6) and 106.25(1), F.S.
[67] FLA. CONST. art. V, s. 14(c).
[68] *Knight v. Chief Judge of Florida's Twelfth Judicial Circuit*, 2017 WL 6598638 (Fla. 2d DCA 2017).

III. Effect of Proposed Changes:

Jurisdictional Amount of the County Courts: Section 5 of the bill raises the jurisdictional amount of the county court from $15,000 to $50,000. The bill also requires that the jurisdictional amount be adjusted for inflation or deflation every 5 years after January 1, 2020, rounded to the nearest $5,000, using the reports and data provided by the United States Department of Labor, Bureau of Labor Statistics or its predecessor.

Because the circuit courts have exclusive jurisdiction over "all actions at law not cognizable by the county courts," the bill also effectively raises the jurisdictional amount of the circuit courts to cases demanding money judgments over $50,000. However, the bill provides that the filing fees for civil lawsuits demanding more than $15,000 will not change even though suit is filed in the county court. Rather, filing fee amounts and allocation for suits demanding $15,000 or more will continue to be governed by ss. 28.241 and 35.22, F.S.

Additional Judges: Section 6 of the bill provides for additional judges. Section 2 of the bill also adds two judges to the ninth circuit, as certified and requested by the Florida Supreme Court.

Section 6 of the bill adds two county judges to Hillsborough County, as certified and requested by the Florida Supreme Court. However, in light of the increase in the jurisdictional amount of the county courts, the bill rejects the Florida Supreme Court's decertification of 13 county court judges and adds three more county court judges: one in Citrus, Columbia, and Flagler counties. The addition of the three county court judges not requested by the Court requires approval by a two-thirds vote of the membership of each house.

Headquarters of Supreme Court Justices: Section 1 of the bill creates s. 25.025, F.S., providing that a Supreme Court justice who permanently resides outside of Tallahassee may:

- Request that a district court of appeal courthouse, a county courthouse, or other appropriate facility in the justice's district be designated as his or her official headquarters and serve as the justice's private chambers; and
- Be reimbursed for travel and subsistence while in Tallahassee to the extent funding is available, as determined by the Chief Justice.

The bill also provides that the Chief Justice is required to coordinate with the justice seeking a private chamber in his or her district and any state and local officials as necessary. The Supreme Court and a county courthouse may enter into an agreement to establish private chambers at the county courthouse for a justice, but the courthouse is under no obligation to provide space for the justice. Additionally, the Supreme Court may *not* use state funds to lease space in a county courthouse for use as a private chamber.

Funding of Court-Related Functions by Counties: Section 3 of the bill provides that the definitions of the terms used in s. 29.008, F.S., which are used to implement and define county responsibilities for funding court-related functions do not apply in other contexts. The definitions "may not be construed to enhance, limit, or define the authority of any court."

Counties under the Florida Constitution are required to fund the costs of security for courts. Section 4 of the bill provides that sheriffs are responsible for providing security for trial court

facilities, but the sheriff remains in operational control over the manner in which security is provided.

Refunds of Qualifying Fees of Unopposed Judicial Candidates: Section 7 of the bill provides that the qualifying fees of unopposed candidates for judicial office must be refunded to them within 20 days after the close of the qualifying period for the election. This section takes effect upon becoming a law.

Effective Date: Section 8 provides that except for section 7, the bill takes effect on 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:

Addition of Judges Not Certified by the Florida Supreme Court- In order to create the three additional county court judgeships in Citrus, Columbia, and Flagler Counties, Art. V, s. 9 of the Florida Constitution requires that these additions be approved by a two-thirds vote of each house.

Headquarters of the Florida Supreme Court Justices- It is unclear whether the Legislature has the authority to authorize the Chief Justice of the Florida Supreme Court to establish "headquarters" under s. 112.061, F.S., for any justice outside of Tallahassee, even if it is within the justice's district.

Article II, s. 2 of the Florida Constitution designates Tallahassee as the seat of state government "where the *offices* of the governor, lieutenant governor, cabinet members and *the supreme court shall be maintained* and the sessions of the legislature shall be held[.]"[69] Under the rule of construction, "expressio unius est exclusio alterius" (the expression of one thing is the exclusion of the other), it appears by excluding the word "offices" for the legislature and only requiring that session be held in Tallahassee, the drafters of Art. II, s. 2 understood that legislators must have offices within their districts around the state. However, the word "offices" is specifically used in reference to the governor, lieutenant governor, cabinet members, and the Florida Supreme Court in Article II, s. 2, and specifically requires that those offices be located at the seat of government in Tallahassee.

[69] FLA. CONST. art. II, s. 2 (emphasis added).

While permitting a justice to work remotely or establish a private chamber in another courthouse in the state does not appear to be problematic, it appears that another "headquarters" outside of Tallahassee may not be constitutionally permissible.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

If the bill results in an increase in the jurisdictional limit of the Small Claims Rules, more cases will be expeditiously resolved in the county courts under the expedited procedures of those rules.

C. Government Sector Impact:

State Government

New Circuit Court Judgeships

When circuit court judgeships are created, other costs must be incurred in addition to the salary and benefits for each new judge. The largest of these costs are for the salary and benefits of a judicial assistant and a law clerk for each judge. According to the Office of the State Courts Administrator, the total costs to fund the addition of the two circuit court judgeships created by the bill are $815,862 from the General Revenue Fund, of which $14,394 are non-recurring costs.[70]

New County Court Judgeships

When county court judgeships are created, the state must incur other costs in addition to the salary and benefits of each new judge. The largest of these costs are for the salary and benefits for a judicial assistant for each judge. Based on figures from the Office of the State Courts Administrator, the total costs to fund the addition of the five county court judgeships created by the bill are $1,556,890 from the General Revenue Fund, of which $23,990 are non-recurring costs.

County Court Jurisdiction

Raising the jurisdictional amount of the county courts is expected to have a positive fiscal impact.[71] However, by increasing the workload of county courts, there will likely be a reduction in some of the costs to operate the judicial system in the future. County courts operate with judges who have lower salaries than circuit courts and with fewer staff than

[70] Office of the State Courts Administrator, *Judicial Impact Statement* (Nov. 22, 2017) (on file with the Senate Committee on Judiciary).

[71] *See* the companion bill analysis, HB 7061, which reports that raising the jurisdictional amount to $50,000 without adjusting filing fees should result in an increase of $2.3 million in revenue for FY 2018-2019.

the circuit courts. Additionally, by shifting workloads to the county courts, there may be less need to create circuit court judgeships in the future.

Travel and Subsistence Costs

According to the Office of the State Court Administrator, the travel and subsistence provisions have an annual fiscal impact of $209,930 in recurring general revenue funds. Supreme Court travel costs are based on official state mileage, assuming 40 round trips yearly per justice between Tallahassee and the DCA headquarters in the justice's home appellate district. Subsistence costs assume 77 meeting days at $131 per day and 80 travel days at $98.25 per day, or $17,947 per justice.[72]

Local Government

Under article V section 14(c) of the Florida Constitution and s. 29.008, F.S., counties are required to provide the court system, including the state attorney and the public defender, with facilities, security, and communication services, including information technology. Under the bill, the counties will incur an indeterminate amount of costs associated with providing those services to the new judges and judicial staff. The clerks of the court will also be required to provide additional services to the new judges. However, counties having fewer county court judges as a result of the bill may have a reduction in costs.

Elections Commission Trust Fund

The operations of the Florida Elections Commission are funded by the Elections Commission Trust Fund, which is funded by qualifying fees (see sections 99.092, 99.093, and 105.031, F.S.) The commission's revenue streams mirror the election cycle; in off years, revenue is relatively low, but the overall trust fund balance is maintained by the increased revenue generated during election years. The agency is self-sustaining - the trust fund covers the commission's approximately $1.5 million appropriation (15 FTEs) each fiscal year and the commission deposits fines into the General Revenue Fund.

According to the Florida Elections Commission, a majority of candidates for the office of circuit judge ran unopposed in 2016. If there are similar proportions of unopposed judicial elections in the future, the refunds of qualifying fees required by the bill will make the funds in the Elections Commission Trust Fund insufficient for the Elections Commission to conduct its work.[73]

VI. Technical Deficiencies:

None.

[72] Office of the State Court Administrator, *Supreme Court Headquarter Travel Analysis* (on file with the Senate Appropriations Subcommittee on Criminal and Civil Justice).
[73] Email from Amy McKeever Toman, JD, CPM, Executive Director, Florida Elections Commission on March 3, 2018.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 26.031, 29.008, 30.15, 34.01, 34.022, and 105.031.

The bill creates section 25.025, Florida Statutes.

IX. Additional Information:

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

CS/CS by Appropriations on March 2, 2018:
The committee substitute:

- Creates several additional county court judgeships and no longer reduces the number of county court judgeships in any county.
- Increases the county court's jurisdiction by increasing monetary threshold separating the jurisdiction of circuit and county courts to $50,000.
- Requires refunds of qualifying fees to candidates for circuit or county court judge who are unopposed.
- Clarify the responsibility for defining and supervising security at court facilities and funding the resulting costs.

CS by Judiciary on January 25, 2018:
The committee substitute no longer includes a provision that would have reduced the number of county court judges in Monroe County.

B. Amendments:

None.

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

By the Committee on Judiciary; and Senator Steube

590-02451-18 20181396c1

A bill to be entitled

An act relating to judgeships; amending s. 26.031, F.S.; adding judges to the Ninth Judicial Circuit Court; amending s. 34.022, F.S.; adding and removing judges from certain county courts; providing an effective date.

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

Section 1. Subsection (9) of section 26.031, Florida Statutes, is amended to read:

26.031 Judicial circuits; number of judges.—The number of circuit judges in each circuit shall be as follows:

JUDICIAL CIRCUIT	TOTAL
(9) Ninth	45 ~~43~~

Section 2. Subsections (1), (5), (8), (11), (16), (28), (36), (51), (53), and (54) of section 34.022, Florida Statutes, are amended to read:

34.022 Number of county court judges for each county.—The number of county court judges in each county shall be as follows:

COUNTY	TOTAL
(1) Alachua	4 ~~5~~
(5) Brevard	8 ~~11~~
(8) Charlotte	2 ~~3~~
(11) Collier	5 ~~6~~
(16) Escambia	4 ~~5~~

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

Florida Senate - 2018 **CS for SB 1396**

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(28) Hillsborough	19 ~~17~~
(36) Leon	4 ~~5~~
(51) Pasco	5 ~~7~~
(53) Polk	9 ~~10~~
(54) Putnam	1 ~~2~~

Section 3. This act shall take effect July 1, 2018.

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Judiciary, *Chair*
Banking and Insurance, *Vice Chair*
Agriculture
Appropriations Subcommittee on Finance and Tax
Appropriations Subcommittee on Pre-K - 12 Education
Children, Families, and Elder Affairs
Regulated Industries

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

SENATOR GREG STEUBE
23rd District

February 14, 2018

The Honorable Rob Bradley
Florida Senate
404 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Senator Bradley,

I am writing this letter because the following bills have been referred to the Senate Appropriations Committee.

- SB 1396 – Judgeships
- SB 1450 – Sales Tax Refunds for Eligible Job Training Organizations

These bills are on the last committee of reference. I am respectfully requesting that you place these bills on your committee's calendar for the next committee week.

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

Very respectfully yours,

W. Gregory Steube, District 23

REPLY TO:
❒ 6230 University Parkway, Suite 202, Sarasota, Florida 34240 (941) 342-9162
❒ 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023

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

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-2-18
Meeting Date

1396
Bill Number (if applicable)

554532
Amendment Barcode (if applicable)

Topic Judgeships

Name Brian Sullivan

Job Title Chief Legal Counsel

Address 100 S. Monroe St.
Street

Tallahassee FL
City *State* *Zip*

Phone 810-335-0150

Email bsullivan@flcounties.com

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

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on 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 1450 (285140)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Transportation, Tourism, and Economic Development); Commerce and Tourism Committee; and Senator Steube
SUBJECT:	Sales Tax Refund for Eligible Job Training Organizations
DATE:	March 1, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Little	McKay	CM	**Fav/CS**
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/CS/SB 1450 creates a sales tax refund for eligible job training organizations. Under the bill, an eligible job training organization may apply for a refund of 10 percent of the sales tax the organization remitted to the DOR on its sales of donated goods during the previous state fiscal year.

The Department of Economic Opportunity (DEO) is required to determine an applicant's eligibility for the sales tax refund and certify the eligibility of organizations that meet the specified requirements. After obtaining certification from the DEO, an eligible job training organization must apply to the Department of Revenue (DOR) in August each year that a refund is sought.

The bill limits the use of a sales tax refund issued to an eligible job training organization to the following purposes:

- Growth in employment hours;
- Job training and employment services to low-income persons, individuals who have workplace disadvantages, or individuals with barriers to employment; or
- Job training and employment services for veterans.

An eligible job training organization that receives a refund must annually report eligibility information to the DEO, including how the previously issued refund was used. If the DEO

determines an organization no longer qualifies for the refund, the DEO must immediately notify the DOR. The DOR is prohibited from issuing a refund after receiving such notification. The bill authorizes the DOR to audit any refund within 4 years of the date the refund was granted and subjects the overpayment of a refund or a refund issued to an ineligible job training organization to repayment.

The Revenue Estimating Conference estimates this bill, beginning in Fiscal Year 2018-2019, will reduce General Revenue Fund receipts by $1.6 million annually, state trust fund receipts by an indeterminate amount annually, and local government revenues by $400,000 annually.

The bill takes effect July 1, 2018.

II. Present Situation:

Florida Sales and Use Tax

Florida levies a six percent state sales and use tax on the sale or rental of most tangible personal property, admissions, rentals of transient accommodations, rentals of commercial real estate, and a limited number of services.[1]

In addition to the state level tax, counties are authorized to levy surtaxes under certain situations.[2] Surtaxes apply to all transactions occurring in the county that are subject to the state level tax.[3]

Generally, sales tax is added to the price of taxable goods or services, and the tax is collected from the purchaser at the time of sale.[4] Anyone that sells taxable goods or services in Florida must register with the DOR as a sales tax dealer to collect, report, and remit sales tax.[5] The DOR is authorized to audit organizations in the state for the purpose of determining whether such taxes are properly collected, reported, and paid.[6]

Charitable Organizations

Charitable organizations are eligible to receive tax-deductible contributions.[7] To qualify as a charitable organization under section 501(c)(3) of the Internal Revenue Code an organization must be organized and operated exclusively for an exempt purpose,[8] none of its earnings may

[1] *See* s. 212.05, F.S.
[2] Section 212.055, F.S.
[3] Section 212.054, F.S.
[4] Sections 212.06(3) and 212.07(2), F.S.
[5] Section 212.18(3)(a), F.S.; Department of Revenue, *Florida Sales and Use Tax*, GT-800013, Revised 1/18, available at http://floridarevenue.com/Forms_library/current/gt800013.pdf (last visited Feb. 9, 2018).
[6] Section 212.13(3), F.S.
[7] 26 U.S.C. s. 170
[8] Exempt purposes under section 501(c)(3) include: charitable, religious, educational, scientific, literary, testing for public safety, fostering national or international amateur sports competition, and preventing cruelty to children or animals." IRS, *Exempt Purposes – Internal Revenue Code Section 501(c)(3)*, available at https://www.irs.gov/charities-non-profits/charitable-organizations/exempt-purposes-internal-revenue-code-section-501c3 (last visited Feb. 4, 2018).

inure to any private shareholder or individual, and it cannot be an action organization.[9] Additionally, organizations that qualify under section 501(c)(3) may be eligible for other tax benefits, such as state and federal sales, property, and income tax exemptions.[10]

Qualified Job Training Organizations Program

Section 288.1097, F.S., allows a "qualified job training organization" to receive grant funding from the Department of Economic Opportunity (DEO).

To be eligible, a job training organization must:
- Be exempt under s. 501(c)(3) or (4) of the Internal Revenue Code;
- Provide job training and employment services to individuals who have workplace disadvantages or disabilities;
- Be accredited by the Commission on Accreditation of Rehabilitation Facilities;
- Collect Florida sales tax;
- Specialize in the retail sale of donated items;
- Operate statewide through more than 100 locations;
- Use a majority of its revenues for job training and placement programs that create jobs and foster economic development; and
- Be certified by the DEO that the organization meets the requirements described above.

The DEO is permitted to release funds to the organization pursuant to a contract with the organization. The contract must require the organization to meet certain performance conditions in order to receive the grant funds. The performance conditions must include "net new employment in the state, the methodology for validating performance, the schedule of payments, and sanctions for failure to meet the performance requirements including any provisions for repayment..." and that salaries paid to officers and employees of the organization meet certain Internal Revenue Code requirements.[11]

The organization must use the grant funds "solely to encourage and provide economic development through capital construction, improvements, or the purchase of equipment that will result in expanded employment opportunities." The statute also requires the following results to be met within a 10-year period:
- Creation of at least 5,000 direct, new jobs;
- Minimum of 23,000 new clients served;
- Production of a minimum of $24 million in new sales tax revenues from increased sales;

[9] The prohibition on the organization being an "action organization" means that the organization "may not attempt to influence legislation as a substantial part of its activities and it may not participate in any campaign activity for or against political candidates." IRS, *Exemption Requirements - 501(c)(3) Organizations*, *available at* https://www.irs.gov/charities-non-profits/charitable-organizations/exemption-requirements-section-501c3-organizations (last visited Feb. 4, 2018).
[10] *See* Internal Revenue Service, *Federal Tax Obligations of Non-Profit Corporations*, *available at* https://www.irs.gov/pub/irs-pdf/n844.pdf (last visited Feb. 4, 2018). "Nonprofit organizations may qualify for exemption from some Florida taxes. Each tax is separate and distinct and has its own requirements. As a result, exemption from one tax does not necessarily exempt the organization from all taxes and not all Florida tax exemptions require the organization obtain a federal tax-exempt status." Department of Revenue, *Nonprofit Organizations*, *available at* http://floridarevenue.com/taxes/businesses/Pages/nonprofit.aspx (last visited Feb. 4, 2018).
[11] Section 288.1097(2), F.S.

- Minimum of $42 million in new salaries; and
- Minimum of $6 million for job placement services.

No funds have ever been appropriated to this program.

III. Effect of Proposed Changes:

The bill creates a sales tax refund for an eligible job training organization on the organization's sales of goods donated to the organization and requires the organization to use the refund for specific employment purposes.[12]

To be eligible for the refund, a job training organization must:
- Be exempt under s. 501(c)(3) of the Internal Revenue Code;
- Provide job training and employment services to low-income persons,[13] individuals who have workplace disadvantages, or individuals with barriers to employment; and
- Be accredited by the Commission on Accreditation of Rehabilitation Facilities.

The bill also specifies that an eligible job training organization consisting of commonly owned and controlled entities is deemed to be a single organization.

An eligible job training organization is entitled to a refund equal to 10 percent of the sales tax remitted to the DOR during the prior state fiscal year on the organization's sales of goods donated to the organization. The total amount of sales tax refunds issued to eligible job training organizations may not exceed $2 million in any state fiscal year. Refunds are granted on a first-come, first-served basis.

The organization must use the refund for any of the following purposes:
- Growth in employment hours.[14]
- Job training and employment services[15] to low-income persons, individuals who have workplace disadvantages, or individuals with barriers to employment.
- Job training and employment services for veterans.

An organization seeking a refund must first submit an application to the DEO by July 15. The application must establish that the organization meets the eligibility requirements and that the refund will be used exclusively for the purposes listed above and must include any supporting information set forth by the DEO in rule. The DEO is required to verify the application and

[12] The bill creates s. 212.099, F.S.
[13] "Low-income persons" means "one or more natural persons or a family, the total annual adjusted gross household income of which does not exceed 80 percent of the median annual adjusted gross income for households within the state, or 80 percent of the median annual adjusted gross income for households within the metropolitan statistical area (MSA) or, if not within an MSA, within the county in which the person or family resides, whichever is greater." Section 420.0004(11), F.S.
[14] "Growth in employment hours" is defined by the bill as "the growth in the number of hours worked by employees at the eligible job training organization in the most recently completed state fiscal year compared with the number of hours worked by employees at the job training organization in the state fiscal year immediately prior to the most recently completed state fiscal year."
[15] "Job training and employment services" is defined by the bill as programs and services that improve workers' job readiness, assist them in gaining employment and adapting to the changing labor market, and help them achieve employment success through self-sufficiency.

notify the organization of the DEO's determination within 15 days of receiving a complete application. The bill authorizes the DEO to adopt rules necessary to administer the sales tax refund, including rules for the approval and disapproval of applications by organizations.

For approved applications, the DEO must send the eligible job training organization a notice that includes a certification that the organization is eligible to receive the sales tax refund. This decision of the DEO must be in writing, or in e-mail if agreed to by the organization. The DEO must send a copy of the notice and the certification, if applicable, to the DOR. The DEO's issuance of a certification remains in effect as long as the eligible job training organization remains in compliance with the requirements of the law.

An eligible job training organization that is certified by the DEO must then apply to the DOR between August 1 and August 31 of each year that the organization seeks a refund. The first application for a refund submitted to the DOR must also include a copy of the DEO certification. An application must include any information required by the DOR.

By August 1 of each state fiscal year that an eligible job training organization received a refund, the organization is required to provide a report to the DEO describing the use of the refund. The report must include the following:

- The amount of the refund used to create growth in employment hours;
- The total growth in employment hours;
- The amount of the refund used for job training and employment services;
- The number of individuals who participated in job training and employment services at the eligible job training organization; and
- A statement declaring that the organization continues to meet the necessary requirements to remain eligible for the sales tax refund.

If the DEO determines that a job training organization no longer qualifies for the refund, the DEO must notify the DOR immediately. The DOR is prohibited from issuing a refund after receiving such notification. The bill also provides that the DOR has the authority to audit any refund within 4 years after the date the refund was granted. The overpayment of a refund, or a refund issued to an ineligible job training organization, is subject to repayment and interest at the rate calculated pursuant to s. 213.235, F.S.

The bill takes effect on 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. 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, which for Fiscal Year 2017-2018 is approximately $2.05 million or less.[16,17,18]

The Revenue Estimating Conference estimates the reduction to local government's tax receipts is $400,000 recurring. Therefore this bill has an insignificant fiscal impact and may not require a two-thirds vote of the membership in each house.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill creates a sales tax refund for eligible job training organizations equal to 10 percent of the sales tax remitted to the DOR on its sales of goods donated to the organization during the prior state fiscal year.

B. Private Sector Impact:

The bill will have a positive impact on eligible job training organizations that receive a sales tax refund.

C. Government Sector Impact:

The Revenue Estimating Conference estimates this bill, beginning in Fiscal Year 2018-2019, will reduce General Revenue Fund receipts by $1.6 million annually, state trust fund receipts by an indeterminate amount annually, and local government revenues by $400,000 annually.[19]

The DEO has stated that any costs related to increased workload to administer the provisions of this bill can be absorbed within existing resources.[20]

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[16] FLA. CONST. art. VII, s. 18(d).
[17] 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.
[18] 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 Dec. 19, 2017).
[19] Office of Economic and Demographic Research, Revenue Estimating Conference, *Job Training Organizations: CS/SB 1450*, February 14, 2018.
[20] Department of Economic Opportunity, *2018 Agency Legislative Bill Analysis: SB 1450*, February 6, 2018.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 212.099 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 Transportation, Tourism, and Economic Development on February 14, 2018:
The committee substitute:

- Removes certification by the DEO as an element of the definition for "eligible job training organization."
- Clarifies the time frames and the location of employees in the definition of "growth in employment hours."
- Clarifies that the refund is granted by the DOR.
- Requires an eligible job training organization to submit any required additional materials for the applications to both the DEO and the DOR.
- Clarifies the determination and certification process by the DEO.
- Clarifies that subsequent applications to the DOR for a refund after the first application do not need to include the certification by the DEO.
- Requires the report to the DEO to be made on August 1 following the state fiscal year in which a refund was received by the eligible job training organization.

CS by Commerce and Tourism on January 29, 2018:
The bill is amended to:

- Make references to "eligible job training organizations" rather than "eligible businesses;"
- Remove "capital costs" from the uses of the sales tax refund authorized by the bill; and
- Clarify that the DOR may audit, rather than examine, any sales tax refund granted to an eligible job training organization within 4 years of issuance.

B. Amendments:

None.

285140

576-03251-18

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 a sales tax refund for eligible job training organizations; creating s. 212.099, F.S.; providing definitions; authorizing eligible organizations to receive a refund of a specified amount of certain sales taxes collected if such amount is used for certain purposes; specifying the annual maximum allowable tax refund for such organizations; providing requirements for receiving the refund; authorizing the Department of Economic Opportunity to certify organizations; authorizing the Department of Revenue to audit, within a certain timeframe, any refund issued; providing the applicable interest rate on overpayments and payments to ineligible organizations; providing that an eligible organization comprised of commonly owned and controlled entities is a single organization; requiring eligible organizations to provide a report to the Department of Economic Opportunity; providing an effective date.

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

Section 1. Section 212.099, Florida Statutes, is created to read:

212.099 Sales tax refund for eligible job training organizations.—

285140

576-03251-18

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

(a) "Eligible job training organization" means an organization that:

1. Is an exempt organization under s. 501(c)(3) of the Internal Revenue Code of 1986, as amended;

2. Provides job training and employment services to low-income persons, as defined in s. 420.0004(11), individuals who have workplace disadvantages, or individuals with barriers to employment; and

3. Is accredited by the Commission on Accreditation of Rehabilitation Facilities.

(b) "Growth in employment hours" means the growth in the number of hours worked by employees at the eligible job training organization in the most recently completed state fiscal year compared with the number of hours worked by employees at the eligible job training organization in the state fiscal year immediately prior to the most recently completed state fiscal year.

(c) "Job training and employment services" means programs and services that are provided to improve job readiness, assist workers in gaining employment and adapting to the changing labor market, and achieve worker success through self-sufficiency.

(2) An eligible job training organization is entitled to a refund of 10 percent of the sales tax remitted to the department during the most recently completed state fiscal year on its sales of goods donated to the organization. The organization must reserve the refund exclusively for use in any of the following:

(a) Growth in employment hours;

(b) Job training and employment services to low-income persons, as defined in s. 420.0004(11), individuals who have workplace disadvantages, and individuals with barriers to employment; or

(c) Job training and employment services for veterans.

(3) The total amount of refunds that the department may issue under this section may not exceed $2 million in any state fiscal year. Refunds must be granted on a first-come, first-served basis.

(4) An eligible job training organization seeking a refund under this section must first submit an application to the Department of Economic Opportunity by July 15, which sets forth that the organization meets the requirements under paragraph (1)(a) and that the refund will be used exclusively for the purposes listed in subsection (2). The organization must submit supporting information as prescribed by the Department of Economic Opportunity by rule.

(5)(a) The Department of Economic Opportunity must verify the application and notify the organization of its determination within 15 days of receiving a complete application. The decision of the Department of Economic Opportunity must be in writing or, if agreed to by the applicant, electronic mail.

(b) If the Department of Economic Opportunity makes a determination to approve the application, then the notice sent to the eligible job training organization must include a certification that the organization is eligible to receive a refund of certain sales and use tax remitted under this chapter. The Department of Economic Opportunity shall transmit a copy of the notice and certification, if applicable, to the department.

(c) Upon the Department of Economic Opportunity's issuance of a certification, such certification remains in effect so long as the eligible job training organization is in compliance with the requirements of this section.

(6) An eligible job training organization certified under this section must apply to the department between August 1 and August 31 of each year to receive a refund. The first time that an organization submits an application for a refund to the department the application must be accompanied by a copy of the certification. Subsequent applications by an organization do not need to include the certification. The organization must submit any information required by the department as part of the application for the refund.

(7) For purposes of this section, an eligible job training organization comprised of commonly owned and controlled entities is deemed to be a single organization.

(8) By August 1 following each state fiscal year in which an eligible job training organization received a refund pursuant to subsection (2), the organization must provide a report to the Department of Economic Opportunity about the use of such funds as required in subsection (2). The report must include at least all of the following:

(a) The amount of the refund used to create growth in employment hours.

(b) The total growth in employment hours.

(c) The amount of the refund used for job training and employment services.

(d) The number of individuals who participated in job training and employment services at the eligible job training

organization.

(e) A statement declaring that the eligible job training organization continues to meet the requirements of this section.

(9) Administration.—

(a) The Department of Economic Opportunity may adopt rules to administer this section, including rules for the approval and disapproval of applications.

(b) If the Department of Economic Opportunity determines that an eligible job training organization no longer qualifies for the refund under this section, the Department of Economic Opportunity must notify the department immediately. The department may not issue a refund after receiving such notification.

(c) Notwithstanding s. 95.091(3)(a)6.b., the department may audit any refund within 4 years after the date of which a refund is granted. The overpayment of a refund or a refund issued to an ineligible organization is subject to repayment and interest at the rate calculated pursuant to s. 213.235.

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 1450
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Transportation, Tourism, and Economic Development); Commerce and Tourism Committee; and Senator Steube
SUBJECT:	Sales Tax Refund for Eligible Job Training Organizations
DATE:	March 5, 2018
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Little	McKay	CM	**Fav/CS**
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/CS/SB 1450 creates a sales tax refund for eligible job training organizations. Under the bill, an eligible job training organization may apply for a refund of 10 percent of the sales tax the organization remitted to the DOR on its sales of donated goods during the previous state fiscal year.

The Department of Economic Opportunity (DEO) is required to determine an applicant's eligibility for the sales tax refund and certify the eligibility of organizations that meet the specified requirements. After obtaining certification from the DEO, an eligible job training organization must apply to the Department of Revenue (DOR) in August each year that a refund is sought.

The bill limits the use of a sales tax refund issued to an eligible job training organization to the following purposes:

- Growth in employment hours;
- Job training and employment services to low-income persons, individuals who have workplace disadvantages, or individuals with barriers to employment; or
- Job training and employment services for veterans.

An eligible job training organization that receives a refund must annually report eligibility information to the DEO, including how the previously issued refund was used. If the DEO

determines an organization no longer qualifies for the refund, the DEO must immediately notify the DOR. The DOR is prohibited from issuing a refund after receiving such notification. The bill authorizes the DOR to audit any refund within 4 years of the date the refund was granted and subjects the overpayment of a refund or a refund issued to an ineligible job training organization to repayment.

The Revenue Estimating Conference estimates this bill, beginning in Fiscal Year 2018-2019, will reduce General Revenue Fund receipts by $1.6 million annually, state trust fund receipts by an indeterminate amount annually, and local government revenues by $400,000 annually.

The bill takes effect July 1, 2018.

II. Present Situation:

Florida Sales and Use Tax

Florida levies a six percent state sales and use tax on the sale or rental of most tangible personal property, admissions, rentals of transient accommodations, rentals of commercial real estate, and a limited number of services.[1]

In addition to the state level tax, counties are authorized to levy surtaxes under certain situations.[2] Surtaxes apply to all transactions occurring in the county that are subject to the state level tax.[3]

Generally, sales tax is added to the price of taxable goods or services, and the tax is collected from the purchaser at the time of sale.[4] Anyone that sells taxable goods or services in Florida must register with the DOR as a sales tax dealer to collect, report, and remit sales tax.[5] The DOR is authorized to audit organizations in the state for the purpose of determining whether such taxes are properly collected, reported, and paid.[6]

Charitable Organizations

Charitable organizations are eligible to receive tax-deductible contributions.[7] To qualify as a charitable organization under section 501(c)(3) of the Internal Revenue Code an organization must be organized and operated exclusively for an exempt purpose,[8] none of its earnings may

[1] *See* s. 212.05, F.S.
[2] Section 212.055, F.S.
[3] Section 212.054, F.S.
[4] Sections 212.06(3) and 212.07(2), F.S.
[5] Section 212.18(3)(a), F.S.; Department of Revenue, *Florida Sales and Use Tax*, GT-800013, Revised 1/18, available at http://floridarevenue.com/Forms_library/current/gt800013.pdf (last visited Feb. 9, 2018).
[6] Section 212.13(3), F.S.
[7] 26 U.S.C. s. 170
[8] Exempt purposes under section 501(c)(3) include: charitable, religious, educational, scientific, literary, testing for public safety, fostering national or international amateur sports competition, and preventing cruelty to children or animals." IRS, *Exempt Purposes – Internal Revenue Code Section 501(c)(3)*, available at https://www.irs.gov/charities-non-profits/charitable-organizations/exempt-purposes-internal-revenue-code-section-501c3 (last visited Feb. 4, 2018).

inure to any private shareholder or individual, and it cannot be an action organization.[9] Additionally, organizations that qualify under section 501(c)(3) may be eligible for other tax benefits, such as state and federal sales, property, and income tax exemptions.[10]

Qualified Job Training Organizations Program

Section 288.1097, F.S., allows a "qualified job training organization" to receive grant funding from the Department of Economic Opportunity (DEO).

To be eligible, a job training organization must:
- Be exempt under s. 501(c)(3) or (4) of the Internal Revenue Code;
- Provide job training and employment services to individuals who have workplace disadvantages or disabilities;
- Be accredited by the Commission on Accreditation of Rehabilitation Facilities;
- Collect Florida sales tax;
- Specialize in the retail sale of donated items;
- Operate statewide through more than 100 locations;
- Use a majority of its revenues for job training and placement programs that create jobs and foster economic development; and
- Be certified by the DEO that the organization meets the requirements described above.

The DEO is permitted to release funds to the organization pursuant to a contract with the organization. The contract must require the organization to meet certain performance conditions in order to receive the grant funds. The performance conditions must include "net new employment in the state, the methodology for validating performance, the schedule of payments, and sanctions for failure to meet the performance requirements including any provisions for repayment..." and that salaries paid to officers and employees of the organization meet certain Internal Revenue Code requirements.[11]

The organization must use the grant funds "solely to encourage and provide economic development through capital construction, improvements, or the purchase of equipment that will result in expanded employment opportunities." The statute also requires the following results to be met within a 10-year period:
- Creation of at least 5,000 direct, new jobs;
- Minimum of 23,000 new clients served;
- Production of a minimum of $24 million in new sales tax revenues from increased sales;

[9] The prohibition on the organization being an "action organization" means that the organization "may not attempt to influence legislation as a substantial part of its activities and it may not participate in any campaign activity for or against political candidates." IRS, *Exemption Requirements - 501(c)(3) Organizations*, *available at* https://www.irs.gov/charities-non-profits/charitable-organizations/exemption-requirements-section-501c3-organizations (last visited Feb. 4, 2018).
[10] *See* Internal Revenue Service, *Federal Tax Obligations of Non-Profit Corporations*, *available at* https://www.irs.gov/pub/irs-pdf/n844.pdf (last visited Feb. 4, 2018). "Nonprofit organizations may qualify for exemption from some Florida taxes. Each tax is separate and distinct and has its own requirements. As a result, exemption from one tax does not necessarily exempt the organization from all taxes and not all Florida tax exemptions require the organization obtain a federal tax-exempt status." Department of Revenue, *Nonprofit Organizations*, *available at* http://floridarevenue.com/taxes/businesses/Pages/nonprofit.aspx (last visited Feb. 4, 2018).
[11] Section 288.1097(2), F.S.

- Minimum of $42 million in new salaries; and
- Minimum of $6 million for job placement services.

No funds have ever been appropriated to this program.

III. Effect of Proposed Changes:

The bill creates a sales tax refund for an eligible job training organization on the organization's sales of goods donated to the organization and requires the organization to use the refund for specific employment purposes.[12]

To be eligible for the refund, a job training organization must:
- Be exempt under s. 501(c)(3) of the Internal Revenue Code;
- Provide job training and employment services to low-income persons,[13] individuals who have workplace disadvantages, or individuals with barriers to employment; and
- Be accredited by the Commission on Accreditation of Rehabilitation Facilities.

The bill also specifies that an eligible job training organization consisting of commonly owned and controlled entities is deemed to be a single organization.

An eligible job training organization is entitled to a refund equal to 10 percent of the sales tax remitted to the DOR during the prior state fiscal year on the organization's sales of goods donated to the organization. The total amount of sales tax refunds issued to eligible job training organizations may not exceed $2 million in any state fiscal year. Refunds are granted on a first-come, first-served basis.

The organization must use the refund for any of the following purposes:
- Growth in employment hours.[14]
- Job training and employment services[15] to low-income persons, individuals who have workplace disadvantages, or individuals with barriers to employment.
- Job training and employment services for veterans.

An organization seeking a refund must first submit an application to the DEO by July 15. The application must establish that the organization meets the eligibility requirements and that the refund will be used exclusively for the purposes listed above and must include any supporting information set forth by the DEO in rule. The DEO is required to verify the application and

[12] The bill creates s. 212.099, F.S.
[13] "Low-income persons" means "one or more natural persons or a family, the total annual adjusted gross household income of which does not exceed 80 percent of the median annual adjusted gross income for households within the state, or 80 percent of the median annual adjusted gross income for households within the metropolitan statistical area (MSA) or, if not within an MSA, within the county in which the person or family resides, whichever is greater." Section 420.0004(11), F.S.
[14] "Growth in employment hours" is defined by the bill as "the growth in the number of hours worked by employees at the eligible job training organization in the most recently completed state fiscal year compared with the number of hours worked by employees at the job training organization in the state fiscal year immediately prior to the most recently completed state fiscal year."
[15] "Job training and employment services" is defined by the bill as programs and services that improve workers' job readiness, assist them in gaining employment and adapting to the changing labor market, and help them achieve employment success through self-sufficiency.

notify the organization of the DEO's determination within 15 days of receiving a complete application. The bill authorizes the DEO to adopt rules necessary to administer the sales tax refund, including rules for the approval and disapproval of applications by organizations.

For approved applications, the DEO must send the eligible job training organization a notice that includes a certification that the organization is eligible to receive the sales tax refund. This decision of the DEO must be in writing, or in e-mail if agreed to by the organization. The DEO must send a copy of the notice and the certification, if applicable, to the DOR. The DEO's issuance of a certification remains in effect as long as the eligible job training organization remains in compliance with the requirements of the law.

An eligible job training organization that is certified by the DEO must then apply to the DOR between August 1 and August 31 of each year that the organization seeks a refund. The first application for a refund submitted to the DOR must also include a copy of the DEO certification. An application must include any information required by the DOR.

By August 1 of each state fiscal year that an eligible job training organization received a refund, the organization is required to provide a report to the DEO describing the use of the refund. The report must include the following:

- The amount of the refund used to create growth in employment hours;
- The total growth in employment hours;
- The amount of the refund used for job training and employment services;
- The number of individuals who participated in job training and employment services at the eligible job training organization; and
- A statement declaring that the organization continues to meet the necessary requirements to remain eligible for the sales tax refund.

If the DEO determines that a job training organization no longer qualifies for the refund, the DEO must notify the DOR immediately. The DOR is prohibited from issuing a refund after receiving such notification. The bill also provides that the DOR has the authority to audit any refund within 4 years after the date the refund was granted. The overpayment of a refund, or a refund issued to an ineligible job training organization, is subject to repayment and interest at the rate calculated pursuant to s. 213.235, F.S.

The bill takes effect on 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. 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, which for Fiscal Year 2017-2018 is approximately $2.05 million or less.[16,17,18]

The Revenue Estimating Conference estimates the reduction to local government's tax receipts is $400,000 recurring. Therefore this bill has an insignificant fiscal impact and may not require a two-thirds vote of the membership in each house.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill creates a sales tax refund for eligible job training organizations equal to 10 percent of the sales tax remitted to the DOR on its sales of goods donated to the organization during the prior state fiscal year.

B. Private Sector Impact:

The bill will have a positive impact on eligible job training organizations that receive a sales tax refund.

C. Government Sector Impact:

The Revenue Estimating Conference estimates this bill, beginning in Fiscal Year 2018-2019, will reduce General Revenue Fund receipts by $1.6 million annually, state trust fund receipts by an indeterminate amount annually, and local government revenues by $400,000 annually.[19]

The DEO has stated that any costs related to increased workload to administer the provisions of this bill can be absorbed within existing resources.[20]

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[16] FLA. CONST. art. VII, s. 18(d).
[17] 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.
[18] 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 Dec. 19, 2017).
[19] Office of Economic and Demographic Research, Revenue Estimating Conference, *Job Training Organizations: CS/SB 1450*, February 14, 2018.
[20] Department of Economic Opportunity, *2018 Agency Legislative Bill Analysis: SB 1450*, February 6, 2018.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 212.099 of the Florida Statutes.

IX. Additional Information:

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

CS/CS by Appropriations on March 2, 2018:
The committee substitute:

- Removes certification by the DEO as an element of the definition for "eligible job training organization."
- Clarifies the time frames and the location of employees in the definition of "growth in employment hours."
- Clarifies that the refund is granted by the DOR.
- Requires an eligible job training organization to submit any required additional materials for the applications to both the DEO and the DOR.
- Clarifies the determination and certification process by the DEO.
- Clarifies that subsequent applications to the DOR for a refund after the first application do not need to include the certification by the DEO.
- Requires the report to the DEO to be made on August 1 following the state fiscal year in which a refund was received by the eligible job training organization.

CS by Commerce and Tourism on January 29, 2018:
The bill is amended to:

- Make references to "eligible job training organizations" rather than "eligible businesses;"
- Remove "capital costs" from the uses of the sales tax refund authorized by the bill; and
- Clarify that the DOR may audit, rather than examine, any sales tax refund granted to an eligible job training organization within 4 years of issuance.

B. Amendments:

None.

By the Committee on Commerce and Tourism; and Senator Steube

577-02600-18 20181450c1

A bill to be entitled

An act relating to a sales tax refund for eligible job training organizations; creating s. 212.099, F.S.; providing definitions; authorizing eligible organizations to receive a refund of a specified amount of certain sales taxes collected if such amount is used for certain purposes relating to job training and employment services; specifying the annual maximum allowable tax refund for such organizations; providing requirements for receiving the refund; authorizing the Department of Economic Opportunity to certify organizations; authorizing the Department of Revenue to audit, within a certain timeframe, any refund issued; providing the applicable interest rate on overpayments and payments to ineligible organizations; providing that an eligible organization comprised of commonly owned and controlled entities is a single organization; requiring eligible organizations to provide an annual report to the Department of Economic Opportunity; providing an effective date.

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

Section 1. Section 212.099, Florida Statutes, is created to read:

212.099 Sales tax refund for eligible job training organizations.—

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

(a) "Eligible job training organization" means an

577-02600-18 20181450c1

organization that:

1. Is an exempt organization under s. 501(c)(3) of the Internal Revenue Code of 1986, as amended;

2. Provides job training and employment services to low-income persons, as defined in s. 420.0004(11), individuals who have workplace disadvantages, or individuals with barriers to employment;

3. Is accredited by the Commission on Accreditation of Rehabilitation Facilities; and

4. Is certified by the Department of Economic Opportunity as meeting the requirements of this section.

(b) "Growth in employment hours" means the annual growth in the number of hours worked by employees in the current year compared with the number of hours worked by employees in the previous year.

(c) "Job training and employment services" means programs and services that are provided to improve job readiness, assist workers in gaining employment and adapting to the changing labor market, and achieve worker success through self-sufficiency.

(2) An eligible job training organization is entitled to a refund of 10 percent of the sales tax remitted to the department during the prior state fiscal year on its sales of goods donated to the organization. The refund must be reserved exclusively for use in any of the following:

(a) Growth in employment hours;

(b) Job training and employment services to low-income persons, as defined in s. 420.0004(11), individuals who have workplace disadvantages, and individuals with barriers to employment; or

(c) Job training and employment services for veterans.

(3) The total amount of refunds issued under this section may not exceed $2 million in any state fiscal year granted on a first-come, first-served basis.

(4) An eligible job training organization seeking a refund under this section must submit an initial application to the Department of Economic Opportunity by July 15, which sets forth that the organization meets the requirements under paragraph (1)(a) and that the refund will be used exclusively for the purposes listed in subsection (2). The organization may submit supporting information as prescribed by rule.

(5) The Department of Economic Opportunity must verify the application and notify the organization of its determination within 15 days of receiving the application. If the Department of Economic Opportunity approves the application, it must send to the eligible job training organization a notice that indicates its certification to receive a refund of certain sales and use tax remitted under this chapter. Upon the Department of Economic Opportunity's issuance of a certification, such certification remains in effect so long as the eligible job training organization is in compliance with the requirements of this section.

(6) An eligible job training organization certified under this section must apply to the department between August 1 and August 31 of each year to receive a refund. The first application for a refund submitted to the department must be accompanied by a copy of the certification.

(7) For purposes of this section, an eligible job training organization comprised of commonly owned and controlled entities

is deemed to be a single organization.

(8) By July 15 of each year, an eligible job training organization must provide a report to the Department of Economic Opportunity which describes the use of the amount refunded. The report must include all of the following:

(a) The amount of the refund used to create growth in employment hours.

(b) The total annual growth in employment hours.

(c) The amount of the refund used for job training and employment services.

(d) The number of individuals who participated in job training and employment services at the eligible job training organization for the fiscal year in which the requested funds were remitted to the department.

(e) A statement declaring that the eligible job training organization continues to meet the requirements of this section.

(9) Administration.—

(a) The Department of Economic Opportunity may adopt rules to administer this section, including rules for the approval and disapproval of applications.

(b) The decision of the Department of Economic Opportunity must be in writing or, if agreed to by the applicant, electronic mail. Upon approval, the Department of Economic Opportunity shall transmit a copy of the decision to the department.

(c) If the Department of Economic Opportunity determines that an eligible job training organization no longer qualifies for the refund under this section, the Department of Economic Opportunity must notify the department immediately. The department may not issue a refund after receiving such

notification.

(d) Notwithstanding s. 95.091(3)(a)6.b., the department may audit any refund within 4 years after the date of which a refund is granted. The overpayment of a refund or a refund issued to an ineligible organization is subject to repayment and interest at the rate calculated pursuant to s. 213.235.

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:	CS/CS/SB 1486
INTRODUCER:	Appropriations Committee; Health Policy Committee; and Senator Grimsley
SUBJECT:	Department of Health
DATE:	March 5, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van Winkle	Stovall	HP	**Fav/CS**
2.	Loe	Hansen	AP	**Fav/CS**
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1486 provides rulemaking authority to the Department of Health (DOH) to implement the Conrad 30 Waiver Program.

The bill has no impact on state revenues or expenditures.

The effective date of the bill is July 1, 2018.

II. Present Situation:

The Conrad 30 Program

The Conrad 30 Waiver Program, authorized by the United States Department of State (USDOS), and the United States Citizenship and Immigration Services (USCIS), addresses the shortage of qualified doctors in medically underserved areas. The program allow a medical doctor holding a J-1 Visa to apply for a waiver of the two-year residence requirement upon completion of the J-1Visa exchange visitor program under s. 214(1) of the Immigration and Nationality Act (INA).

State public health agencies are authorized to sponsor up to 30 physicians annually to serve in a designated U.S. Department of Health and Human Services (HHS) Health Professional Shortage Area (HPSA), Medically Underserved Area (MUA), or Medically Underserved Population

(MUP). The program requires a medical doctor holding a J-1 Visa who wishes to participate in a Conrad 30 Waiver Program to:

- Agree to be employed full-time in H-1B nonimmigrant status at a health care facility located in an area designated by the HHS as a HPSA, MUA, or MUP;
- Obtain a contract from the health care facility located in an area designated by HHS as an HPSA, MUA, or MUP;
- Obtain a "no objection" letter from his or her home country if the home government funded his or her exchange program; and
- Agree to begin employment at the health care facility within 90 days of receipt of the waiver, not the date his or her J-1 visa expires.

The DOH has administered the Conrad 30 Waiver Program since 1994. In recent years, the number of applicants has exceeded the maximum number of 30 slots allowed by the program. The DOH does not have rulemaking authority to establish additional criteria for selecting Conrad 30 Waiver Program applicants for sponsorship, thereby limiting the DOH's ability to place qualified physicians in areas of highest need.[1]

III. Effect of Proposed Changes:

Section 1 amends s. 381.4018, F.S., to require the DOH to adopt rules, following federal requirements, to implement the Conrad 30 Program to further encourage qualified physicians to relocate to Florida and practice in underserved areas. This rulemaking authority allows the DOH to establish criteria beyond the federal minimum requirements and prioritize applications, thereby placing physicians in areas of highest need.

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.

[1] Florida Department of Health, *House Bill 1047 Analysis* (December 19, 2017) (on file with the Senate Committee on Health Policy).

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:

The bill substantially amends section 381.4018 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 March 2, 2018:
The committee substitute changes the bill title to, "an act relating to workforce development;" and deletes provisions of the bill related to:

- Requiring dates of birth on health care professional licensure applications;
- Expediting licensure for dentistry for spouses of active duty military;
- Repealing the requirement for the Board of Medicine (BOM) to conduct a review of organizations that board certify physicians in dermatology;
- Defining a contact classroom hour for chiropractic continuing education (CE) and authorizing 10 hours of online general chiropractic CE credit;
- Deregulating registered chiropractic assistants;
- Granting rulemaking authority to the Board of Nursing (BON) to establish standards of care, including discipline and standards of care for certified nursing assistants (CNA);
- Recognizing CNA certification in a territory of the United States or the District of Columbia for certification in Florida and eliminating the element of intent for violations of practice laws for CNAs;
- Requiring an institutional, nuclear, special, or internet pharmacy to pass a DOH onsite inspection before licensure;
- Establishing the licensure of in-state sterile compounding pharmacies;
- Deleting the requirement for Florida dentists and dental hygienists to grade dental and dental hygienist licensure examinations;
- Requiring dentists and dental hygienists to report adverse incidents;

- Expanding the definition of dental laboratory to include a person who provides onsite consultation during dental procedures;
- Requiring dental laboratories to be inspected at least biennially, rather than annually;
- Restricting an athletic trainer to working within his or her scope of practice;
- Requiring athletic trainers to maintain certification in good standing without lapse;
- Requiring supervision of athletic training students to be in accordance with board rules rather than an external entity's standards;
- Authorizing a joint registration for orthotics and prosthetics residency and providing a licensure pathway for a joint educational program;
- Eliminating the massage therapy apprenticeship program, except for the study of colonic irrigation; clarifying that the massage therapist licensure examination is a national examination approved by the board; and expanding circumstances for the revocation, or denial, of initial licensure of a massage establishment license;
- Eliminating outdated language, clarifying education accreditation requirements, and streamlining licensure by endorsement requirements for psychology licensure;
- Clarifying, streamlining, and correcting inconsistencies in provisions regulating the licensure of marriage and family therapy, mental health counseling, and clinical social work; and
- Requiring applicants for licensure as a mental health counselor to have a master's degree that is accredited by the Council for Accreditation of Counseling and Related Educational Programs (CACREP), beginning July 1, 2024.

CS by Health Policy January 30, 2018:
The committee substitute:

- Repeals the requirement that the BOM conduct a review of organizations that board certify physicians in dermatology;
- Defines "contact classroom hour" for ch. 460, F.S.; authorizes chiropractic physicians to take up to 10 hours of general CE online; and deregulates registered chiropractic assistants;
- Removes provisions that sought to create regulatory and rulemaking authority to the BOM and the BOOM to oversee all office surgery centers (OSCs);
- Removes provisions that sought to deregulate laboratory personnel; and
- Removes provisions relating to the timing for submission of an application for examination for licensure as an optometrist; and provisions creating a pathway for licensure by endorsement.

B. Amendments:

None.

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

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/02/2018	.	
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The Committee on Appropriations (Grimsley) recommended the following:

Senate Amendment (with title amendment)

Delete lines 145 - 1408.

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

And the title is amended as follows:

Delete lines 2 - 114

and insert:

An act relating to physician workforce development; amending s. 381.4018, F.S.; requiring the Department

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of Health to adopt any rules necessary to implement a specified federal program to further encourage qualified physicians to relocate to and practice in underserved areas;

By the Committee on Health Policy; and Senator Grimsley

588-02622-18 20181486c1

A bill to be entitled

An act relating to the Department of Health; amending s. 381.4018, F.S.; requiring the department to adopt any rules necessary to implement a specified federal program to further encourage qualified physicians to relocate to and practice in underserved areas; amending s. 456.013, F.S.; revising health care practitioner licensure application requirements; amending s. 456.024, F.S.; revising health care practitioner licensure eligibility for certain members of the armed forces and their spouses to include licensed dentists; removing a provision requiring a certain applicant issued a temporary professional license to practice as a dentist to practice under supervision; amending s. 458.3312, F.S.; removing a provision prohibiting a physician from holding himself or herself out as a board-certified specialist in dermatology unless the recognizing agency is reviewed and reauthorized on a specified basis by the Board of Medicine; amending s. 460.408, F.S.; defining the term "contact classroom hour"; revising provisions relating to continuing chiropractic education requirements; repealing s. 460.4166, F.S., relating to registered chiropractic assistants; amending s. 464.006, F.S.; authorizing the Board of Nursing to establish certain standards of care; amending s. 464.202, F.S.; requiring the board to adopt by rule discipline and standards of care for certified nursing assistants; amending s. 464.203, F.S.; revising certification

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

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requirements for nursing assistants; amending s. 464.204, F.S.; revising grounds for board-imposed disciplinary sanctions; amending s. 465.019, F.S.; requiring an institutional pharmacy to pass an onsite inspection by the department within a specified time before the issuance of an initial permit or a permit for change of location; amending s. 465.0193, F.S.; requiring a nuclear pharmacy to pass an onsite inspection by the department within a specified time before issuance of an initial permit or a permit for change of location; creating s. 465.0195, F.S.; requiring certain pharmacies and outsourcing facilities located in this state to obtain a permit in order to create, ship, mail, deliver, or dispense compounded sterile products; providing application requirements; providing inspection requirements; providing permit requirements; authorizing the Board of Pharmacy to adopt certain rules; providing applicability; amending s. 465.0196, F.S.; requiring a special pharmacy to pass an onsite inspection by the department within a specified time before the issuance of an initial permit or a permit for change of location; amending s. 465.0197, F.S.; requiring an Internet pharmacy to pass an onsite inspection by the department within a specified time before the issuance of an initial permit or a permit for change of location; amending s. 466.006, F.S.; revising certain requirements for examinations to be completed by applicants seeking dental licensure; amending s.

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

466.007, F.S.; revising requirements for examinations of dental hygienists; amending s. 466.017, F.S.; providing adverse incident reporting requirements; defining the term "adverse incident"; providing for disciplinary action by the Board of Dentistry; authorizing the board to adopt rules; amending s. 466.031, F.S.; expanding the definition of the term "dental laboratory" to include any person who performs an onsite consultation during dental procedures; amending s. 466.036, F.S.; requiring the periodic inspection of dental laboratories at least once during a specified period; amending s. 468.701, F.S.; revising a definition; amending s. 468.707, F.S.; revising athletic trainer licensure requirements; amending s. 468.711, F.S.; revising requirements for the renewal of a license relating to continuing education; amending s. 468.723, F.S.; revising a definition; amending s. 468.803, F.S.; revising orthotic, prosthetic, and pedorthic licensure, registration, and examination requirements; amending s. 480.033, F.S.; revising a definition; amending s. 480.041, F.S.; revising qualifications for licensure as a massage therapist; specifying that a massage apprentice who was licensed before a specified date may continue to perform massage therapy as authorized under his or her license; authorizing a massage apprentice to apply for full licensure upon completion of the apprenticeship under certain conditions; repealing s. 480.042, F.S., relating to examinations;

amending s. 480.046, F.S.; revising instances under which disciplinary action may be taken against massage establishments; prohibiting a certain disciplined massage establishment from applying for relicensure; providing an exception; amending s. 490.003, F.S.; revising definitions; amending s. 490.005, F.S.; revising examination requirements for licensure of a psychologist; amending s. 490.006, F.S.; revising requirements for licensure by endorsement of certain psychologists; amending s. 491.0045, F.S.; providing an exemption for intern registration requirements under certain circumstances; amending s. 491.005, F.S.; revising education requirements for the licensure of marriage and family therapists; revising examination requirements for the licensure of mental health counselors; amending s. 491.006, F.S.; revising requirements for licensure or certification by endorsement for certain professions; amending s. 491.007, F.S.; removing a biennial intern registration fee; amending s. 491.009, F.S.; authorizing the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling, or the department under certain circumstances, to enter an order denying licensure or imposing penalties against an applicant for licensure under certain circumstances; providing penalties; amending ss. 491.0046 and 945.42, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Paragraph (f) of subsection (3) of section 381.4018, Florida Statutes, is amended to read:

381.4018 Physician workforce assessment and development.—

(3) GENERAL FUNCTIONS.—The department shall maximize the use of existing programs under the jurisdiction of the department and other state agencies and coordinate governmental and nongovernmental stakeholders and resources in order to develop a state strategic plan and assess the implementation of such strategic plan. In developing the state strategic plan, the department shall:

(f) Develop strategies to maximize federal and state programs that provide for the use of incentives to attract physicians to this state or retain physicians within the state. Such strategies should explore and maximize federal-state partnerships that provide incentives for physicians to practice in federally designated shortage areas. Strategies shall also consider the use of state programs, such as the Medical Education Reimbursement and Loan Repayment Program pursuant to s. 1009.65, which provide for education loan repayment or loan forgiveness and provide monetary incentives for physicians to relocate to underserved areas of the state. To further encourage qualified physicians to relocate to and practice in underserved areas, the department, following federal requirements, shall adopt any rules necessary for the implementation of the Conrad 30 Waiver Program established under s. 214(1) of the Immigration and Nationality Act.

Section 2. Paragraph (a) of subsection (1) of section

456.013, Florida Statutes, is amended to read:

456.013 Department; general licensing provisions.—

(1)(a) Any person desiring to be licensed in a profession within the jurisdiction of the department shall apply to the department in writing ~~to take the licensure examination~~. The application shall be made on a form prepared and furnished by the department. The application form must be available on the World Wide Web and the department may accept electronically submitted applications beginning July 1, 2001. The application shall require the social security number and date of birth of the applicant, except as provided in paragraphs (b) and (c). The form shall be supplemented as needed to reflect any material change in any circumstance or condition stated in the application which takes place between the initial filing of the application and the final grant or denial of the license and which might affect the decision of the department. If an application is submitted electronically, the department may require supplemental materials, including an original signature of the applicant and verification of credentials, to be submitted in a nonelectronic format. An incomplete application shall expire 1 year after initial filing. In order to further the economic development goals of the state, and notwithstanding any law to the contrary, the department may enter into an agreement with the county tax collector for the purpose of appointing the county tax collector as the department's agent to accept applications for licenses and applications for renewals of licenses. The agreement must specify the time within which the tax collector must forward any applications and accompanying application fees to the department.

Section 3. Paragraphs (a) and (b) of subsection (3) and paragraph (j) of subsection (4) of section 456.024, Florida Statutes, are amended 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.~~

Section 4. Section 458.3312, Florida Statutes, is amended to read:

458.3312 Specialties.—A physician licensed under this chapter may not hold himself or herself out as a board-certified specialist unless the physician has received formal recognition as a specialist from a specialty board of the American Board of Medical Specialties or other recognizing agency that has been approved by the board. However, a physician may indicate the services offered and may state that his or her practice is

limited to one or more types of services when this accurately reflects the scope of practice of the physician. ~~A physician may not hold himself or herself out as a board-certified specialist in dermatology unless the recognizing agency, whether authorized in statute or by rule, is triennially reviewed and reauthorized by the Board of Medicine.~~

Section 5. Subsection (1) of section 460.408, Florida Statutes, is amended to read:

460.408 Continuing chiropractic education.—

(1) The board shall require licensees to periodically demonstrate their professional competence as a condition of renewal of a license by completing up to 40 contact classroom hours of continuing education. For purposes of this subsection, term "contact classroom hour" means a presentation in which the persons presenting and the persons attending the course are present on site. Up to 10 general credit continuing education hours may be completed online in place of contact classroom hours, as determined by board rule. Online continuing education courses must be competency based and must use the Sharable Content Objective Reference Model standard or more stringent standards, as determined by the board.

(a) Continuing education courses sponsored by chiropractic colleges whose graduates are eligible for examination under any provision of this chapter may be approved upon review by the board if all other requirements of board rules setting forth criteria for course approval are met.

(b) The board shall approve those courses that build upon the basic courses required for the practice of chiropractic medicine, and the board may also approve courses in adjunctive

modalities. Courses that consist of instruction in the use, application, prescription, recommendation, or administration of a specific company's brand of products or services are not eligible for approval.

Section 6. Section 460.4166, Florida Statutes, is repealed.

Section 7. Section 464.006, Florida Statutes, is amended to read:

464.006 Rulemaking authority.—The board may ~~has authority to~~ adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this part conferring duties upon it and establish standards of care.

Section 8. Section 464.202, Florida Statutes, is amended to read:

464.202 Duties and powers of the board.—The board shall maintain, or contract with or approve another entity to maintain, a state registry of certified nursing assistants. The registry must consist of the name of each certified nursing assistant in this state; other identifying information defined by board rule; certification status; the effective date of certification; other information required by state or federal law; information regarding any crime or any abuse, neglect, or exploitation as provided under chapter 435; and any disciplinary action taken against the certified nursing assistant. The registry shall be accessible to the public, the certificateholder, employers, and other state agencies. The board shall adopt by rule testing procedures for use in certifying nursing assistants and shall adopt rules regulating the practice of certified nursing assistants, including discipline and establishing standards of care, and specifying

the scope of practice authorized and the level of supervision required for the practice of certified nursing assistants. The board may contract with or approve another entity or organization to provide the examination services, including the development and administration of examinations. The board shall require that the contract provider offer certified nursing assistant applications via the Internet, and may require the contract provider to accept certified nursing assistant applications for processing via the Internet. The board shall require the contract provider to provide the preliminary results of the certified nursing examination on the date the test is administered. The provider shall pay all reasonable costs and expenses incurred by the board in evaluating the provider's application and performance during the delivery of services, including examination services and procedures for maintaining the certified nursing assistant registry.

Section 9. Paragraph (c) of subsection (1) of section 464.203, Florida Statutes, is amended to read:

464.203 Certified nursing assistants; certification requirement.—

(1) The board shall issue a certificate to practice as a certified nursing assistant to any person who demonstrates a minimum competency to read and write and successfully passes the required background screening pursuant to s. 400.215. If the person has successfully passed the required background screening pursuant to s. 400.215 or s. 408.809 within 90 days before applying for a certificate to practice and the person's background screening results are not retained in the clearinghouse created under s. 435.12, the board shall waive the

requirement that the applicant successfully pass an additional background screening pursuant to s. 400.215. The person must also meet one of the following requirements:

(c) Is currently certified in another state or territory or the District of Columbia; is listed on that state's certified nursing assistant registry; and has not been found to have committed abuse, neglect, or exploitation in that state.

Section 10. Subsection (1) of section 464.204, Florida Statutes, is amended to read:

464.204 Denial, suspension, or revocation of certification; disciplinary actions.—

(1) The following acts constitute grounds for which the board may impose disciplinary sanctions as specified in subsection (2):

(a) Obtaining or attempting to obtain certification or an exemption, or possessing or attempting to possess certification or a letter of exemption, by bribery, misrepresentation, deceit, or through an error of the board.

(b) ~~Intentionally~~ Violating any provision of this chapter, chapter 456, or the rules adopted by the board.

Section 11. Subsection (7) is added to section 465.019, Florida Statutes, to read:

465.019 Institutional pharmacies; permits.—

(7) An institutional pharmacy must pass an onsite inspection by the department as a prerequisite to the issuance of an initial permit or a permit for a change of location. The inspection must be completed within 90 days before the issuance of the permit.

Section 12. Section 465.0193, Florida Statutes, is amended

to read:

465.0193 Nuclear pharmacy permits.—Any person desiring a permit to operate a nuclear pharmacy shall apply to the department. If the board certifies that the application complies with applicable law, the department shall issue the permit. No permit shall be issued unless a duly licensed and qualified nuclear pharmacist is designated as being responsible for activities described in s. 465.0126. A nuclear pharmacy must pass an onsite inspection by the department as a prerequisite to the issuance of an initial permit or a permit for a change of location. The inspection must be completed within 90 days before the issuance of the permit. The permittee shall notify the department within 10 days of any change of the licensed pharmacist responsible for the compounding and dispensing of nuclear pharmaceuticals.

Section 13. Section 465.0195, Florida Statutes, is created to read:

465.0195 Pharmacy or outsourcing facility; sterile compounding permit.—Before a pharmacy or outsourcing facility located in this state dispenses, creates, delivers, ships, or mails, in any manner, a compounded sterile product, the pharmacy or outsourcing facility must hold a sterile compounding permit.

(1) An application for a sterile compounding permit shall be submitted on a form furnished by the board. The board may require such information as it deems reasonably necessary to carry out the purposes of this section.

(2) If the board certifies that the application complies with applicable laws and rules of the board governing pharmacies, the department shall issue the permit.

(3) A pharmacy or outsourcing facility must pass an onsite inspection by the department as a prerequisite to the issuance of an initial permit or a permit for a change of location. The inspection must be completed within 90 days before the issuance of the permit. The board may adopt by rule standards for conducting an onsite inspection for issuance of a sterile compounding permit.

(4) A permit may not be issued unless a licensed pharmacist is designated to undertake the professional supervision of the compounding and dispensing of all drugs dispensed by the permittee.

(5) A permittee must notify the department within 10 days after any change of the licensed pharmacist under subsection (4). Each permittee that employs or otherwise uses registered pharmacy technicians shall have a written policy and procedures manual specifying those duties, tasks, and functions that a registered pharmacy technician is authorized to perform.

(6) The board may adopt by rule standards of practice for sterile compounding. In adopting such rules, the board shall give due consideration to the standards and requirements provided in chapter 797 of the United States Pharmacopeia, or other professionally accepted standards deemed authoritative by the board. In adopting such rules for an outsourcing facility, the board shall consider the standards and requirements of current good manufacturing practices as set forth by federal law and any other professionally accepted standards deemed authoritative by the board.

(7) All provisions relating to pharmacy permits found in ss. 465.022 and 465.023 apply to permits issued pursuant to this

section.

Section 14. Section 465.0196, Florida Statutes, is amended to read:

465.0196 Special pharmacy permits.—Any person desiring a permit to operate a special pharmacy shall apply to the department for a special pharmacy permit. If the board certifies that the application complies with the applicable laws and rules of the board governing the practice of the profession of pharmacy, the department shall issue the permit. A special pharmacy must pass an onsite inspection by the department as a prerequisite to the issuance of an initial permit or a permit for a change of location. The inspection must be completed within 90 days before the issuance of the permit. A permit may not be issued unless a licensed pharmacist is designated to undertake the professional supervision of the compounding and dispensing of all drugs dispensed by the pharmacy. The licensed pharmacist shall be responsible for maintaining all drug records and for providing for the security of the area in the facility in which the compounding, storing, and dispensing of medicinal drugs occurs. The permittee shall notify the department within 10 days after any change of the licensed pharmacist responsible for such duties. Each permittee that employs or otherwise uses registered pharmacy technicians shall have a written policy and procedures manual specifying those duties, tasks, and functions that a registered pharmacy technician is allowed to perform.

Section 15. Subsection (2) of section 465.0197, Florida Statutes, is amended to read:

465.0197 Internet pharmacy permits.—

(2) An Internet pharmacy must obtain a permit under this

section to sell medicinal drugs to persons in this state. An Internet pharmacy must pass an onsite inspection by the department as a prerequisite to the issuance of an initial permit or a permit for a change of location. The inspection must be completed within 90 days before the issuance of the permit.

Section 16. Subsection (4) of section 466.006, Florida Statutes, is amended to read:

466.006 Examination of dentists.—

(4) Notwithstanding any other provision of law in chapter 456 pertaining to the clinical dental licensure examination or national examinations, to be licensed as a dentist in this state, an applicant must successfully complete the following:

(a) A written examination on the laws and rules of the state regulating the practice of dentistry;

(b)1. A practical or clinical examination, which shall be the American Dental Licensing Examination produced by the American Board of Dental Examiners, Inc., or its successor entity, if any, that is administered in this state ~~and graded by dentists licensed in this state and employed by the department for just such purpose~~, provided that the board has attained, and continues to maintain thereafter, representation on the board of directors of the American Board of Dental Examiners, the examination development committee of the American Board of Dental Examiners, and such other committees of the American Board of Dental Examiners as the board deems appropriate by rule to assure that the standards established herein are maintained organizationally. A passing score on the American Dental Licensing Examination administered in this state ~~and graded by dentists who are licensed in this state~~ is valid for 365 days

after the date the official examination results are published.

2.a. As an alternative to the requirements of subparagraph 1., an applicant may submit scores from an American Dental Licensing Examination previously administered in a jurisdiction other than this state after October 1, 2011, and such examination results shall be recognized as valid for the purpose of licensure in this state. A passing score on the American Dental Licensing Examination administered out-of-state shall be the same as the passing score for the American Dental Licensing Examination administered in this state ~~and graded by dentists who are licensed in this state~~. The examination results are valid for 365 days after the date the official examination results are published. The applicant must have completed the examination after October 1, 2011.

b. This subparagraph may not be given retroactive application.

3. If the date of an applicant's passing American Dental Licensing Examination scores from an examination previously administered in a jurisdiction other than this state under subparagraph 2. is older than 365 days, then such scores shall nevertheless be recognized as valid for the purpose of licensure in this state, but only if the applicant demonstrates that all of the following additional standards have been met:

a.(I) The applicant completed the American Dental Licensing Examination after October 1, 2011.

(II) This sub-subparagraph may not be given retroactive application;

b. The applicant graduated from a dental school accredited by the American Dental Association Commission on Dental

Accreditation or its successor entity, if any, or any other dental accrediting organization recognized by the United States Department of Education. Provided, however, if the applicant did not graduate from such a dental school, the applicant may submit proof of having successfully completed a full-time supplemental general dentistry program accredited by the American Dental Association Commission on Dental Accreditation of at least 2 consecutive academic years at such accredited sponsoring institution. Such program must provide didactic and clinical education at the level of a D.D.S. or D.M.D. program accredited by the American Dental Association Commission on Dental Accreditation;

c. The applicant currently possesses a valid and active dental license in good standing, with no restriction, which has never been revoked, suspended, restricted, or otherwise disciplined, from another state or territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico;

d. The applicant submits proof that he or she has never been reported to the National Practitioner Data Bank, the Healthcare Integrity and Protection Data Bank, or the American Association of Dental Boards Clearinghouse. This sub-subparagraph does not apply if the applicant successfully appealed to have his or her name removed from the data banks of these agencies;

e.(I) In the 5 years immediately preceding the date of application for licensure in this state, the applicant must submit proof of having been consecutively engaged in the full-time practice of dentistry in another state or territory of the

United States, the District of Columbia, or the Commonwealth of Puerto Rico, or, if the applicant has been licensed in another state or territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico for less than 5 years, the applicant must submit proof of having been engaged in the full-time practice of dentistry since the date of his or her initial licensure.

(II) As used in this section, "full-time practice" is defined as a minimum of 1,200 hours per year for each and every year in the consecutive 5-year period or, where applicable, the period since initial licensure, and must include any combination of the following:

(A) Active clinical practice of dentistry providing direct patient care.

(B) Full-time practice as a faculty member employed by a dental or dental hygiene school approved by the board or accredited by the American Dental Association Commission on Dental Accreditation.

(C) Full-time practice as a student at a postgraduate dental education program approved by the board or accredited by the American Dental Association Commission on Dental Accreditation.

(III) The board shall develop rules to determine what type of proof of full-time practice is required and to recoup the cost to the board of verifying full-time practice under this section. Such proof must, at a minimum, be:

(A) Admissible as evidence in an administrative proceeding;

(B) Submitted in writing;

(C) Submitted by the applicant under oath with penalties of

perjury attached;

(D) Further documented by an affidavit of someone unrelated to the applicant who is familiar with the applicant's practice and testifies with particularity that the applicant has been engaged in full-time practice; and

(E) Specifically found by the board to be both credible and admissible.

(IV) An affidavit of only the applicant is not acceptable proof of full-time practice unless it is further attested to by someone unrelated to the applicant who has personal knowledge of the applicant's practice. If the board deems it necessary to assess credibility or accuracy, the board may require the applicant or the applicant's witnesses to appear before the board and give oral testimony under oath;

f. The applicant must submit documentation that he or she has completed, or will complete, prior to licensure in this state, continuing education equivalent to this state's requirements for the last full reporting biennium;

g. The applicant must prove that he or she has never been convicted of, or pled nolo contendere to, regardless of adjudication, any felony or misdemeanor related to the practice of a health care profession in any jurisdiction;

h. The applicant must successfully pass a written examination on the laws and rules of this state regulating the practice of dentistry and must successfully pass the computer-based diagnostic skills examination; and

i. The applicant must submit documentation that he or she has successfully completed the National Board of Dental Examiners dental examination.

Section 17. Paragraph (b) of subsection (4) and paragraph (a) of subsection (6) of section 466.007, Florida Statutes, are amended to read:

466.007 Examination of dental hygienists.—

(4) Effective July 1, 2012, to be licensed as a dental hygienist in this state, an applicant must successfully complete the following:

(b) A practical or clinical examination approved by the board. The examination shall be the Dental Hygiene Examination produced by the American Board of Dental Examiners, Inc. (ADEX) or its successor entity, if any, if the board finds that the successor entity's clinical examination meets or exceeds the provisions of this section. The board shall approve the ADEX Dental Hygiene Examination if the board has attained and continues to maintain representation on the ADEX House of Representatives, the ADEX Dental Hygiene Examination Development Committee, and such other ADEX Dental Hygiene committees as the board deems appropriate through rulemaking to ensure that the standards established in this section are maintained organizationally. The ADEX Dental Hygiene Examination or the examination produced by its successor entity is a comprehensive examination in which an applicant must demonstrate skills within the dental hygiene scope of practice on a live patient and any other components that the board deems necessary for the applicant to successfully demonstrate competency for the purpose of licensure. ~~The ADEX Dental Hygiene Examination or the examination by the successor entity administered in this state shall be graded by dentists and dental hygienists licensed in this state who are employed by the department for this purpose.~~

(6)(a) A passing score on the ADEX Dental Hygiene Examination administered out of state shall be considered the same as a passing score for the ADEX Dental Hygiene Examination administered in this state ~~and graded by licensed dentists and dental hygienists~~.

Section 18. Subsections (9) through (15) are added to section 466.017, Florida Statutes, to read:

466.017 Prescription of drugs; anesthesia.—

(9) Any adverse incident that occurs in an office maintained by a dentist must be reported to the department. The required notification to the department must be submitted in writing by certified mail and postmarked within 48 hours after the incident occurs.

(10) A dentist practicing in this state must notify the board in writing by certified mail within 48 hours of any mortality or other adverse incident that occurs in the dentist's outpatient facility. A complete written report must be filed with the board within 30 days after the mortality or other adverse incident.

(11) For purposes of notification to the department pursuant to this section, the term "adverse incident" means any mortality that occurs during or as the result of a dental procedure, or an incident that results in a temporary or permanent physical or mental injury that requires hospitalization or emergency room treatment of a dental patient which occurred during or as a direct result of the use of anesthesia, deep sedation, moderate sedation, pediatric moderate sedation, oral sedation, minimal sedation(anxiolysis), nitrous oxide, or local anesthesia.

(12) Any certified registered dental hygienist administering local anesthesia must notify the board, in writing by registered mail within 48 hours of any adverse incident that was related to or the result of the administration of local anesthesia. A complete written report must be filed with the board within 30 days after the mortality or other adverse incident.

(13) A failure by the dentist or dental hygienist to timely and completely comply with all the reporting requirements in this section is the basis for disciplinary action by the board pursuant to s. 466.028(1).

(14) The department shall review each incident and determine whether it involved conduct by a health care professional subject to disciplinary action, in which case s. 456.073 applies. Disciplinary action, if any, shall be taken by the board under which the health care professional is licensed.

(15) The board may adopt rules to administer this section.

Section 19. Subsection (1) of section 466.031, Florida Statutes, is amended to read:

466.031 "Dental laboratory" defined.—The term "dental laboratory" as used in this chapter:

(1) Includes any person, firm, or corporation who performs for a fee of any kind, gratuitously, or otherwise, directly or through an agent or employee, by any means or method, or who in any way supplies or manufactures artificial substitutes for the natural teeth, or who furnishes, supplies, constructs, or reproduces or repairs any prosthetic denture, bridge, or appliance to be worn in the human mouth, or who provides onsite consultation during dental procedures, or who in any way holds

itself out as a dental laboratory.

Section 20. Section 466.036, Florida Statutes, is amended to read:

466.036 Information; periodic inspections; equipment and supplies.—The department may require from the applicant for a registration certificate to operate a dental laboratory any information necessary to carry out the purpose of this chapter, including proof that the applicant has the equipment and supplies necessary to operate as determined by rule of the department, and shall require periodic inspection of all dental laboratories operating in this state at least once each biennial registration period. Such inspections shall include, but not be limited to, inspection of sanitary conditions, equipment, supplies, and facilities on the premises. The department shall specify dental equipment and supplies that are not permitted in a registered dental laboratory.

Section 21. Subsection (1) of section 468.701, Florida Statutes, is amended to read:

468.701 Definitions.—As used in this part, the term:

(1) "Athletic trainer" means a person licensed under this part who has met the requirements under this part, including education requirements as set forth by the Commission on Accreditation of Athletic Training Education or its successor and necessary credentials from the Board of Certification. An athletic trainer must work within his or her scope of practice as established in the rules adopted by the board under s. 468.705. An individual who is licensed as an athletic trainer may not otherwise provide, offer to provide, or represent that he or she is qualified to provide any care or services beyond

his or her scope of practice, or that he or she lacks the education, training, or experience to provide, or that he or she is otherwise prohibited by law from providing.

Section 22. Section 468.707, Florida Statutes, is amended to read:

468.707 Licensure requirements.—Any person desiring to be licensed as an athletic trainer shall apply to the department on a form approved by the department. An applicant shall also provide records or other evidence, as determined by the board, to prove he or she has met the requirements of this section. The department shall license each applicant who:

(1) Has completed the application form and remitted the required fees.

(2) ~~For a person who applies on or after July 1, 2016,~~ Has submitted to background screening pursuant to s. 456.0135. The board may require a background screening for an applicant whose license has expired or who is undergoing disciplinary action.

(3)(a) Has obtained a baccalaureate or higher degree from a college or university professional athletic training degree program accredited by the Commission on Accreditation of Athletic Training Education or its successor recognized and approved by the United States Department of Education or the Commission on Recognition of Postsecondary Accreditation, approved by the board, or recognized by the Board of Certification, and has passed the national examination to be certified by the Board of Certification; or~~.~~

(b) ~~(4)~~ Has obtained, at a minimum, a bachelor's degree and has completed the Board of Certification internship requirements and ~~If graduated before 2004,~~ has a current certification from

the Board of Certification.

(4) ~~(5)~~ Has current certification in both cardiopulmonary resuscitation and the use of an automated external defibrillator set forth in the continuing education requirements as determined by the board pursuant to s. 468.711.

(5) ~~(6)~~ Has completed any other requirements as determined by the department and approved by the board.

Section 23. Subsection (3) of section 468.711, Florida Statutes, is amended to read:

468.711 Renewal of license; continuing education.—

(3) If initially licensed after January 1, 1998, the licensee must be currently certified by the Board of Certification or its successor agency and maintain that certification in good standing without lapse.

Section 24. Subsection (2) of section 468.723, Florida Statutes, is amended to read:

468.723 Exemptions.—This part does not prevent or restrict:

(2) An athletic training student acting under the direct supervision of a licensed athletic trainer. For purposes of this subsection, "direct supervision" means the physical presence of an athletic trainer so that the athletic trainer is immediately available to the athletic training student and able to intervene on behalf of the athletic training student. The supervision must be in accordance with rules adopted by the board ~~the standards set forth by the Commission on Accreditation of Athletic Training Education or its successor~~.

Section 25. Subsections (1), (3), and (4) of section 468.803, Florida Statutes, are amended to read:

468.803 License, registration, and examination

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requirements.—

(1) The department shall issue a license to practice orthotics, prosthetics, or pedorthics, or a registration for a resident to practice orthotics or prosthetics, to qualified applicants. Licenses shall be granted independently in orthotics, prosthetics, or pedorthics, but a person may be licensed in more than one such discipline, and a prosthetist-orthotist license may be granted to persons meeting the requirements for both a prosthetist and an orthotist license. Registrations shall be granted independently in orthotics or prosthetics, and a person may be registered in both fields at the same time or jointly in orthotics and prosthetics as a dual registration.

(3) A person seeking to attain the required orthotics or prosthetics experience in this state must be approved by the board and registered as a resident by the department. Although a registration may be held in both practice fields, for independent registrations, the board shall not approve a second registration until at least 1 year after the issuance of the first registration. Notwithstanding subsection (2), an applicant for independent registrations who has been approved by the board and registered by the department in one practice field may apply for registration in the second practice field without an additional state or national criminal history check during the period in which the first registration is valid. Each independent registration or dual registration is valid for 2 years from the date of issuance unless otherwise revoked by the department upon recommendation of the board. The board shall set a registration fee not to exceed $500 to be paid by the

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applicant. A registration may be renewed once by the department upon recommendation of the board for a period no longer than 1 year, as such renewal is defined by the board by rule. The registration renewal fee shall not exceed one-half the current registration fee. To be considered by the board for approval of registration as a resident, the applicant must have:

(a) A Bachelor of Science or higher-level postgraduate degree in Orthotics and Prosthetics from a regionally accredited college or university recognized by the Commission on Accreditation of Allied Health Education Programs or, at a minimum, a bachelor's degree from a regionally accredited college or university and a certificate in orthotics from a program recognized by the Commission on Accreditation of Allied Health Education Programs, or its equivalent, as determined by the board; ~~or~~

(b) A Bachelor of Science or higher-level postgraduate degree in Orthotics and Prosthetics from a regionally accredited college or university recognized by the Commission on Accreditation of Allied Health Education Programs or, at a minimum, a bachelor's degree from a regionally accredited college or university and a certificate in prosthetics from a program recognized by the Commission on Accreditation of Allied Health Education Programs, or its equivalent, as determined by the board; or

(c) A Bachelor of Science or higher-level postgraduate degree in Orthotics and Prosthetics from a regionally accredited college or university recognized by the Commission on Accreditation of Allied Health Education Programs or, at a minimum, a bachelor's degree from a regionally accredited

college or university and a dual certificate in both orthotics and prosthetics from a program recognized by the Commission on Accreditation of Allied Health Education Programs, or its equivalent, as determined by the board.

(4) The department may develop and administer a state examination for an orthotist or a prosthetist license, or the board may approve the existing examination of a national standards organization. The examination must be predicated on a minimum of a baccalaureate-level education and formalized specialized training in the appropriate field. Each examination must demonstrate a minimum level of competence in basic scientific knowledge, written problem solving, and practical clinical patient management. The board shall require an examination fee not to exceed the actual cost to the board in developing, administering, and approving the examination, which fee must be paid by the applicant. To be considered by the board for examination, the applicant must have:

(a) For an examination in orthotics:

1. A Bachelor of Science or higher-level postgraduate degree in Orthotics and Prosthetics from a regionally accredited college or university recognized by the Commission on Accreditation of Allied Health Education Programs or, at a minimum, a bachelor's degree from a regionally accredited college or university and a certificate in orthotics from a program recognized by the Commission on Accreditation of Allied Health Education Programs, or its equivalent, as determined by the board; and

2. An approved orthotics internship of 1 year of qualified experience, as determined by the board, or an orthotic residency

program or a dual residency program recognized by the board.

(b) For an examination in prosthetics:

1. A Bachelor of Science or higher-level postgraduate degree in Orthotics and Prosthetics from a regionally accredited college or university recognized by the Commission on Accreditation of Allied Health Education Programs or, at a minimum, a bachelor's degree from a regionally accredited college or university and a certificate in prosthetics from a program recognized by the Commission on Accreditation of Allied Health Education Programs, or its equivalent, as determined by the board; and

2. An approved prosthetics internship of 1 year of qualified experience, as determined by the board, or a prosthetic residency program or dual residency program recognized by the board.

Section 26. Subsection (5) of section 480.033, Florida Statutes, is amended to read:

480.033 Definitions.—As used in this act:

(5) "Apprentice" means a person approved by the board to study colonic irrigation ~~massage~~ under the instruction of a licensed massage therapist practicing colonic irrigation.

Section 27. Subsections (1) and (2) of section 480.041, Florida Statutes, are amended, and subsection (8) is added to that section, to read:

480.041 Massage therapists; qualifications; licensure; endorsement.—

(1) Any person is qualified for licensure as a massage therapist under this act who:

(a) Is at least 18 years of age or has received a high

school diploma or high school equivalency diploma;

(b) Has completed a course of study at a board-approved massage school ~~or has completed an apprenticeship program~~ that meets standards adopted by the board; and

(c) Has received a passing grade on a national ~~an~~ examination designated ~~administered~~ by the board ~~department~~.

(2) Every person desiring to be examined for licensure as a massage therapist shall apply to the department in writing upon forms prepared and furnished by the department. Such applicants shall be subject to the provisions of s. 480.046(1). ~~Applicants may take an examination administered by the department only upon meeting the requirements of this section as determined by the board.~~

(8) A person issued a license as a massage apprentice before July 1, 2018, may continue that apprenticeship and perform massage therapy as authorized under that license until its expiration. Upon completion of the apprenticeship, before July 1, 2021, a massage apprentice may apply to the board for full licensure and be granted a license if all other applicable licensure requirements are met.

Section 28. Section 480.042, Florida Statutes, is repealed.

Section 29. Subsection (3) of section 480.046, Florida Statutes, is amended, and subsection (5) is added to that section, to read:

480.046 Grounds for disciplinary action by the board.—

(3) The board may ~~shall have the power to~~ revoke or suspend the license of a massage establishment licensed under this act, or ~~to~~ deny subsequent licensure of such an establishment, if the establishment is owned by an individual or entity who has had a

prior establishment license revoked, in any ~~either~~ of the following cases:

(a) Upon proof that a license has been obtained by fraud or misrepresentation.

(b) Upon proof that the holder of a license is guilty of fraud or deceit or of gross negligence, incompetency, or misconduct in the operation of the establishment so licensed.

(c) Upon proof that the owner of the massage establishment or any individual or individuals providing massage therapy services within the establishment, in the aggregate or individually, have had three convictions of, or pleas of guilty or nolo contendere to, or dismissals of a criminal action after a successful completion of a pretrial intervention, diversion, or substance abuse program for any misdemeanor or felony, regardless of adjudication, a crime in any jurisdiction related to prostitution and related acts as defined in s. 796.07, which occurred at or within the establishment.

(5) An establishment may not apply for relicensure if disciplined under this section unless there is a change in ownership.

Section 30. Subsection (3) of section 490.003, Florida Statutes, is amended to read:

490.003 Definitions.—As used in this chapter:

(3)~~(a) Prior to July 1, 1999, "doctoral-level psychological education" and "doctoral degree in psychology" mean a Psy.D., an Ed.D. in psychology, or a Ph.D. in psychology from:~~

~~1. An educational institution which, at the time the applicant was enrolled and graduated, had institutional accreditation from an agency recognized and approved by the~~

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~~United States Department of Education or was recognized as a member in good standing with the Association of Universities and Colleges of Canada; and~~

~~2. A psychology program within that educational institution which, at the time the applicant was enrolled and graduated, had programmatic accreditation from an accrediting agency recognized and approved by the United States Department of Education or was comparable to such programs.~~

~~(b)~~ Effective July 1, 1999, "doctoral-level psychological education" and "doctoral degree in psychology" mean a Psy.D., an Ed.D. in psychology, or a Ph.D. in psychology from:

(a)~~1.~~ An educational institution that ~~which~~, at the time the applicant was enrolled and graduated, had institutional accreditation from an agency recognized and approved by the United States Department of Education or was recognized as a member in good standing with the Association of Universities and Colleges of Canada; and

(b)~~2.~~ A psychology program within that educational institution which, at the time the applicant was enrolled and graduated, had programmatic accreditation from the American Psychological Association ~~an agency recognized and approved by the United States Department of Education~~.

Section 31. Paragraph (b) of subsection (1) and paragraph (b) of subsection (2) of section 490.005, Florida Statutes, are amended to read:

490.005 Licensure by examination.—

(1) Any person desiring to be licensed as a psychologist shall apply to the department to take the licensure examination. The department shall license each applicant who the board

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certifies has:

(b) Submitted proof satisfactory to the board that the applicant has:

1. Received doctoral-level psychological education, as defined in s. 490.003(3); or

2. Received the equivalent of a doctoral-level psychological education, as defined in s. 490.003(3), from a program at a school or university located outside the United States of America ~~and Canada~~, which was officially recognized by the government of the country in which it is located as an institution or program to train students to practice professional psychology. The burden of establishing that the requirements of this provision have been met shall be upon the applicant~~:~~

~~3. Received and submitted to the board, prior to July 1, 1999, certification of an augmented doctoral-level psychological education from the program director of a doctoral-level psychology program accredited by a programmatic agency recognized and approved by the United States Department of Education; or~~

~~4. Received and submitted to the board, prior to August 31, 2001, certification of a doctoral-level program that at the time the applicant was enrolled and graduated maintained a standard of education and training comparable to the standard of training of programs accredited by a programmatic agency recognized and approved by the United States Department of Education. Such certification of comparability shall be provided by the program director of a doctoral-level psychology program accredited by a programmatic agency recognized and approved by the United States~~

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~~Department of Education~~.

(2) Any person desiring to be licensed as a school psychologist shall apply to the department to take the licensure examination. The department shall license each applicant who the department certifies has:

(b) Submitted satisfactory proof to the department that the applicant:

1. Has received a doctorate, specialist, or equivalent degree from a program primarily psychological in nature and has completed 60 semester hours or 90 quarter hours of graduate study, in areas related to school psychology as defined by rule of the department, from a college or university which at the time the applicant was enrolled and graduated was accredited by an accrediting agency recognized and approved by the Council for Higher Education Accreditation, its successor, ~~Commission on Recognition of Postsecondary Accreditation~~ or an institution which is publicly recognized as a member in good standing with the Association of Universities and Colleges of Canada.

2. Has had a minimum of 3 years of experience in school psychology, 2 years of which must be supervised by an individual who is a licensed school psychologist or who has otherwise qualified as a school psychologist supervisor, by education and experience, as set forth by rule of the department. A doctoral internship may be applied toward the supervision requirement.

3. Has passed an examination provided by the department.

Section 32. Subsection (1) of section 490.006, Florida Statutes, is amended to read:

490.006 Licensure by endorsement.—

(1) The department shall license a person as a psychologist

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or school psychologist who, upon applying to the department and remitting the appropriate fee, demonstrates to the department or, in the case of psychologists, to the board that the applicant:

~~(a) Holds a valid license or certificate in another state to practice psychology or school psychology, as applicable, provided that, when the applicant secured such license or certificate, the requirements were substantially equivalent to or more stringent than those set forth in this chapter at that time; and, if no Florida law existed at that time, then the requirements in the other state must have been substantially equivalent to or more stringent than those set forth in this chapter at the present time;~~

(a) ~~(b)~~ Is a diplomate in good standing with the American Board of Professional Psychology, Inc.; or

(b) ~~(c)~~ Possesses a doctoral degree in psychology as described in s. 490.003 and has at least 10 ~~20~~ years of experience as a licensed psychologist in any jurisdiction or territory of the United States within 25 years preceding the date of application.

Section 33. Subsection (6) of section 491.0045, Florida Statutes, as amended by chapter 2016-80 and chapter 2016-241, Laws of Florida, is amended to read:

491.0045 Intern registration; requirements.—

(6) A registration issued on or before March 31, 2017, expires March 31, 2022, and may not be renewed or reissued. Any registration issued after March 31, 2017, expires 60 months after the date it is issued. The board may make a one-time exception from the requirements of this section in emergency or

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hardship cases, as defined by board rule, if ~~A subsequent intern registration may not be issued unless~~ the candidate has passed the theory and practice examination described in s. 491.005(1)(d), (3)(d), and (4)(d).

Section 34. Subsections (3) and (4) of section 491.005, Florida Statutes, are amended to read:

491.005 Licensure by examination.—

(3) MARRIAGE AND FAMILY THERAPY.—Upon verification of documentation and payment of a fee not to exceed $200, as set by board rule, plus the actual cost ~~to the department~~ for the purchase of the examination from the Association of Marital and Family Therapy Regulatory Board, or similar national organization, the department shall issue a license as a marriage and family therapist to an applicant who the board certifies:

(a) Has submitted an application and paid the appropriate fee.

(b)1. Has a minimum of a master's degree with major emphasis in marriage and family therapy from a program accredited by the Commission on Accreditation for Marriage and Family Therapy Education or from a Florida university program accredited by the Council for Accreditation of Counseling and Related Educational Programs, or a closely related field, and has completed graduate courses approved by the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling. ~~has completed all of the following requirements:~~

~~a. Thirty-six semester hours or 48 quarter hours of graduate coursework, which must include a minimum of 3 semester hours or 4 quarter hours of graduate-level course credits in each of the following nine areas: dynamics of marriage and~~

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~~family systems; marriage therapy and counseling theory and techniques; family therapy and counseling theory and techniques; individual human development theories throughout the life cycle; personality theory or general counseling theory and techniques; psychopathology; human sexuality theory and counseling techniques; psychosocial theory; and substance abuse theory and counseling techniques. Courses in research, evaluation, appraisal, assessment, or testing theories and procedures; thesis or dissertation work; or practicums, internships, or fieldwork may not be applied toward this requirement.~~

~~b. A minimum of one graduate-level course of 3 semester hours or 4 quarter hours in legal, ethical, and professional standards issues in the practice of marriage and family therapy or a course determined by the board to be equivalent.~~

~~c. A minimum of one graduate-level course of 3 semester hours or 4 quarter hours in diagnosis, appraisal, assessment, and testing for individual or interpersonal disorder or dysfunction; and a minimum of one 3-semester-hour or 4-quarter-hour graduate-level course in behavioral research which focuses on the interpretation and application of research data as it applies to clinical practice. Credit for thesis or dissertation work, practicums, internships, or fieldwork may not be applied toward this requirement.~~

~~d. A minimum of one supervised clinical practicum, internship, or field experience in a marriage and family counseling setting, during which the student provided 180 direct client contact hours of marriage and family therapy services under the supervision of an individual who met the requirements for supervision under paragraph (c). This requirement may be met~~

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~~by a supervised practice experience which took place outside the academic arena, but which is certified as equivalent to a graduate-level practicum or internship program which required a minimum of 180 direct client contact hours of marriage and family therapy services currently offered within an academic program of a college or university accredited by an accrediting agency approved by the United States Department of Education, or an institution which is publicly recognized as a member in good standing with the Association of Universities and Colleges of Canada or a training institution accredited by the Commission on Accreditation for Marriage and Family Therapy Education recognized by the United States Department of Education. Certification shall be required from an official of such college, university, or training institution.~~

2. If the course title which appears on the applicant's transcript does not clearly identify the content of the coursework, the applicant shall be required to provide additional documentation, including, but not limited to, a syllabus or catalog description published for the course.

The required master's degree must have been received in an institution of higher education which at the time the applicant graduated was: fully accredited by a regional accrediting body recognized by the Commission on Recognition of Postsecondary Accreditation; publicly recognized as a member in good standing with the Association of Universities and Colleges of Canada; or an institution of higher education located outside the United States and Canada, which at the time the applicant was enrolled and at the time the applicant graduated maintained a standard of

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training substantially equivalent to the standards of training of those institutions in the United States which are accredited by a regional accrediting body recognized by the Commission on Recognition of Postsecondary Accreditation. Such foreign education and training must have been received in an institution or program of higher education officially recognized by the government of the country in which it is located as an institution or program to train students to practice as professional marriage and family therapists or psychotherapists. The burden of establishing that the requirements of this provision have been met shall be upon the applicant, and the board shall require documentation, such as, but not limited to, an evaluation by a foreign equivalency determination service, as evidence that the applicant's graduate degree program and education were equivalent to an accredited program in this country. An applicant with a master's degree from a program which did not emphasize marriage and family therapy may complete the coursework requirement in a training institution fully accredited by the Commission on Accreditation for Marriage and Family Therapy Education recognized by the United States Department of Education.

(c) Has had at least 2 years of clinical experience during which 50 percent of the applicant's clients were receiving marriage and family therapy services, which must be at the post-master's level under the supervision of a licensed marriage and family therapist with at least 5 years of experience, or the equivalent, who is a qualified supervisor as determined by the board. An individual who intends to practice in Florida to satisfy the clinical experience requirements must register

pursuant to s. 491.0045 before commencing practice. If a graduate has a master's degree with a major emphasis in marriage and family therapy or a closely related field that did not include all the coursework required under subparagraph (b)1. ~~sub-subparagraphs (b)1.a.-c.~~, credit for the post-master's level clinical experience shall not commence until the applicant has completed a minimum of 10 of the courses required under subparagraph (b)1. ~~sub-subparagraphs (b)1.a.-c.~~, as determined by the board, and at least 6 semester hours or 9 quarter hours of the course credits must have been completed in the area of marriage and family systems, theories, or techniques. Within the 2 ~~3~~ years of required experience, the applicant shall provide direct individual, group, or family therapy and counseling, to include the following categories of cases: unmarried dyads, married couples, separating and divorcing couples, and family groups including children. A doctoral internship may be applied toward the clinical experience requirement. A licensed mental health professional must be on the premises when clinical services are provided by a registered intern in a private practice setting.

(d) Has passed a theory and practice examination provided by the department for this purpose.

(e) Has demonstrated, in a manner designated by rule of the board, knowledge of the laws and rules governing the practice of clinical social work, marriage and family therapy, and mental health counseling.

(f) For the purposes of dual licensure, the department shall license as a marriage and family therapist any person who meets the requirements of s. 491.0057. Fees for dual licensure

shall not exceed those stated in this subsection.

(4) MENTAL HEALTH COUNSELING.—Upon verification of documentation and payment of a fee not to exceed $200, as set by board rule, plus the actual per applicant cost to the department for purchase of the examination from the National Board for Certified Counselors or its successor ~~Professional Examination Service for the National Academy of Certified Clinical Mental Health Counselors or a similar national organization~~, the department shall issue a license as a mental health counselor to an applicant who the board certifies:

(a) Has submitted an application and paid the appropriate fee.

(b)1. Has a minimum of an earned master's degree from a mental health counseling program accredited by the Council for the Accreditation of Counseling and Related Educational Programs that consists of at least 60 semester hours or 80 quarter hours of clinical and didactic instruction, including a course in human sexuality and a course in substance abuse. If the master's degree is earned from a program related to the practice of mental health counseling that is not accredited by the Council for the Accreditation of Counseling and Related Educational Programs, then the coursework and practicum, internship, or fieldwork must consist of at least 60 semester hours or 80 quarter hours and meet the following requirements:

a. Thirty-three semester hours or 44 quarter hours of graduate coursework, which must include a minimum of 3 semester hours or 4 quarter hours of graduate-level coursework in each of the following 11 content areas: counseling theories and practice; human growth and development; diagnosis and treatment

of psychopathology; human sexuality; group theories and practice; individual evaluation and assessment; career and lifestyle assessment; research and program evaluation; social and cultural foundations; ~~counseling in community settings; and~~ substance abuse; and legal, ethical, and professional standards issues in the practice of mental health counseling. Courses in research, thesis or dissertation work, practicums, internships, or fieldwork may not be applied toward this requirement.

b. A minimum of 3 semester hours or 4 quarter hours of graduate-level coursework addressing diagnostic processes, including differential diagnosis and the use of the current diagnostic tools, such as the current edition of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders. The graduate program must have emphasized the common core curricular experience ~~in legal, ethical, and professional standards issues in the practice of mental health counseling, which includes goals, objectives, and practices of professional counseling organizations, codes of ethics, legal considerations, standards of preparation, certifications and licensing, and the role identity and professional obligations of mental health counselors. Courses in research, thesis or dissertation work, practicums, internships, or fieldwork may not be applied toward this requirement~~.

c. The equivalent, as determined by the board, of at least 700 ~~1,000~~ hours of university-sponsored supervised clinical practicum, internship, or field experience that includes at least 280 hours of direct client services, as required in the accrediting standards of the Council for Accreditation of Counseling and Related Educational Programs for mental health

counseling programs. This experience may not be used to satisfy the post-master's clinical experience requirement.

2. If the course title which appears on the applicant's transcript does not clearly identify the content of the coursework, the applicant shall be required to provide additional documentation, including, but not limited to, a syllabus or catalog description published for the course.

Education and training in mental health counseling must have been received in an institution of higher education which at the time the applicant graduated was: fully accredited by a regional accrediting body recognized by the Council for Higher Education or its successor ~~Commission on Recognition of Postsecondary Accreditation~~; publicly recognized as a member in good standing with the Association of Universities and Colleges of Canada; or an institution of higher education located outside the United States and Canada, which at the time the applicant was enrolled and at the time the applicant graduated maintained a standard of training substantially equivalent to the standards of training of those institutions in the United States which are accredited by a regional accrediting body recognized by the Council for Higher Education or its successor ~~Commission on Recognition of Postsecondary Accreditation~~. Such foreign education and training must have been received in an institution or program of higher education officially recognized by the government of the country in which it is located as an institution or program to train students to practice as mental health counselors. The burden of establishing that the requirements of this provision have been met shall be upon the applicant, and the board shall require

documentation, such as, but not limited to, an evaluation by a foreign equivalency determination service, as evidence that the applicant's graduate degree program and education were equivalent to an accredited program in this country. Beginning July 1, 2024, an applicant must have a master's degree that is accredited by the Council for Accreditation of Counseling and Related Educational Programs which consists of at least 60 semester hours or 80 quarter hours to apply for licensure under this paragraph.

(c) Has had at least 2 years of clinical experience in mental health counseling, which must be at the post-master's level under the supervision of a licensed mental health counselor or the equivalent who is a qualified supervisor as determined by the board. An individual who intends to practice in Florida to satisfy the clinical experience requirements must register pursuant to s. 491.0045 before commencing practice. If a graduate has a master's degree with a major related to the practice of mental health counseling that did not include all the coursework required under sub-subparagraphs (b)1.a.-b., credit for the post-master's level clinical experience shall not commence until the applicant has completed a minimum of seven of the courses required under sub-subparagraphs (b)1.a.-b., as determined by the board, one of which must be a course in psychopathology or abnormal psychology. A doctoral internship may be applied toward the clinical experience requirement. A licensed mental health professional must be on the premises when clinical services are provided by a registered intern in a private practice setting.

(d) Has passed a theory and practice examination provided

by the department for this purpose.

(e) Has demonstrated, in a manner designated by rule of the board, knowledge of the laws and rules governing the practice of clinical social work, marriage and family therapy, and mental health counseling.

Section 35. Paragraph (b) of subsection (1) of section 491.006, Florida Statutes, is amended to read:

491.006 Licensure or certification by endorsement.—

(1) The department shall license or grant a certificate to a person in a profession regulated by this chapter who, upon applying to the department and remitting the appropriate fee, demonstrates to the board that he or she:

(b)1. Holds an active valid license to practice and has actively practiced the profession for which licensure is applied in another state for 3 of the last 5 years immediately preceding licensure.

~~2. Meets the education requirements of this chapter for the profession for which licensure is applied.~~

2.~~3.~~ Has passed a substantially equivalent licensing examination in another state or has passed the licensure examination in this state in the profession for which the applicant seeks licensure.

3.~~4.~~ Holds a license in good standing, is not under investigation for an act that would constitute a violation of this chapter, and has not been found to have committed any act that would constitute a violation of this chapter. The fees paid by any applicant for certification as a master social worker under this section are nonrefundable.

Section 36. Subsection (3) of section 491.007, Florida

Statutes, is amended to read:

491.007 Renewal of license, registration, or certificate.—

~~(3) The board or department shall prescribe by rule a method for the biennial renewal of an intern registration at a fee set by rule, not to exceed $100.~~

Section 37. Subsection (2) of section 491.009, Florida Statutes, is amended to read:

491.009 Discipline.—

(2) The board ~~department~~, or, in the case of certified master social workers ~~psychologists~~, the department ~~board~~, may enter an order denying licensure or imposing any of the penalties in s. 456.072(2) against any applicant for licensure or licensee who is found guilty of violating any provision of subsection (1) of this section or who is found guilty of violating any provision of s. 456.072(1).

Section 38. Paragraph (c) of subsection (2) of section 491.0046, Florida Statutes, is amended to read:

491.0046 Provisional license; requirements.—

(2) The department shall issue a provisional clinical social worker license, provisional marriage and family therapist license, or provisional mental health counselor license to each applicant who the board certifies has:

(c) Has met the following minimum coursework requirements:

1. For clinical social work, a minimum of 15 semester hours or 22 quarter hours of the coursework required by s. 491.005(1)(b)2.b.

2. For marriage and family therapy, 10 of the courses required by s. 491.005(3)(b)1. ~~s. 491.005(3)(b)1.a.-c.~~, as determined by the board, and at least 6 semester hours or 9

quarter hours of the course credits must have been completed in the area of marriage and family systems, theories, or techniques.

3. For mental health counseling, a minimum of seven of the courses required under s. 491.005(4)(b)1.a.-c.

Section 39. Subsection (11) of section 945.42, Florida Statutes, is amended to read:

945.42 Definitions; ss. 945.40-945.49.—As used in ss. 945.40-945.49, the following terms shall have the meanings ascribed to them, unless the context shall clearly indicate otherwise:

(11) "Psychological professional" means a behavioral practitioner who has an approved doctoral degree in psychology as defined in s. 490.003(3) ~~s. 490.003(3)(b)~~ and is employed by the department or who is licensed as a psychologist pursuant to chapter 490.

Section 40. 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:	CS/CS/CS/SB 1494
INTRODUCER:	Appropriations Committee; Banking and Insurance Committee; Health Policy Committee; and Senator Montford and others
SUBJECT:	Prescription Drug Pricing Transparency
DATE:	March 5, 2018
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Lloyd	Stovall	HP	**Fav/CS**
2.	Johnson	Knudson	BI	**Fav/CS**
3.	Sanders	Hansen	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 1494 requires a pharmacist or his or her authorized employee to inform customers of potential lower cost generically equivalent alternatives for their prescriptions and whether a prescription's cost sharing amount exceeds the retail price in the absence of insurance coverage. The bill also requires pharmacy benefit managers (PBMs) to register with the Office of Insurance Regulation (OIR) and pay a biennial registration fee not to exceed $500. A PBM is a person or entity doing business in this state, which contracts to administer or manage prescription drug benefits on behalf of a health insurer or a health maintenance organization (HMO) to residents of this state.

Further, the bill requires that contracts of PBMs with insurers or HMOs must require the PBM to update the maximum allowable cost (MAC) information every seven calendar days and include specific terms to prohibit PBMs from limiting a pharmacist's ability to disclose to customers when cost sharing may exceed the retail price of a drug or the availability of a more affordable alternative drug. The bill also prohibits any contract between a PBM and a health insurer or HMO from requiring a customer to pay an amount that exceeds the applicable cost-sharing amount or the retail price of the drug in the absence of prescription drug coverage.

The bill appropriates $74,141 for one full time equivalent (FTE) position, with associated salary rate of 45,043, and $5,000 for technology upgrades to the Office of Insurance Regulation.

The effective date of the act is July 1, 2018.

II. Present Situation:

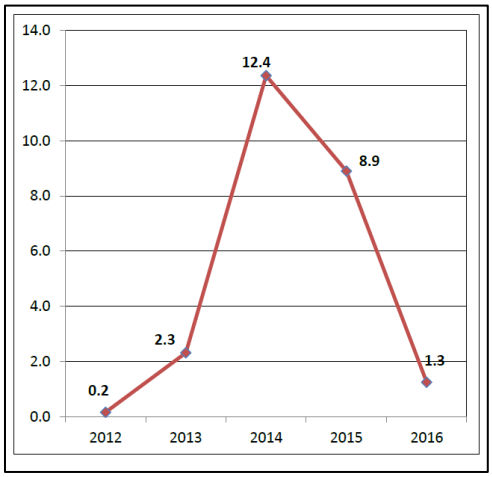
Prescription Drugs Costs

In 2016, total health care expenditures in the United States reached $3.3 trillion or $10,348 per person, which is a 4.3 percent increase over the 2015 level.[1,2] Of that amount, prescription drug coverage accounted for $328.6 billion, up from $324.5 billion, which was only a year-to-year growth rate of 1.3 percent.[3] In the prior year, 2014 to 2015, the annual growth trend in prescription drugs had been 8.9 percent and then 12.4 percent in the annual period of 2013 to 2014.[4] The significant growth rates of these periods are attributed largely to new medicines for hepatitis C and higher use rates for brand-names medications due to losses in certain patent protections.[5]

The graph below from the Centers for Medicare and Medicaid Services, Office of the Actuary, shows the Annual Growth in Retail Prescription Drug Spending from 2012 through 2016 highlighting the moderate increase in spending from 2015 to 2016 of 1.3 percent.[6] The 2016 decline in spending is linked to the approval of fewer new drugs, slower growth in brand name drugs, and a drop in spending in hepatitis C drugs.[7]

[1] Micah Hartman, Anne B. Martin, Nathan Espinosa, et al, *National Health Care Spending in 2016: Spending and Enrollment Growth Slow After Initial Coverage Expansions*, Health Affairs – January 2018 (Dec. 6, 2017), p. 152, available at https://www.healthaffairs.org/doi/full/10.1377/hlthaff.2017.1299 (last viewed Feb. 15, 2018).
[2] Centers for Medicare and Medicaid Services, https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/NationalHealthAccountsHistorical.html (last visited February 22, 2018).
[3] Micah Hartman, Anne B. Martin, Nathan Espinosa, et al, *National Health Care Spending in 2016: Spending and Enrollment Growth Slow After Initial Coverage Expansions*, Health Affairs – January 2018 (Dec. 6, 2017), p. 153.
[4] *Id.*
[5] *Id at 155.*
[6] Centers for Medicare and Medicaid Services, Office of the Actuary, National Health Statistics Group, *Annual Growth in Retail Prescription Drug Spending, 2012-2016*, Slide 12, available at https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/Downloads/NHE-Presentation-Slides.pdf (last viewed Feb. 9, 2018).
[7] *Id.*

Graph 1 - Annual Growth in Retail Prescription Drug Spending - 2012 - 2016



SOURCE: Centers for Medicare & Medicaid Services, Office of the Actuary, National Health Statistics

As shown in *Table 1* below, the largest payer for prescription drugs is private health insurance coverage at 43 percent.[8]

Utilization data shows an increase in 2016 in the number of prescriptions dispensed, especially for drugs that treat high blood pressure, high cholesterol, and mental health.[9]

Table 1: Retail Prescription Growth Rates, 2015-2016[10,11] (in percent)			
Payer	**Percentage of Market**	**Percent Growth**	
		2015	**2016**
Overall – All Payers	100	8.9	1.3
Private Health Insurance	43	10.4	0.8
Medicare	29	9.3	2.8
Medicaid	10	13.4	5.5
Out-of-pocket spending	14	1.6	(1.0)

The United States Department of Health and Human Services (USDHHS), in a brief issued on March 8, 2016, found the rise in prescription drug costs can be attributed to:

- Population growth (10 percent);
- Increase in the number of prescriptions dispensed per person (30 percent);
- Economy-wide inflation (30 percent); and,

[8] *Supra* note 5, at 155.
[9] *Supra* note 1, at 156.
[10] *Id.*
[11] Centers for Medicare and Medicaid Services, National Health Expenditure Data – Historical, *2016 - Table 16 – Retail Prescription Expenditures (Average Annual Percent Change from Previous Year Shown)* (Jan. 8, 2018) available at https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/NationalHealthAccountsHistorical.html (last viewed Feb. 22, 2018).

- Changes in the composition of drugs prescribed toward higher priced products or price increases for drugs that drove average price increases in excess of general inflation (30 percent).[12]

An increase in the use of specialty drugs may have also played a part in the increased costs. Expenditures on specialty drugs are rising more rapidly than expenditures on other drugs; however, there is no clear definition of what is considered a "specialty drug."[13] The estimates do not include non-retail drug spending.[14] The USDHHS estimates the 2015 non-retail drug spending at $128 billion. These estimates are based on data from the National Health Expenditure Accounts (NHEA) and account for 28 percent of all drug spending.[15]

Pharmacy Benefits Managers (PBMs)

Health insurers, HMOs, and other purchasers of health benefits coverage increasingly utilize pharmacy benefits managers (PBMs) to provide a range of services related to the acquisition and management of prescription drugs. The PBMs negotiate with retail pharmacies to obtain various discounts on prescription drug prices. The PBMs also provide the following services to its customers:

- Pharmacy claims processing;
- Mail-order pharmacy services;
- Rebate negotiations with drug manufacturers;
- Development of pharmacy networks;
- Formulary management;[16]
- Prospective and retrospective drug utilization reviews;
- Offer incentives to plan participations to use generic drug substitutions; and
- Disease management programs.

The decision of plan sponsors to use PBMs to control pharmacy benefit costs, however, can shift business away from retail pharmacies. A PBM can often use aggregate volume to offer its clients savings with discounts from pharmaceutical manufacturers and pharmacies.[17] An estimated 266 million Americans have their pharmacy benefits managed by a PBM.[18] An industry advocacy group estimates that PBMs have saved an average of $941 per person per year

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[12] Department of Health and Human Services USA, Office of the Assistant Secretary for Planning and Evaluation (ASPE), ASPE Issue Brief, *Observations on Trends in Prescription Drug Spending* (March 8, 2016), https://aspe.hhs.gov/system/files/pdf/187586/Drugspending.pdf (last visited February 22, 2018)
[13] Id.
[14] Non-retail drug spending is spending by medical providers for drugs they provide directly to patients. *Id* at page 2.
[15] Id at page 2. *See* footnote 2 and 3.
[16] A list of drugs that a health plan uses to make reimbursement decisions.
[17] Bill Alpert, *Pharmacy Benefit Managers Under Pressure*, Barrons (July 23, 2016) *available at* https://www.barrons.com/articles/pharmacy-benefit-managers-under-fire-1469247082 (last visited Feb. 22, 2018).
[18] Visante, Prepared for the Pharmaceutical Care Management Association, *The Return on Investment on PBM Services* (November 2016), Slide 2, *available at* https://www.pcmanet.org/wp-content/uploads/2016/11/ROI-on-PBM-Services-FINAL.pdf (last visited Feb. 1, 2018).

compared to unmanaged expenditures,[19] including a total of $43.4 billion across all payors[20] in Florida.[21]

Approximately 60 PBMs are operational nationally[22], and the three largest – Express Scripts, CVS/Caremark, and OptumRx – report filling or managing a combined 5.1 billion prescriptions annually.[23,24, 25] PBMs use different tools and methods to reduce costs and find savings for payors through:

- Reductions in the unit costs of drugs;
- The mix of drugs that are prescribed; and,
- The modification of patient behavior through either reduction of inappropriate use of certain prescriptions or improvements in patient adherence to drug regimens.[26]

Examples of unit cost reductions may be in discounts to pharmacy network participants, use of manufacturer rebates, or the increased use of mail order pharmacies. PBMs may also encourage a greater use of generic drugs over certain brand name drugs, require step therapy, or implement tiered copayment levels for different types of prescriptions to achieve desired savings. Reducing or eliminating certain types of patient behaviors through quantity limits, prior authorization requirements, or other patient management programs are also tools that may be used.[27] Each PBM may generate savings from these actions, which may also translate into savings for the patient and the payor.

Most patients assume that their share of cost of that prescription will be less than the actual retail cost of the prescription (or the non-insured cash price) of the drug. However, this may not always be the case. In cases where the retail price of the drug is less than a patient's applicable cost share, a patient could pay the regular cost sharing, regardless of the retail price; pay the lower retail price; or, some other amount based on the contract terms between the PBM and the pharmacy. If a pharmacist is obligated to charge this higher price, the PBM may collect as revenue the difference between a patient's cost share and the lower retail price.[28] One recent *New York Times* article cited a statistic that for up to 10 percent of drug transactions, the patient could

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[19] *Id.*
[20] Payors in this instance include: commercial or private insurance, MediCare Part D, and Medicaid.
[21] Pharmaceutical Care Management Association, *How Much PBMs are Saving: State by State* http://drugbenefitsolutions.com/prescription-costs/ (last visited Feb. 1, 2018).
[22] Joanna Shepherd, Associate Professor of Law, Emory University School of Law, *Is More Information Always Better? Mandatory Disclosure Regulations in the Prescription Drug Market*, (2014) *See* footnote 11 at p. 5. https://www.ftc.gov/system/files/documents/public_comments/2014/02/00006-88685.pdf (last visited February 22, 2018).
[23] Express Scripts, *Corporate Overview* https://lab.express-scripts.com/about/ (last visited Feb. 1, 2018).
[24] CVS Health, *Investor Fact Sheet* (November 2017) *available at* http://investors.cvshealth.com/~/media/Files/C/CVS-IR-v3/documents/cvs-factsheet-111017.pdf (last visited Feb. 1, 2018).
[25] OptumRx, *About Optum* https://www.optum.com/about.html (last visited Feb. 1, 2018).
[26] *Supra* note 15, at 4.
[27] *Id.*
[28] National Community Pharmacists Association. *Statement for the Record: National Community Pharmacists Association*, U.S. House Committee on Oversight and Government Reform, (Feb. 4, 2016), *available at* http://www.ncpa.co/pdf/ncpa-ogr-statement.pdf (last visited Feb. 1, 2018).

have gotten a better price without an insurance card for a prescription than with his or her coverage.[29]

Maximum Allowable Cost Pricing List

Contracts between a PBM and health plan sponsors, insurers, or health maintenance organizations (HMOs) specify how much such entities will pay the PBMs for brand name and generic drugs. These prices are typically set as a discount off the average wholesale price[30] for brand-name drugs and at a maximum allowable cost (MAC)[31] for generic drugs, plus a dispensing fee. The MAC represents the upper limit price that a payor, such as a state or a plan sponsor has through its PBM, will pay or reimburse for generic and brand drugs that have generic versions available.[32] A national survey represents that 92 percent of large employers have such a list in place through their PBM.[33]

A MAC pricing list creates a standard reimbursement amount for identical products, and is a common cost management tool developed from a proprietary survey of wholesale prices in the marketplace, taking into account market share, inventory, reasonable profits margins, and other factors. The purpose of the MAC pricing list is to ensure that the pharmacy is motivated to seek and purchase generic drugs at the lowest price in the marketplace. The federal Medicare Part D program and 44 state Medicaid programs use some type of MAC price lists to reduce costs.[34]

Regulation of Pharmacies and Pharmacy Benefit Management Companies

In Florida, PBMs are not regulated or licensed. However, the Board of Pharmacy under ch. 465, F.S., regulates pharmacies, adopts rules to implement the provisions of the Pharmacy Act, and takes other actions according to duties conferred upon it.[35] Each pharmacy is subject to inspection by the Department of Health (DOH) and may be disciplined for violations of applicable laws and rules relating to a pharmacy.[36]

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[29] Charles Orsnstein, *When Buying Prescription Drugs, Some Pay More With Insurance Than Without It,* The New York Times, (December 9, 2017), *available at* https://www.nytimes.com/2017/12/09/health/drug-prices-generics-insurance.html (last visited Feb. 1, 2018).
[30] Average wholesale price is the retail list price (sticker price) or the average price that manufacturers recommend wholesalers sell to physicians, pharmacies, and others, such as hospitals.
[31] Maximum allowable cost is a price set for generic drugs and is the maximum amount that the plan sponsor will pay for a specific drug.
[32] Brent J. Eberle, RPh, Alan Van Amber, *Your PBM's MAC List Impacts Your Bottom Line,* Managed Healthcare Executive, (December 1, 2008), available at http://managedhealthcareexecutive.modernmedicine.com/managed-healthcare-executive/content/your-pbms-mac-list-impacts-your-bottom-line (last visited Feb. 15, 2018).
[33] *Id.*
[34] Medicaid.gov, *Medicaid Covered Outpatient Prescription Drug Reimbursement Information by State (Quarter Ending September 2017),* available at https://www.medicaid.gov/medicaid/prescription-drugs/state-prescription-drug-resources/drug-reimbursement-information/index.html (last viewed Feb. 15, 2018).
[35] Sections 465.005 and 465.022, F.S.
[36] Sections 465.015 and 465.016, F.S.

A PBM administers the prescription drug part of a health plan on behalf of plan sponsors, insurers, and HMOs. Some states require PBMs to either register with state insurance regulators or be licensed as third-party administrators.[37] Types of state regulation of PBMs include: [38]

Licensure/Registration of PBMs		Patient Protections and Pricing Transparency	Both Licensure and Patient Protections
Iowa (2007) Kansas (2006) Kentucky (2016) Maryland (2003) New Mexico (2016)	North Dakota (2005) Rhode Island (2004) South Dakota (2004) Wyoming (2016)	Georgia (2017) Louisiana (2016) North Carolina (2017) Tennessee (2009) Texas (2017)	Arkansas (2015) Connecticut (2007, 2017) Washington (2014)

A PBM may obtain accreditation from various accrediting bodies that determine if certain national standards are met. Accreditation is an evaluative, rigorous, transparent, and comprehensive process in which a health care organization undergoes an examination of its systems, processes, and performance by an accrediting body to ensure that it is conducting business in a manner that meets predetermined criteria and is consistent with national standards. Current law provides that a contract between a PBM and a pharmacy must include requirements that the PBM:

- Update the MAC pricing at least every seven calendar days; and
- Maintains a process to eliminate drugs in a timely manner from the MAC lists or drug price lists, and to remain consistent with changes in pricing data that is used in formulating the MAC prices and product availability.[39]

However, no state agency is responsible for enforcing these provisions.

III. Effect of Proposed Changes:

Section 1 amends s. 465.0244, F.S., to require a pharmacist or his or her authorized employee to notify customers:

- If a less expensive, generically equivalent drug product is available for his or her prescription; and
- If the customer's cost sharing obligation for his or her prescription exceeds the retail price of the customer's prescription in the absence of prescription drug coverage.

Section 2 repeals s. 465.1862, F.S., relating to contracts between pharmacy benefit managers (PBM) and pharmacies.

Section 3 creates s. 624.490, F.S., to require the Office of Insurance Regulation (OIR) to implement a PBM registration and biennial registration renewal process beginning January 1,

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[37] Joanne Wojcik, *States Try to Regulate Pharmacy Benefit Managers*, Business Insurance (August 22, 2010), available at http://www.businessinsurance.com/article/20100822/ISSUE07/308229997 (last visited Feb. 15, 2018).

[38] *See also* Pharmacists United for Truth and Transparency, *State Regulations in Pharmacy Benefit Management*, available at https://www.marleydrug.com/wp-content/uploads/2016/05/PUTT_State-Regulations_061713a.pdf (last viewed Feb. 15, 2018), and National Association of Community Pharmacists, *State Laws Reforming the Practices of Pharmacy Benefit Managers (PBMs)*, available at http://www.ncpanet.org/pdf/leg/nov12/pbm_enacted_legislation.pdf (last viewed Feb. 15, 2018).

[39] Section 465.1862(2), F.S.

2019. The bill also defines a PBM to mean a person or entity who is doing business in this state, which contracts to administer prescription drug benefits on behalf of a health insurer or a health maintenance organization to residents of this state.

To register, a PBM is required to submit a completed registration on a form, which contains the name and address of the registrant and the directors and officers of the registrant. Upon receipt of a completed registration form, the registration fee, and required documents, the OIR must issue a registration certification to the PBM. The registration certificate is valid for two years. The certificate is nontransferable.

The PBM must report to the OIR any changes in the information required for registration within 60 days of the change. The Financial Services Commission must adopt by rule an initial registration fee not to exceed $500 and a registration renewal fee not to exceed $500. The commission must adopt rules to implement the registration process.

Sections 4, 5 and 6 create ss. 627.64741, 627.6572, and 641.314, F.S., respectively, to require a contract between a PBM and a health insurer, or a PBM and a health maintenance organization (HMO), mandate that the PBM:

- Update its maximum allowable cost (MAC) information at least every seven calendar days. The term "MAC" is defined as the per unit amount that a PBM reimburses a pharmacist for a prescription drug, excluding dispensing fees.
- Maintain a process that will, in a timely manner, eliminate drugs from the MAC lists or modify drug prices to remain consistent with changes in pricing data used in formulating MAC and product availability.
- May not limit a pharmacist's ability to disclose to the consumer whether the consumer's cost sharing obligation exceeds the retail price for a covered prescription drug and disclosure of the availability of a more affordable alternative drug.

These provisions would apply to individual and group policies and contracts of insurers and HMOs, respectively. Further, these sections prohibit a PBM from requiring a consumer to pay for a prescription in an amount that exceeds the lesser of the applicable cost sharing amount or the retail price in the absence of prescription drug coverage. The changes in these sections are effective for contracts entered into or renewed on or after July 1, 2018.

Section 7 provides an effective date for the act 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:

The bill creates a registration program within the Office of Insurance Regulation (OIR) for pharmacy benefit managers (PBMs). The Financial Services Commission must adopt by rule an initial registration fee that may not exceed $500 and a renewal fee that may not exceed $500.

B. Private Sector Impact:

Each pharmacy benefit manager seeking to do business in the state will be required to complete the new registration process with the OIR and will be required to pay a biennial registration fee and renewal fee. The PBM will incur administrative costs to complete the registration process and to maintain updated information with the OIR.

The bill prohibits a PBM from limiting a pharmacist from notifying a patient if the patient's cost sharing obligation exceeds the retail price for a covered drug and of the availability of a more affordable alternative drug. This could reduce the out-of-pocket costs of some consumers. However, some insurers suggest that this practice may increase the costs of health care.

C. Government Sector Impact:

The bill requires the OIR to implement and maintain a registration process for PBMs. The initial registration fee and the biennial registration certificate fees are capped at $500 each, and the Financial Services Commission must adopt by rule such fees. This will result in revenues deposited into the Insurance Regulatory Trust Fund.

The bill appropriates $74,141 for one full time equivalent position and $5,000 for technology upgrades and provides 45,043 in associated salary rate to the OIR.

VI. Technical Deficiencies:

None.

VII. Related Issues:

PBM Registration Process

The Office of Insurance Regulation (OIR) notes that the bill does not include any guidelines by which the OIR could evaluate, approve, or disapprove the registration application or renewal of a

pharmacy benefits manager (PBM) other than the completeness of a form.[40] This may result in the approval of an individual with a criminal background, for example.

OIR Oversight and Enforcement Authority

The OIR requests the statutory authority to conduct market examinations on the registered PBMs and to require the PBMs to pay for the costs of those exams under s. 624.3161, F.S., as is done for all other market conduct examinations. The bill does not provide the OIR with statutory authority to determine or enforce a PBM's compliance with the provisions of this bill.

VIII. Statutes Affected:

This bill substantially amends section 465.0244 of the Florida Statutes.

This bill creates the following sections of the Florida Statutes: 624.490, 627.64741, 627.6572, and 641.314.

This bill repeals section 465.1862 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 March 2, 2018:
The committee substitute appropriates the following to the Office of Insurance Regulation:

- $74,141 in recurring funds for one full time equivalent position from the Insurance Regulatory Trust Fund;
- $5,000 in nonrecurring funds for technology upgrades from the Insurance Regulatory Trust Fund; and
- Associated salary rate of 45,034.

CS/CS by Banking and Insurance on February 20, 2018:
The CS/CS revises the Office of Insurance Regulation (OIR) registration process for pharmacy benefit managers (PBMs) in the following manner:

- Requires PBMs to register with the OIR beginning January 1, 2019.
- Caps the initial registration fee at $500 and renewal fee at $500.
- Clarifies that the PBM must submit all required registration information prior to the issuance of the registration certificate by the OIR.
- Provides technical conforming changes.

CS by Health Policy on February 6, 2018:
The CS adds the ability for a pharmacist's authorized employee, in addition to the requirement for a pharmacist, to inform a customer of the availability of less expensive, generically equivalent drug product for his or her prescription and as to whether a

[40] *Id.*

customer's cost-sharing obligation exceeds the retail price of the prescription drug in the absence of prescription drug coverage.

The CS repeals s. 465.1862, F.S., relating to pharmacy benefits manager contracts; however, these provisions are moved to the insurance code under the jurisdiction of the OIR.

Additionally, the CS modifies the PBM registration process by:

- Eliminating requirements for an individual's social security number;
- Removing the requirement that PBM's submit the names of those individuals or entities with 10 percent or greater controlling ownership interest with the registration or biennial renewal;
- Deleting the definition of controlling interest;
- Extending the notice period for information changes to 60 days from 30 days; and
- Capping the maximum fees that may be charged by the OIR for administering the process at $500.

The CS deletes the requirement that the contracts between PBMs and insurers and HMOs include a prohibition against limiting the ability of the pharmacy or PBM to substitute a less expensive, generically equivalent drug product for a brand name drug.

For contracts between health insurers and HMOs and the PBMs, the CS amends the comparison points relating to the consumer's out of pocket cost for prescription drugs from three to two, so the consumer pays the lesser of the applicable cost-sharing amount or the retail price of the drug in the absence of prescription drug coverage. The third reference point, the allowable claim amount for the prescription drug, is deleted.
The CS also creates s. 627.6572, F.S, making the provisions relating to PBM contract reporting on MAC cost information and contract provision requirements applicable to group health insurance policies.

B. Amendments:

None.

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

722650

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/03/2018	.	
	.	
	.	
	.	

The Committee on Appropriations (Montford) recommended the following:

Senate Amendment

Delete lines 116 - 192
and insert:
(5) This section applies to contracts entered into, modified, amended, altered, or renewed on or after July 1, 2018.
Section 5. Section 627.6572, Florida Statutes, is created to read:
627.6572 Pharmacy benefit manager contracts.—
(1) As used in this section, the term:

722650

(a) "Maximum allowable cost" means the per-unit amount that a pharmacy benefit manager reimburses a pharmacist for a prescription drug, excluding dispensing fees, prior to the application of copayments, coinsurance, and any other cost-sharing charges.

(b) "Pharmacy benefit manager" means a person or entity doing business in this state which contracts to administer or manage prescription drug benefits on behalf of a health insurer to residents of this state.

(2) A contract between a health insurer and a pharmacy benefit manager must require that the pharmacy benefit manager:

(a) Update maximum allowable cost pricing information at least every 7 calendar days.

(b) Maintain a process that will, in a timely manner, eliminate drugs from maximum allowable cost lists or modify drug prices to remain consistent with changes in pricing data used in formulating maximum allowable cost prices and product availability.

(3) A contract between a health insurer and a pharmacy benefit manager must prohibit the pharmacy benefit manager from limiting a pharmacist's ability to disclose whether the cost-sharing obligation exceeds the retail price for a covered prescription drug, and the availability of a more affordable alternative drug, pursuant to s. 465.0244.

(4) A contract between a health insurer and a pharmacy benefit manager must prohibit the pharmacy benefit manager from requiring an insured to make a payment for a prescription drug at the point of sale in an amount that exceeds the lesser of:

(a) The applicable cost-sharing amount; or

722650

(b) The retail price of the drug in the absence of prescription drug coverage.

(5) This section applies to contracts entered into, modified, amended, altered, or renewed on or after July 1, 2018.

Section 6. Section 641.314, Florida Statutes, is created to read:

641.314 Pharmacy benefit manager contracts.—

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

(a) "Maximum allowable cost" means the per-unit amount that a pharmacy benefit manager reimburses a pharmacist for a prescription drug, excluding dispensing fees, prior to the application of copayments, coinsurance, and any other cost-sharing charges.

(b) "Pharmacy benefit manager" means a person or entity doing business in this state which contracts to administer or manage prescription drug benefits on behalf of a health maintenance organization to residents of this state.

(2) A contract between a health maintenance organization and a pharmacy benefit manager must require that the pharmacy benefit manager:

(a) Update maximum allowable cost pricing information at least every 7 calendar days.

(b) Maintain a process that will, in a timely manner, eliminate drugs from maximum allowable cost lists or modify drug prices to remain consistent with changes in pricing data used in formulating maximum allowable cost prices and product availability.

(3) A contract between a health maintenance organization and a pharmacy benefit manager must prohibit the pharmacy

722650

benefit manager from limiting a pharmacist's ability to disclose whether the cost-sharing obligation exceeds the retail price for a covered prescription drug, and the availability of a more affordable alternative drug, pursuant to s. 465.0244.

(4) A contract between a health maintenance organization and a pharmacy benefit manager must prohibit the pharmacy benefit manager from requiring a subscriber to make a payment for a prescription drug at the point of sale in an amount that exceeds the lesser of:

(a) The applicable cost-sharing amount; or

(b) The retail price of the drug in the absence of prescription drug coverage.

(5) This section applies to contracts entered into, modified, amended, altered, or

796750

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/03/2018	.	
	.	
	.	
	.	

The Committee on Appropriations (Montford) recommended the following:

Senate Amendment (with title amendment)

Between lines 193 and 194
insert:

Section 7. The sums of $74,141 in recurring funds and $5,000 in nonrecurring funds from the Insurance Regulatory Trust Fund are 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 implementing this act.

796750

========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:
Between lines 26 and 27
insert:
providing an appropriation;

By the Committees on Banking and Insurance; and Health Policy; and Senators Montford, Grimsley, and Powell

597-03453-18 20181494c2

A bill to be entitled

An act relating to prescription drug pricing transparency; amending s. 465.0244, F.S.; requiring pharmacists to inform customers of less expensive, generically equivalent drugs for their prescriptions and as to whether customers' cost-sharing obligations exceed the retail price of their prescriptions; repealing s. 465.1862, F.S., relating to pharmacy benefit manager contracts; creating s. 624.490, F.S.; defining the term "pharmacy benefit manager"; requiring a pharmacy benefit manager to register with the Office of Insurance Regulation beginning on a specified date; providing requirements and terms of registration, including the payment of a nonrefundable fee; requiring the office to issue certificates of registration; specifying that certificates are nontransferable; requiring the Financial Services Commission to set an initial registration fee and a renewal fee which are nonrefundable and may not exceed a specified amount; requiring the commission to adopt rules; creating ss. 627.64741, 627.6572, and 641.314, F.S.; defining the terms "maximum allowable cost" and "pharmacy benefit manager"; requiring that certain terms be included in a contract between a health insurer or a health maintenance organization and a pharmacy benefit manager; providing applicability; providing an effective date.

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

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

597-03453-18 20181494c2

Section 1. Section 465.0244, Florida Statutes, is amended to read:

465.0244 Information disclosure.—

(1) Every pharmacy shall make available on its website a hyperlink to the health information that is disseminated by the Agency for Health Care Administration pursuant to s. 408.05(3) and shall place in the area where customers receive filled prescriptions notice that such information is available electronically and the address of its Internet website.

(2) In addition to the requirements of s. 465.025, a pharmacist or her or his authorized employee must inform a customer of a less expensive, generically equivalent drug product for her or his prescription and as to whether the customer's cost-sharing obligation exceeds the retail price of the prescription in the absence of prescription drug coverage.

Section 2. Section 465.1862, Florida Statutes, is repealed.

Section 3. Section 624.490, Florida Statutes, is created to read:

624.490 Registration of pharmacy benefit managers.—

(1) As used in this section, the term "pharmacy benefit manager" means a person or entity doing business in this state which contracts to administer prescription drug benefits on behalf of a health insurer or a health maintenance organization to residents of this state.

(2) Beginning January 1, 2019, a pharmacy benefit manager must register with the office to conduct business in this state. To initially register or renew a registration, a pharmacy benefit manager must submit:

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

(a) A nonrefundable fee;

(b) A copy of the registrant's corporate charter, articles of incorporation, or other charter document; and

(c) A completed registration on a form adopted by the commission which contains:

1. The name and address of the registrant; and

2. The name, address, and official position of each officer and director of the registrant.

(3) The registrant shall report any change in information required by subsection (2) to the office in writing within 60 days after the change occurs.

(4) Upon receipt of a completed registration form, required documents, and the registration fee, the office shall issue a registration certificate. The certificate may be in paper or electronic form, and must indicate the expiration date of the registration. Registration certificates are nontransferable.

(5) A registration certificate is valid for 2 years from its date of issue. The commission shall adopt by rule an initial registration fee not to exceed $500 and a registration renewal fee not to exceed $500, both of which are nonrefundable.

(6) The commission shall adopt rules necessary to implement this section.

Section 4. Section 627.64741, Florida Statutes, is created to read:

627.64741 Pharmacy benefit manager contracts.—

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

(a) "Maximum allowable cost" means the per-unit amount that a pharmacy benefit manager reimburses a pharmacist for a prescription drug, excluding dispensing fees, prior to the

application of copayments, coinsurance, and other cost-sharing charges, if any.

(b) "Pharmacy benefit manager" means a person or entity doing business in this state which contracts to administer or manage prescription drug benefits on behalf of a health insurer to residents of this state.

(2) A contract between a health insurer and a pharmacy benefit manager must require that the pharmacy benefit manager:

(a) Update maximum allowable cost pricing information at least every 7 calendar days.

(b) Maintain a process that will, in a timely manner, eliminate drugs from maximum allowable cost lists or modify drug prices to remain consistent with changes in pricing data used in formulating maximum allowable cost prices and product availability.

(3) A contract between a health insurer and a pharmacy benefit manager must prohibit the pharmacy benefit manager from limiting a pharmacist's ability to disclose whether the cost-sharing obligation exceeds the retail price for a covered prescription drug, and the availability of a more affordable alternative drug, pursuant to s. 465.0244.

(4) A contract between a health insurer and a pharmacy benefit manager must prohibit the pharmacy benefit manager from requiring an insured to make a payment for a prescription drug at the point of sale in an amount that exceeds the lesser of:

(a) The applicable cost-sharing amount; or

(b) The retail price of the drug in the absence of prescription drug coverage.

(5) This section applies to contracts entered into or

renewed on or after July 1, 2018.

Section 5. Section 627.6572, Florida Statutes, is created to read:

627.6572 Pharmacy benefit manager contracts.—

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

(a) "Maximum allowable cost" means the per-unit amount that a pharmacy benefit manager reimburses a pharmacist for a prescription drug, excluding dispensing fees, prior to the application of copayments, coinsurance, and any other cost-sharing charges.

(b) "Pharmacy benefit manager" means a person or entity doing business in this state which contracts to administer or manage prescription drug benefits on behalf of a health insurer to residents of this state.

(2) A contract between a health insurer and a pharmacy benefit manager must require that the pharmacy benefit manager:

(a) Update maximum allowable cost pricing information at least every 7 calendar days.

(b) Maintain a process that will, in a timely manner, eliminate drugs from maximum allowable cost lists or modify drug prices to remain consistent with changes in pricing data used in formulating maximum allowable cost prices and product availability.

(3) A contract between a health insurer and a pharmacy benefit manager must prohibit the pharmacy benefit manager from limiting a pharmacist's ability to disclose whether the cost-sharing obligation exceeds the retail price for a covered prescription drug, and the availability of a more affordable alternative drug, pursuant to s. 465.0244.

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

(4) A contract between a health insurer and a pharmacy benefit manager must prohibit the pharmacy benefit manager from requiring an insured to make a payment for a prescription drug at the point of sale in an amount that exceeds the lesser of:

(a) The applicable cost-sharing amount; or

(b) The retail price of the drug in the absence of prescription drug coverage.

(5) This section applies to contracts entered into or renewed on or after July 1, 2018.

Section 6. Section 641.314, Florida Statutes, is created to read:

641.314 Pharmacy benefit manager contracts.—

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

(a) "Maximum allowable cost" means the per-unit amount that a pharmacy benefit manager reimburses a pharmacist for a prescription drug, excluding dispensing fees, prior to the application of copayments, coinsurance, and any other cost-sharing charges.

(b) "Pharmacy benefit manager" means a person or entity doing business in this state which contracts to administer or manage prescription drug benefits on behalf of a health maintenance organization to residents of this state.

(2) A contract between a health maintenance organization and a pharmacy benefit manager must require that the pharmacy benefit manager:

(a) Update maximum allowable cost pricing information at least every 7 calendar days.

(b) Maintain a process that will, in a timely manner, eliminate drugs from maximum allowable cost lists or modify drug

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

prices to remain consistent with changes in pricing data used in formulating maximum allowable cost prices and product availability.

(3) A contract between a health maintenance organization and a pharmacy benefit manager must prohibit the pharmacy benefit manager from limiting a pharmacist's ability to disclose whether the cost-sharing obligation exceeds the retail price for a covered prescription drug, and the availability of a more affordable alternative drug, pursuant to s. 465.0244.

(4) A contract between a health maintenance organization and a pharmacy benefit manager must prohibit the pharmacy benefit manager from requiring a subscriber to make a payment for a prescription drug at the point of sale in an amount that exceeds the lesser of:

(a) The applicable cost-sharing amount; or

(b) The retail price of the drug in the absence of prescription drug coverage.

(5) This section applies to contracts entered into or renewed on or after July 1, 2018.

Section 7. 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)

3/2/18
Meeting Date

1494
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Christopher Nuland

Job Title _____

Address 1000 Riverside Ave.
Street

Phone 904-355-1555

Jacksonville FL 32204
City *State* *Zip*

Email nulandlaw@aol.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing ~~AFM~~ Florida Chapter of the American College of Physicians

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/2/18
Meeting Date

1494
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Lauren Henderson

Job Title _____

Address 108 E. Jefferson St. Suite E
Street

Tallahassee FL 32301
City *State* *Zip*

Phone 8505093410

Email Lauren.claire.henderson@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing EPIC Rx

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

3/2/2018
Meeting Date

CS/CS/SB 1494
Bill Number (if applicable)

Topic PRESCRIPTION DRUG PRICE TRANSPARENCY

Amendment Barcode (if applicable)

Name MICHAEL JACKSON

Job Title EXECUTIVE VICE PRESIDENT & CEO

Address 610 NORTH ADAMS STREET
Street

Phone (850) 222-2400

TALLAHASSEE FL 32301
City State Zip

Email MJACKSON@PHARMVIEW.COM

Speaking: ☒ For ☐ Against ☐ Information

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

Representing FLORIDA PHARMACY ASSOCIATION

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/2/18
Meeting Date

SB 1494
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Drug Price Transparency

Name Larry Gonzalez

Job Title General Counsel

Address 227 S. Gadsden ST. Phone 850-222-0465
Street

Tallahassee FL 32301 Email lawgonz@earthlink.net
City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Florida Society of Health-System Pharmacists

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons 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 1532
INTRODUCER:	Senator Stargel and others
SUBJECT:	Early Learning Coalitions
DATE:	March 1, 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 1532 authorizes an early learning coalition to refuse to contract with a school readiness program provider if the provider has been cited for a class I violation. A class I violation is the most serious in nature and poses an imminent threat to a child including abuse or neglect that could result in death or serious harm to the health, safety or well-being of a child.

The bill does not affect state revenues or expenditures.

The bill takes effect July 1, 2018.

II. Present Situation:

The school readiness program was established in 1999[1] and provides subsidies for childcare services and early childhood education for children of low-income families; children in protective services who are at risk of abuse, neglect, or abandonment; and children with disabilities.[2]

School Readiness Program

The school readiness program (program) is a state-federal partnership between Florida's Office of Early Learning (OEL)[3] and the Office of Child Care of the United States Department of

[1] Section 1, ch. 99-357, L.O.F.

[2] Sections 1002.87, F.S.

[3] In 2013, the Legislature established the Office of Early Learning in the Office of Independent Education and Parental Choice within the Department of Education (DOE).The office is administered by an executive director and is fully accountable to the Commissioner of Education but shall independently exercise all powers, duties, and functions prescribed by law, as well as adopt rules for the establishment and operation of the School Readiness Program and the VPK Program. Section 1, ch. 2013-252, L.O.F., *codified as* s. 1001.213, F.S.

Health and Human Services.[4] The program is administered by early learning coalitions (ELCs) at the county or regional level.[5]

At the state level, the OEL administers the program, including statewide coordination of the ELCs.[6] The OEL is the lead agency for administering the federal Child Care and Development Block Grant Trust Fund, which funds are used to implement the school readiness program.[7] The OEL must adopt, in rule, a statewide provider contract to be used by each provider[8] and must monitor and evaluate the performance of each ELC in administering the school readiness program.[9]

The Florida Department of Children and Families' (DCF) Office of Child Care Regulations, as the agency responsible for the state's child care provider licensing program, inspects licensed and license exempt childcare providers who provide a school readiness program for specified health and safety standards.[10]

School Readiness Program Eligibility

To be eligible to deliver the school readiness program in this state, a provider must be:[11]

- A licensed child care facility;
- A licensed or registered family day care home (FDCH);
- A licensed large family child care home (LFCCH);
- A public school or nonpublic school;
- A license-exempt faith-based child care provider;
- A before-school or after-school program; or
- An informal childcare provider authorized in the state's Child Care and Development Fund plan.

All school readiness program providers must be inspected to ensure compliance with basic health and safety requirements and to ensure compliance with the age-appropriate immunizations of children enrolled in the school readiness program.[12] In addition, each childcare facility, family day care home, and large family day care home must annually submit to the DCF an affidavit of compliance with the requirements to report instances of child abuse, abandonment, or neglect.[13]

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[4] *See* U.S. Department of Health and Human Services, *Child Care and Development Fund Fact Sheet*, https://www.acf.hhs.gov/occ/fact-sheet-occ (last visited Jan. 26, 2018).
[5] Section 1002.83(1), F.S.
[6] Section 1001.213(3), F.S.
[7] Section 1002.82(1), F.S.
[8] Section 1008.82(2)(m), F.S,
[9] Section 1008.82(2)(p), F.S,
[10] *See* ss. 402.301-319, F.S., and Parts V and VI, ch. 1002, F.S.
[11] Section 1002.88(1)(a), F.S.
[12] Rule 6M-4.620, F.A.C. The Department of Children and Families or the local licensing agency (whichever is applicable) is authorized to inspect school readiness providers.
[13] Section 402.319(3), F.S.

Early Learning Coalition Responsibilities

There are currently 30 early learning coalitions.[14] Each ELC administers and implements a local comprehensive program of school readiness program services, which enhances the cognitive, social and physical development of children to achieve the performance standards.[15]

Florida law specifies the responsibilities for the ELCs.[16] These responsibilities include a requirement that each ELC monitor school readiness program providers in accordance with the coalition's plan, or in response to a parental complaint, to verify that the standards specified in law[17] are being met using a standard monitoring tool adopted by the OEL.[18] Providers determined to be high-risk by the ELC, as determined by substantial findings of violations of federal law or the general or local laws of the state, must be monitored more frequently.[19] Providers with three consecutive years of compliance may be monitored biennially.[20]

Florida law specifies that if a school readiness program provider fails or refuses to comply with school readiness program provider standards[21], or any contractual obligation of the statewide provider contract,[22] the ELC may revoke the provider's eligibility to deliver the school readiness program or receive state or federal funds for a period of five years.[23]

In addition, ELCs may terminate a provider's contract if the provider has one or more Class I violations, five or more Class II violations, or six or more Class III violations, and the violation(s) pose an immediate and serious danger to the health, safety and welfare of the children in care.[24]

Class I violations are the most serious in nature and pose an imminent threat to a child including abuse or neglect that could result in death or serious harm to the health, safety or well-being of a child.[25] Class II violations are less serious than Class I violations and could pose a threat to the

[14] Florida's Office of Early Learning, *Parents – Contact your County's Early Learning Coalition*, http://www.floridaearlylearning.com/parents/find_quality_child_care/locate_a_child_care_resource_referral_program/countys_early_learning_coalition.aspx (last visited Jan. 26, 2018).
[15] Section 1002.84(1), F.S.
[16] Section 1002.84, F.S.
[17] Section 1002.84 (15), F.S.
[18] Section 1002.84(15), F.S.
[19] *Id*.
[20] *Id*.
[21] Section 1002.88, F.S.
[22] The Office of Early Learning must adopt by rule a standard statewide provider contract to be used with each school readiness program provider, with standardized attachments by provider type. The office must publish a copy of the standard statewide provider contract on its website. The standard statewide contract must include, at a minimum, provisions for provider probation, termination for cause, and emergency termination for those actions or inactions of a provider that pose an immediate and serious danger to the health, safety, or welfare of the children. The standard statewide provider contract must also include appropriate due process procedures. During the pendency of an appeal of a termination, the provider may not continue to offer its services. Any provision imposed upon a provider that is inconsistent with, or prohibited by, law is void and unenforceable. Section 1002.82(2)(m), F.S.
[23] Section 1002.88(2), F.S.
[24] Section 1002.82(2)(m), F.S. s*ee also* The Office of Early Learning, *School Readiness Program Health and Safety Standards Handbook*, (Feb. 2017), *available at* http://www.floridaearlylearning.com/sites/www/Uploads/files/Statewide%20Initiatives/Health%20and%20Safety/HS%20Handbook%20Facilities_OEL-SR-6202_ADA.pdf, at 51-52 of 53.
[25] *Id* at 50.

health, safety or well-being of a child, although the threat is not imminent.[26] Class III violations are less serious than either Class I or Class II violations and pose a low potential for harm to a child.[27] A list of Class I, II and III violations are provided in the Office of Early Learning, School Readiness Program, Health and Safety Checklist.[28]

III. Effect of Proposed Changes:

The bill authorizes an early learning coalition (ELC) to refuse to contract with a school readiness program provider if the provider has been cited for a Class I violation. This authority is consistent with the ELC's authority to terminate a provider's contract if the provider has one or more Class I violations.[29] Accordingly, the bill may assist with maintaining a safe environment for children enrolled in school readiness programs.

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.

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[26] *Id.*
[27] *Id.*
[28] The Office of Early Learning, *School Readiness Program, Health and Safety Checklist - Public and Nonpublic schools,* (Feb. 2017*) available at* https://www.flrules.org/gateway/readRefFile.asp?refId=7846&filename=Form OEL-SR-6203 (February 2017) HS Checklist Public NonPublic Schools.pdf.
[29] The Office of Early Learning, *School Readiness Program Health and Safety Standards Handbook,* (Feb. 2017), *available at* http://www.floridaearlylearning.com/sites/www/Uploads/files/Statewide%20Initiatives/Health%20and%20Safety/HS%20Handbook%20Facilities_OEL-SR-6202_ADA.pdf, at 51-52 of 53.

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 1002.88 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

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

By Senator Stargel

22-01481-18 20181532__

A bill to be entitled

An act relating to early learning coalitions; amending s. 1002.88, F.S.; authorizing an early learning coalition to refuse to contract with certain school readiness program providers; providing an effective date.

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

Section 1. Subsection (2) of section 1002.88, Florida Statutes, is amended to read:

1002.88 School readiness program provider standards; eligibility to deliver the school readiness program.—

(2)(a) If a school readiness program provider fails or refuses to comply with this part or any contractual obligation of the statewide provider contract under s. 1002.82(2)(m), the coalition may revoke the provider's eligibility to deliver the school readiness program or receive state or federal funds under this chapter for a period of 5 years.

(b) Notwithstanding any other provision of law, if a school readiness program provider has been cited for a class I violation, as defined by rule, the coalition may refuse to contract with the provider.

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:	CS/CS/SB 1548
INTRODUCER:	Appropriations Committee; Education Committee; and Senator Book
SUBJECT:	K-12 Student Safety
DATE:	March 5, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Androff	Graf	ED	**Fav/CS**
2.	Erickson	Jones	CJ	**Favorable**
3.	Sikes	Hansen	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1548 modifies Florida law regarding educator certification requirements and district school board duties relating to school safety and prohibits misconduct by authority figures against students. Specifically, the bill:

- Expands the applicability of certain employment disqualification criteria to include all positions that require direct contact with students.
- Grants the Department of Education (DOE) and the Education Practices Commission additional authority to enforce the educator certification requirements and impose penalties against persons who do not comply with certification requirements.
- Requires an educator who has been placed on probation to immediately notify the investigative office in the DOE upon separation from employment in any public or private position requiring a Florida educator's certificate.
- Deems offenses against students by authority figures as a second-degree felony.
- Adds a school bus to the definition of "school," to apply to the provisions in law regarding trespass on school grounds or facilities.
- Revises standards of ethical conduct for instructional personnel and school administrators to require training to cover misconduct that involves specified conduct that would result in disqualification from educator certification or employment.
- Requires a school district to:
  - File in writing with the DOE all legally sufficient complaints against teachers and administrators, regardless of whether the subject of the complaint is still a district employee.

  - Immediately notify the DOE if the subject of a legally sufficient complaint of misconduct affecting the health, safety, or welfare of a student resigns or is terminated before the conclusion of the district investigation.
- Requires a district school superintendent to:
  - Report misconduct by instructional personnel or school administrators that would result in a disqualification from educator certification or employment to the law enforcement agencies with jurisdiction over the conduct. Provides that a superintendent who knowingly fails to report misconduct to law enforcement agencies must forfeit his or her salary for one year after the date of such failure to act.
  - Notify the parent of a student who was subjected to or affected by specified misconduct within a specified timeframe.
- Requires the resignation or termination of an employee before the conclusion of an alleged misconduct investigation affecting the health, safety, or welfare of a student to be clearly indicated in the employee's personnel file.

The bill does not affect state revenues or expenditures.

The bill takes effect July 1, 2018.

II. Present Situation:

Educator Certification Requirements

The purpose of Florida educator certification is to protect the educational interest of students, parents, and the public at large by assuring that Florida educators are professionally qualified for highly effective instruction.[1] The Legislature has established certification requirements to assure that educational personnel in public schools possess appropriate skills in reading, writing, and mathematics, and adequate pedagogical knowledge and relevant subject matter competence to demonstrate an acceptable level of professional performance.[2] Further, the Legislature has established a certificate renewal process that promotes the continuing professional improvement of school personnel, thereby enhancing public education in all areas of the state.[3]

Florida law provides that a person who has been convicted of an offense specified in law is ineligible for educator certification, and instructional personnel and school administrators are ineligible for employment in any position that requires direct contact with students in a district school system, charter school, or private school that accepts certain state scholarship students.[4]

Florida law also requires each person who has obtained an educator certification to agree, under penalty of perjury, to inform his or her employer if convicted of any disqualifying offense while he or she is employed in a position for which such certification is required.[5]

[1] Section 1012.54, F.S.
[2] *Id.*
[3] *Id.*
[4] Section 1012.315(1), F.S.
[5] Section 1012.56(10)(b), F.S.

Educator Discipline

The Education Practices Commission (Commission) is established in Florida law to interpret and apply the standards of professional practice established by the State Board of Education (SBE).[6] The Commission is authorized to revoke or suspend a certificate or take other appropriate action as provided in law.[7]

Specifically, the Commission may revoke or suspend the educator certification if the person:

- Obtained or attempted to obtain an educator certificate by fraudulent means.
- Knowingly failed to report actual or suspected child abuse or report alleged misconduct by instructional personnel or school administrators that affects the health, safety, or welfare of a student.
- Has proved to be incompetent to teach or perform duties as an employee of the public school system or to teach in or operate a private school.
- Has been guilty of gross immorality or an act involving moral turpitude as defined by SBE rule.
- Has had an educator certificate sanctioned by revocation, suspension, or surrender in another state.
- Has been convicted or found guilty of, or entered a plea of guilty to, regardless of adjudication of guilt, a misdemeanor, felony, or any other criminal charge, other than a minor traffic violation.[8]

Florida law provides that the Department of Education (DOE) may deny an applicant a certificate if the department possesses satisfactory evidence that the applicant has committed an act, or that a situation exists, for which the Education Practices Commission would be authorized to revoke a teaching certificate.[9] The decision of the DOE is subject to review by the Education Practices Commission upon the filing of a written request from the applicant within 20 days after receipt of notice of denial.[10]

Educator Certification Reporting Requirements

Each district school superintendent and the governing authority of each university lab school, state-supported school, private school, and the Florida High School Athletic Association must report to the DOE the name of any Florida certified educator who:

- Has been convicted of, or who has pled nolo contendere to, a misdemeanor, felony, or any other criminal charge, other than a minor traffic infraction;
- That official has reason to believe has committed, or is found to have committed, any act which would be a ground for revocation or suspension of a Florida Educator Certification;
- Has been dismissed or severed from employment because of conduct involving any immoral, unnatural, or lascivious act.[11]

[6] Section 1012.79(7)(a), F.S. The SBE has established principles for professional conduct for the Education Profession in rule. Rule 6A-10.081, F.A.C.
[7] Section 1012.79(7)(b), F.S.
[8] Section 1012.795(1), F.S.
[9] Section 1012.56(12)(a), F.S.
[10] Section 1012.56(12)(b), F.S.
[11] Section 1012.795(5), F.S.

Florida law also requires an educator certificate holder to inform his or her employer within 48 hours if convicted of any disqualifying offense while employed in a position that requires the certification.[12]

Ethical Conduct of Instructional Personnel and School Administrators

Florida law provides that each district school board must adopt policies establishing standards of ethical conduct for instructional personnel and school administrators.[13] The policies must requires all instructional personnel and school administrators to complete specified training.[14] Florida law also provides that the felony degree of a violation for specified sexual offenses must be enhanced if the offense is committed by an authority figure of a school against the student of the school.[15]

III. Effect of Proposed Changes:

The bill modifies Florida law regarding educator certification requirements and district school board duties relating to school safety and prohibits misconduct by authority figures against students. Specifically, the bill:

- Expands the applicability of certain employment disqualification criteria to include all positions that require direct contact with students.
- Grants the Department of Education (DOE) and the Education Practices Commission with additional authority to enforce the educator certification requirements and impose penalties against persons who do not comply with certification requirements.
- Requires an educator who has been placed on probation to immediately notify the investigative office in the DOE upon separation from employment in any public or private position requiring a Florida educator's certificate.
- Deems offenses against students by authority figures as a second-degree felony.
- Adds a school bus to the definition of "school," to apply to the provisions in law regarding trespass on school grounds or facilities.
- Revises standards of ethical conduct for instructional personnel and school administrators to require training to cover misconduct that involves specified conduct that would result in disqualification from educator certification or employment.
- Requires a school district to:
  - File in writing with the DOE all legally sufficient complaints against teachers and administrators, regardless of whether the subject of the complaint is still a district employee.
  - Immediately notify the DOE if the subject of a legally sufficient complaint of misconduct affecting the health, safety, or welfare of a student resigns or is terminated before the conclusion of the district investigation.
- Requires a district school superintendent to:
  - Report misconduct by instructional personnel or school administrators that would result in a disqualification from educator certification or employment to the law enforcement

[12] Section 1012.56(10)(b), F.S.
[13] Section 1012.42
[14] *Id.*
[15] Section 775.0862, F.S. Authority figure means a person 18 years of age or older who is employed by, volunteering at, or under contract with a school.

agencies with jurisdiction over the conduct. Provides that a superintendent who knowingly fails to report misconduct to law enforcement agencies must forfeit his or her salary for one year after the date of such failure to act.
    - Notify the parent of a student who was subjected to or affected by specified misconduct within a specified timeframe.
- Requires the resignation or termination of an employee before the conclusion of an alleged misconduct investigation affecting the health, safety, or welfare of a student to be clearly indicated in the employee's personnel file.

Educator Certification Requirements (Section 7)

Section 7 amends s. 1012.315, F.S., to expand the conditions for disqualification from employment to clarify that if a person has been convicted of an offense specified in law, the person is ineligible for educator certification or employment in any position that requires direct contact with students in a district school system, charter school, or private school that accepts specified state scholarship students. These changes may assist the school districts with their efforts to maintain a safe learning environment for students.

Educator Discipline (Sections 8 and 9)

Section 9 amends s. 1012.795, F.S., to authorize the Education Practices Commission (Commission) to *deny* an application for certification in addition to the Commission's existing authority to *suspend* an educator certificate of any educator certificate holder. This section modifies the conditions under which the Commission is authorized to take disciplinary action to provide that the Commission is authorized to discipline a person who:

- Has been guilty of gross immorality or an act involving moral turpitude, including engaging in or soliciting sexual, romantic, or lewd conduct with a student or minor.
- Has had any professional license sanctioned by Florida or any other state, or has had the authority to practice the regulated profession revoked, suspended, or otherwise acted against, including a denial of certification or licensure, by the licensing or certifying authority of any jurisdiction, including its agencies and subdivision. The licensing or certifying authority's acceptance of a relinquishment, stipulation, consent order, other settlement offered in response to or in anticipation of the filing of charges against the licensee or certificateholder shall be construed as action against the license or certificate.
- Regardless of adjudication, has been convicted or found guilty of, or entered a plea of guilty or nolo contendere to a misdemeanor, a felony, or any other criminal charge other than a minor traffic violation.
- Has violated test security rules as provided in law.[16]

The authorization to deny an application for certification also applies to existing conditions under which the Commission is authorized to take disciplinary action.[17]

Section 8 amends s. 1012.56, F.S., to authorize the Department of Education (DOE) to deny an applicant a certificate if DOE possesses satisfactory evidence that the applicant has committed an

[16] Section 1008.24, F.S., specifies the test administration and security rules.
[17] *See* s. 1012.795(1), F.S.

act, or that a situation exists, for which the Commission would be authorized to discipline a certified educator. As provided in current law, the decision of the DOE is reviewable upon the filing of a written request from the applicant within 20 days after receipt of notice of denial.[18] This section provides that, upon review of the DOE's decision, the Commission may deny the award of a certificate, bar an applicant from reapplying for a certificate, or allow the awarding of a certificate with one or more of the following conditions:

- Probation for a period of time.
- Restriction of the scope of practice.
- Issuance of a letter of reprimand.
- Referral of the teacher, administrator, or supervisor to the recovery network program under such terms and conditions as the commission may specify.
- An administrative fine not to exceed $2,000 for each count or separate offense.

Accordingly, the bill provides the DOE and the Commission with additional authority to enforce the educator certification requirements and impose penalties against persons who do not comply with the specified certification requirements or assessment administration protocol.

Educator Certification Reporting Requirements (Section 9)

Section 9 amends s. 1012.795, F.S., to modify the information that each district school superintendent and the governing authority of each university lab school, state-supported school, private school and the Florida High School Athletic Association must report to the DOE to add the name of any educator certificateholder who has been found *guilty of*, who has had *adjudication withheld*, or who has *pled guilty* to a misdemeanor, a felony, or any other criminal charge, other than a minor traffic infraction. These changes may assist the school districts with their efforts to maintain a safe learning environment for students.

Notification by Educator on Probation (Section 10)

Section 10 amends s. 1012.796, F.S., to require a school district to:

- File in writing with the DOE all legally sufficient complaints against teachers and administrators, regardless of whether the subject of the complaint is still a district employee.
- Immediately notify the DOE if the subject of a legally sufficient complaint of misconduct affecting the health, safety, or welfare of a student resigns or is terminated before the conclusion of the district investigation. The DOE must then place an alert on the subject's certification file.

Ethical Conduct of Instructional Personnel and School Administrators (Sections 1, 3, 4, 5, and 6)

Section 1 creates s. 800.101, F.S., to prohibit specified misconduct against students by authority figures. This section defines

- "Authority figure" to mean a person 18 years of age or older who is employed by, volunteering at, or under contract with a school, including a school resource officer.

[18] *Supra*, n. 11.

- "School" to include a private school, a voluntary prekindergarten education program, early learning programs, specified child care facilities deemed public schools,[19] the Florida School for the Deaf and the Blind, and the Florida Virtual School. The term does not include a facility dedicated exclusively to the education of adults.
- "Student" as a person who is enrolled at a school.

This section prohibits an authority figure from soliciting or engaging in the following with a student:

- Sexual conduct;
- A relationship of a romantic or intimate nature where the nature of the relationship is characterized by the expectation of affection or sexual involvement between the parties; or
- Lewd conduct.

A person who violates this prohibition commits a felony of the second degree, punishable as specified in law.[20] This provision does not apply to conduct that constitutes an offense subject to reclassification as a sexual offense against a student by an authority figure.[21]

Section 3 amends s. 1001.42, F.S., to require the district school board to include in its adopted policies establishing standards of ethical conduct for instructional personnel and school administrators procedures for reporting alleged misconduct which affects the health, safety, or welfare of students to include all misconduct that involves the engaging in or soliciting sexual, romantic, or lewd conduct with a student. This section also requires the superintendent to report misconduct by instructional personnel or school administrators that would result in disqualification from educator certification or employment to the law enforcement agencies with jurisdiction over the conduct. Section 4 amends s.1001.51, F.S., to include knowingly failing to report this misconduct to law enforcement among the offenses for which a superintend forfeits his or her salary for one year.

Section 5 amends s. 1012.27, F.S., to require the district school superintendent to notify the parent of a student who was subjected to or affected by the misconduct within 30 days after the date on which the school district learns of the misconduct. The notification must include:

- The alleged misconduct, including which, if any, allegations have been substantiated.
- Whether the district reported the misconduct to the DOE.
- The sanctions, if any, imposed by the school district against the employee.
- The support the school district will make available to the student in response to the misconduct.

Section 6 amends s. 1012.31, F.S., to require public school system employee personnel files to contain a clear indication of the resignation or termination of an employee before an investigation of alleged misconduct by the employee affecting the health, safety, or welfare of a student is concluded. The school district must file in writing any legally sufficient complaints against personnel to the DOE within 30 days after the date on which the subject matter was brought to the school district's attention, regardless of the status of the complaint.

[19] As descried in section 402.3025 (1) of the Florida Statutes.
[20] Sections 775.082, 775.083, and 775.084, F.S.
[21] Section 775.0862, F.S.

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 does not affect state revenues or expenditures.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 810.097, 1001.42, 1001.51, 1012.27, 1012.31, 1012.315, 1012.56, 1012.795, and 1012.796.

IX. This bill creates section 800.101 of the Florida Statutes.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 March 2, 2018:
The committee substitute:

- Adds the following provisions:
  - Deems offenses against students by authority figures as a second-degree felony.
  - Adds a school bus to the definition of "school," to apply to the provisions in law regarding trespass on school grounds or facilities.
  - Revises standards of ethical conduct for instructional personnel and school administrators to require training to cover misconduct that involves specified conduct that would result in disqualification from educator certification or employment.
  - Requires a school district to notify the Florida Department of Education about all legally sufficient complaints against teachers and administrators and the resignation or termination of a subject of a legally sufficient complaint of misconduct.
  - Requires a district school superintendent to report misconduct by instructional personnel or school administrators to law enforcement agencies and notify parents of a student who was subjected to or affected by specified misconduct within a specified timeframe.
  - Requires the resignation or termination of an employee before the conclusion of an investigation of alleged misconduct affecting the health, safety, or welfare of a student to be clearly indicated in the employee's personnel file.
- Deletes the following provisions:
  - Provides that a teacher may not be awarded a Career and Professional Education (CAPE) industry certification bonus if the teacher fails to maintain the security of any CAPE industry certification examination or other security protocols.
  - Provides that persons employed as part-time teachers by the district school board are not exempt from the certification requirements for all school-based personnel.
  - Specifies that an adjunct teaching certificate may not be used to fulfill the certification requirements for a person who is employed and renders service as an athletic coach in any public school in Florida.
  - Deletes an outdated reference in current law to the Safety and Security Best Practices developed by the Office of Program Policy Analysis and Government Accountability.

CS by Education on January 22, 2018:
The committee substitute removes from the bill the provision that exempted from background screening employees of the Division of Vocational Rehabilitation who work as service providers for the school district.

B. Amendments:

None.

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

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/03/2018	.	
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The Committee on Appropriations (Book) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 800.101, Florida Statutes, is created to read:

800.101 Offenses against students by authority figures.—

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

(a) "Authority figure" means a person 18 years of age or older who is employed by, volunteering at, or under contract

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with a school, including school resource officers as provided in s. 1006.12.

(b) "School" has the same meaning as provided in s. 1003.01 and includes a private school as defined in s. 1002.01, a voluntary prekindergarten education program as described in s. 1002.53(3), early learning programs, a public school as described in s. 402.3025(1), the Florida School for the Deaf and the Blind, and the Florida Virtual School established under s. 1002.37. The term does not include a facility dedicated exclusively to the education of adults.

(c) "Student" means a person who is enrolled at a school.

(2) An authority figure shall not solicit or engage in:

(a) Sexual conduct;

(b) A relationship of a romantic or intimate nature where the nature of the relationship is characterized by the expectation of affection or sexual involvement between the parties; or

(c) Lewd conduct

with a student.

(3) A person who violates this section commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) This section does not apply to conduct constituting an offense that is subject to reclassification under s. 775.0862.

Section 2. Subsection (5) of section 810.097, Florida Statutes, is amended to read:

810.097 Trespass upon grounds or facilities of a school; penalties; arrest.—

(5) As used in this section, the term "school" means the grounds or any facility, including school buses, of any kindergarten, elementary school, middle school, junior high school, or secondary school, whether public or nonpublic.

Section 3. Subsection (6) and paragraph (b) of subsection (7) of section 1001.42, Florida Statutes, are amended to read:

1001.42 Powers and duties of district school board.—The district school board, acting as a board, shall exercise all powers and perform all duties listed below:

(6) STANDARDS OF ETHICAL CONDUCT FOR INSTRUCTIONAL PERSONNEL AND SCHOOL ADMINISTRATORS.—Adopt policies establishing standards of ethical conduct for instructional personnel and school administrators. The policies must require all instructional personnel and school administrators, as defined in s. 1012.01, to complete training on the standards; establish the duty of instructional personnel and school administrators to report, and procedures for reporting, alleged misconduct by other instructional personnel and school administrators which affects the health, safety, or welfare of a student, including misconduct that involves engaging in or soliciting sexual, romantic, or lewd conduct with a student; require the district school superintendent to report to law enforcement misconduct by instructional personnel or school administrators which would result in disqualification from educator certification or employment as provided in s. 1012.315; and include an explanation of the liability protections provided under ss. 39.203 and 768.095. A district school board, or any of its employees, may not enter into a confidentiality agreement regarding terminated or dismissed instructional personnel or

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school administrators, or personnel or administrators who resign in lieu of termination, based in whole or in part on misconduct that affects the health, safety, or welfare of a student, and may not provide instructional personnel or school administrators with employment references or discuss the personnel's or administrators' performance with prospective employers in another educational setting, without disclosing the personnel's or administrators' misconduct. Any part of an agreement or contract that has the purpose or effect of concealing misconduct by instructional personnel or school administrators which affects the health, safety, or welfare of a student is void, is contrary to public policy, and may not be enforced.

(7) DISQUALIFICATION FROM EMPLOYMENT.—Disqualify instructional personnel and school administrators, as defined in s. 1012.01, from employment in any position that requires direct contact with students if the personnel or administrators are ineligible for such employment under s. 1012.315. An elected or appointed school board official forfeits his or her salary for 1 year if:

(b) The school board official knowingly fails to adopt policies that require:

1. Instructional personnel and school administrators to report alleged misconduct by other instructional personnel and school administrators;

2. The district school superintendent to report misconduct by instructional personnel or school administrators that would result in disqualification from educator certification or employment as provided in s. 1012.315 to the law enforcement agencies with jurisdiction over the conduct;~~.~~ or

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3. ~~that require~~ The investigation of all reports of alleged misconduct by instructional personnel and school administrators, if the misconduct affects the health, safety, or welfare of a student.

Section 4. Subsection (12) of section 1001.51, Florida Statutes, is amended to read:

1001.51 Duties and responsibilities of district school superintendent.—The district school superintendent shall exercise all powers and perform all duties listed below and elsewhere in the law, provided that, in so doing, he or she shall advise and counsel with the district school board. The district school superintendent shall perform all tasks necessary to make sound recommendations, nominations, proposals, and reports required by law to be acted upon by the district school board. All such recommendations, nominations, proposals, and reports by the district school superintendent shall be either recorded in the minutes or shall be made in writing, noted in the minutes, and filed in the public records of the district school board. It shall be presumed that, in the absence of the record required in this section, the recommendations, nominations, and proposals required of the district school superintendent were not contrary to the action taken by the district school board in such matters.

(12) RECORDS AND REPORTS.—Recommend such records as should be kept in addition to those prescribed by rules of the State Board of Education; prepare forms for keeping such records as are approved by the district school board; ensure that such records are properly kept; and make all reports that are needed or required, as follows:

(a) *Forms, blanks, and reports.*—Require that all employees accurately keep all records and promptly make in proper form all reports required by the education code or by rules of the State Board of Education; recommend the keeping of such additional records and the making of such additional reports as may be deemed necessary to provide data essential for the operation of the school system; and prepare such forms and blanks as may be required and ensure that these records and reports are properly prepared.

(b) *Reports to the department.*—Prepare, for the approval of the district school board, all reports required by law or rules of the State Board of Education to be made to the department and transmit promptly all such reports, when approved, to the department, as required by law. If any reports are not transmitted at the time and in the manner prescribed by law or by State Board of Education rules, the salary of the district school superintendent must be withheld until the report has been properly submitted. Unless otherwise provided by rules of the State Board of Education, the annual report on attendance and personnel is due on or before July 1, and the annual school budget and the report on finance are due on the date prescribed by the commissioner.

Any district school superintendent who knowingly signs and transmits to any state official a report that the superintendent knows to be false or incorrect; who knowingly fails to investigate any allegation of misconduct by instructional personnel or school administrators, as defined in s. 1012.01, which affects the health, safety, or welfare of a student; ~~or~~

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who knowingly fails to report the alleged misconduct to the department as required in s. 1012.796; or who knowingly fails to report misconduct to the law enforcement agencies with jurisdiction over the conduct pursuant to district school board policy under s. 1001.42(6), forfeits his or her salary for 1 year following the date of such act or failure to act.

Section 5. Subsections (5) and (6) of section 1012.27, Florida Statutes, are amended to read:

1012.27 Public school personnel; powers and duties of district school superintendent.—The district school superintendent is responsible for directing the work of the personnel, subject to the requirements of this chapter, and in addition the district school superintendent shall perform the following:

(5) SUSPENSION AND DISMISSAL; NOTIFICATION.—

(a) Suspend members of the instructional staff and other school employees during emergencies for a period extending to and including the day of the next regular or special meeting of the district school board and notify the district school board immediately of such suspension. When authorized to do so, serve notice on the suspended member of the instructional staff of charges made against him or her and of the date of hearing. Recommend employees for dismissal under the terms prescribed herein.

(b) Notify the parent of a student who was subjected to or affected by misconduct identified under s. 1001.42(6) within 30 days after the date on which the school district learns of the misconduct. The notification must inform the parent of:

1. The alleged misconduct, including which allegations have

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been substantiated, if any.

2. Whether the district reported the misconduct to the department, if required by s. 1012.796(1)(d).

3. The sanctions imposed by the school district against the employee, if any.

4. The support the school district will make available to the student in response to the misconduct.

(6) EMPLOYMENT HISTORY CHECKS.—Before employing a person ~~instructional personnel and school administrators, as defined in s. 1012.01,~~ in any position that requires direct contact with students, conduct employment history checks of each of the person's ~~personnel's or administrators'~~ previous employers, screen instructional ~~the~~ personnel and school ~~or~~ administrators as defined in s. 1012.01 through use of the educator screening tools described in s. 1001.10(5), and document the findings. If unable to contact a previous employer, the district school superintendent shall document efforts to contact the employer.

Section 6. Paragraph (a) of subsection (2) and paragraph (a) of subsection (3) of section 1012.31, Florida Statutes, are amended to read:

1012.31 Personnel files.—Public school system employee personnel files shall be maintained according to the following provisions:

(2)(a) Materials relating to work performance, discipline, suspension, or dismissal must be reduced to writing and signed by a person competent to know the facts or make the judgment. The resignation or termination of an employee before an investigation of alleged misconduct by the employee affecting the health, safety, or welfare of a student is concluded must be

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clearly indicated in the employee's personnel file.

(3)(a) Public school system employee personnel files are subject to the provisions of s. 119.07(1), except as follows:

1. Any complaint and any material relating to the investigation of a complaint against an employee shall be confidential and exempt from the provisions of s. 119.07(1) until the conclusion of the preliminary investigation or until such time as the preliminary investigation ceases to be active. If the preliminary investigation is concluded with the finding that there is no probable cause to proceed further and with no disciplinary action taken or charges filed, a statement to that effect signed by the responsible investigating official shall be attached to the complaint, and the complaint and all such materials shall be open thereafter to inspection pursuant to s. 119.07(1). If the preliminary investigation is concluded with the finding that there is probable cause to proceed further or with disciplinary action taken or charges filed, the complaint and all such materials shall be open thereafter to inspection pursuant to s. 119.07(1). If the preliminary investigation ceases to be active, the complaint and all such materials shall be open thereafter to inspection pursuant to s. 119.07(1). For the purpose of this subsection, a preliminary investigation shall be considered active as long as it is continuing with a reasonable, good faith anticipation that an administrative finding will be made in the foreseeable future. An investigation shall be presumed to be inactive if no finding relating to probable cause is made within 60 days after the complaint is made. This subparagraph does not absolve the school district of its duty to provide any legally sufficient complaint to the

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department within 30 days after the date on which the subject matter of the complaint comes to the attention of the school district pursuant to s. 1012.796(1)(d)1., regardless of the status of the complaint.

2. An employee evaluation prepared pursuant to s. 1012.33, s. 1012.34, or s. 1012.56 or rules adopted by the State Board of Education or district school board under the authority of those sections shall be confidential and exempt from the provisions of s. 119.07(1) until the end of the school year immediately following the school year in which the evaluation was made. No evaluation prepared before July 1, 1983, shall be made public pursuant to this section.

3. No material derogatory to an employee shall be open to inspection until 10 days after the employee has been notified pursuant to paragraph (2)(c).

4. The payroll deduction records of an employee shall be confidential and exempt from the provisions of s. 119.07(1).

5. Employee medical records, including psychiatric and psychological records, shall be confidential and exempt from the provisions of s. 119.07(1); however, at any hearing relative to the competency or performance of an employee, the administrative law judge, hearing officer, or panel shall have access to such records.

Section 6. Section 1012.315, Florida Statutes, is amended to read:

1012.315 Disqualification from employment.—A person is ineligible for educator certification or~~, and instructional personnel and school administrators, as defined in s. 1012.01, are ineligible for~~ employment in any position that requires

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direct contact with students in a district school system, charter school, or private school that accepts scholarship students under s. 1002.39 or s. 1002.395~~,~~ if the person~~, instructional personnel, or school administrator~~ has been convicted of:

(1) Any felony offense prohibited under any of the following statutes:

(a) Section 393.135, relating to sexual misconduct with certain developmentally disabled clients and reporting of such sexual misconduct.

(b) Section 394.4593, relating to sexual misconduct with certain mental health patients and reporting of such sexual misconduct.

(c) Section 415.111, relating to adult abuse, neglect, or exploitation of aged persons or disabled adults.

(d) Section 782.04, relating to murder.

(e) Section 782.07, relating to manslaughter, aggravated manslaughter of an elderly person or disabled adult, aggravated manslaughter of a child, or aggravated manslaughter of an officer, a firefighter, an emergency medical technician, or a paramedic.

(f) Section 784.021, relating to aggravated assault.

(g) Section 784.045, relating to aggravated battery.

(h) Section 784.075, relating to battery on a detention or commitment facility staff member or a juvenile probation officer.

(i) Section 787.01, relating to kidnapping.

(j) Section 787.02, relating to false imprisonment.

(k) Section 787.025, relating to luring or enticing a

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child.

(l) Section 787.04(2), relating to leading, taking, enticing, or removing a minor beyond the state limits, or concealing the location of a minor, with criminal intent pending custody proceedings.

(m) Section 787.04(3), relating to leading, taking, enticing, or removing a minor beyond the state limits, or concealing the location of a minor, with criminal intent pending dependency proceedings or proceedings concerning alleged abuse or neglect of a minor.

(n) Section 790.115(1), relating to exhibiting firearms or weapons at a school-sponsored event, on school property, or within 1,000 feet of a school.

(o) Section 790.115(2)(b), relating to possessing an electric weapon or device, destructive device, or other weapon at a school-sponsored event or on school property.

(p) Section 794.011, relating to sexual battery.

(q) Former s. 794.041, relating to sexual activity with or solicitation of a child by a person in familial or custodial authority.

(r) Section 794.05, relating to unlawful sexual activity with certain minors.

(s) Section 794.08, relating to female genital mutilation.

(t) Chapter 796, relating to prostitution.

(u) Chapter 800, relating to lewdness and indecent exposure.

(v) Section 800.101, relating to offenses against students by authority figures.

(w) ~~(v)~~ Section 806.01, relating to arson.

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(x) ~~(w)~~ Section 810.14, relating to voyeurism.
(y) ~~(x)~~ Section 810.145, relating to video voyeurism.
(z) ~~(y)~~ Section 812.014(6), relating to coordinating the commission of theft in excess of $3,000.
(aa) ~~(z)~~ Section 812.0145, relating to theft from persons 65 years of age or older.
(bb) ~~(aa)~~ Section 812.019, relating to dealing in stolen property.
(cc) ~~(bb)~~ Section 812.13, relating to robbery.
(dd) ~~(cc)~~ Section 812.131, relating to robbery by sudden snatching.
(ee) ~~(dd)~~ Section 812.133, relating to carjacking.
(ff) ~~(ee)~~ Section 812.135, relating to home-invasion robbery.
(gg) ~~(ff)~~ Section 817.563, relating to fraudulent sale of controlled substances.
(hh) ~~(gg)~~ Section 825.102, relating to abuse, aggravated abuse, or neglect of an elderly person or disabled adult.
(ii) ~~(hh)~~ Section 825.103, relating to exploitation of an elderly person or disabled adult.
(jj) ~~(ii)~~ Section 825.1025, relating to lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person.
(kk) ~~(jj)~~ Section 826.04, relating to incest.
(ll) ~~(kk)~~ Section 827.03, relating to child abuse, aggravated child abuse, or neglect of a child.
(mm) ~~(ll)~~ Section 827.04, relating to contributing to the delinquency or dependency of a child.
(nn) ~~(mm)~~ Section 827.071, relating to sexual performance by

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a child.

(oo) ~~(nn)~~ Section 843.01, relating to resisting arrest with violence.

(pp) ~~(oo)~~ Chapter 847, relating to obscenity.

(qq) ~~(pp)~~ Section 874.05, relating to causing, encouraging, soliciting, or recruiting another to join a criminal street gang.

(rr) ~~(qq)~~ Chapter 893, relating to drug abuse prevention and control, if the offense was a felony of the second degree or greater severity.

(ss) ~~(rr)~~ Section 916.1075, relating to sexual misconduct with certain forensic clients and reporting of such sexual misconduct.

(tt) ~~(ss)~~ Section 944.47, relating to introduction, removal, or possession of contraband at a correctional facility.

(uu) ~~(tt)~~ Section 985.701, relating to sexual misconduct in juvenile justice programs.

(vv) ~~(uu)~~ Section 985.711, relating to introduction, removal, or possession of contraband at a juvenile detention facility or commitment program.

(2) Any misdemeanor offense prohibited under any of the following statutes:

(a) Section 784.03, relating to battery, if the victim of the offense was a minor.

(b) Section 787.025, relating to luring or enticing a child.

(3) Any criminal act committed in another state or under federal law which, if committed in this state, constitutes an offense prohibited under any statute listed in subsection (1) or

subsection (2).

(4) Any delinquent act committed in this state or any delinquent or criminal act committed in another state or under federal law which, if committed in this state, qualifies an individual for inclusion on the Registered Juvenile Sex Offender List under s. 943.0435(1)(h)1.d.

Section 7. Subsection (12) of section 1012.56, Florida Statutes, is amended to read:

1012.56 Educator certification requirements.—

(12) DENIAL OF CERTIFICATE.—

(a) The Department of Education may deny an applicant a certificate if the department possesses evidence satisfactory to it that the applicant has committed an act or acts, or that a situation exists, for which the Education Practices Commission would be authorized to discipline a certified educator ~~revoke a teaching certificate~~.

(b) The decision of the department is subject to review by the Education Practices Commission upon the filing of a written request from the applicant within 20 days after receipt of the notice of denial. Upon review, the commission may deny the award of a certificate, bar an applicant from reapplying for a certificate, or allow the awarding of a certificate with one or more of the following conditions:

1. Probation for a period of time.

2. Restriction on the scope of practice.

3. Issuance of a letter of reprimand.

4. Referral to the recovery network program provided in s. 1012.798 under such terms and conditions as the commission may specify.

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5. Imposition of an administrative fine not to exceed $2,000 for each count or separate offense.

Section 8. Subsections (1) and (5) of section 1012.795, Florida Statutes, are amended to read:

1012.795 Education Practices Commission; authority to discipline.—

(1) The Education Practices Commission may suspend the educator certificate of any person as defined in s. 1012.01(2) or (3), for up to 5 years, thereby denying that person the right to teach or otherwise be employed by a district school board or public school in any capacity requiring direct contact with students for that period of time, after which the holder may return to teaching as provided in subsection (4); may revoke the educator certificate of any person, thereby denying that person the right to teach or otherwise be employed by a district school board or public school in any capacity requiring direct contact with students for up to 10 years, with reinstatement subject to ~~the provisions of~~ subsection (4); may permanently revoke ~~permanently~~ the educator certificate of any person thereby denying that person the right to teach or otherwise be employed by a district school board or public school in any capacity requiring direct contact with students; may suspend a person's ~~the~~ educator certificate, upon an order of the court or notice by the Department of Revenue relating to the payment of child support; or may impose any other penalty provided by law, if the person:

(a) Obtained or attempted to obtain an educator certificate by fraudulent means.

(b) Knowingly failed to report actual or suspected child

abuse as required in s. 1006.061 or report alleged misconduct by instructional personnel or school administrators which affects the health, safety, or welfare of a student as required in s. 1012.796.

(c) Has proved to be incompetent to teach or to perform duties as an employee of the public school system or to teach in or to operate a private school.

(d) Has been guilty of gross immorality or an act involving moral turpitude as defined by rule of the State Board of Education, including engaging in or soliciting sexual, romantic, or lewd conduct with a student or minor.

(e) Has had an educator certificate or other professional license sanctioned by this or any other ~~revocation, suspension, or surrender in another~~ state or has had the authority to practice the regulated profession revoked, suspended, or otherwise acted against, including a denial of certification or licensure by the licensing or certifying authority of any jurisdiction, including its agencies and subdivisions. The licensing or certifying authority's acceptance of a relinquishment, stipulation, consent order, or other settlement offered in response to or in anticipation of the filing of charges against the licensee or certificateholder shall be construed as action against the license or certificate.

(f) Has been convicted or found guilty of, has had adjudication withheld for, or has pled ~~entered a plea of~~ guilty or nolo contendere to~~, regardless of adjudication of guilt,~~ a misdemeanor, felony, or any other criminal charge, other than a minor traffic violation.

(g) Upon investigation, has been found guilty of personal

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conduct that seriously reduces that person's effectiveness as an employee of the district school board.

(h) Has breached a contract, as provided in s. 1012.33(2) or s. 1012.335.

(i) Has been the subject of a court order or notice by the Department of Revenue pursuant to s. 409.2598 directing the Education Practices Commission to suspend the certificate as a result of noncompliance with a child support order, a subpoena, an order to show cause, or a written agreement with the Department of Revenue.

(j) Has violated the Principles of Professional Conduct for the Education Profession prescribed by State Board of Education rules.

(k) Has otherwise violated the provisions of law, the penalty for which is the revocation of the educator certificate.

(l) Has violated any order of the Education Practices Commission.

(m) Has been the subject of a court order or plea agreement in any jurisdiction which requires the certificateholder to surrender or otherwise relinquish his or her educator's certificate. A surrender or relinquishment shall be for permanent revocation of the certificate. A person may not surrender or otherwise relinquish his or her certificate prior to a finding of probable cause by the commissioner as provided in s. 1012.796.

(n) Has been disqualified from educator certification under s. 1012.315.

(o) Has committed a third recruiting offense as determined by the Florida High School Athletic Association (FHSAA) pursuant

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to s. 1006.20(2)(b).

(p) Has violated test security rules as provided in s. 1008.24.

(5) Each district school superintendent and the governing authority of each university lab school, state-supported school, private school, and the FHSAA shall report to the department the name of any person certified pursuant to this chapter ~~or employed and qualified pursuant to s. 1012.39~~:

(a) Who has been convicted or found guilty of, who has had adjudication withheld for, or who has pled guilty or nolo contendere to~~,~~ a misdemeanor, felony, or any other criminal charge, other than a minor traffic infraction;

(b) Who that official has reason to believe has committed or is found to have committed any act which would be a ground for revocation or suspension under subsection (1); or

(c) Who has been dismissed or severed from employment because of conduct involving any immoral, unnatural, or lascivious act.

Section 9. Paragraphs (d) and (e) of subsection (1) and paragraphs (a) and (d) of subsection (7) of section 1012.796, Florida Statutes, are amended to read:

1012.796 Complaints against teachers and administrators; procedure; penalties.—

(1)

(d)1. Each school district shall file in writing with the department all legally sufficient complaints within 30 days after the date on which subject matter of the complaint comes to the attention of the school district, regardless of whether the subject of the complaint is still an employee of the school

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district. A complaint is legally sufficient if it contains ultimate facts that show a violation has occurred as provided in s. 1012.795 and defined by rule of the State Board of Education. The school district shall include all information relating to the complaint which is known to the school district at the time of filing.

2. A school district shall immediately notify the department if the subject of a legally sufficient complaint of misconduct affecting the health, safety, or welfare of a student resigns or is terminated before the conclusion of the school district's investigation. Upon receipt of the notification, the department shall place an alert on the person's certification file indicating that he or she resigned or was terminated before an investigation involving allegations of misconduct affecting the health, safety, or welfare of a student was concluded. In such circumstances, the database may not include specific information relating to the alleged misconduct until permitted by subsection (4).

3. Each district school board shall develop and adopt policies and procedures to comply with this reporting requirement. School board policies and procedures must include standards for screening, hiring, and terminating instructional personnel and school administrators, as defined in s. 1012.01; standards of ethical conduct for instructional personnel and school administrators; the duties of instructional personnel and school administrators for upholding the standards; detailed procedures for reporting alleged misconduct by instructional personnel and school administrators which affects the health, safety, or welfare of a student; requirements for the

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reassignment of instructional personnel or school administrators pending the outcome of a misconduct investigation; and penalties for failing to comply with s. 1001.51 or s. 1012.795. The district school board policies and procedures shall include appropriate penalties for all personnel of the district school board for nonreporting and procedures for promptly informing the district school superintendent of each legally sufficient complaint. The district school superintendent is charged with knowledge of these policies and procedures and is accountable for the training of all instructional personnel and school administrators of the school district on the standards of ethical conduct, policies, and procedures.

4. If the district school superintendent has knowledge of a legally sufficient complaint and does not report the complaint, or fails to enforce the policies and procedures of the district school board, and fails to comply with the requirements of this subsection, in addition to other actions against certificateholders authorized by law, the district school superintendent is subject to penalties as specified in s. 1001.51(12).

5. If the superintendent determines that misconduct by instructional personnel or school administrators who hold an educator certificate affects the health, safety, or welfare of a student and the misconduct warrants termination, the instructional personnel or school administrators may resign or be terminated, and the superintendent must report the misconduct to the department in the format prescribed by the department. The department shall maintain each report of misconduct as a public record in the instructional personnel’s or school

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administrators' certification files. This paragraph does not limit or restrict the power and duty of the department to investigate complaints, regardless of the school district's untimely filing, or failure to file, complaints and followup reports.

(e) If allegations arise against an employee who is certified under s. 1012.56 and employed in an educator-certificated position in any public school, charter school or governing board thereof, or private school that accepts scholarship students under s. 1002.39 or s. 1002.395, the school shall file in writing with the department a legally sufficient complaint within 30 days after the date on which the subject matter of the complaint came to the attention of the school, regardless of whether the subject of the allegations is still an employee of the school. A complaint is legally sufficient if it contains ultimate facts that show a violation has occurred as provided in s. 1012.795 and defined by rule of the State Board of Education. The school shall include all known information relating to the complaint with the filing of the complaint. This paragraph does not limit or restrict the power and duty of the department to investigate complaints, regardless of the school's untimely filing, or failure to file, complaints and followup reports. A school described in this paragraph shall immediately notify the department if the subject of a legally sufficient complaint of misconduct affecting the health, safety, or welfare of a student resigns or is terminated before the conclusion of the school's investigation. Upon receipt of the notification, the department shall place an alert on the person's certification file indicating that he or she resigned or was

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terminated before an investigation involving allegations of misconduct affecting the health, safety, or welfare of a student was concluded. In such circumstances, the database may not include specific information relating to the alleged misconduct until permitted by subsection (4).

(7) A panel of the commission shall enter a final order either dismissing the complaint or imposing one or more of the following penalties:

(a) Denial of an application for a ~~teaching~~ certificate or for an administrative or supervisory endorsement on a teaching certificate. The denial may provide that the applicant may not reapply for certification, and that the department may refuse to consider that applicant's application, for a specified period of time or permanently.

(d) Placement of the teacher, administrator, or supervisor on probation for a period of time and subject to such conditions as the commission may specify, including requiring the certified teacher, administrator, or supervisor to complete additional appropriate college courses or work with another certified educator, with the administrative costs of monitoring the probation assessed to the educator placed on probation. An educator who has been placed on probation shall, at a minimum:

1. Immediately notify the investigative office in the Department of Education upon employment or separation from ~~termination of~~ employment ~~in the state~~ in any public or private position requiring a Florida educator's certificate.

2. Have his or her immediate supervisor submit annual performance reports to the investigative office in the Department of Education.

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3. Pay to the commission within the first 6 months of each probation year the administrative costs of monitoring probation assessed to the educator.

4. Violate no law and fully comply with all district school board policies, school rules, and State Board of Education rules.

5. Satisfactorily perform his or her assigned duties in a competent, professional manner.

6. Bear all costs of complying with the terms of a final order entered by the commission.

The penalties imposed under this subsection are in addition to, and not in lieu of, the penalties required for a third recruiting offense pursuant to s. 1006.20(2)(b).

Section 10. 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 student safety; creating s. 800.101, F.S.; defining terms; prohibiting certain conduct with students by authority figures; providing penalties; providing exceptions; amending s. 810.097, F.S.; adding school buses to the definition of the term "school" for purposes of trespass upon grounds or facilities of a school; amending s. 1001.42, F.S.; requiring school districts to adopt certain standards

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of ethical conduct; requiring the district school superintendent to report certain misconduct to law enforcement agencies; amending s. 1001.51, F.S.; providing for the forfeiture of a district school superintendent's salary for a specified period for failure to report certain misconduct to law enforcement agencies; amending s. 1012.27, F.S.; requiring the district school superintendent to notify a parent of specified information relating to allegations of misconduct by instructional personnel or school administrators; amending s. 1012.31, F.S.; requiring a resignation or termination before an investigation of certain misconduct is concluded to be indicated in a personnel file; specifying that legally sufficient complaints of certain misconduct must be reported to the Department of Education; amending 1012.315, F.S.; expanding the scope of provisions requiring the disqualification of persons convicted of certain offenses to apply to all persons who are required to have contact with students; providing an additional offense that disqualifies such persons from employment; amending s. 1012.56, F.S.; authorizing the department to deny applicants for certification if the Education Practices Commission would be authorized to discipline such applicant; authorizing the commission to deny an award, bar reapplication, or approve an application with certain conditions; amending s. 1012.795, F.S.; authorizing the commission to take certain actions against persons who meet specified

criteria; revising reporting requirements concerning specified misconduct by certified personnel; amending s. 1012.796, F.S.; requiring a school district to file certain complaints with the department even if the subject of the complaint is no longer employed by the district; requiring a school district to immediately notify the department upon certain changes in employment status for certain employees requiring that certain information be included on an educator's certificate file; requiring certified educators who are placed on probation to immediately notify a specified office upon separation from, rather than termination of, employment; providing an effective date.

By the Committee on Education; and Senator Book

581-02336-18 20181548c1

A bill to be entitled

An act relating to K-12 student safety; amending s. 1006.07, F.S.; revising district school board duties to include security risk assessments; requiring certain self-assessments to be in a specified format; amending s. 1011.62, F.S.; prohibiting certain teachers from receiving bonuses related to specified FTE student membership calculations; authorizing the State Board of Education to adopt rules for rescinding certain certifications or grades; amending s. 1012.315, F.S.; providing that certain persons are ineligible for employment in a school district under specified circumstances; amending s. 1012.36, F.S.; providing that certain persons are not exempt from specified certification requirements; amending s. 1012.56, F.S.; requiring certified educators to inform their employers within a specified time period after being arrested for, rather than convicted of, certain offenses; authorizing the Department of Education to deny applicants for certification if the applicant could be disciplined by the Education Practices Commission; authorizing the commission to impose specified penalties on such applicants under certain circumstances; amending s. 1012.57, F.S.; providing that an adjunct teaching certificate does not fulfill specified certification requirements; amending s. 1012.795, F.S.; authorizing the commission to take certain actions against persons who meet specified criteria; amending s. 1012.796, F.S.; requiring

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

581-02336-18 20181548c1

certified educators who are placed on probation to immediately notify a specified office upon separation from, rather than termination of, employment; providing an effective date.

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

Section 1. Subsection (6) of section 1006.07, Florida Statutes, is amended to read:

1006.07 District school board duties relating to student discipline and school safety.—The district school board shall provide for the proper accounting for all students, for the attendance and control of students at school, and for proper attention to health, safety, and other matters relating to the welfare of students, including:

(6) SAFETY AND SECURITY BEST PRACTICES.—Each school district shall ~~Use the Safety and Security Best Practices developed by the Office of Program Policy Analysis and Government Accountability to~~ conduct a security risk assessment at each public school and conduct a self-assessment of the school districts' current safety and security practices using a format prescribed by the department. Based on these assessment ~~self-assessment~~ findings, the district school superintendent shall provide recommendations to the district school board which identify strategies and activities that the district school board should implement in order to improve school safety and security. Annually, each district school board must receive such findings and the superintendent's recommendations ~~the self-assessment results~~ at a publicly noticed district school board

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meeting to provide the public an opportunity to hear the district school board members discuss and take action on the ~~report~~ findings and recommendations. Each district school superintendent shall report such findings ~~the self-assessment results~~ and school board action to the commissioner within 30 days after the district school board meeting.

Section 2. Paragraphs (o) and (t) of subsection (1) of section 1011.62, Florida Statutes, are amended to read:

1011.62 Funds for operation of schools.—If the annual allocation from the Florida Education Finance Program to each district for operation of schools is not determined in the annual appropriations act or the substantive bill implementing the annual appropriations act, it shall be determined as follows:

(1) COMPUTATION OF THE BASIC AMOUNT TO BE INCLUDED FOR OPERATION.—The following procedure shall be followed in determining the annual allocation to each district for operation:

(o) *Calculation of additional full-time equivalent membership based on successful completion of a career-themed course pursuant to ss. 1003.491, 1003.492, and 1003.493, or courses with embedded CAPE industry certifications or CAPE Digital Tool certificates, and issuance of industry certification identified on the CAPE Industry Certification Funding List pursuant to rules adopted by the State Board of Education or CAPE Digital Tool certificates pursuant to s. 1003.4203.*—

1.a. A value of 0.025 full-time equivalent student membership shall be calculated for CAPE Digital Tool

certificates earned by students in elementary and middle school grades.

b. A value of 0.1 or 0.2 full-time equivalent student membership shall be calculated for each student who completes a course as defined in s. 1003.493(1)(b) or courses with embedded CAPE industry certifications and who is issued an industry certification identified annually on the CAPE Industry Certification Funding List approved under rules adopted by the State Board of Education. A value of 0.2 full-time equivalent membership shall be calculated for each student who is issued a CAPE industry certification that has a statewide articulation agreement for college credit approved by the State Board of Education. For CAPE industry certifications that do not articulate for college credit, the Department of Education shall assign a full-time equivalent value of 0.1 for each certification. Middle grades students who earn additional FTE membership for a CAPE Digital Tool certificate pursuant to sub-subparagraph a. may not use the previously funded examination to satisfy the requirements for earning an industry certification under this sub-subparagraph. Additional FTE membership for an elementary or middle grades student may not exceed 0.1 for certificates or certifications earned within the same fiscal year. The State Board of Education shall include the assigned values on the CAPE Industry Certification Funding List under rules adopted by the state board. Such value shall be added to the total full-time equivalent student membership for grades 6 through 12 in the subsequent year. CAPE industry certifications earned through dual enrollment must be reported and funded pursuant to s. 1011.80. However, if a student earns a

certification through a dual enrollment course and the certification is not a fundable certification on the postsecondary certification funding list, or the dual enrollment certification is earned as a result of an agreement between a school district and a nonpublic postsecondary institution, the bonus value shall be funded in the same manner as other nondual enrollment course industry certifications. In such cases, the school district may provide for an agreement between the high school and the technical center, or the school district and the postsecondary institution may enter into an agreement for equitable distribution of the bonus funds.

c. A value of 0.3 full-time equivalent student membership shall be calculated for student completion of the courses and the embedded certifications identified on the CAPE Industry Certification Funding List and approved by the commissioner pursuant to ss. 1003.4203(5)(a) and 1008.44.

d. A value of 0.5 full-time equivalent student membership shall be calculated for CAPE Acceleration Industry Certifications that articulate for 15 to 29 college credit hours, and 1.0 full-time equivalent student membership shall be calculated for CAPE Acceleration Industry Certifications that articulate for 30 or more college credit hours pursuant to CAPE Acceleration Industry Certifications approved by the commissioner pursuant to ss. 1003.4203(5)(b) and 1008.44.

2. Each district must allocate at least 80 percent of the funds provided for CAPE industry certification, in accordance with this paragraph, to the program that generated the funds. This allocation may not be used to supplant funds provided for basic operation of the program.

3. For CAPE industry certifications earned in the 2013-2014 school year and in subsequent years, the school district shall distribute to each classroom teacher who provided direct instruction toward the attainment of a CAPE industry certification that qualified for additional full-time equivalent membership under subparagraph 1.:

a. A bonus of $25 for each student taught by a teacher who provided instruction in a course that led to the attainment of a CAPE industry certification on the CAPE Industry Certification Funding List with a weight of 0.1.

b. A bonus of $50 for each student taught by a teacher who provided instruction in a course that led to the attainment of a CAPE industry certification on the CAPE Industry Certification Funding List with a weight of 0.2.

c. A bonus of $75 for each student taught by a teacher who provided instruction in a course that led to the attainment of a CAPE industry certification on the CAPE Industry Certification Funding List with a weight of 0.3.

d. A bonus of $100 for each student taught by a teacher who provided instruction in a course that led to the attainment of a CAPE industry certification on the CAPE Industry Certification Funding List with a weight of 0.5 or 1.0.

Bonuses awarded pursuant to this paragraph shall be provided to teachers who are employed by the district in the year in which the additional FTE membership calculation is included in the calculation. Bonuses shall be calculated based upon the associated weight of a CAPE industry certification on the CAPE Industry Certification Funding List for the year in which the

certification is earned by the student. Any bonus awarded to a teacher pursuant to ~~under~~ this paragraph is in addition to any regular wage or other bonus the teacher received or is scheduled to receive. A bonus may not be awarded to a teacher who fails to maintain the security of any CAPE industry certification examination or who otherwise violates the security or administration protocol of any assessment instrument that may result in a bonus being awarded to the teacher under this paragraph.

(t) *Computation for funding through the Florida Education Finance Program.*—The State Board of Education may adopt rules establishing programs, industry certifications, and courses for which the student may earn credit toward high school graduation and the criteria under which a student's industry certification or grade may be rescinded.

Section 3. Section 1012.315, Florida Statutes, is amended to read:

1012.315 Disqualification from employment.—A person is ineligible for educator certification or~~, and instructional personnel and school administrators, as defined in s. 1012.01, are ineligible for~~ employment in any position that requires direct contact with students in a district school system, charter school, or private school that accepts scholarship students under s. 1002.39 or s. 1002.395~~,~~ if the person~~, instructional personnel, or school administrator~~ has been convicted of:

(1) Any felony offense prohibited under any of the following statutes:

(a) Section 393.135, relating to sexual misconduct with

certain developmentally disabled clients and reporting of such sexual misconduct.

(b) Section 394.4593, relating to sexual misconduct with certain mental health patients and reporting of such sexual misconduct.

(c) Section 415.111, relating to adult abuse, neglect, or exploitation of aged persons or disabled adults.

(d) Section 782.04, relating to murder.

(e) Section 782.07, relating to manslaughter, aggravated manslaughter of an elderly person or disabled adult, aggravated manslaughter of a child, or aggravated manslaughter of an officer, a firefighter, an emergency medical technician, or a paramedic.

(f) Section 784.021, relating to aggravated assault.

(g) Section 784.045, relating to aggravated battery.

(h) Section 784.075, relating to battery on a detention or commitment facility staff member or a juvenile probation officer.

(i) Section 787.01, relating to kidnapping.

(j) Section 787.02, relating to false imprisonment.

(k) Section 787.025, relating to luring or enticing a child.

(l) Section 787.04(2), relating to leading, taking, enticing, or removing a minor beyond the state limits, or concealing the location of a minor, with criminal intent pending custody proceedings.

(m) Section 787.04(3), relating to leading, taking, enticing, or removing a minor beyond the state limits, or concealing the location of a minor, with criminal intent pending

dependency proceedings or proceedings concerning alleged abuse or neglect of a minor.

(n) Section 790.115(1), relating to exhibiting firearms or weapons at a school-sponsored event, on school property, or within 1,000 feet of a school.

(o) Section 790.115(2)(b), relating to possessing an electric weapon or device, destructive device, or other weapon at a school-sponsored event or on school property.

(p) Section 794.011, relating to sexual battery.

(q) Former s. 794.041, relating to sexual activity with or solicitation of a child by a person in familial or custodial authority.

(r) Section 794.05, relating to unlawful sexual activity with certain minors.

(s) Section 794.08, relating to female genital mutilation.

(t) Chapter 796, relating to prostitution.

(u) Chapter 800, relating to lewdness and indecent exposure.

(v) Section 806.01, relating to arson.

(w) Section 810.14, relating to voyeurism.

(x) Section 810.145, relating to video voyeurism.

(y) Section 812.014(6), relating to coordinating the commission of theft in excess of $3,000.

(z) Section 812.0145, relating to theft from persons 65 years of age or older.

(aa) Section 812.019, relating to dealing in stolen property.

(bb) Section 812.13, relating to robbery.

(cc) Section 812.131, relating to robbery by sudden

snatching.

(dd) Section 812.133, relating to carjacking.

(ee) Section 812.135, relating to home-invasion robbery.

(ff) Section 817.563, relating to fraudulent sale of controlled substances.

(gg) Section 825.102, relating to abuse, aggravated abuse, or neglect of an elderly person or disabled adult.

(hh) Section 825.103, relating to exploitation of an elderly person or disabled adult.

(ii) Section 825.1025, relating to lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person.

(jj) Section 826.04, relating to incest.

(kk) Section 827.03, relating to child abuse, aggravated child abuse, or neglect of a child.

(ll) Section 827.04, relating to contributing to the delinquency or dependency of a child.

(mm) Section 827.071, relating to sexual performance by a child.

(nn) Section 843.01, relating to resisting arrest with violence.

(oo) Chapter 847, relating to obscenity.

(pp) Section 874.05, relating to causing, encouraging, soliciting, or recruiting another to join a criminal street gang.

(qq) Chapter 893, relating to drug abuse prevention and control, if the offense was a felony of the second degree or greater severity.

(rr) Section 916.1075, relating to sexual misconduct with

certain forensic clients and reporting of such sexual misconduct.

(ss) Section 944.47, relating to introduction, removal, or possession of contraband at a correctional facility.

(tt) Section 985.701, relating to sexual misconduct in juvenile justice programs.

(uu) Section 985.711, relating to introduction, removal, or possession of contraband at a juvenile detention facility or commitment program.

(2) Any misdemeanor offense prohibited under any of the following statutes:

(a) Section 784.03, relating to battery, if the victim of the offense was a minor.

(b) Section 787.025, relating to luring or enticing a child.

(3) Any criminal act committed in another state or under federal law which, if committed in this state, constitutes an offense prohibited under any statute listed in subsection (1) or subsection (2).

(4) Any delinquent act committed in this state or any delinquent or criminal act committed in another state or under federal law which, if committed in this state, qualifies an individual for inclusion on the Registered Juvenile Sex Offender List under s. 943.0435(1)(h)1.d.

Section 4. Subsection (3) is added to section 1012.36, Florida Statutes, to read:

1012.36 Part-time teachers.—

(3) Persons employed under the provisions of this section are not exempt from the requirements of s. 1012.55(2)(a).

Section 5. Paragraph (b) of subsection (10) and subsection (12) of section 1012.56, Florida Statutes, are amended to read:

1012.56 Educator certification requirements.—

(10) BACKGROUND SCREENING REQUIRED, INITIALLY AND PERIODICALLY.—

(b) A person may not receive a certificate under this chapter until the person's screening under s. 1012.32 is completed and the results have been submitted to the Department of Education or to the district school superintendent of the school district that employs the person. Every 5 years after obtaining initial certification, each person who is required to be certified under this chapter must be rescreened in accordance with s. 1012.32, at which time the school district shall request the Department of Law Enforcement to forward the fingerprints to the Federal Bureau of Investigation for federal criminal records checks. If, for any reason after obtaining initial certification, the fingerprints of a person who is required to be certified under this chapter are not retained by the Department of Law Enforcement under s. 1012.32(3)(a) and (b), the person must file a complete set of fingerprints with the district school superintendent of the employing school district. Upon submission of fingerprints for this purpose, the school district shall request the Department of Law Enforcement to forward the fingerprints to the Federal Bureau of Investigation for federal criminal records checks, and the fingerprints shall be retained by the Department of Law Enforcement under s. 1012.32(3)(a) and (b). The cost of the state and federal criminal history checks required by paragraph (a) and this paragraph may be borne by the district school board or the

employee. Under penalty of perjury, each person who is certified under this chapter must agree to inform his or her employer within 48 hours if arrested for ~~convicted of~~ any disqualifying offense while he or she is employed in a position for which such certification is required.

(12) DENIAL OF CERTIFICATE.—

(a) The Department of Education may deny an applicant a certificate if the department possesses evidence satisfactory to it that the applicant has committed an act or acts, or that a situation exists, for which the Education Practices Commission would be authorized to discipline a certified educator ~~revoke a teaching certificate~~.

(b) The decision of the department is subject to review by the Education Practices Commission upon the filing of a written request from the applicant within 20 days after receipt of the notice of denial. Upon review, the commission may impose one or more of the following penalties pursuant to s. 1012.796(7):

1. Denial of an application.

2. Bar from reapplication.

3. Probation for a period of time.

4. Restriction of the scope of practice.

5. Issuance of a letter of reprimand.

6. Referral of the teacher, administrator, or supervisor to the recovery network program provided in s. 1012.798 under such terms and conditions as the commission may specify.

7. An administrative fine not to exceed $2,000 for each count or separate offense.

Section 6. Subsection (1) of section 1012.57, Florida Statutes, is amended to read:

1012.57 Certification of adjunct educators.—

(1) Notwithstanding ~~the provisions of~~ ss. 1012.32, 1012.55, and 1012.56~~,~~ or any other provision of law or rule to the contrary, district school boards shall adopt rules to allow for the issuance of an adjunct teaching certificate to any applicant who fulfills the requirements of s. 1012.56(2)(a)-(f) and (10) and who has expertise in the subject area to be taught. An applicant shall be considered to have expertise in the subject area to be taught if the applicant demonstrates sufficient subject area mastery through passage of a subject area test. The adjunct teaching certificate shall be used for part-time teaching positions. The adjunct teaching certificate may not be used to fulfill the requirements of s. 1012.55(2)(a).

Section 7. Subsections (1) and (5) of section 1012.795, Florida Statutes, are amended to read:

1012.795 Education Practices Commission; authority to discipline.—

(1) The Education Practices Commission may deny an application for certification; may suspend the educator certificates ~~certificate~~ of any instructional personnel or school administrators, ~~person~~ as defined in s. 1012.01(2) or (3), for up to 5 years, thereby denying that person the right to teach or otherwise be employed by a district school board or public school in any capacity requiring direct contact with students for that period of time, after which the person ~~holder~~ may return to teaching as provided in subsection (4); may revoke the educator certificate of any person, thereby denying that person the right to teach or otherwise be employed by a district school board or public school in any capacity requiring direct

contact with students for up to 10 years, with reinstatement subject to ~~the provisions of~~ subsection (4); may permanently revoke ~~permanently~~ the educator certificate of any person, thereby denying that person the right to teach or otherwise be employed by a district school board or public school in any capacity requiring direct contact with students; may suspend a person's ~~the~~ educator certificate~~,~~ upon an order of the court or notice by the Department of Revenue relating to the payment of child support; or may impose any other penalty provided by law, if the person:

(a) Obtained or attempted to obtain an educator certificate by fraudulent means.

(b) Knowingly failed to report actual or suspected child abuse as required in s. 1006.061 or report alleged misconduct by instructional personnel or school administrators which affects the health, safety, or welfare of a student as required in s. 1012.796.

(c) Has proved to be incompetent to teach or to perform duties as an employee of the public school system or to teach in or to operate a private school.

(d) Has been guilty of gross immorality or an act involving moral turpitude as defined by rule of the State Board of Education.

(e) Has had an educator certificate or other professional license sanctioned by this or any other ~~revocation, suspension, or surrender in another~~ state or has had the authority to practice the regulated profession revoked, suspended, or otherwise acted against, including a denial of certification or licensure, by the licensing or certifying authority of any

jurisdiction, including its agencies and subdivisions. The licensing or certifying authority's acceptance of a relinquishment, stipulation, consent order, or other settlement offered in response to or in anticipation of the filing of charges against the licensee or certificateholder shall be construed as action against the license or certificate.

(f) Regardless of adjudication, has been convicted or found guilty of, or entered a plea of guilty or nolo contendere to, ~~regardless of adjudication of guilt,~~ a misdemeanor, a felony, or any other criminal charge, other than a minor traffic violation.

(g) Upon investigation, has been found guilty of personal conduct that seriously reduces that person's effectiveness as an employee of the district school board.

(h) Has breached a contract, as provided in s. 1012.33(2) or s. 1012.335.

(i) Has been the subject of a court order or notice by the Department of Revenue pursuant to s. 409.2598 directing the Education Practices Commission to suspend the certificate as a result of noncompliance with a child support order, a subpoena, an order to show cause, or a written agreement with the Department of Revenue.

(j) Has violated the Principles of Professional Conduct for the Education Profession prescribed by State Board of Education rules.

(k) Has otherwise violated the provisions of law, the penalty for which is the revocation of the educator certificate.

(l) Has violated any order of the Education Practices Commission.

(m) Has been the subject of a court order or plea agreement

in any jurisdiction which requires the certificateholder to surrender or otherwise relinquish his or her educator's certificate. A surrender or relinquishment shall be for permanent revocation of the certificate. A person may not surrender or otherwise relinquish his or her certificate prior to a finding of probable cause by the commissioner as provided in s. 1012.796.

(n) Has been disqualified from educator certification under s. 1012.315.

(o) Has committed a third recruiting offense as determined by the Florida High School Athletic Association (FHSAA) pursuant to s. 1006.20(2)(b).

(p) Has violated test security rules as provided in s. 1008.24.

(5) Each district school superintendent and the governing authority of each university lab school, state-supported school, private school, and the FHSAA shall report to the department the name of any person certified pursuant to this chapter ~~or employed and qualified pursuant to s. 1012.39~~:

(a) Who has been convicted or found guilty of, who has had adjudication withheld, or who has pled guilty or nolo contendere to~~,~~ a misdemeanor, a felony, or any other criminal charge, other than a minor traffic infraction;

(b) Who that official has reason to believe has committed or is found to have committed any act which would be a ground for revocation or suspension under subsection (1); or

(c) Who has been dismissed or severed from employment because of conduct involving any immoral, unnatural, or lascivious act.

Section 8. Paragraphs (a) and (d) of subsection (7) of section 1012.796, Florida Statutes, are amended to read:

1012.796 Complaints against teachers and administrators; procedure; penalties.—

(7) A panel of the commission shall enter a final order either dismissing the complaint or imposing one or more of the following penalties:

(a) Denial of an application for a ~~teaching~~ certificate or for an administrative or supervisory endorsement on a teaching certificate. The denial may provide that the applicant may not reapply for certification, and that the department may refuse to consider that applicant's application, for a specified period of time or permanently.

(d) Placement of the teacher, administrator, or supervisor on probation for a period of time and subject to such conditions as the commission may specify, including requiring the certified teacher, administrator, or supervisor to complete additional appropriate college courses or work with another certified educator, with the administrative costs of monitoring the probation assessed to the educator placed on probation. An educator who has been placed on probation shall, at a minimum:

1. Immediately notify the investigative office in the Department of Education upon employment or separation from ~~termination of~~ employment ~~in the state~~ in any public or private position requiring a Florida educator's certificate.

2. Have his or her immediate supervisor submit annual performance reports to the investigative office in the Department of Education.

3. Pay to the commission within the first 6 months of each

probation year the administrative costs of monitoring probation assessed to the educator.

4. Violate no law and fully comply with all district school board policies, school rules, and State Board of Education rules.

5. Satisfactorily perform his or her assigned duties in a competent, professional manner.

6. Bear all costs of complying with the terms of a final order entered by the commission.

The penalties imposed under this subsection are in addition to, and not in lieu of, the penalties required for a third recruiting offense pursuant to s. 1006.20(2)(b).

Section 9. This act shall take effect July 1, 2018.

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

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 6, 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 1548, relating to K-12 Student Safety, 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

APPEARANCE RECORD

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

3/12/18
Meeting Date

1549
Bill Number (if applicable)

1429446
Amendment Barcode (if applicable)

Topic K-12 Student Safety

Name Chase Daniels

Job Title Assistant Executive Director

Address 8700 Citizen Dr
Street

Phone 727-277-6226

New Port Rich, FL 34654
City *State* *Zip*

Email cdaniels@pascosheriff.org

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

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

Representing Pasco Sheriff's Office

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)

3/2/18
Meeting Date

1548
Bill Number (if applicable)

Topic K-12 Student Safety

Amendment Barcode (if applicable)

Name Alexander Anderson

Job Title Deputy Director, Governmental Relations

Address 325 W Gaines St
Street

Phone 245-0507

Tallahassee FL 32399
City *State* *Zip*

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/CS/SB 1612 (473282)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on the Environment and Natural Resources); Environmental Preservation and Conservation Committee; and Senators Rader and Book
SUBJECT:	Airboat Regulation
DATE:	March 1, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Istler	Rogers	EP	**Fav/CS**
2.	Reagan	Betta	AEN	**Recommend: Fav/CS**
3.	Reagan	Hansen	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 1612 creates "Ellie's Law" to prohibit, beginning December 31, 2018, a person from operating an airboat to carry passengers for hire on waters of the state unless he or she has all of the following onboard the airboat:

- Photographic identification.
- Proof of completion of a boating safety education course compliant with s. 327.395(1)(a), F.S., and the bill requires that all airboat operators carrying passengers for hire must complete this course, regardless of age or exemptions provided in s. 327.395, F.S., except as otherwise provided.
- Proof of successful completion of a commission-approved airboat operator course that meets the minimum standards established by the Fish and Wildlife Conservation Commission (FWC) rule.
- Proof of successful course completion in cardiopulmonary resuscitation and first aid.

A person issued a captain's license by the United States Coast Guard is not required to complete the boating safety education course. However, proof of such captain's license is required to be onboard the airboat when carrying passengers for hire on waters of the state.

The bill provides that a person who violates the airboat operating provisions commits a noncriminal infraction, punishable by up to a $500 fine.

The bill requires airboat operators that carry passengers for hire to complete a FWC-approved airboat operator course if they do not have a United States Coast Guard Captain's License. This will create a negative, indeterminate fiscal impact to these airboat operators.

To implement the provisions of the bill, the FWC will incur minimal costs, which can be absorbed within the FWC's existing resources.

II. Present Situation:

Airboats

Airboats are designed to operate in shallow water and marshlands.[1] An airboat is propelled by air pushed through the vessel's aircraft-like propeller to create a column of forced air that passes by the rudders.[2] It is best steered and controlled through acceleration, but its high center of gravity and lack of flotation make it susceptible to capsizing or sinking.[3] Unlike most boats, an airboat is incapable of going in reverse. Its forward momentum is slowed only by deceleration and the friction and displacement of the water.[4] As a vessel,[5] an airboat is regulated generally under state and federal vessel operation and safety requirements.

Florida Vessel Safety Law

Florida leads the nation in the number of vessels registered in any state with close to one million vessels.[6] The Fish and Wildlife Conservation Commission (FWC) is charged with coordinating and managing the waterways of the state to provide for safe and enjoyable boating.[7] 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.[8]

Chapter 327, F.S., titled the "Florida Vessel Safety Law," includes laws relating to vessel safety, such as boating safety education course requirements and vessel operation requirements. 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

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[1] Fish and Wildlife Conservation Commission (FWC), *The Florida Boaters Guide: A handbook of Boating Laws and Responsibilities*, 15 https://www.boat-ed.com/assets/pdf/handbook/fl_handbook_entire.pdf (last visited Jan. 16, 2018).
[2] *Id*.
[3] *Id*.
[4] *Id*.
[5] Section 327.02, F.S., defines the term "vessel" as being "synonymous with boat as referenced in s. 1(b), Art. VII of the State Constitution and includes every description of watercraft, barge, and airboat, other than a seaplane on the water, used or capable of being used as a means of transportation on water."
[6] FWC, 2016 Boating Accident Statistical Report, *Introduction*, II (2016) *available at* http://myfwc.com/media/4215167/2016BoatStatBook.pdf (last visited Jan. 3, 2018).
[7] FWC, *Boating in Florida*, http://myfwc.com/boating/ (last visited Jan. 8, 2018).
[8] FWC, 2016 Boating Accident Statistical Report, *Introduction*, I (2016) *available at* http://myfwc.com/media/4215167/2016BoatStatBook.pdf (last visited Jan. 3, 2018).

- Any other law enforcement officer described in s. 943.10, F.S.[9]

Any individual who operates a vessel with a willful disregard for the safety of persons or property will be cited for reckless operation of a vessel, which is a first degree misdemeanor punishable by a fine of up to $1,000 or a term of imprisonment not exceeding one year. Each operator is responsible for operating his or her vessel in a reasonable and prudent manner with regard for other vessel traffic, posted restrictions, the presence of divers-down flags, and other circumstances so as not to endanger people or property. Failure to do so is considered careless operation, which is a noncriminal infraction punishable by a penalty of $50.

Safety Equipment

Each vessel is required to have size-specific safety equipment on board. 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.[10]

Additionally, an airboat must be equipped with a mast or flagpole bearing a flag at a height of at least 10 feet above the lowest portion of the vessel.[11] Such flag must be orange in color and be displayed so that the visibility of the flag is not obscured in any direction.[12] An airboat is also required to have a device manufactured to effectively muffle the sound of engine exhaust.[13] These airboat specific requirements do not apply to a person participating in an event for which a permit is required, or for which notice must be given under s. 327.48, F.S., relating to regattas, races, marine parades, tournaments, or exhibitions.[14]

Boating Safety Identification Cards

In order to operate a vessel of 10 horsepower or greater, Florida law requires anyone who was born on or after January 1, 1988, to have aboard the vessel photographic identification and an FWC-issued boater safety identification card.[15] The card is proof that the holder has:

- Completed a commission-approved boater education course that meets the minimum eight hour instruction requirement established by the National Association of State Boating Law Administrators;

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[9] 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…"

[10] *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).

[11] Section 327.391(3), F.S.

[12] *Id*.

[13] 327.391, F.S.

[14] *Id*.

[15] Section 327.395(1), F.S.

- Passed a course equivalency examination approved by the FWC; or
- Passed a temporary certificate examination developed or approved by the FWC.[16]

The FWC may appoint liveries, marinas, or other persons as its agents to administer the course or examinations and issue identification cards.[17] An agent is required to charge a $2 examination fee, which must be forwarded to the FWC with proof of passage of the examination and may charge and keep a $1 service fee.[18] The boating courses include coverage related to:

- Vessel safety regulations, including personal flotation device requirements;
- State divers-down flag requirements;
- Boating restricted areas;
- Boating accidents; and
- Manatee and ecosystem awareness.

An identification card issued to a person who has completed a boating education course or a course equivalency examination is valid for life.[19] A card issued to a person who has passed a temporary certification examination is valid for 12 months from the date of issuance.[20]

A person is exempt from the boater safety identification card requirement if he or she:

- Is licensed by the United States Coast Guard to serve as master of a vessel;
- Operates a vessel only on a private lake or pond;
- Is accompanied in the vessel by a person who is exempt from this section or who holds an identification card in compliance with this section, is 18 years of age or older, and is attendant to the operation of the vessel and responsible for the safe operation of the vessel and for any violation that occurs during the operation of the vessel;
- Is a nonresident who has in his or her possession proof that he or she has completed a boater education course or equivalency examination in another state which meets or exceeds the Florida requirements;
- Is operating a vessel within 90 days after the purchase of that vessel and has available for inspection aboard that vessel a valid bill of sale;
- Is operating a vessel within 90 days after completing a commission-approved boater education course or passed a course equivalency examination approved by the commission and has a photographic identification card and a boater education certificate available for inspection as proof of having completed a boater education course. The boater education certificate must provide, at a minimum, the student's first and last name, the student's date of birth, and the date that he or she passed the course examination; or
- Is exempted by rule of the commission.[21]

The penalty for operating a vessel in violation of the boating safety identification card requirements is a noncriminal infraction, which is punishable by a civil penalty of $50.[22]

[16] *Id*.
[17] Section 327.395(4), F.S.
[18] *Id*.
[19] Section 327.395(5), F.S.
[20] *Id*.
[21] Section 327.395(6), F.S.
[22] Section 327.73(1)(s), F.S.

Passengers For Hire on Vessels

On federal waters a United States Coast Guard (USCG) issued license is required in order to legally carry passengers for hire.[23] This includes charters for fishing, sightseeing, diving, transportation, teaching or any use that is considered a passenger for hire situation.[24] When carrying six passengers or less, an operator of uninspected vessels (OUPV) license is required. When carrying more than six passengers, a Master license is required and the vessel itself must be built in accordance with strict inspection standards.[25] All USCG issued licenses must be renewed every five years, which requires a renewal physical examination and an approved drug test.[26]

To obtain either an OUPV license or a Master license an individual must submit an application; have a physical examination taken within 12 months of submitting the application; have an approved drug test taken within six months of submitting the application; and have received CPR and First Aid certification within 12 months of submitting the application. Additionally, for an OUPV license an individual must have 90 days of service in the last three years on vessels of appropriate tonnage and have 360 days of deck service in the operation of vessels.[27]

Additionally, an FWC-issued charter captain or boat license is required to carry passengers for hire for the purpose of taking, attempting to take, or possessing saltwater fish or organisms.[28] In order to purchase a charter captain or boat license an individual must have a USCG captain's license.[29]

Boating Accidents and Citations

In 2016, there were 714 reportable[30] boating accidents and 67 boating related fatalities in Florida.[31] Seventy percent of the operators involved in fatal accidents had no formal boater education.[32] The top three primary causes of the accidents reported in 2016 included no proper look-out, operator inexperience, and excessive speed.[33] From 2015-2017, a total of 112 airboat

[23] U.S. Department of Homeland Security, United States Coast Guard Auxiliary, *Captains' License Information*, http://wow.uscgaux.info/content.php?unit=054-09&category=captains-license-info (last visited Jan. 17, 2018).
[24] *Id*.
[25] *Id*.
[26] *Id*.
[27] *Id*.
[28] FWC, *Charter and Headboat Operators' and Guides'*, http://myfwc.com/license/saltwater/commercial-fishing/charter/ (last visited Jan. 17, 2018).
[29] *Id*.
[30] Boating accidents must meet at least one of the five criteria to be classified as reportable: a person dies; a person disappears under circumstances that indicate possible death or injury; a person receives an injury requiring medical treatment beyond immediate first aid; there is at least $2,000 in aggregate property damage to the vessel or other property; or there is a total loss of a vessel.
[31] FWC, 2016 Boating Accident Statistical Report, *Violation Summary*, IV (2016) *available at* http://myfwc.com/media/4215167/2016BoatStatBook.pdf (last visited Jan. 3, 2018).
[32] *Id*.
[33] *Id*. at 11.

accidents occurred in Florida, resulting in 146 injuries.[34] Commercial airboats represented 21 percent of the total accidents and almost 46 percent of the total injuries, including one fatality.[35]

The following chart provides a summary of the citations that were issued in 2016 relating to violations for registration and numbering requirements; safety equipment and regulations; boating safety education requirements; and the negligent operation of a vessel.

2016 Uniform Boating Citation Summary[36]

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
Boating Safety Education Boating safety education I.D. cards	455	285
Negligent Operation of a Vessel Reckless operation of a vessel Careless operation of a vessel Navigation rule violation resulting in an accident Navigation rule violation not resulting in an accident Failure to report an accident	420	173

III. Effect of Proposed Changes:

The bill creates "Ellie's Law" in honor of Elizabeth "Ellie" Goldenberg who died on Saturday, May 13, 2017, from injuries she sustained after being thrown from an airboat on an Everglades airboat tour.[37]

The bill prohibits, beginning December 31, 2018, a person from operating an airboat to carry passengers for hire on waters of the state unless he or she has all of the following onboard the airboat:

- Photographic identification.

[34] FWC, *Senate Bill 1612 Agency Analysis*, 2 (Jan. 22, 2018) (on file with the Senate Committee on Environmental Preservation and Conservation).
[35] *Id*.
[36] FWC, 2016 Boating Accident Statistical Report, *Violation Summary*, 35 (2016) *available at* http://myfwc.com/media/4215167/2016BoatStatBook.pdf (last visited Jan. 3, 2018).
[37] Howard Cohen, *A day after she graduated, UM student dies in Everglades boat crash*, THE MIAMI HERALD, May 15, 2017, *available at* http://www.miamiherald.com/news/local/education/article150577537.html (last visited Jan. 17, 2018).

- Proof of completion of a boating safety education course compliant with s. 327.395(1)(a), F.S., and the bill requires that all airboat operators carrying passengers for hire must complete this course, regardless of age or exemptions provided in s. 327.395, F.S., except as otherwise provided in this section.
- Proof of successful completion of a commission-approved airboat operator course that meets the minimum standards established by the FWC rule.
- Proof of successful course completion in cardiopulmonary resuscitation and first aid.

A person issued a captain's license by the United States Coast Guard is not required to complete the boating safety education course. However, proof of such captain's license is required to be onboard the airboat when carrying passengers for hire on waters of the state.

Additionally, the airboat operator requirements do not apply to a person participating in an event for which a permit is required, or for which notice must be given under s. 327.48, F.S., relating to regattas, races, marine parades, tournaments, or exhibitions, due to an existing section wide exemption in present s. 327.391(4), F.S.

The bill amends s. 327.73, F.S., to provide that a person who violates the airboat operating provisions commits a noncriminal infraction, punishable by up to a $500 fine.

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:

Airboat operators who do not have a United States Coast Guard Captains' License will be required to complete a FWC-approved airboat operator course to continue carrying passengers for hire.

C. Government Sector Impact:

The FWC will have increased workload relating to the adoption of rules to establish minimum standards for an approved airboat operator course. The costs associated with this increased workload may be absorbed within the FWC's existing resources.[38]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 327.391 and 327.73.

IX. Additional Information:

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

Recommended CS/CS by Appropriations Subcommittee on the Environment and Natural Resources on February 14, 2018:
The committee substitute provides technical changes to clarify what requirements must be met to carry passengers for hire on an airboat.

CS by Environmental Preservation and Conservation on January 22, 2018:
The CS changes the penalty for violations relating to the airboat operation requirements from a criminal to a noncriminal infraction. The maximum value for a fine remains the same at $500.

B. Amendments:

None.

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

[38] FWC, *Senate Bill 1612 Agency Analysis*, 5 (Jan. 22, 2018) (on file with the Senate Committee on Environmental Preservation and Conservation).

179484

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/03/2018	.	
	.	
	.	
	.	

The Committee on Appropriations (Rader) recommended the following:

Senate Amendment (with title amendment)

Between lines 40 and 41
insert:

(d) This subsection does not apply to a person who is a member of a federally recognized Indian tribe operating an airboat on the reservation-owned or reservation-leased land of such tribe.

(e) The commission shall adopt rules to implement this subsection no later than October 1, 2018.

179484

11
12 ================ T I T L E A M E N D M E N T ================
13 And the title is amended as follows:
14 Delete line 9
15 and insert:
16 providing a penalty; providing applicability;
17 requiring the Fish and Wildlife Conservation
18 Commission to adopt rules by a specified date;
19 amending s. 327.73, F.S.;

152212

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/03/2018	.	
	.	
	.	
	.	

The Committee on Appropriations (Rader) recommended the following:

Senate Amendment

Delete line 63
and insert:
Section 4. This act shall take effect July 1, 2019.

639812

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/03/2018	.	
	.	
	.	
	.	

The Committee on Appropriations (Rader) recommended the following:

Senate Amendment

Delete line 19
and insert:
(5)(a) Beginning July 1, 2019, a person may not

473282

576-03247-18

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 airboat regulation; providing a short title; amending s. 327.391, F.S.; requiring, by a specified date, a commercial airboat operator to have specified documents on board the airboat while carrying passengers for hire; requiring all airboat operators carrying passengers for hire to complete a boater education course; providing an exception; providing a penalty; amending s. 327.73, F.S.; providing a penalty for violation of airboat operation requirements; providing an effective date.

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

Section 1. This act may be cited as "Ellie's Law."

Section 2. Subsection (5) is added to section 327.391, Florida Statutes, to read:

327.391 Airboats regulated.—

(5)(a) Beginning December 31, 2018, a person may not operate an airboat carrying one or more passengers for hire on waters of the state, unless he or she has all of the following on board the airboat:

1. Photographic identification.

2. Proof of completion of a boater education course compliant with s. 327.395(1)(a). All airboat operators carrying passengers for hire must complete this course, regardless of age

473282

576-03247-18

or exemptions provided in s. 327.395, except as otherwise provided in this section.

3. Proof of successful completion of a commission-approved airboat operator course that meets the minimum standards established by commission rule.

4. Proof of successful course completion in cardiopulmonary resuscitation and first aid.

(b) A person issued a captain's license by the United States Coast Guard is not required to complete the boating safety education course required under s. 327.395. Proof of the captain's license must be on board the airboat when carrying passengers for hire on waters of the state.

(c) A person who violates this subsection commits a noncriminal infraction, punishable as provided in s. 327.73.

Section 3. Paragraph (cc) is added to subsection (1) of section 327.73, Florida Statutes, to read:

327.73 Noncriminal infractions.—

(1) Violations of the following provisions of the vessel laws of this state are noncriminal infractions:

(cc) Section 327.391(5), relating to airboat operation requirements, for which the civil penalty is up to a maximum of $500.

Any person cited for a violation of any provision of this subsection shall be deemed to be charged with a noncriminal infraction, shall be cited for such an infraction, and shall be cited to appear before the county court. The civil penalty for any such infraction is $50, except as otherwise provided in this section. Any person who fails to appear or otherwise properly

respond to a uniform boating citation shall, in addition to the charge relating to the violation of the boating laws of this state, be charged with the offense of failing to respond to such citation and, upon conviction, be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. A written warning to this effect shall be provided at the time such uniform boating citation is issued.

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 1612
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on the Environment and Natural Resources); Environmental Preservation and Conservation Committee; and Senators Rader and Book
SUBJECT:	Airboat Regulation
DATE:	March 5, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Istler	Rogers	EP	**Fav/CS**
2.	Reagan	Betta	AEN	**Recommend: Fav/CS**
3.	Reagan	Hansen	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1612 creates "Ellie's Law" to prohibit, beginning July 1, 2019, a person from operating an airboat to carry passengers for hire on waters of the state unless he or she has all of the following onboard the airboat:

- Photographic identification.
- Proof of completion of a boating safety education course compliant with s. 327.395(1)(a), F.S., and the bill requires that all airboat operators carrying passengers for hire must complete this course, regardless of age or exemptions provided in s. 327.395, F.S., except as otherwise provided.
- Proof of successful completion of a commission-approved airboat operator course that meets the minimum standards established by the Fish and Wildlife Conservation Commission (FWC) rule.
- Proof of successful course completion in cardiopulmonary resuscitation and first aid.

A person issued a captain's license by the United States Coast Guard is not required to complete the boating safety education course. However, proof of such captain's license is required to be onboard the airboat when carrying passengers for hire on waters of the state.

The bill provides that a person who violates the airboat operating provisions commits a noncriminal infraction, punishable by up to a $500 fine.

The bill requires airboat operators that carry passengers for hire to complete a FWC-approved airboat operator course if they do not have a United States Coast Guard Captain's License. This will create a negative, indeterminate fiscal impact to these airboat operators.

To implement the provisions of the bill, the FWC will incur minimal costs, which can be absorbed within the FWC's existing resources.

II. Present Situation:

Airboats

Airboats are designed to operate in shallow water and marshlands.[1] An airboat is propelled by air pushed through the vessel's aircraft-like propeller to create a column of forced air that passes by the rudders.[2] It is best steered and controlled through acceleration, but its high center of gravity and lack of flotation make it susceptible to capsizing or sinking.[3] Unlike most boats, an airboat is incapable of going in reverse. Its forward momentum is slowed only by deceleration and the friction and displacement of the water.[4] As a vessel,[5] an airboat is regulated generally under state and federal vessel operation and safety requirements.

Florida Vessel Safety Law

Florida leads the nation in the number of vessels registered in any state with close to one million vessels.[6] The Fish and Wildlife Conservation Commission (FWC) is charged with coordinating and managing the waterways of the state to provide for safe and enjoyable boating.[7] 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.[8]

Chapter 327, F.S., titled the "Florida Vessel Safety Law," includes laws relating to vessel safety, such as boating safety education course requirements and vessel operation requirements. 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

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[1] Fish and Wildlife Conservation Commission (FWC), *The Florida Boaters Guide: A handbook of Boating Laws and Responsibilities*, 15 https://www.boat-ed.com/assets/pdf/handbook/fl_handbook_entire.pdf (last visited Jan. 16, 2018).
[2] *Id*.
[3] *Id*.
[4] *Id*.
[5] Section 327.02, F.S., defines the term "vessel" as being "synonymous with boat as referenced in s. 1(b), Art. VII of the State Constitution and includes every description of watercraft, barge, and airboat, other than a seaplane on the water, used or capable of being used as a means of transportation on water."
[6] FWC, 2016 Boating Accident Statistical Report, *Introduction*, II (2016) *available at* http://myfwc.com/media/4215167/2016BoatStatBook.pdf (last visited Jan. 3, 2018).
[7] FWC, *Boating in Florida*, http://myfwc.com/boating/ (last visited Jan. 8, 2018).
[8] FWC, 2016 Boating Accident Statistical Report, *Introduction*, I (2016) *available at* http://myfwc.com/media/4215167/2016BoatStatBook.pdf (last visited Jan. 3, 2018).

- Any other law enforcement officer described in s. 943.10, F.S.[9]

Any individual who operates a vessel with a willful disregard for the safety of persons or property will be cited for reckless operation of a vessel, which is a first degree misdemeanor punishable by a fine of up to $1,000 or a term of imprisonment not exceeding one year. Each operator is responsible for operating his or her vessel in a reasonable and prudent manner with regard for other vessel traffic, posted restrictions, the presence of divers-down flags, and other circumstances so as not to endanger people or property. Failure to do so is considered careless operation, which is a noncriminal infraction punishable by a penalty of $50.

Safety Equipment

Each vessel is required to have size-specific safety equipment on board. 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.[10]

Additionally, an airboat must be equipped with a mast or flagpole bearing a flag at a height of at least 10 feet above the lowest portion of the vessel.[11] Such flag must be orange in color and be displayed so that the visibility of the flag is not obscured in any direction.[12] An airboat is also required to have a device manufactured to effectively muffle the sound of engine exhaust.[13] These airboat specific requirements do not apply to a person participating in an event for which a permit is required, or for which notice must be given under s. 327.48, F.S., relating to regattas, races, marine parades, tournaments, or exhibitions.[14]

Boating Safety Identification Cards

In order to operate a vessel of 10 horsepower or greater, Florida law requires anyone who was born on or after January 1, 1988, to have aboard the vessel photographic identification and an FWC-issued boater safety identification card.[15] The card is proof that the holder has:

- Completed a commission-approved boater education course that meets the minimum eight hour instruction requirement established by the National Association of State Boating Law Administrators;

[9] 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…"
[10] *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).
[11] Section 327.391(3), F.S.
[12] *Id*.
[13] 327.391, F.S.
[14] *Id*.
[15] Section 327.395(1), F.S.

- Passed a course equivalency examination approved by the FWC; or
- Passed a temporary certificate examination developed or approved by the FWC.[16]

The FWC may appoint liveries, marinas, or other persons as its agents to administer the course or examinations and issue identification cards.[17] An agent is required to charge a $2 examination fee, which must be forwarded to the FWC with proof of passage of the examination and may charge and keep a $1 service fee.[18] The boating courses include coverage related to:

- Vessel safety regulations, including personal flotation device requirements;
- State divers-down flag requirements;
- Boating restricted areas;
- Boating accidents; and
- Manatee and ecosystem awareness.

An identification card issued to a person who has completed a boating education course or a course equivalency examination is valid for life.[19] A card issued to a person who has passed a temporary certification examination is valid for 12 months from the date of issuance.[20]

A person is exempt from the boater safety identification card requirement if he or she:

- Is licensed by the United States Coast Guard to serve as master of a vessel;
- Operates a vessel only on a private lake or pond;
- Is accompanied in the vessel by a person who is exempt from this section or who holds an identification card in compliance with this section, is 18 years of age or older, and is attendant to the operation of the vessel and responsible for the safe operation of the vessel and for any violation that occurs during the operation of the vessel;
- Is a nonresident who has in his or her possession proof that he or she has completed a boater education course or equivalency examination in another state which meets or exceeds the Florida requirements;
- Is operating a vessel within 90 days after the purchase of that vessel and has available for inspection aboard that vessel a valid bill of sale;
- Is operating a vessel within 90 days after completing a commission-approved boater education course or passed a course equivalency examination approved by the commission and has a photographic identification card and a boater education certificate available for inspection as proof of having completed a boater education course. The boater education certificate must provide, at a minimum, the student's first and last name, the student's date of birth, and the date that he or she passed the course examination; or
- Is exempted by rule of the commission.[21]

The penalty for operating a vessel in violation of the boating safety identification card requirements is a noncriminal infraction, which is punishable by a civil penalty of $50.[22]

[16] *Id*.
[17] Section 327.395(4), F.S.
[18] *Id*.
[19] Section 327.395(5), F.S.
[20] *Id*.
[21] Section 327.395(6), F.S.
[22] Section 327.73(1)(s), F.S.

Passengers For Hire on Vessels

On federal waters a United States Coast Guard (USCG) issued license is required in order to legally carry passengers for hire.[23] This includes charters for fishing, sightseeing, diving, transportation, teaching or any use that is considered a passenger for hire situation.[24] When carrying six passengers or less, an operator of uninspected vessels (OUPV) license is required. When carrying more than six passengers, a Master license is required and the vessel itself must be built in accordance with strict inspection standards.[25] All USCG issued licenses must be renewed every five years, which requires a renewal physical examination and an approved drug test.[26]

To obtain either an OUPV license or a Master license an individual must submit an application; have a physical examination taken within 12 months of submitting the application; have an approved drug test taken within six months of submitting the application; and have received CPR and First Aid certification within 12 months of submitting the application. Additionally, for an OUPV license an individual must have 90 days of service in the last three years on vessels of appropriate tonnage and have 360 days of deck service in the operation of vessels.[27]

Additionally, an FWC-issued charter captain or boat license is required to carry passengers for hire for the purpose of taking, attempting to take, or possessing saltwater fish or organisms.[28] In order to purchase a charter captain or boat license an individual must have a USCG captain's license.[29]

Boating Accidents and Citations

In 2016, there were 714 reportable[30] boating accidents and 67 boating related fatalities in Florida.[31] Seventy percent of the operators involved in fatal accidents had no formal boater education.[32] The top three primary causes of the accidents reported in 2016 included no proper look-out, operator inexperience, and excessive speed.[33] From 2015-2017, a total of 112 airboat

[23] U.S. Department of Homeland Security, United States Coast Guard Auxiliary, *Captains' License Information*, http://wow.uscgaux.info/content.php?unit=054-09&category=captains-license-info (last visited Jan. 17, 2018).
[24] *Id*.
[25] *Id*.
[26] *Id*.
[27] *Id*.
[28] FWC, *Charter and Headboat Operators' and Guides'*, http://myfwc.com/license/saltwater/commercial-fishing/charter/ (last visited Jan. 17, 2018).
[29] *Id*.
[30] Boating accidents must meet at least one of the five criteria to be classified as reportable: a person dies; a person disappears under circumstances that indicate possible death or injury; a person receives an injury requiring medical treatment beyond immediate first aid; there is at least $2,000 in aggregate property damage to the vessel or other property; or there is a total loss of a vessel.
[31] FWC, 2016 Boating Accident Statistical Report, *Violation Summary*, IV (2016) *available at* http://myfwc.com/media/4215167/2016BoatStatBook.pdf (last visited Jan. 3, 2018).
[32] *Id*.
[33] *Id*. at 11.

accidents occurred in Florida, resulting in 146 injuries.[34] Commercial airboats represented 21 percent of the total accidents and almost 46 percent of the total injuries, including one fatality.[35]

The following chart provides a summary of the citations that were issued in 2016 relating to violations for registration and numbering requirements; safety equipment and regulations; boating safety education requirements; and the negligent operation of a vessel.

2016 Uniform Boating Citation Summary[36]

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
Boating Safety Education Boating safety education I.D. cards	455	285
Negligent Operation of a Vessel Reckless operation of a vessel Careless operation of a vessel Navigation rule violation resulting in an accident Navigation rule violation not resulting in an accident Failure to report an accident	420	173

III. Effect of Proposed Changes:

The bill creates "Ellie's Law" in honor of Elizabeth "Ellie" Goldenberg who died on Saturday, May 13, 2017, from injuries she sustained after being thrown from an airboat on an Everglades airboat tour.[37]

The bill prohibits, beginning July 1, 2019, a person from operating an airboat to carry passengers for hire on waters of the state unless he or she has all of the following onboard the airboat:

- Photographic identification.
- Proof of completion of a boating safety education course compliant with s. 327.395(1)(a), F.S., and the bill requires that all airboat operators carrying passengers for hire must

[34] FWC, *Senate Bill 1612 Agency Analysis*, 2 (Jan. 22, 2018) (on file with the Senate Committee on Environmental Preservation and Conservation).
[35] *Id*.
[36] FWC, 2016 Boating Accident Statistical Report, *Violation Summary*, 35 (2016) *available at* http://myfwc.com/media/4215167/2016BoatStatBook.pdf (last visited Jan. 3, 2018).
[37] Howard Cohen, *A day after she graduated, UM student dies in Everglades boat crash*, THE MIAMI HERALD, May 15, 2017, *available at* http://www.miamiherald.com/news/local/education/article150577537.html (last visited Jan. 17, 2018).

complete this course, regardless of age or exemptions provided in s. 327.395, F.S., except as otherwise provided in this section.
- Proof of successful completion of a commission-approved airboat operator course that meets the minimum standards established by the FWC rule.
- Proof of successful course completion in cardiopulmonary resuscitation and first aid.

A person issued a captain's license by the United States Coast Guard is not required to complete the boating safety education course. However, proof of such captain's license is required to be onboard the airboat when carrying passengers for hire on waters of the state.

Additionally, the airboat operator requirements do not apply to a person participating in an event for which a permit is required, or for which notice must be given under s. 327.48, F.S., relating to regattas, races, marine parades, tournaments, or exhibitions, due to an existing section wide exemption in present s. 327.391(4), F.S.

The bill amends s. 327.73, F.S., to provide that a person who violates the airboat operating provisions commits a noncriminal infraction, punishable by up to a $500 fine.

The bill exempts from these requirements members of a federally recognized Indian tribe operating an airboat on the reservation-owned or reservation-leased land of such tribe.

The bill requires the FWC to adopt rules to implement these requirements no later than October 1, 2018.

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:

Airboat operators who do not have a United States Coast Guard Captains' License will be required to complete a FWC-approved airboat operator course to continue carrying passengers for hire.

C. Government Sector Impact:

The FWC will have increased workload relating to the adoption of rules to establish minimum standards for an approved airboat operator course. The costs associated with this increased workload may be absorbed within the FWC's existing resources.[38]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 327.391 and 327.73.

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 March 2, 2018:
The committee substitute:

- Provides technical changes to clarify what requirements must be met to carry passengers for hire on an airboat;
- Exempts from these requirements members of a federally recognized Indian tribe operating an airboat on the reservation-owned or reservation-leased land of such tribe; and
- Requires the FWC to adopt rules to implement these requirements no later than October 1, 2018.

CS by Environmental Preservation and Conservation on January 22, 2018:
The CS changes the penalty for violations relating to the airboat operation requirements from a criminal to a noncriminal infraction. The maximum value for a fine remains the same at $500.

[38] FWC, *Senate Bill 1612 Agency Analysis*, 5 (Jan. 22, 2018) (on file with the Senate Committee on Environmental Preservation and Conservation).

B. Amendments:

None.

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

By the Committee on Environmental Preservation and Conservation; and Senators Rader and Book

592-02316-18 20181612c1

A bill to be entitled

An act relating to airboat regulation; providing a short title; amending s. 327.391, F.S.; requiring, by a specified date, a commercial airboat operator to have specified documents on board the airboat while carrying passengers for hire; providing an exception; providing a penalty; amending s. 327.73, F.S.; providing a penalty for violation of airboat operation requirements; providing an effective date.

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

Section 1. This act may be cited as "Ellie's Law."

Section 2. Subsection (5) is added to section 327.391, Florida Statutes, to read:

327.391 Airboats regulated.—

(5)(a) Beginning December 31, 2018, a person may not operate an airboat to carry passengers for hire on waters of the state unless he or she has all of the following on board the airboat:

1. A photographic identification card.

2. Proof of compliance with s. 327.395.

3. Proof of successful completion of a commission-approved airboat operator course that meets the minimum standards established by commission rule.

4. A certificate of successful course completion in cardiopulmonary resuscitation and first aid.

(b) A person issued a captain's license by the United States Coast Guard is not required to complete the boating

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

592-02316-18 20181612c1

safety education course required under s. 327.395. Proof of the captain's license must be on board the airboat when carrying passengers for hire on waters of the state.

(c) A person who violates this subsection commits a noncriminal infraction, punishable as provided in s. 327.73.

Section 3. Paragraph (cc) is added to subsection (1) of section 327.73, Florida Statutes, to read:

327.73 Noncriminal infractions.—

(1) Violations of the following provisions of the vessel laws of this state are noncriminal infractions:

(cc) Section 327.391(5), relating to airboat operation requirements, for which the civil penalty is up to a maximum of $500.

Any person cited for a violation of any provision of this subsection shall be deemed to be charged with a noncriminal infraction, shall be cited for such an infraction, and shall be cited to appear before the county court. The civil penalty for any such infraction is $50, except as otherwise provided in this section. Any person who fails to appear or otherwise properly respond to a uniform boating citation shall, in addition to the charge relating to the violation of the boating laws of this state, be charged with the offense of failing to respond to such citation and, upon conviction, be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. A written warning to this effect shall be provided at the time such uniform boating citation is issued.

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

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)

3-12-18
Meeting Date

1612
Bill Number (if applicable)

Topic Airboat Safety

Amendment Barcode (if applicable)

Name Lane Stephens

Job Title

Address 111 N Calhoun St
Street

Phone 850-933-3583

Email lane@sclgov.com

City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Airboat Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons 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 1646 (952426)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Transportation, Tourism, and Economic Development); Commerce and Tourism Committee; and Senators Montford and Gainer
SUBJECT:	Regional Rural Development Grants
DATE:	February 26, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Swift	McKay	CM	**Fav/CS**
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/CS/SB 1646 amends the Regional Rural Development Grant Program to:

- Increase the maximum annual grant amount to $250,000 from $150,000 that three regional economic development organizations that serve the entire region of a rural area of opportunity may receive.
- Increase the funds allocated for the program to up to $1 million annually from up to $750,000 annually.
- Reduce the required match of non-state resources for grant funds from 100 percent to 25 percent of the state's contribution.
- Define the uses of grant funds to build the professional capacity of regional economic development organizations; and
- Allow a regional economic development organization to use these grants to provide technical assistance to local governments, local economic development organizations, and existing and prospective businesses within the rural community it serves.

The bill amends the Rural Infrastructure Fund program to increase the grant awards to 50 percent of infrastructure project costs from 30 percent of infrastructure project costs (or 40 percent of projects costs at a catalyst site in a rural area of opportunity). The bill also amends the program to clarify that eligible infrastructure projects include access to broadband Internet service and require such projects that improve service and access must be through a partnership with a dealer

of communications services that was publicly noticed and competitively bid. The bill requires the Department of Economic Opportunity to review the grant program application and award procedures by September 1, 2019.

Related to contracts or agreements for the Regional Rural Development Grant Program or the Rural Infrastructure Fund, the bill:

- Requires contracts or agreements that include the spending of these funds to be posted online at least 14 days prior to execution.
- Requires a plain language version of the contract or agreement to be posted online, if the contract agreement exceeds $35,000, is between certain entities, or is for certain purposes.
- Specifies required provisions for contracts or agreements expending state grant funds.

The bill has no impact on state funds. Under the bill, from the $1.6 million recurring appropriation to the Rural Community Development Revolving Loan Fund, the Department of Economic Opportunity may expend up to $1 million on the Rural Development Grant Program; if the maximum amount is expended on the grant program, then $600,000 would be available for the loan fund (up to $250,000 less annually).

The bill takes effect July 1, 2018.

II. Present Situation:

Rural Economic Development Initiative

The Rural Economic Development Initiative (REDI) was established in 1997 by the Legislature to encourage and facilitate the location and expansion of major economic development projects of significant scale in rural communities.[1] The REDI is responsible for coordinating and focusing the efforts and resources of state and regional agencies on the problems that affect the fiscal, economic, and community viability of Florida's economically distressed rural communities.[2] The REDI works with local governments, community-based organizations, and private organizations that have an interest in the growth and development of these communities to find ways to balance environmental and growth management issues with local needs.

Rural Areas of Opportunity

A rural area of opportunity (RAO) is a rural community, or region of rural communities, that has been adversely affected by an extraordinary economic event, severe or chronic distress, or a natural disaster or that presents a unique economic development opportunity of regional impact.[3] By executive order, the Governor may designate up to three RAOs, establishing each region as a priority assignment for REDI agencies. The Governor can waive the criteria, requirements, or any similar provisions of any state economic development incentive for projects in a RAO.[4]

[1] Section 288.0656, F.S.
[2] Agencies required to participate in the REDI are found in s. 288.0656(6)(a), F.S.
[3] Section 288.0656(1)(d), F.S.
[4] Section 288.0656(7), F.S.

The currently designated RAOs are:[5]

- **Northwestern RAO**: Calhoun, Franklin, Gadsden, Gulf, Holmes, Jackson, Liberty, Wakulla, and Washington counties, and the City of Freeport in Walton County.
- **South Central RAO**: DeSoto, Glades, Hardee, Hendry, Highlands, and Okeechobee counties, and the cities of Pahokee, Belle Glade, South Bay (Palm Beach County), and Immokalee (Collier County).
- **North Central RAO**: Baker, Bradford, Columbia, Dixie, Gilchrist, Hamilton, Jefferson, Lafayette, Levy, Madison, Putnam, Suwannee, Taylor, and Union counties.

Regional Economic Development Organizations

Three regional economic development organizations that operate in the state coincide with the current RAOs. These public/private 501(c)(6) organizations provide economic development support to the local governments that represent the RAOs. Opportunity Florida serves the Northwestern RAO.[6] Florida's Heartland Regional Economic Development Initiative, Inc., serves the South Central RAO.[7] The North Florida Economic Development Partnership serves the North Central RAO.[8]

Regional Rural Development Grant Program[9]

The Regional Rural Development Grant Program was established to provide funding, through matching grants, to build the professional capacity of regional economic development organizations in Florida. Additionally, grants from the program may be used by an economic development organization to provide technical assistance to businesses within the rural counties and communities that the organization serves. The Department of Economic Opportunity (DEO) administers the grant program through contract with Enterprise Florida, Inc.

To be approved, an applying organization must provide proof to the DEO of:

- The organization's need for the assistance;
- The official commitments of support from all the local governments represented by the organization
- Financial or in-kind commitments to the organization by each local government and the private sector;
- The organization's existence and active involvement in economic development activities in the region; and
- The manner in which the organization coordinates its efforts with those of other local and state organizations.

[5] Department of Economic Opportunity, *Rural Areas of Opportunity*, available at http://www.floridajobs.org/community-planning-and-development/rural-community-programs/rural-areas-of-opportunity (last visited February 15, 2018).
[6] *See generally*, Opportunity Florida, available at http://www.opportunityflorida.com/ (last visited February 15, 2018).
[7] *See generally*, Florida's Heartland Regional Economic Development Initiative, Inc., available at http://flaheartland.com/ (last visited February 15, 2018).
[8] *See generally*, North Florida Economic Development Partnership, available at http://nflp.org/, (last visited February 15, 2018).
[9] Section 288.018, F.S.

The maximum amount any organization can receive is $50,000, or $150,000 in a rural area of opportunity, and the grant must be matched by an equivalent amount of non-state resources. Because the Governor can waive criteria, requirements, or any similar provisions of any state economic development incentive in RAOs, the matching requirement is likely eligible to be waived.[10] The DEO may expend up to $750,000 each fiscal year from funds appropriated to the Rural Community Development Revolving Loan Fund for the program.

Rural Infrastructure Fund[11]

The Rural Infrastructure Fund was created to facilitate the planning, preparation, and financing of tourism infrastructure and economic development projects that encourage job growth and capital investment in rural communities. The DEO administers the fund and awards grants that maximize the use of federal, local, and private resources.

There are three grants that DEO awards from this fund: the total project participation grant, the infrastructure feasibility grant, and the preclearance review grant.[12]

The total project participation grant allows for awards up to 30 percent of the total infrastructure project cost for projects related to access to federal funds; and up to 40 percent if the project is a RAO catalyst site.[13] Eligible projects must be related to specific job creation or retention opportunities, and may include improving certain inadequate infrastructure that is prohibiting economic or community growth or reducing costs to community users of proposed infrastructure improvements that exceed costs in comparable communities. Infrastructure can include public or public-private partnership facilities, like storm water systems, roads, nature-based tourism facilities, and broadband facilities.

The infrastructure feasibility grant provides awards of up to 30 percent of the total project costs for infrastructure feasibility studies, design and engineering activities, or other infrastructure planning and preparation activities.[14] Maximum awards are dependent on the number of jobs that a business commits to create and may be up to $300,000 if the project is located in a RAO. The total project participation grant and infrastructure feasibility grant may be used in conjunction.

The preclearance review grant provides awards to help a local government participate in expedited permitting processes through technical assistance in preparing permit applications and local comprehensive plan amendments.[15] Grants may be used for surveys, feasibility studies, and other activities related to the identification and preclearance review of land use modifications. Grants are limited to $75,000 (or $300,000 for a project in a RAO) and must be matched 50

[10] Section 288.0656(7) and 288.018(1), F.S.
[11] Section 288.0655, F.S.
[12] Department of Economic Opportunity, *Rural Infrastructure Fund*, available at http://www.floridajobs.org/community-planning-and-development/rural-community-programs/rural-infrastructure-fund (last visited February 15, 2018).
[13] Section 288.0655(2)(b), F.S. A "catalyst site" is "a parcel or parcels of land within a rural area of opportunity that has been prioritized as a geographic site for economic development through partnerships with state, regional, and local organizations. The site must be reviewed by REDI and approved by the department for the purposes of locating a catalyst project." Section 288.0656(2)(b), F.S.
[14] Section 288.0655(2)(c), F.S.
[15] Section 288.0655(2)(e), F.S. Expedited permitting is pursuant to s. 403.973(18), F.S.

percent with local funds (or 33 percent for a project in a RAO, or waived for a project in a catalyst site).

The DEO reviews and certifies the grant applications in consultation with Enterprise Florida, Inc., the Florida Tourism Industry Marketing Corporation (VISIT Florida), the Department of Environmental Protection, and the Florida Fish and Wildlife Conservation Commission, as appropriate.

In Fiscal Year 2017-2018, the funding appropriated for the Rural Infrastructure Fund was $1.6 million.[16]

III. Effect of Proposed Changes:

Regional Rural Development Grant Program

Section 1 amends the Regional Rural Development Grants Program in s. 288.018, F.S., to specify what the term "building the professional capacity" of regional economic development organizations includes, revise and increase the grant amount for certain organizations in RAOs, and to require certain contract requirements.

The bill specifies that "building the professional capacity" of a regional economic development organizations includes hiring professional staff to develop, facilitate, and provide economic development professional services. Economic development services include technical assistance, education and leadership development, and marketing and project recruitment. Grant funds under the bill may be used for these purposes.

Currently, grant funds may be used to provide technical assistance to businesses within the area that the regional economic development organization services. The bill expands the use of the grant funds to allow technical assistance to be provided to local governments, local economic development organizations, and existing and prospective businesses.

Related to the grant amount for organizations in RAOs, the bill increases the maximum grant amount from $150,000 to $250,000 specifically for each of the three regional economic development organizations recognized by the DEO that are serving the entire region of each RAO currently: Opportunity Florida; Florida Heartland Regional Economic Region of Opportunity; and the North Florida Economic Development Partnership. Regional economic development organizations not located in a RAO would still be eligible for a $50,000 grant and regional economic development organizations in a RAO would still be eligible for a $150,000 grant.

The bill reduces the required match for a grant under this program to 25 percent of the state contribution, instead of the current requirement for a 100 percent match (one to one match).

[16] Specific appropriation 2226Q, ch. 2017-70, L.O.F.

The bill increases the amount that the DEO may expend up each fiscal year on the program from up to $750,000 to up to $1 million. These funds are from the funds appropriated to the Rural Community Development Revolving Loan Fund.

Rural Infrastructure Fund

Section 2 amends the total project participation grant of the Rural Infrastructure Fund program in s. 288.0655, F.S., to increase the amount of the total infrastructure project costs that the grant can pay for from 30 percent to 50 percent. The bill repeals the grant award for up to 40 percent of total infrastructure project costs if the project is a RAO catalyst site.

The bill specifies that eligible projects may include improving certain inadequate infrastructure that reduces costs to community users of proposed infrastructure improvements that exceed costs in comparable communities, *including improving access to and the availability of broadband Internet service*. Further, eligible uses of funds are expanded to include "improvements to broadband Internet service and access in unserved or underserved rural communities." Such eligible use must be conducted through a partnership or partnerships with one or more dealers of communications services,[17] and the partnership must be established by a publicly noticed and competitively selected process.

The bill requires the DEO, in consultation with Enterprise Florida, Inc., the Florida Tourism Industry Marketing Corporation (VISIT Florida), the Department of Environmental Protection, and the Florida Fish and Wildlife Conservation Commission, to review and edit any guidelines or criteria for grant applications by September 1, 2019.

Contracts or Agreements Under the Regional Rural Development Grant Program and the Rural Infrastructure Fund

The bill amends both ss. 288.018 and 288.0655, F.S., relating to the Regional Rural Development Grant Program and the Rural Infrastructure Fund, respectively, to include the same requirements for contracts or agreements that expend grant funds.

The bill requires the contract or agreement to be posted on the contracting regional economic development organization's or the DEO's website for at least 14 days before execution. It is unclear from the text of the bill, but this may include the contract or agreement that the organization enters into with the DEO or Enterprise Florida, Inc., to receive the grant funds.

A contract or agreement to expend grant funds must include:
- The purpose of the contract or agreement;
- Specific performance standards and responsibilities of all involved parties;
- A detailed budget, if applicable;
- The value of services provided; and
- Estimated travel and entertainment expenses of board members and staff, if applicable.

[17] A "dealer of communications services" is defined as a person registered with the Department of Revenue as a provider of communications services in this state. *See* s. 202.11, F.S.

These required contract provisions apply to any contract or agreement that expends grant funds, but the bill specifies that this include any contract or agreement between another entity and a regional economic development organization, a unit of local government, or an economic development organization substantially underwritten by a unit of local government. Again, it is unclear from the text of the bill, but this may include the contract or agreement that the organization enters into with the DEO or Enterprise Florida, Inc., to receive the grant funded.

The bill requires specific contracts or agreements that exceed $35,000 and expend grant funds to be posted on the contracting regional economic development organization's or the DEO's website in a "plain language version." This applies to a contract or agreement with a private entity, a municipality, or a vendor of services, supplies, or programs (including marketing) or a contract or agreement for the purchase, lease, or use of lands, facilities, or properties.

Effective Date

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 requires 25 percent of all disbursed Regional Rural Development Grant funds to be matched annually by a nonstate source, a reduction from the current 100 percent (one to one) match.

C. Government Sector Impact:

The Rural Community Development Revolving Loan Fund receives a recurring appropriation of $1.6 million, of which up to $750,000 is statutorily distributed to the Regional Rural Development Grant program. The bill increases the maximum grant

amount that three regional economic development organizations that serve the entire region of a RAO may receive, from $150,000 to $250,000 annually.

The bill increases the amount that the DEO may expend up each fiscal year on the program from up to $750,000 to up to $1 million. These funds are from the funds appropriated to the Rural Community Development Revolving Loan Fund. From the $1.6 million recurring appropriation to the Rural Community Development Revolving Loan Fund, if the DEO expends the maximum amount on the Rural Development Grant Program (up to $1 million annually), then at least $600,000 would be available for the loan fund (up to $250,000 less annually).

The Rural Infrastructure Fund receives a recurring appropriation of $1.6 million. Specific inclusion of certain broadband Internet infrastructure projects as eligible for the total project participation grant may increase the competition for grant funds in the Rural Infrastructure Fund. Additionally, the bill increases the amount of total infrastructure project costs for which the grant will pay from 30 percent (or 40 percent if the project is at a catalyst site in a RAO) to 50 percent for all infrastructure projects, no matter the location. This change may lead to fewer grants awarded.

The cost to regional economic development organizations (Rural Development Grant Fund) to post contracts and "plain language" versions of contracts online is unknown. The DEO indicated that the bill would have no impact on state expenditures.[18]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 288.018 and 288.0655 of the Florida Statutes.

IX. Additional Information:

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

Recommended CS/CS by Appropriations Subcommittee on Transportation, Tourism, and Economic Development on February 21, 2018:
The committee substitute:

- Revises the maximum grant amounts that may be awarded under the Rural Development Grant Program.

[18] DEO, *2018 Agency Legislative Bill Analysis: SB 1646*, January 22, 2018.

- Increases the cap on the Rural Development Grant program from up to $750,000 to up to $1 million.
- Removes reference to 3 specifically named regional economic development organizations to receive grants under the Rural Development Grant program.
- Increases the amount of infrastructure project costs from 30 percent to 50 percent that a Rural Infrastructure Grant can be awarded to pay.
- Requires any infrastructure project funded for broadband Internet to be through a partnership with a communication services dealer, the partnership with which must be publicly noticed and competitively selected.

CS by Commerce and Tourism Committee on January 29, 2017:
The committee substitute made technical changes by correcting the name of a regional economic development organization.

B. Amendments:

None.

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

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/02/2018	.	
	.	
	.	
	.	

The Committee on Appropriations (Montford) recommended the following:

Senate Amendment (with title amendment)

Between lines 223 and 224
insert:

Section 3. In order to enhance and fortify the competitiveness of Florida rural communities for new businesses and job creation, the Department of Economic Opportunity is directed to review best practices and methods and make recommendations for the establishment of a site readiness

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program to assist rural communities in evaluating property in their jurisdictions, promoting the availability and benefits of such sites, and other related issues. The department must identify technical requirements and quality control standards that would best benefit such a program, and must provide options for the implementation of such a program. The department must seek the input of stakeholders and persons, groups, and organizations that are knowledgeable about rural areas and site readiness issues. The department must submit a report to the Legislature by December 1, 2018, of its findings.

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

And the title is amended as follows:

Delete line 43

and insert:

on a certain website; requiring the department to review best practices and methods and make recommendations to establish a site readiness program for rural communities; requiring certain information; requiring the report be completed and submitted by a certain date; providing an effective date.

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576-03502-18

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 regional rural development grants; amending s. 288.018, F.S.; providing that regional rural development grants may be used to hire regional economic development organization professional staff; authorizing the use of matching grant funds to provide technical assistance to certain entities; increasing the annual maximum amount of grant funding that specified economic development organizations may receive; revising the amount of nonstate matching funds required; increasing the amount the Department of Economic Opportunity may expend each fiscal year for the program; requiring that contracts or agreements involving the expenditure of grant funds be placed on a certain website for a specified time period; requiring that certain information be included in a contract or agreement involving the expenditure of grant funds; requiring that a plain language version of certain contracts or agreements be placed on a certain website; deleting an obsolete provision authorizing the Department of Economic Opportunity to contract for the development of certain enterprise zone web portals or websites; amending s. 288.0655, F.S.; increasing the maximum percent of total infrastructure project costs for which the department may award a grant; repealing a provision for increased

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maximum percent of total infrastructure project costs that may be awarded for a catalyst site; providing that improving access to and availability of broadband Internet service may be included in a project that is eligible for rural infrastructure grant funds; providing that grants for improvements to broadband Internet service and access must be conducted through certain partnerships; extending the date by which the department is required to reevaluate certain guidelines and criteria; requiring that contracts or agreements involving the expenditure of grant funds be placed on a certain website for a specified time period; requiring that certain information be included in a contract or agreement involving the expenditure of grant funds; requiring that a plain language version of certain contracts or agreements be placed on a certain website; providing an effective date.

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

Section 1. Subsections (1), (3), and (4) of section 288.018, Florida Statutes, are amended to read:

288.018 Regional Rural Development Grants Program.—

(1)(a) The department shall establish a matching grant program to provide funding to regional ~~regionally based~~ economic development organizations representing rural counties and communities to build ~~for the purpose of building~~ the professional capacity of such regional economic development ~~their~~ organizations. Building the professional capacity of

regional economic development organizations includes hiring professional staff to develop, facilitate the delivery of, and directly provide needed economic development professional services, including technical assistance, education and leadership development, marketing and project recruitment, and other services that are important for rural economic development. ~~Such~~ Matching grants may also be used by a regional ~~an~~ economic development organization to provide technical assistance to local governments, local economic development organizations, and existing and prospective businesses within the rural counties and communities that it serves.

(b) A regional economic development organization may apply to the department for a matching grant each year. The department is authorized to approve an application for a grant up to~~, on an annual basis, grants~~:

1. Fifty thousand dollars to a regional economic development organization;

2. One hundred fifty thousand dollars to an organization located ~~to such regionally based economic development organizations. The maximum amount an organization may receive in any year will be $50,000, or $150,000~~ in a rural area of opportunity designated pursuant to s. 288.0656; or

3. Two hundred fifty thousand dollars to any of the three regional economic development organizations that serve an entire region of a rural area of opportunity designated pursuant to s. 288.0656 and that are recognized by the department as serving such regions.

(c) Grant funds received by a regional economic development organization ~~recommended by the Rural Economic Development~~

~~Initiative and designated by the Governor, and~~ must be matched each year by ~~an equivalent amount of~~ nonstate resources in an amount equal to 25 percent of the state contribution.

(3)(a) A contract or agreement that involves the expenditure of grant funds provided under this section must be placed on the contracting regional economic development organization's website at least 14 days before execution.

(b) A contract or agreement that involves the expenditure of grant funds provided under this section, including a contract or agreement entered into between another entity and a regional economic development organization, a unit of local government, or an economic development organization substantially underwritten by a unit of local government, must include:

1. The purpose of the contract or agreement.

2. Specific performance standards and responsibilities for each entity.

3. A detailed project or contract budget, if applicable.

4. The value of any services provided.

5. The projected travel and entertainment expenses for employees and board members, if applicable.

(c) A plain language version of a contract or agreement with a private entity, a municipality, or a vendor of services, supplies, or programs, including marketing, or for the purchase or lease or use of lands, facilities, or properties which involves the expenditure of grant funds provided under this section and which is estimated to exceed $35,000 must be posted on the contracting regional economic development organization's website ~~The department may also contract for the development of an enterprise zone web portal or websites for each enterprise~~

~~zone which will be used to market the program for job creation in disadvantaged urban and rural enterprise zones. Each enterprise zone web page should include downloadable links to state forms and information, as well as local message boards that help businesses and residents receive information concerning zone boundaries, job openings, zone programs, and neighborhood improvement activities~~.

(4) The department may expend up to $1,000,000 ~~$750,000~~ each fiscal year from funds appropriated to the Rural Community Development Revolving Loan Fund for the purposes outlined in this section. The department may contract with Enterprise Florida, Inc., for the administration of the purposes specified in this section. Funds released to Enterprise Florida, Inc., for this purpose shall be released quarterly and shall be calculated based on the applications in process.

Section 2. Subsection (5) of section 288.0655, Florida Statutes, is redesignated as subsection (6), paragraph (b) of subsection (2) and subsection (4) of that section are amended, and a new subsection (5) is added to that section, to read:

288.0655 Rural Infrastructure Fund.—

(2)(b) To facilitate access of rural communities and rural areas of opportunity as defined by the Rural Economic Development Initiative to infrastructure funding programs of the Federal Government, such as those offered by the United States Department of Agriculture and the United States Department of Commerce, and state programs, including those offered by Rural Economic Development Initiative agencies, and to facilitate local government or private infrastructure funding efforts, the department may award grants for up to 50 ~~30~~ percent of the total

infrastructure project cost. ~~If an application for funding is for a catalyst site, as defined in s. 288.0656, the department may award grants for up to 40 percent of the total infrastructure project cost.~~ Eligible projects must be related to specific job-creation or job-retention opportunities. Eligible projects may also include improving any inadequate infrastructure that has resulted in regulatory action that prohibits economic or community growth or reducing the costs to community users of proposed infrastructure improvements that exceed such costs in comparable communities, which includes improving access to and the availability of broadband Internet service. Eligible uses of funds shall include improvements to public infrastructure for industrial or commercial sites, ~~and~~ upgrades to or development of public tourism infrastructure, and improvements to broadband Internet service and access in unserved or underserved rural communities. Improvements to broadband Internet service and access must be conducted through a partnership or partnerships with one or more dealers of communications services, as defined in s. 202.11(2), and the partnership must be established by a publicly noticed and competitively selected process. Authorized infrastructure may include the following public or public-private partnership facilities: storm water systems; telecommunications facilities; broadband facilities; roads or other remedies to transportation impediments; nature-based tourism facilities; or other physical requirements necessary to facilitate tourism, trade, and economic development activities in the community. Authorized infrastructure may also include publicly or privately owned self-powered nature-based tourism facilities, publicly owned

telecommunications facilities, and broadband facilities, and additions to the distribution facilities of the existing natural gas utility as defined in s. 366.04(3)(c), the existing electric utility as defined in s. 366.02, or the existing water or wastewater utility as defined in s. 367.021(12), or any other existing water or wastewater facility, which owns a gas or electric distribution system or a water or wastewater system in this state where:

1. A contribution-in-aid of construction is required to serve public or public-private partnership facilities under the tariffs of any natural gas, electric, water, or wastewater utility as defined herein; and

2. Such utilities as defined herein are willing and able to provide such service.

(4) By September 1, 2019 ~~2012~~, the department shall, in consultation with the organizations listed in subsection (3), and other organizations, reevaluate existing guidelines and criteria governing submission of applications for funding, review and evaluation of such applications, and approval of funding under this section. The department shall consider factors including, but not limited to, the project's potential for enhanced job creation or increased capital investment, the demonstration and level of local public and private commitment, whether the project is located ~~in an enterprise zone,~~ in a community development corporation service area~~,~~ or in an urban high-crime area as designated under s. 212.097, the unemployment rate of the county in which the project would be located, and the poverty rate of the community.

(5)(a) A contract or agreement that involves the

expenditure of grant funds provided under this section must be placed on the department's website at least 14 days before execution.

(b) A contract or agreement that includes the expenditure of grant funds provided under this section, including a contract or agreement entered into between an entity and a regional economic development organization, a unit of local government, or an economic development organization substantially underwritten by a unit of local government, must include:

1. The purpose of the contract or agreement.

2. Specific performance standards and responsibilities for each entity.

3. A detailed project or contract budget, if applicable.

4. The value of any services provided.

5. The projected travel and entertainment expenses for employees and board members, if applicable.

(c) A plain language version of a contract or agreement with a private entity, a municipality, or a vendor of services, supplies, or programs, including marketing, or for the purchase or lease or use of lands, facilities, or properties which involves the expenditure of grant funds provided under this section and which is estimated to exceed $35,000 must be posted on the department's website.

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 1646
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Transportation, Tourism, and Economic Development); Commerce and Tourism Committee; and Senators Montford and Gainer
SUBJECT:	Regional Rural Development Grants
DATE:	March 2, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Swift	McKay	CM	**Fav/CS**
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/CS/SB 1646 amends the Regional Rural Development Grant Program to:

- Increase the maximum annual grant amount to $250,000 from $150,000 that three regional economic development organizations that serve the entire region of a rural area of opportunity may receive.
- Increase the funds allocated for the program to up to $1 million annually from up to $750,000 annually.
- Reduce the required match of non-state resources for grant funds from 100 percent to 25 percent of the state's contribution.
- Define the uses of grant funds to build the professional capacity of regional economic development organizations; and
- Allow a regional economic development organization to use these grants to provide technical assistance to local governments, local economic development organizations, and existing and prospective businesses within the rural community it serves.

The bill amends the Rural Infrastructure Fund program to increase the grant awards to 50 percent of infrastructure project costs from 30 percent of infrastructure project costs (or 40 percent of projects costs at a catalyst site in a rural area of opportunity). The bill also amends the program to clarify that eligible infrastructure projects include access to broadband Internet service and require such projects that improve service and access must be through a partnership with a dealer

of communications services that was publicly noticed and competitively bid. The bill requires the Department of Economic Opportunity to review the grant program application and award procedures by September 1, 2019.

Related to contracts or agreements for the Regional Rural Development Grant Program or the Rural Infrastructure Fund, the bill:

- Requires contracts or agreements that include the spending of these funds to be posted online at least 14 days prior to execution.
- Requires a plain language version of the contract or agreement to be posted online, if the contract agreement exceeds $35,000, is between certain entities, or is for certain purposes.
- Specifies required provisions for contracts or agreements expending state grant funds.

Related to site readiness, the bill directs the DEO to review best practices and methods and to make recommendations for the establishment of a site readiness program for rural communities.

The bill has no impact on state funds. Under the bill, from the $1.6 million recurring appropriation to the Rural Community Development Revolving Loan Fund, the Department of Economic Opportunity may expend up to $1 million on the Rural Development Grant Program; if the maximum amount is expended on the grant program, then $600,000 would be available for the loan fund (up to $250,000 less annually).

The bill takes effect July 1, 2018.

II. Present Situation:

Rural Economic Development Initiative

The Rural Economic Development Initiative (REDI) was established in 1997 by the Legislature to encourage and facilitate the location and expansion of major economic development projects of significant scale in rural communities.[1] The REDI is responsible for coordinating and focusing the efforts and resources of state and regional agencies on the problems that affect the fiscal, economic, and community viability of Florida's economically distressed rural communities.[2] The REDI works with local governments, community-based organizations, and private organizations that have an interest in the growth and development of these communities to find ways to balance environmental and growth management issues with local needs.

Rural Areas of Opportunity

A rural area of opportunity (RAO) is a rural community, or region of rural communities, that has been adversely affected by an extraordinary economic event, severe or chronic distress, or a natural disaster or that presents a unique economic development opportunity of regional impact.[3] By executive order, the Governor may designate up to three RAOs, establishing each region as a

[1] Section 288.0656, F.S.
[2] Agencies required to participate in the REDI are found in s. 288.0656(6)(a), F.S.
[3] Section 288.0656(1)(d), F.S.

priority assignment for REDI agencies. The Governor can waive the criteria, requirements, or any similar provisions of any state economic development incentive for projects in a RAO.[4]

The currently designated RAOs are:[5]

- **Northwestern RAO**: Calhoun, Franklin, Gadsden, Gulf, Holmes, Jackson, Liberty, Wakulla, and Washington counties, and the City of Freeport in Walton County.
- **South Central RAO**: DeSoto, Glades, Hardee, Hendry, Highlands, and Okeechobee counties, and the cities of Pahokee, Belle Glade, South Bay (Palm Beach County), and Immokalee (Collier County).
- **North Central RAO**: Baker, Bradford, Columbia, Dixie, Gilchrist, Hamilton, Jefferson, Lafayette, Levy, Madison, Putnam, Suwannee, Taylor, and Union counties.

Regional Economic Development Organizations

Three regional economic development organizations that operate in the state coincide with the current RAOs. These public/private 501(c)(6) organizations provide economic development support to the local governments that represent the RAOs. Opportunity Florida serves the Northwestern RAO.[6] Florida's Heartland Regional Economic Development Initiative, Inc., serves the South Central RAO.[7] The North Florida Economic Development Partnership serves the North Central RAO.[8]

Regional Rural Development Grant Program[9]

The Regional Rural Development Grant Program was established to provide funding, through matching grants, to build the professional capacity of regional economic development organizations in Florida. Additionally, grants from the program may be used by an economic development organization to provide technical assistance to businesses within the rural counties and communities that the organization serves. The Department of Economic Opportunity (DEO) administers the grant program through contract with Enterprise Florida, Inc.

To be approved, an applying organization must provide proof to the DEO of:

- The organization's need for the assistance;
- The official commitments of support from all the local governments represented by the organization
- Financial or in-kind commitments to the organization by each local government and the private sector;
- The organization's existence and active involvement in economic development activities in the region; and

[4] Section 288.0656(7), F.S.
[5] Department of Economic Opportunity, *Rural Areas of Opportunity*, available at http://www.floridajobs.org/community-planning-and-development/rural-community-programs/rural-areas-of-opportunity (last visited February 15, 2018).
[6] *See generally*, Opportunity Florida, available at http://www.opportunityflorida.com/ (last visited February 15, 2018).
[7] *See generally*, Florida's Heartland Regional Economic Development Initiative, Inc., available at http://flaheartland.com/ (last visited February 15, 2018).
[8] *See generally*, North Florida Economic Development Partnership, available at http://nflp.org/, (last visited February 15, 2018).
[9] Section 288.018, F.S.

- The manner in which the organization coordinates its efforts with those of other local and state organizations.

The maximum amount any organization can receive is $50,000, or $150,000 in a rural area of opportunity, and the grant must be matched by an equivalent amount of non-state resources. Because the Governor can waive criteria, requirements, or any similar provisions of any state economic development incentive in RAOs, the matching requirement is likely eligible to be waived.[10] The DEO may expend up to $750,000 each fiscal year from funds appropriated to the Rural Community Development Revolving Loan Fund for the program.

Rural Infrastructure Fund[11]

The Rural Infrastructure Fund was created to facilitate the planning, preparation, and financing of tourism infrastructure and economic development projects that encourage job growth and capital investment in rural communities. The DEO administers the fund and awards grants that maximize the use of federal, local, and private resources.

There are three grants that DEO awards from this fund: the total project participation grant, the infrastructure feasibility grant, and the preclearance review grant.[12]

The total project participation grant allows for awards up to 30 percent of the total infrastructure project cost for projects related to access to federal funds; and up to 40 percent if the project is a RAO catalyst site.[13] Eligible projects must be related to specific job creation or retention opportunities, and may include improving certain inadequate infrastructure that is prohibiting economic or community growth or reducing costs to community users of proposed infrastructure improvements that exceed costs in comparable communities. Infrastructure can include public or public-private partnership facilities, like storm water systems, roads, nature-based tourism facilities, and broadband facilities.

The infrastructure feasibility grant provides awards of up to 30 percent of the total project costs for infrastructure feasibility studies, design and engineering activities, or other infrastructure planning and preparation activities.[14] Maximum awards are dependent on the number of jobs that a business commits to create and may be up to $300,000 if the project is located in a RAO. The total project participation grant and infrastructure feasibility grant may be used in conjunction.

The preclearance review grant provides awards to help a local government participate in expedited permitting processes through technical assistance in preparing permit applications and local comprehensive plan amendments.[15] Grants may be used for surveys, feasibility studies, and

[10] Section 288.0656(7) and 288.018(1), F.S.
[11] Section 288.0655, F.S.
[12] Department of Economic Opportunity, *Rural Infrastructure Fund*, available at http://www.floridajobs.org/community-planning-and-development/rural-community-programs/rural-infrastructure-fund (last visited February 15, 2018).
[13] Section 288.0655(2)(b), F.S. A "catalyst site" is "a parcel or parcels of land within a rural area of opportunity that has been prioritized as a geographic site for economic development through partnerships with state, regional, and local organizations. The site must be reviewed by REDI and approved by the department for the purposes of locating a catalyst project." Section 288.0656(2)(b), F.S.
[14] Section 288.0655(2)(c), F.S.
[15] Section 288.0655(2)(e), F.S. Expedited permitting is pursuant to s. 403.973(18), F.S.

other activities related to the identification and preclearance review of land use modifications. Grants are limited to $75,000 (or $300,000 for a project in a RAO) and must be matched 50 percent with local funds (or 33 percent for a project in a RAO, or waived for a project in a catalyst site).

The DEO reviews and certifies the grant applications in consultation with Enterprise Florida, Inc., the Florida Tourism Industry Marketing Corporation (VISIT Florida), the Department of Environmental Protection, and the Florida Fish and Wildlife Conservation Commission, as appropriate.

In Fiscal Year 2017-2018, the funding appropriated for the Rural Infrastructure Fund was $1.6 million.[16]

III. Effect of Proposed Changes:

Regional Rural Development Grant Program

Section 1 amends the Regional Rural Development Grants Program in s. 288.018, F.S., to specify what the term "building the professional capacity" of regional economic development organizations includes, revise and increase the grant amount for certain organizations in RAOs, and to require certain contract requirements.

The bill specifies that "building the professional capacity" of a regional economic development organizations includes hiring professional staff to develop, facilitate, and provide economic development professional services. Economic development services include technical assistance, education and leadership development, and marketing and project recruitment. Grant funds under the bill may be used for these purposes.

Currently, grant funds may be used to provide technical assistance to businesses within the area that the regional economic development organization services. The bill expands the use of the grant funds to allow technical assistance to be provided to local governments, local economic development organizations, and existing and prospective businesses.

Related to the grant amount for organizations in RAOs, the bill increases the maximum grant amount from $150,000 to $250,000 specifically for each of the three regional economic development organizations recognized by the DEO that are serving the entire region of each RAO currently: Opportunity Florida; Florida Heartland Regional Economic Region of Opportunity; and the North Florida Economic Development Partnership. Regional economic development organizations not located in a RAO would still be eligible for a $50,000 grant and regional economic development organizations in a RAO would still be eligible for a $150,000 grant.

The bill reduces the required match for a grant under this program to 25 percent of the state contribution, instead of the current requirement for a 100 percent match (one to one match).

[16] Specific appropriation 2226Q, ch. 2017-70, L.O.F.

The bill increases the amount that the DEO may expend up each fiscal year on the program from up to $750,000 to up to $1 million. These funds are from the funds appropriated to the Rural Community Development Revolving Loan Fund.

Rural Infrastructure Fund

Section 2 amends the total project participation grant of the Rural Infrastructure Fund program in s. 288.0655, F.S., to increase the amount of the total infrastructure project costs that the grant can pay for from 30 percent to 50 percent. The bill repeals the grant award for up to 40 percent of total infrastructure project costs if the project is a RAO catalyst site.

The bill specifies that eligible projects may include improving certain inadequate infrastructure that reduces costs to community users of proposed infrastructure improvements that exceed costs in comparable communities, *including improving access to and the availability of broadband Internet service*. Further, eligible uses of funds are expanded to include "improvements to broadband Internet service and access in unserved or underserved rural communities." Such eligible use must be conducted through a partnership or partnerships with one or more dealers of communications services,[17] and the partnership must be established by a publicly noticed and competitively selected process.

The bill requires the DEO, in consultation with Enterprise Florida, Inc., the Florida Tourism Industry Marketing Corporation (VISIT Florida), the Department of Environmental Protection, and the Florida Fish and Wildlife Conservation Commission, to review and edit any guidelines or criteria for grant applications by September 1, 2019.

Contracts or Agreements Under the Regional Rural Development Grant Program and the Rural Infrastructure Fund

The bill amends both ss. 288.018 and 288.0655, F.S., relating to the Regional Rural Development Grant Program and the Rural Infrastructure Fund, respectively, to include the same requirements for contracts or agreements that expend grant funds.

The bill requires the contract or agreement to be posted on the contracting regional economic development organization's or the DEO's website for at least 14 days before execution. It is unclear from the text of the bill, but this may include the contract or agreement that the organization enters into with the DEO or Enterprise Florida, Inc., to receive the grant funds.

A contract or agreement to expend grant funds must include:
- The purpose of the contract or agreement;
- Specific performance standards and responsibilities of all involved parties;
- A detailed budget, if applicable;
- The value of services provided; and
- Estimated travel and entertainment expenses of board members and staff, if applicable.

[17] A "dealer of communications services" is defined as a person registered with the Department of Revenue as a provider of communications services in this state. *See* s. 202.11, F.S.

These required contract provisions apply to any contract or agreement that expends grant funds, but the bill specifies that this include any contract or agreement between another entity and a regional economic development organization, a unit of local government, or an economic development organization substantially underwritten by a unit of local government. Again, it is unclear from the text of the bill, but this may include the contract or agreement that the organization enters into with the DEO or Enterprise Florida, Inc., to receive the grant funded.

The bill requires specific contracts or agreements that exceed $35,000 and expend grant funds to be posted on the contracting regional economic development organization's or the DEO's website in a "plain language version." This applies to a contract or agreement with a private entity, a municipality, or a vendor of services, supplies, or programs (including marketing) or a contract or agreement for the purchase, lease, or use of lands, facilities, or properties.

Site Readiness

Section 3 directs the DEO to review best practices and methods and to make recommendations for the establishment of a site readiness program for rural communities. The program would include assisting a rural community to evaluate property in its jurisdiction and promote the availability and benefits of the property. The DEO must:

- Identify technical requirements and quality control standards that would best benefit such a program;
- Provide options for implementation of a program; and
- Seek the input of stakeholders and persons, groups, and organizations that are knowledgeable about rural areas and site readiness issues.

The DEO must submit a report of its findings to the Legislature by December 1, 2018.

Effective Date

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 requires 25 percent of all disbursed Regional Rural Development Grant funds to be matched annually by a nonstate source, a reduction from the current 100 percent (one to one) match.

C. Government Sector Impact:

The Rural Community Development Revolving Loan Fund receives a recurring appropriation of $1.6 million, of which up to $750,000 is statutorily distributed to the Regional Rural Development Grant program. The bill increases the maximum grant amount that three regional economic development organizations that serve the entire region of a RAO may receive, from $150,000 to $250,000 annually.

The bill increases the amount that the DEO may expend up each fiscal year on the program from up to $750,000 to up to $1 million. These funds are from the funds appropriated to the Rural Community Development Revolving Loan Fund. From the $1.6 million recurring appropriation to the Rural Community Development Revolving Loan Fund, if the DEO expends the maximum amount on the Rural Development Grant Program (up to $1 million annually), then at least $600,000 would be available for the loan fund (up to $250,000 less annually).

The Rural Infrastructure Fund receives a recurring appropriation of $1.6 million. Specific inclusion of certain broadband Internet infrastructure projects as eligible for the total project participation grant may increase the competition for grant funds in the Rural Infrastructure Fund. Additionally, the bill increases the amount of total infrastructure project costs for which the grant will pay from 30 percent (or 40 percent if the project is at a catalyst site in a RAO) to 50 percent for all infrastructure projects, no matter the location. This change may lead to fewer grants awarded.

The cost to regional economic development organizations (Rural Development Grant Fund) to post contracts and "plain language" versions of contracts online is unknown. The DEO indicated that the bill would have no impact on state expenditures.[18]

The DEO stated that the site readiness report could be done with existing resources.

VI. Technical Deficiencies:

None.

[18] DEO, *2018 Agency Legislative Bill Analysis: SB 1646*, January 22, 2018.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 288.018 and 288.0655 of the Florida Statutes.

The bill creates an 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.)

CS/CS by Appropriations on March 2, 2018:
The committee substitute:

- Revises the maximum grant amounts that may be awarded under the Rural Development Grant Program.
- Increases the cap on the Rural Development Grant program from up to $750,000 to up to $1 million.
- Removes reference to 3 specifically named regional economic development organizations to receive grants under the Rural Development Grant program.
- Increases the amount of infrastructure project costs from 30 percent to 50 percent that a Rural Infrastructure Grant can be awarded to pay.
- Requires any infrastructure project funded for broadband Internet to be through a partnership with a communication services dealer, the partnership with which must be publicly noticed and competitively selected.
- Directs the DEO to review best practices and methods and to make recommendations for the establishment of a site readiness program for rural communities.

CS by Commerce and Tourism Committee on January 29, 2017:
The committee substitute made technical changes by correcting the name of a regional economic development organization.

B. Amendments:

None.

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

By the Committee on Commerce and Tourism; and Senators Montford and Gainer

577-02597-18 20181646c1

A bill to be entitled

An act relating to regional rural development grants; amending s. 288.018, F.S.; providing that regional rural development grants may be used to hire regional economic development organization professional staff; authorizing the use of matching grant funds to provide technical assistance to certain entities; increasing the annual maximum amount of grant funding that specified economic development organizations may receive; revising the amount of nonstate matching funds required; requiring that contracts or agreements involving the expenditure of grant funds be placed on a certain website for a specified time period; requiring that certain information be included in a contract or agreement involving the expenditure of grant funds; requiring that a plain language version of certain contracts or agreements be placed on a certain website; deleting a provision authorizing the Department of Economic Opportunity to contract for the development of certain enterprise zone web portals or websites; amending s. 288.0655, F.S.; providing that improving access to and availability of broadband Internet service may be included in a project that is eligible for rural infrastructure grant funds; extending the date by which the department is required to reevaluate certain guidelines and criteria; revising the factors that the department must consider when awarding grant funds; requiring that contracts or agreements involving the expenditure of grant funds be

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577-02597-18 20181646c1

placed on a certain website for a specified time period; requiring that certain information be included in a contract or agreement involving the expenditure of grant funds; requiring that a plain language version of certain contracts or agreements be placed on a certain website; providing an effective date.

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

Section 1. Subsections (1) and (3) of section 288.018, Florida Statutes, are amended to read:

288.018 Regional Rural Development Grants Program.—

(1) The department shall establish a matching grant program to provide funding to regional ~~regionally based~~ economic development organizations representing rural counties and communities to build ~~for the purpose of building~~ the professional capacity of such regional economic development ~~their~~ organizations. Building the professional capacity of regional economic development organizations includes hiring professional staff to develop, facilitate the delivery of, and directly provide needed economic development professional services, including technical assistance, education and leadership development, marketing and project recruitment, and other services that are important for rural economic development. ~~Such~~ Matching grants may also be used by a regional ~~an~~ economic development organization to provide technical assistance to local governments, local economic development organizations, and existing and prospective businesses within the rural counties and communities that it serves. The

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department is authorized to approve, on an annual basis, grants to such regional ~~regionally based~~ economic development organizations. The maximum amount an organization may receive in any year is ~~will be~~ $50,000, or $250,000 for each of the three regional economic development organizations serving rural areas of opportunity designated pursuant to s. 288.0656. The three regional economic development organizations include the North Florida Economic Development Partnership, Opportunity Florida, and Florida Heartland Economic Region of Opportunity. Grant funds received by a regional economic development organization ~~$150,000 in a rural area of opportunity recommended by the Rural Economic Development Initiative and designated by the Governor, and~~ must be matched each year by ~~an equivalent amount of~~ nonstate resources in an amount equal to 25 percent of the state contribution.

(3)(a) A contract or agreement that involves the expenditure of grant funds provided under this section must be placed on the contracting regional economic development organization's website for review at least 14 days before execution.

(b) A contract or agreement that involves the expenditure of grant funds provided under this section, including a contract or agreement entered into between another entity and a regional economic development organization, a unit of local government, or an economic development organization substantially underwritten by a unit of local government, must include:

1. The purpose of the contract or agreement.

2. Specific performance standards and responsibilities for each entity.

3. A detailed project or contract budget, if applicable.

4. The value of any services provided.

5. The projected travel and entertainment expenses for employees and board members, if applicable.

(c) A plain language version of a contract or agreement with a private entity, a municipality, or a vendor of services, supplies, or programs, including marketing, or for the purchase or lease or use of lands, facilities, or properties which involves the expenditure of grant funds provided under this section and which is estimated to exceed $35,000 must be posted on the contracting regional economic development organization's website ~~The department may also contract for the development of an enterprise zone web portal or websites for each enterprise zone which will be used to market the program for job creation in disadvantaged urban and rural enterprise zones. Each enterprise zone web page should include downloadable links to state forms and information, as well as local message boards that help businesses and residents receive information concerning zone boundaries, job openings, zone programs, and neighborhood improvement activities~~.

Section 2. Subsection (5) of section 288.0655, Florida Statutes, is redesignated as subsection (6), paragraph (b) of subsection (2) and subsection (4) of that section are amended, and a new subsection (5) is added to that section, to read:

288.0655 Rural Infrastructure Fund.—

(2)(b) To facilitate access of rural communities and rural areas of opportunity as defined by the Rural Economic Development Initiative to infrastructure funding programs of the Federal Government, such as those offered by the United States

Department of Agriculture and the United States Department of Commerce, and state programs, including those offered by Rural Economic Development Initiative agencies, and to facilitate local government or private infrastructure funding efforts, the department may award grants for up to 30 percent of the total infrastructure project cost. If an application for funding is for a catalyst site, as defined in s. 288.0656, the department may award grants for up to 40 percent of the total infrastructure project cost. Eligible projects must be related to specific job-creation or job-retention opportunities. Eligible projects may also include improving any inadequate infrastructure that has resulted in regulatory action that prohibits economic or community growth or reducing the costs to community users of proposed infrastructure improvements that exceed such costs in comparable communities, which includes improving access to and the availability of broadband Internet service. Eligible uses of funds shall include improvements to public infrastructure for industrial or commercial sites, ~~and~~ upgrades to or development of public tourism infrastructure, and improvements to broadband Internet service and access in unserved or underserved rural communities. Authorized infrastructure may include the following public or public-private partnership facilities: storm water systems; telecommunications facilities; broadband facilities; roads or other remedies to transportation impediments; nature-based tourism facilities; or other physical requirements necessary to facilitate tourism, trade, and economic development activities in the community. Authorized infrastructure may also include publicly or privately owned self-powered nature-based tourism

facilities, publicly owned telecommunications facilities, and broadband facilities, and additions to the distribution facilities of the existing natural gas utility as defined in s. 366.04(3)(c), the existing electric utility as defined in s. 366.02, or the existing water or wastewater utility as defined in s. 367.021(12), or any other existing water or wastewater facility, which owns a gas or electric distribution system or a water or wastewater system in this state where:

1. A contribution-in-aid of construction is required to serve public or public-private partnership facilities under the tariffs of any natural gas, electric, water, or wastewater utility as defined herein; and

2. Such utilities as defined herein are willing and able to provide such service.

(4) By September 1, 2019 ~~2012~~, the department shall, in consultation with the organizations listed in subsection (3), and other organizations, reevaluate existing guidelines and criteria governing submission of applications for funding, review and evaluation of such applications, and approval of funding under this section. The department shall consider factors including, but not limited to, the project's potential for enhanced job creation or increased capital investment, the demonstration and level of local public and private commitment, whether the project is located ~~in an enterprise zone,~~ in a community development corporation service area~~,~~ or in an urban high-crime area as designated under s. 212.097, the unemployment rate of the county in which the project would be located, and the poverty rate of the community.

(5)(a) A contract or agreement that involves the

expenditure of grant funds provided under this section must be placed on the department's website for review at least 14 days before execution.

(b) A contract or agreement that includes the expenditure of grant funds provided under this section, including a contract or agreement entered into between an entity and a regional economic development organization, a unit of local government, or an economic development organization substantially underwritten by a unit of local government, must include:

1. The purpose of the contract or agreement.

2. Specific performance standards and responsibilities for each entity.

3. A detailed project or contract budget, if applicable.

4. The value of any services provided.

5. The projected travel and entertainment expenses for employees and board members, if applicable.

(c) A plain language version of a contract or agreement with a private entity, a municipality, or a vendor of services, supplies, or programs, including marketing, or for the purchase or lease or use of lands, facilities, or properties which involves the expenditure of grant funds provided under this section and which is estimated to exceed $35,000 must be posted on the department's website.

Section 3. This act shall take effect July 1, 2018.

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THE FLORIDA SENATE

APPEARANCE RECORD

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

3/2/18	1646
Meeting Date	*Bill Number (if applicable)*

Topic Rural Development Grants — *Amendment Barcode (if applicable)*

Name Carolyn Johnson

Job Title Policy Director

Address 136 S Bronough St (*Street*) — Phone 521-1200

Tallahassee (*City*) FL (*State*) 32301 (*Zip*) — Email cjohnson@flchamber.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Chamber of Commerce

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

March 2, 2018
Meeting Date

1646
Bill Number (if applicable)

Topic Regional Rural Development Grant

Amendment Barcode (if applicable)

Name Diane Scholz

Job Title Director Rural & Economic Development Services

Address 3200 Commonwealth Blvd, Ste. 7- FSU Research Center
Street

Tallahassee FL 32303
City *State* *Zip*

Phone 850.728.5191

Email dscholz@iog.fsu.edu

Speaking: ☑ For ☐ Against ☐ Information

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

Representing North Florida Economic Development 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.

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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)

3/2/18
Meeting Date

1646
Bill Number (if applicable)

Topic Rural Economic Development Grants

Amendment Barcode (if applicable)

Name Jim Spratt

Job Title

Address PO Box 10011
Street

Tallahassee FL 32302
City *State* *Zip*

Phone 850-278-1296

Email jim@magnolia strategiesllc.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Okeechobee County

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

03/02/2018
Meeting Date

1646
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Regional Rural Development Grants

Name Greg Turbeville

Job Title

Address 201 E. Park Ave
Street

TLH FL 32301
City *State* *Zip*

Phone 850-577-0444

Email greg@ballardfl.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida's Great Northwest

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

2-3-18
Meeting Date

1646
Bill Number (if applicable)

Topic Rural Program

Amendment Barcode (if applicable)

Name Chris Doolin

Job Title CONSULTANT

Address 1118-B Thomasville Rd.
Street

Tall. Fl. 32308
City *State* *Zip*

Phone 850-508-5492

Email cdoolin@nettally.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing SMALL COUNTY COALITION

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on 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 1678
INTRODUCER:	Judiciary Committee; Criminal Justice Committee; and Senator Stargel
SUBJECT:	Reports Concerning Seized or Forfeited Property
DATE:	February 26, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Storch	Jones	CJ	**Fav/CS**
2.	Farach	Cibula	JU	**Fav/CS**
3.	Sadberry	Hansen	AP	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1678 changes the deadline for the annual submission of reports concerning seized or forfeited property by law enforcement agencies pursuant to the Florida Contraband Forfeiture Act from October 10 to December 1.

The bill is not expected to affect state or local revenues or expenditures.

The bill is effective July 1, 2018.

II. Present Situation:

Florida Contraband Forfeiture Act

The Florida Contraband Forfeiture Act (act), ss. 932.701-932.7062, F.S., provides for the seizure and civil forfeiture of property related to criminal and non-criminal violations of law.[1] Contraband and other property may be seized when used during a violation of, or for the purpose of violating, the act. Property constituting a "contraband article" includes, but is not limited to, a controlled substance as defined in ch. 893, F.S., any gambling paraphernalia being used or attempted to be used in violation of the state's gambling laws, and any motor fuel upon which the motor fuel tax has not been paid as required by law.[2]

[1] Section 932.701(1), F.S.
[2] *See* s. 932.701(2)(a)1.-12., F.S.

Currently, any contraband article, vessel, motor vehicle, aircraft, other personal property, or real property used in violation of any provision of the act, or in, upon, or by means of which any violation of the act has taken or is taking place, may be seized and forfeited subject to the act.[3] If the court finds that the seizure occurred lawfully[4] and that probable cause exists for the seizure, the forfeiture may proceed as set forth in the act.[5]

When a seizing agency obtains a final judgment granting forfeiture of real or personal property, it may elect to:

- Retain the property for the agency's use;
- Sell the property at public auction or by sealed bid to the highest bidder;[6] or
- Salvage, trade, or transfer the property to any public or nonprofit organization.[7]

Reports Concerning Seized or Forfeited Property

Section 932.7061, F.S., requires every law enforcement agency to submit an annual report by October 10 indicating whether the agency has seized or forfeited property under the act.[8] In the event that a law enforcement agency received or expended forfeited property or proceeds from the sale of forfeited property in accordance with the act, the annual report must document such receipts and expenditures.

The report must be submitted in electronic form to the FDLE and the entity that has budgetary authority over the law enforcement agency. The report must specify, at a minimum, the type, approximate value, court case number, type of offense, disposition of property received, and amount of any proceeds received or expended. The report must be maintained by the FDLE in consultation with the Office of Program Policy Analysis and Government Accountability (OPPAGA).[9]

The FDLE must submit an annual report to the OPPAGA that compiles the information and data in the annual reports. The FDLE must also include a list of law enforcement agencies that failed to meet the reporting requirements and a summary of any action taken against such noncomplying agency by the office of Chief Financial Officer (CFO).[10]

Penalty for Noncompliance with Reporting Requirements

An agency that is in noncompliance with the reporting requirements in s. 932.7061, F.S., must be notified by the FDLE. Such agency has 60 days within receipt of the notification of noncompliance to comply with the reporting requirements. An agency that fails to comply within

[3] Section 932.703(1)(a), F.S.
[4] Section 932.703(1)(a), F.S., sets forth the circumstances that permit for a lawful seizure of property.
[5] Section 932.703(2)(c), F.S.
[6] Real property should be listed on the market and sold in a commercially reasonable manner after appraisal. Section 932.7055(1)(b), F.S.
[7] Section 932.7055(1)(a)-(c), F.S.
[8] Section 932.7061(1), F.S.
[9] *Id.*
[10] Section 932.7061(2), F.S.

60 days is subject to a civil fine of $5,000. The fine is determined by the CFO and payable to the General Revenue Fund.[11]

The FDLE must submit any substantial noncompliance to the office of the CFO, which will then be responsible for the enforcement of the fine.[12]

The fiscal year for sheriff departments runs from October 1-September 30, making it difficult to gather all required information and submit it by October 10 to comply with the statutory mandate. An agency that does not meet the deadline for submission of the annual report is subject to negative implications associated with a noncompliance status.[13]

III. Effect of Proposed Changes:

Reports Concerning Seized or Forfeited Property (amending s. 932.7061, F.S.)

Current law requires agencies having seized or forfeited property pursuant to the Florida Contraband Forfeiture Act to submit an annual report by October 10 documenting the receipts and expenditures of forfeited property or proceeds from the sale of forfeited property pursuant to the act. The bill changes the deadline for the submission of the reports to December 1.

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.

[11] Section 932.7062, F.S.
[12] *Id.*
[13] Polk County Sheriff's Office, *Proposal for the 2018 FSA Legislative Summit*, (on file with the Senate Criminal Justice Committee).

B. Private Sector Impact:

None.

C. Government Sector Impact:

Reports Concerning Seized or Forfeited Property

The bill will likely have no fiscal impact with regards to the reports. While law enforcement agencies are subject to a fine if they are in noncompliance with the reporting requirements pursuant to s. 932.7061, F.S., the agencies have 60 days after receiving notification of noncompliance to comply. Sections 932.7061 and 932.7062, F.S., went into effect July 1, 2016.[14] Since the law has gone into effect, no law enforcement agencies have been in noncompliance after the passage of the 60 days.[15] No fines have been collected pursuant to s. 932.7062, F.S., to date,[16] and the modification to the submission deadline will enable law enforcement agencies a greater opportunity to achieve initial compliant status.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends section 932.7061 of the Florida Statutes.

The bill reenacts section 932.7062 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 Judiciary on February 20, 2018:
The Committee Substitute includes only sections 5, 8, and 11 of the underlying bill. The removed provisions related to the collection and reporting of criminal justice data.

CS by Criminal Justice on February 12, 2018:
The Committee Substitute:
- Creates a model of uniform criminal justice data collection;
- Defines terms used in the bill as they relate to data collection;

[14] Chapter 2016-179, Laws of Fla.
[15] Conversation with Tabitha Krol, Government Affairs Coordinator, Florida Sheriffs Association (February 8, 2018).
[16] *Id.*

- Requires the clerks of the circuit court, state attorneys, public defenders, county jail operators, and the Department of Corrections (DOC) to collect certain data and transmit it to the Florida Department of Law Enforcement (FDLE) on a weekly basis;
- Requires the FDLE to publish the data on the FDLE's website and make it searchable and accessible to the public;
- Digitizes the Criminal Punishment Code sentencing scoresheet;
- Requires additional information to be reported in the annual report for pretrial release programs;
- Authorizes a pilot project in the Sixth Judicial Circuit for the purposes of implementing the bill; and
- Appropriates $1,750,000 in nonrecurring funds to the FDLE for the hiring of nine full-time employees for purposes of implementing the requirements of the bill and to assist in the transition to incident-based crime reporting to meet the requirements of the FBI under the National Incident-Based Reporting System.

B. Amendments:

None.

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

By the Committees on Judiciary; and Criminal Justice; and
Senator Stargel

590-03467-18 20181678c2

A bill to be entitled

An act relating to reports concerning seized or forfeited property; amending s. 932.7061, F.S.; revising the deadline for submitting an annual report by law enforcement agencies concerning property seized or forfeited under the Florida Contraband Forfeiture Act; reenacting s. 932.7062, F.S., relating to a penalty for noncompliance with reporting requirements, to incorporate the amendment made to s. 932.7061, F.S., in a reference thereto; providing an effective date.

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

Section 1. Subsection (1) of section 932.7061, Florida Statutes, is amended to read:

932.7061 Reporting seized property for forfeiture.—

(1) Every law enforcement agency shall submit an annual report to the Department of Law Enforcement indicating whether the agency has seized or forfeited property under the Florida Contraband Forfeiture Act. A law enforcement agency receiving or expending forfeited property or proceeds from the sale of forfeited property in accordance with the Florida Contraband Forfeiture Act shall submit a completed annual report by December 1 ~~October 10~~ documenting the receipts and expenditures. The report shall be submitted in an electronic form, maintained by the Department of Law Enforcement in consultation with the Office of Program Policy Analysis and Government Accountability, to the entity that has budgetary authority over such agency and

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590-03467-18 20181678c2

to the Department of Law Enforcement. The annual report must, at a minimum, specify the type, approximate value, court case number, type of offense, disposition of property received, and amount of any proceeds received or expended.

Section 2. For the purpose of incorporating the amendment made by this act to section 932.7061, Florida Statutes, in a reference thereto, section 932.7062, Florida Statutes, is reenacted to read:

932.7062 Penalty for noncompliance with reporting requirements.—A seizing agency that fails to comply with the reporting requirements in s. 932.7061 is subject to a civil fine of $5,000, to be determined by the Chief Financial Officer and payable to the General Revenue Fund. However, such agency is not subject to the fine if, within 60 days after receipt of written notification from the Department of Law Enforcement of noncompliance with the reporting requirements of the Florida Contraband Forfeiture Act, the agency substantially complies with those requirements. The Department of Law Enforcement shall submit any substantial noncompliance to the office of Chief Financial Officer, which shall be responsible for the enforcement of this section.

Section 3. This act shall take effect July 1, 2018.

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THE FLORIDA SENATE

APPEARANCE RECORD

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

3-2-18
Meeting Date

1678
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Forfeited Property

Name Amy Mercer

Job Title Executive Director

Address 2630 Mitcham Drive
Street

Tallahassee FL 32308
City *State* *Zip*

Phone 850-219-3631

Email Amercer@fpca.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Police Chiefs

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons 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 1712
INTRODUCER:	Senators Montford and Thurston
SUBJECT:	Postsecondary Revenue Bonds and Debt
DATE:	February 26, 2018
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bouck	Graf	ED	**Favorable**
2.	Sikes	Elwell	AHE	**Recommend: Favorable**
3.	Sikes	Hansen	AP	**Favorable**

I. Summary:

SB 1712 modifies restrictions on debt payment sources for state universities by authorizing them to use federal grant and contract funds to secure revenue bonds, but only as required for an institution to participate in the Historically Black College and University Capital Financing Program (HBCU Program). In effect, the bill may allow Florida Agricultural and Mechanical University to participate in the HBCU Program.

The bill does not affect state revenues or expenditures.

The law takes effect July 1, 2018.

II. Present Situation:

Historically Black College and University Capital Financing Program

The Higher Education Act of 1965, as amended, defines a historically black college 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 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, *Historically Black College and University Capital Financing Program, Eligibility*, https://www2.ed.gov/programs/hbcucapfinance/eligibility.html (last visited Feb. 5, 2018). The Florida HBCUs are Florida Agricultural and Mechanical University (public), Bethune-Cookman University (private), Edward Waters College (private), and Florida Memorial University (private). National Center for Education Statistics, *College Navigator*, https://nces.ed.gov/COLLEGENAVIGATOR/?s=FL&sp=4 (last visited Feb. 5, 2018).

The Historically Black College and University Capital Financing Program (HBCU Program), administered by the United States Department of Education (USDOE), provides low-cost capital to finance improvements to the infrastructure of the nation's HBCUs.[2] Specifically, the HBCU Program provides HBCUs with access to capital financing or refinancing for the repair, renovation, and construction of classrooms, libraries, laboratories, dormitories, instructional equipment, and research instrumentation.[3] This assistance comes through the issuance of federal guarantees on the full payment of principal and interest on qualified bonds, the proceeds of which are used for loans.[4] Public HBCUs have received about $530 million in loan proceeds and private HBCUs have received about $1.27 billion in loan proceeds[5] through the HBCU Program

The HBCU Program specifies, as a part of the loan agreement, the procedures for repayment of the loan and procedures in the event of delinquency or default on the loan.[6] Federal law requires that, for delinquent debt or a default on debt to the United States, the debts or payments may be collected by administrative offset.[7] In order to borrow funds under the HBCU Program, the participating HBCU must permit the use of revenue from grants and contracts via administrative offset if the pledged revenues are insufficient to pay debt service.[8] The USDOE may hold other federal funds, including grants and contracts owed to the HBCU, and apply those federal funds to debt service for the HBCU Program loan.[9]

State University Revenue Bonds and Debt

The Board of Governors (BOG), each state university, and any state university direct-support organization must comply with the provisions of law in order to issue or enter into agreements

[2] U.S. Department of Education, *Historically Black College and University Capital Financing Program, Purpose*, https://www2.ed.gov/programs/hbcucapfinance/index.html (last visited Feb. 5, 2018).
[3] *Id.*
[4] *Id.*
[5] U.S. Department of Education, *Historically Black College and University Capital Financing Program, Awards,* https://www2.ed.gov/programs/hbcucapfinance/awards.html (last visited Feb. 5, 2018). Since September 2009, Florida Memorial University has received two HBCU Capital Financing program loans totaling $44,060,000. Since July 1997, Bethune-Cookman College has received two HBCU Capital Financing program loans totaling $20,295,000. *Id.*
[6] U.S. Department of Education, *Legislation, Regulations, and Guidance,* https://www2.ed.gov/programs/hbcucapfinance/legislation.html (last visited Feb. 5, 2018).
[7] 31 C.F.R. 901.3. "Administrative offset" means withholding funds payable by the United States (including funds payable by the United States on behalf of a State government) to, or held by the United States for, a person to satisfy a claim. 31 U.S.C., s. 3701.
[8] Telephone interview, Board of Governors (Feb. 2, 2018).
[9] *Id.*

for the issuance of revenue bonds or debt.[10] The law authorizes the BOG to request the issuance of revenue bonds[11] to finance or refinance capital outlay projects[12] permitted by law.[13] Revenue bonds may not be secured by or be payable from, directly or indirectly, the following sources:[14]

- Tuition;
- The financial aid fee;
- Sales and services of educational departments;
- Revenues from grants and contracts, except for money received for overhead and indirect costs and other moneys not required for the payment of direct costs; or
- Any other operating revenues of a state university.

The issuance of debt must be approved by the BOG and must be:[15]

- For a purpose consistent with the mission of the state university.
- Structured in a manner appropriate for the prudent financial management of the state university.
- Secured by revenues adequate to provide for all payments relating to the debt.
- Analyzed by the Division of Bond Finance,[16] and issues raised by such analysis must be appropriately considered by the BOG.
- Consistent with the requirements of any policies or criteria adopted by the BOG for the approval of debt.[17]

III. Effect of Proposed Changes:

The bill modifies restrictions on debt payments sources for state universities by authorizing them to use federal grant and contract funds to secure revenue bonds but only as required for an institution to participate in the Historically Black College and University Capital Financing Program (HBCU Program).

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[10] Section 1010.62(8), F.S.
[11] Revenue bonds may be issued by the state or its agencies without a vote of the electors to finance or refinance the cost of state fixed capital outlay projects authorized by law, and purposes incidental thereto, and shall be payable solely from funds derived directly from sources other than state tax revenues. Art. VII, s. 11(d), Fla. Const.
[12] A capital outlay project is any project to acquire, construct, improve, or change the functional use of land, buildings, and other facilities, including furniture and equipment necessary to operate a new or improved building or facility. Section 1010.62(1)(b), F.S.
[13] Section 1010.62(2)(a), F.S.
[14] *Id.*
[15] *Id.* at (3)(b).
[16] The duties of the Division of Bond Finance within the State Board of Administration include the issuance of bonds for or on behalf of State agencies and providing technical assistance on new financing programs.
[17] The Board of Governors *Debt Management Guidelines* confirm that the state universities and their direct-support organizations must engage in sound debt management practices and, to that end, the Board of Governors has formalized guiding principles for the issuance of debt by the state universities and their DSOs, Board of Governors, *Debt Management Guidelines* (June 17, 2016), *available at* http://www.flbog.edu/documents_regulations/guidelines/REVISED%20FAC%207%202%20Debt%20Management%20Guidelines%202016%20-%20DRAFT.pdf, at 1.

By permitting FAMU to pledge revenue from federal grants and contracts for the repayment of revenue bonds, the bill allows Florida Agricultural and Mechanical University (FAMU), as the only public historically black college and university (HBCU) in the state, to become eligible to participate in the HBCU Program. This authorization aligns with the federal requirements regarding collection by administrative offset.

The bill does not change the prohibition on the use of state funds to pay debt service on revenue bonds. Additionally, the bill does not change the requirement for analysis by the Division of Bond Finance and approval by the Board of Governors for the issuance of debt. [18]

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 may provide FAMU access to competitive financing through the HBCU Program, which may result in interest rate savings for FAMU. The benefits may be extended to refinancing existing revenue bonds and for loans under the HBCU Program for future capital outlay projects.

The Board of Governors reports that, in 2016, Florida Agricultural and Mechanical University (FAMU) had researched refinancing its existing housing revenue bonds, which at the time totaled $80 million.[19] Projections at that time estimated that FAMU

[18] Board of Governors, *2018 Agency Analysis for HB 1712*, at 2.
[19] Board of Governors, *2018 Agency Analysis for HB 375*, at 2. HB 375 is similar to SB 1712.

would save approximately $1.2 million in debt service costs over the remaining life of the bond if FAMU were able to refinance the existing bonds under the HBCU Program.[20]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 1010.62 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

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

[20] *Id.*

By Senator Montford

3-01149A-18 20181712__

A bill to be entitled

An act relating to postsecondary revenue bonds and debt; amending s. 1010.62, F.S.; authorizing state universities to use specified moneys to pay debt service on revenue bonds if required by a specified federal program; providing an effective date.

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

Section 1. Paragraph (a) of subsection (2) of section 1010.62, Florida Statutes, is amended to read:

1010.62 Revenue bonds and debt.—

(2)(a) The Board of Governors may request the issuance of revenue bonds pursuant to the State Bond Act and s. 11(d), Art. VII of the State Constitution to finance or refinance capital outlay projects permitted by law. Revenue bonds may be secured by or payable only from those revenues authorized for such purpose, including the Capital Improvement Trust Fund fee, the building fee, the health fee, the transportation access fee, hospital revenues, or those revenues derived from or received in relation to sales and services of auxiliary enterprises or component units of the university, including, but not limited to, housing, transportation, health care, research or research-related activities, food service, retail sales, athletic activities, or other similar services, other revenues attributable to the projects to be financed or refinanced, any other revenue approved by the Legislature for facilities construction or for securing revenue bonds issued pursuant to s. 11(d), Art. VII of the State Constitution, or any other revenues

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permitted by law. Revenues from the activity and service fee and the athletic fee may be used to pay and secure revenue bonds except that the annual debt service shall not exceed an amount equal to 5 percent of the fees collected during the most recent 12 consecutive months for which collection information is available prior to the sale of the bonds. The assets of a university foundation and the earnings thereon may also be used to pay and secure revenue bonds of the university or its direct-support organizations. Revenues from royalties and licensing fees may also be used to pay and secure revenue bonds so long as the facilities being financed are functionally related to the university operation or direct-support organization reporting such royalties and licensing fees. Revenue bonds may not be secured by or be payable from, directly or indirectly, tuition, the financial aid fee, sales and services of educational departments, revenues from grants and contracts, except for money received for overhead and indirect costs and other moneys not required for the payment of direct costs, or any other operating revenues of a state university. However, moneys due to the state university from the federal government for the payment of grants and contracts may be used to pay debt service on revenue bonds only as required through the United States Department of Education's Historically Black College and University Capital Financing Program. Revenues from one auxiliary enterprise may not be used to secure revenue bonds of another unless the Board of Governors, after review and analysis, determines that the facilities being financed are functionally related to the auxiliary enterprise revenues being used to secure such revenue bonds.

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

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The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	SB 7028
INTRODUCER:	Rules Committee
SUBJECT:	Ratification of Department of Elderly Affairs Rules
DATE:	March 1, 2018
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Hendon	Phelps		**RC Submitted as Committee Bill**
1.	Kidd	Hansen	AP	**Favorable**

I. Summary:

SB 7028 ratifies Rule 58A-5.036, F.A.C., entitled "Emergency Environmental Control for Assisted Living Facilities" by the Department of Elder Affairs. This rule requires, by June 1, 2018, each assisted living facility to acquire an alternative power source to ensure that temperatures are maintained at 81 degrees Fahrenheit or cooler in a sufficient portion of the facility to accommodate all of the facility's residents.

The Statement of Estimated Regulatory Costs (SERC) developed by the Department of Elder Affairs determined that the proposed rule will likely increase regulatory costs in excess of $1 million in the aggregate within 5 years after implementation of the rule. Accordingly, the rule must be ratified by the Legislature before it may go into effect.

The bill's provisions take effect upon becoming law.

II. Present Situation:

DOEA Rule for Assisted Living Facility Generators

The DOEA filed the rule 58A-5.036, F.A.C., for adoption with the Department of State on February 13, 2018.[1] The DOEA proposed the rule for Emergency Environmental Control for Assisted Living Facilities on November 14, 2017 and corrected the proposed rule January 19, 2018.

Rule 58A-5.036, F.A.C., requires each assisted living facility to prepare a detailed plan, as a supplement to the facility's comprehensive emergency management plan, to address emergency power in the event of the loss of primary electrical power to the facility. The plan is required to include the following:

[1] See rule package filed with the Department of State for Rule 58A-5.036. On file with Senate Children, Families and Elder Affairs Committee.

- The acquisition of a sufficient alternate power source maintained at the facility to ensure the protection of resident health, safety, welfare, and comfort for a minimum of 96 hours in the event of the loss of primary electrical power.
  - Each facility must determine a safe indoor air temperature required to meet the needs of residents that cannot be higher than 81 degrees Fahrenheit. The required temperature must be maintained in an area determined by the facility to be sufficient to maintain resident safety at all times, but not less than 20 square feet per resident.
  - The rule allows a facility to provide emergency power through its essential electrical system required by the Florida Building Code and allows flexibility for each assisted living facility to determine the best method for achieving the requirement for an alternative power source.
  - The rule specifies that a facility in an evacuation zone may use portable generators if an evacuation is necessary; that a facility on a campus with other licensed facilities under common ownership may share power sources, fuel, and space with the other licensed facilities; and that a multistory facility that plans on moving residents to a higher floor during a flood or surge event must also place its alternative power source in an area protected from flooding or storm surge.
- The acquisition of sufficient fuel to run the alternate power source and to maintain safe air temperatures. For facilities with 16 beds or less must store 48 hours of fuel on site. For facilities with 17 or more beds, 72 hours must be stored onsite at the facility. For a facility in a declared state of emergency area must secure 96 hours of fuel. If local ordinances or other regulations limit the amount of fuel that may be stored onsite, the assisted living facility must store the maximum amount of fuel allowed and must have a plan to obtain the remaining required amount of fuel within 24 hours prior to depleting its onsite supply. The rule specifies that piped natural gas is an allowed fuel source.
- The acquisition of services necessary to install, maintain, and test the equipment and to ensure the safe and sufficient operation of the alternate power source.

Each existing assisted living facility is required to submit its plan to the local emergency management agency within 30 days of the effective date of the rule. Each newly licensed assisted living facility must submit its plan prior to obtaining a license. If any additions, modifications, alterations, refurbishments, reconstructions, or renovations of an assisted living facility affect the compliance with the rule, the facility must amend its plan and resubmit it to the local emergency management agency for review and approval.

The local emergency management agency must review each plan and once approved, the plan must be submitted to AHCA for approval. Each assisted living facility must maintain a copy of its plan in a form that is readily available for review and must submit a consumer friendly summary of the plan to the AHCA. The AHCA must post the summary and notice of approval within ten business days on its website.

Each existing assisted living facility must have implemented its plan no later than June 1, 2018, and a new assisted living facility must have the plan implemented prior to obtaining a license. The AHCA may grant an extension of time up to January 1, 2019, if the implementation is delayed due to necessary construction, delivery of ordered equipment, or zoning or other regulatory processes. If an assisted living facility is granted an extension of time, the facility must update the AHCA on implementation progress monthly. If an assisted living facility is

granted an extension of time, it must make arrangements to ensure that the residents are housed in an area that meets the safe indoor air temperature requirement for a minimum of 96 hours during that time.

The rule also requires each facility to implement policies and procedures to ensure that it can effectively and immediately activate, operate, and maintain the alternate power source. The policies and procedures must be resident-focused and ensure that the residents do not suffer complications from heat exposure.

The rule specifies that the AHCA may seek any statutory remedy for noncompliance including, but not limited to, license revocation, license suspension, and administrative fines.

Hurricane Irma

Between September 10 and September 16, 2017, Hurricane Irma swept across Florida causing heavy damage and widespread loss of power. In the aftermath of the hurricane, the nursing home Rehabilitation Center at Hollywood Hills (Center) was left without power and air conditioning for multiple days. As a consequence of the uncontrolled heat in the Center and because the Center's staff neglected to evacuate its residents, 12 Center residents died from heat exposure.[2]

On September 16, 2017, (after eight of the 12 resident deaths had occurred) Governor Scott issued a press release announcing emergency action for nursing homes and ALFs. In the press release, the Governor stated that "[a]ssisted living facilities and nursing homes serve our elderly and Florida's most vulnerable residents, and so many families rely on the health care professionals at these facilities to care for their loved ones…During emergencies, health care facilities must be fully prepared to ensure the health, safety and wellbeing of those in their care and there is absolutely no excuse not to protect life. The inability for this nursing home in Broward County to protect life has shined the light on the need for emergency action."[3]

Statement of Estimated Regulatory Costs (SERC) Requirements

Agencies must prepare a SERC for a rule that has an adverse impact on small businesses or that increases regulatory costs more than $200,000 in the aggregate within 1 year after implementation of the rule.[4]

A SERC must include estimates of:

- The number of people and entities effected by the proposed rule;
- The cost to the agency and other governmental entities to implement and enforce the proposed rule;
- Transactional costs likely to be incurred by people, entities, and governmental agencies for compliance; and

[2] Eight residents died before the Center evacuated the facility and six more died in the following weeks. Two of the 14 deaths were found not to be related to heat exposure. See *12 of 14 Nursing Home Deaths After Irma Ruled Homicides*, WUSF News, available at http://wusfnews.wusf.usf.edu/post/12-14-nursing-home-deaths-after-irma-ruled-homicides, (last visited on Jan. 26, 2018).

[3] See https://www.flgov.com/2017/09/16/gov-scott-i-am-aggressively-fighting-to-keep-vulnerable-floridians-safe-during-emergencies/, (last visited on Jan. 26, 2018).

[4] Sections 120.54(3)(b) and 120.541(1)(b), F.S.

- An analysis of the proposed rule's impact on small businesses, counties, and cities.[5]

The SERC must also include an economic analysis on the likelihood that the proposed rule will have an adverse impact in excess of $1 million within the first 5 years of implementation on:
- Economic growth, private-sector job creation or employment, or private-sector investment;
- Business competitiveness,[6] productivity, or innovation; or
- Regulatory costs, including any transactional costs.[7,8]

If the economic analysis results in an adverse impact or regulatory costs in excess of $1 million within 5 years after implementation of the rule, then the rule must be ratified by the Legislature in order to take effect.[9]

The DOEA has estimated the cost for assisted living facilities to comply with this rule will be approximately $243 million.[10]

III. Effect of Proposed Changes:

This bill ratifies DOEA Rule 58A-5.036, F.A.C., entitled "Emergency Environmental Control for Assisted Living Facilities." This rule requires, by June 1, 2018, each facility to acquire an alternative power source to ensure that temperatures are maintained at 81 degrees Fahrenheit or cooler in a sufficient portion of the facility to accommodate all of the facility's residents. The rule also requires each facility to implement certain policies and procedures to ensure that resident's do not suffer complications from heat exposure.

The bill also:
- Directs that the act shall not be codified in the Florida Statutes;
- Requires that after the act becomes law, its enactment and effective date shall be noted in the Florida Administrative Code, the F.A.R., or both, as appropriate;
- Provides that the act does not alter rulemaking authority or constitute a legislative preemption of, or exception to, any other provision of law regarding adoption or enforcement of the rule and is intended to preserve the status of the rule; and
- Does not cure any rulemaking defect or preempt any challenge based on a lack of authority or a violation of requirements governing adoption of the rule.

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[5] Section 120.541(2)(b)-(e), F.S. A small city has an unincarcerated population of 10,000 or less. A small county has an unincarcerated population of 75,000 or less. A small business employs less than 200 people, and has a net worth of $5 million or less. *See* ss. 120.52(18), (19), and 288.703(6), respectively.

[6] Business competitiveness includes the ability of those doing business in Florida to compete with those doing business in other states or domestic markets.

[7] Transactional costs are direct costs that are readily ascertainable based upon standard business practices. They include filing fees, the cost of obtaining a license, the cost of equipment required to be installed or used, procedures required to by employed to comply with the rule, additional operating costs, the cost of monitoring and reporting, and any other costs necessary to comply with the rules.

[8] Section 120.541(2)(a), F.S.

[9] Section 120.541(3), F.S. Legislative ratification is not required for adoption of federal standards, amendments to the Florida Building Code, or amendments to the Florida Fire Prevention Code. *See* s. 120.541(4), F.S.

[10] Summary of SERC for Rule 58A-5.036, published in a notice of correction in the Florida Administrative Register on January 19, 2018.

The SERC developed by the DOEA determined that the proposed rule will likely increase regulatory costs in excess of $1 million in the aggregate within 5 years after implementation of the rule. Accordingly, the rule must be ratified by the Legislature before it may go into effect.

The bill's provisions take effect upon becoming law at that time, the rule becomes effective.[11]

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

By the Legislature's ratification of this rule, assisted living facilities that have not complied with the new requirements will experience increased costs.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates one undesignated section of the Florida Statutes.

[11] Section 120.54(3)(e)6., F.S.

IX. Additional Information:

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

None.

B. Amendments:

None.

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

By the Committee on Rules

595-03971-18 20187028__

A bill to be entitled

An act relating to ratification of Department of Elderly Affairs rules; ratifying a specified rule relating to emergency environmental control for assisted living facilities for the sole and exclusive purpose of satisfying any condition on effectiveness pursuant to s. 120.541(3), F.S., which requires ratification of any rule exceeding the specified thresholds for likely adverse impact or increase in regulatory costs; providing applicability; providing an effective date.

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

Section 1. (1) The following rule is ratified for the sole and exclusive purpose of satisfying any condition on effectiveness imposed under s. 120.541(3), Florida Statutes: Rule 58A-5.036, Florida Administrative Code, entitled "Emergency Environmental Control for Assisted Living Facilities," as filed for adoption with the Department of State pursuant to the certification package dated February 13, 2018.

(2) This act serves no other purpose and may not be codified in the Florida Statutes. After this act becomes law, its enactment and effective dates shall be noted in the Florida Administrative Code, the Florida Administrative Register, or both, as appropriate. This act does not alter rulemaking authority delegated by prior law, does not constitute legislative preemption of or exception to any provision of law governing adoption or enforcement of the rule cited, and is

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595-03971-18 20187028__

intended to preserve the status of any cited rule as a rule under chapter 120, Florida Statutes. This act does not cure any rulemaking defect or preempt any challenge based on a lack of authority or a violation of the legal requirements governing the adoption of any rule cited.

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

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)

3/2/18
Meeting Date

7028
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Bob Asztalos

Job Title Chief Lobbyist

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Tal FL 32301
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Email basztalos@fhcaa.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Health Care Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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)

3/2/18
Meeting Date

SB 7028
Bill Number (if applicable)

Topic Ratification of Dept of Elderly Affairs Rules

Amendment Barcode (if applicable)

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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.

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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)

March 2, 2018
Meeting Date

7028
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Ratification of ALF rule

Name Gail Matillo

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Email gmatillo@floridaseniorliving.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Senior Living 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:	SB 7030
INTRODUCER:	Rules Committee
SUBJECT:	Ratification of Agency for Health Care Administration Rules
DATE:	March 1, 2018
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Looke	Phelps		**RC Submitted as Committee Bill**
1.	Kidd	Hansen	AP	**Favorable**

I. Summary:

SB 7030 ratifies Agency for Health Care Administration (AHCA) Rule 59A-4.1265, F.A.C., entitled "Emergency Environmental Control for Nursing Homes." This rule requires, by June 1, 2018, each nursing home to acquire an alternative power source to ensure that temperatures are maintained at 81 degrees Fahrenheit or cooler in a sufficient portion of the facility to accommodate all of the facility's residents. The rule also requires each facility to implement certain policies and procedures to ensure that resident's do not suffer complications from heat exposure.

The Statement of Estimated Regulatory Costs (SERC) developed by the AHCA determined that the proposed rule will likely increase regulatory costs in excess of $1 million in the aggregate within 5 years after implementation of the rule. Accordingly, the rule must be ratified by the Legislature before it may go into effect.

The bill's provisions take effect upon becoming law.

II. Present Situation:

AHCA Rule for Nursing Home Generators

Rule History

The AHCA filed the rule 59A-4.1265, F.A.C., for adoption with the Department of State on February 2, 2018.[1] The AHCA initiated the rulemaking process on October 11, 2017, with rules published on November 14, 2017. The AHCA issued a notice of change published on January 10, 2017. Leading Age Florida challenged the validity of the AHCA's proposed rules for nursing homes but the challenge was withdrawn on January 26, 2018.

[1] See rule package filed with the Department of State for Rule 59A-4.1265. On file with Senate Health Policy Committee staff.

Alternate Power Source Plan

Rule 59A-4.1265, F.A.C., requires each nursing home to prepare a detailed plan, as a supplement to the facility's comprehensive emergency management plan, to address emergency power in the event of the loss of primary electrical power to the facility. The plan is required to include the following:

- The acquisition of a sufficient alternate power source maintained at the nursing home to ensure the protection of resident health, safety, welfare, and comfort for a minimum of 96 hours in the event of the loss of primary electrical power.
    - Each facility must determine a safe indoor air temperature required to meet the needs of residents that cannot be higher than 81 degrees Fahrenheit. The required temperature must be maintained in an area determined by the facility to be sufficient to maintain resident safety at all times, but not less than 30 square feet per resident.
    - The rule allows a facility to provide emergency power through its essential electrical system required by the Florida Building Code and allows flexibility for each nursing home to determine the best method for achieving the requirement for an alternative power source.
    - The rule specifies that a facility in an evacuation zone may use portable generators if an evacuation is necessary; that a facility on a campus with other licensed facilities under common ownership may share power sources, fuel, and space with the other licensed facilities; and that a multistory facility that plans on moving residents to a higher floor during a flood or surge event must also place its alternative power source in an area protected from flooding or storm surge.
- The acquisition of sufficient fuel to run the alternate power source and to maintain safe air temperatures for at least 96 hours. Of the 96 hours of required fuel, 72 hours must be stored onsite at the facility and the remaining 24 hours' worth of fuel must be obtained if the facility is located within an area in a declared state of emergency. If local ordinances or other regulations limit the amount of fuel that may be stored onsite, the nursing home must store the maximum amount of fuel allowed and must have a plan to obtain the remaining required amount of fuel within 24 hours prior to depleting its onsite supply. The rule specifies that piped natural gas is an allowed fuel source.
- The acquisition of services necessary to install, maintain, and test the equipment and to ensure the safe and sufficient operation of the alternate power source.

Submission of the Plan

Each existing nursing home is required to submit its plan to the local emergency management agency within 30 days of the effective date of the rule. Each newly licensed nursing home must submit its plan prior to obtaining a license. If any additions, modifications, alterations, refurbishments, reconstructions, or renovations of a nursing home affect the nursing home's compliance with the rule, the nursing home must amend its plan and resubmit it to the local emergency management agency for review and approval.

Review and Approval of the Plan

The local emergency management agency must review each plan and the AHCA's Office of Plans and Construction must review any related architectural and engineering plans. If the plan is

deficient, the local emergency management agency must report such deficiencies to the nursing home for resubmission of a corrected plan within ten business days. If the plan is approved or denied the local emergency management agency must report the approval or denial to the AHCA. The nursing home must also submit proof of approval of the plan to the AHCA within two business days of the plan's approval. Each nursing home must maintain a copy of its plan in a form that is readily available for review and must submit a consumer friendly summary of the plan to the AHCA. The AHCA must post the summary and notice of approval within ten business days on its website.

Plan Implementation

Each existing nursing home must have implemented its plan no later than June 1, 2018, and a new nursing home must have the plan implemented prior to obtaining a license. The AHCA may grant an extension of time up to January 1, 2019, if the implementation is delayed due to necessary construction, delivery of ordered equipment, or zoning or other regulatory processes. If a nursing home is granted an extension of time, the facility must update the AHCA on implementation progress monthly. If a nursing home is granted an extension of time, it must also make arrangements to ensure that the residents are housed in an area that meets the safe indoor air temperature requirement for a minimum of 96 hours during that time.

Policies and Procedures

The rule also requires each facility to implement policies and procedures to ensure that it can effectively and immediately activate, operate, and maintain the alternate power source. The policies and procedures must be resident-focused and ensure that the residents do not suffer complications from heat exposure. A contingency plan must also exist to transport residents to a safe facility if required. The policies and procedures must be available for inspection by residents, their representatives, and any other parties authorized in law.

Enforcement

The rule specifies that the AHCA may seek any statutory remedy for noncompliance including, but not limited to, license revocation, license suspension, and administrative fines.

History of Nursing Home Generator Rulemaking

Hurricane Irma

Between September 10 and September 16, 2017, Hurricane Irma swept across Florida causing heavy damage and widespread loss of power. In the aftermath of the hurricane, the nursing home Rehabilitation Center at Hollywood Hills (Center) was left without power and air conditioning for multiple days. As a consequence of the uncontrolled heat in the Center and because the Center's staff neglected to evacuate its residents, 12 Center residents died from heat exposure.[2]

[2] Eight residents died before the Center evacuated the facility and six more died in the following weeks. Two of the 14 deaths were found not to be related to heat exposure. See *12 of 14 Nursing Home Deaths After Irma Ruled Homicides*, WUSF News, available at http://wusfnews.wusf.usf.edu/post/12-14-nursing-home-deaths-after-irma-ruled-homicides, (last visited on Jan. 26, 2018).

On September 16, 2017, (after eight of the 12 resident deaths had occurred) Governor Scott issued a press release announcing emergency action for nursing homes and ALFs. In the press release, the Governor stated that "[a]ssisted living facilities and nursing homes serve our elderly and Florida's most vulnerable residents, and so many families rely on the health care professionals at these facilities to care for their loved ones…During emergencies, health care facilities must be fully prepared to ensure the health, safety and wellbeing of those in their care and there is absolutely no excuse not to protect life. The inability for this nursing home in Broward County to protect life has shined the light on the need for emergency action."[3]

Emergency Rules for Nursing Home Generators

Complying with the Governor's order, the AHCA published an emergency Rule 59AER17-1, F.A.C., requiring that all nursing homes install emergency generators. This emergency rule took effect on September 18, 2017; was renewed on December 15, 2017; [4] and established:

- The requirement that each facility provide a detailed plan within 45 days of the effective date of the rule for the acquisition and installation of an emergency generator and sufficient fuel to power the generator for 96 hours. The generator must be sufficiently large to cool the facility to 80 degrees Fahrenheit or below for the required time period;
- The requirement that each facility implement its plan within 60 days of the effective date of the rule; and
- Penalties for violating the emergency rule including possible license revocation and monetary penalties of up to $1,000 per day for continuing violations.

The emergency rule was challenged at the Division of Administrative Hearings (DOAH) and was ruled invalid on October 27, 2017. A similar emergency rule for Assisted Living Facilities was also challenged. The DOAH judge ruled that there was no emergency that required the rules and that the rules were invalid exercises of delegated legislative authority. The judge ruled that the rules:

- Were arbitrary and capricious in that complying with the rules in the timeframes allowed was impossible;
- Vested unbridled discretion in the AHCA and the DOEA in that the rules were so vague as to require agency discretion to implement them; and
- Contravened the implementing statute in that the penalties made no effect to classify noncompliance in a manner consistent with statute.[5]

[3] See https://www.flgov.com/2017/09/16/gov-scott-i-am-aggressively-fighting-to-keep-vulnerable-floridians-safe-during-emergencies/, (last visited on Jan. 26, 2018).

[4] Generally, emergency rules expire after 90 days and are not renewable. See s. 120.54(c), F.S. However, s. 120.54(4)(c)2., F.S., allows an agency to extend the period of time that emergency rules are effective if the agency has initiated the rulemaking process on the same subject and the proposed rules are awaiting legislative ratification. Currently, the AHCA and the DOEA have initiated rulemaking to adopt rules on the same subject (see section below) and the agencies' have submitted the proposed rules to the Legislature for ratification.

[5] *Florida Association of Homes and Services for the Aging, Inc., d/b/a, Leadingage Florida v. the Agency for Health Care Administration*, case no. 17-5388RE, and *Florida Assisted Living Association, Inc., a Florida not for Profit Corporation v. the Florida Department of Elder Affairs*, case no. 17-5409RE

The case has been appealed to the Florida First District Court of Appeal[6] (DCA). The DCA denied a motion to stay the effect of the rules on November 11, 2017, and consequently, the emergency rule continues to be in effect pending appeal.

Federal Regulations for Nursing Home Emergency Power

Federal regulations currently in effect require nursing homes[7] to obtain emergency power in a similar manner to the permanent rules in development by the AHCA. The regulations in 42 CFR 483.73, require each long term care facility, including nursing homes, to develop and implement emergency preparedness policies and procedures that must include alternative sources of energy to maintain safe air temperatures for residents. Based on the facility's policies and procedures, each facility must implement emergency and standby power systems and maintain on onsite fuel source and a plan to keep the power systems operational, unless the facility evacuates. These regulations took effect on November 16, 2017, and are a requirement for the nursing home to participate in the Medicare or Medicaid programs.

SERC Requirements

Agencies must prepare a SERC for a rule that has an adverse impact on small businesses or that increases regulatory costs more than $200,000 in the aggregate within 1 year after implementation of the rule.[8]

A SERC must include estimates of:
- The number of people and entities effected by the proposed rule;
- The cost to the agency and other governmental entities to implement and enforce the proposed rule;
- Transactional costs likely to be incurred by people, entities, and governmental agencies for compliance; and
- An analysis of the proposed rule's impact on small businesses, counties, and cities.[9]

The SERC must also include an economic analysis on the likelihood that the proposed rule will have an adverse impact in excess of $1 million within the first 5 years of implementation on:
- Economic growth, private-sector job creation or employment, or private-sector investment;
- Business competitiveness,[10] productivity, or innovation; or
- Regulatory costs, including any transactional costs.[11,12]

[6] Case no. 1D17-4534.
[7] While nursing homes are federally regulated, the regulation of ALFs is delegated to the states.
[8] Sections 120.54(3)(b) and 120.541(1)(b), F.S.
[9] Section 120.541(2)(b)-(e), F.S. A small city has an unincarcerated population of 10,000 or less. A small county has an unincarcerated population of 75,000 or less. A small business employs less than 200 people, and has a net worth of $5 million or less. *See* ss. 120.52(18), (19), and 288.703(6), respectively.
[10] Business competitiveness includes the ability of those doing business in Florida to compete with those doing business in other states or domestic markets.
[11] Transactional costs are direct costs that are readily ascertainable based upon standard business practices. They include filing fees, the cost of obtaining a license, the cost of equipment required to be installed or used, procedures required to by employed to comply with the rule, additional operating costs, the cost of monitoring and reporting, and any other costs necessary to comply with the rules.
[12] Section 120.541(2)(a), F.S.

If the economic analysis results in an adverse impact or regulatory costs in excess of $1 million within 5 years after implementation of the rule, then the rule must be ratified by the Legislature in order to take effect.[13]

The AHCA has determined that the likely aggregate cost for nursing homes to comply with this rule will be approximately $108,224,945.[14]

III. Effect of Proposed Changes:

This bill ratifies AHCA Rule 59A-4.1265, F.A.C., entitled "Emergency Environmental Control for Nursing Homes." This rule requires, by June 1, 2018, each nursing home to acquire an alternative power source to ensure that temperatures are maintained at 81 degrees Fahrenheit or cooler in a sufficient portion of the facility to accommodate all of the facility's residents. The rule also requires each facility to implement certain policies and procedures to ensure that resident's do not suffer complications from heat exposure.

The bill also:

- Directs that the act shall not be codified in the Florida Statutes;
- Requires that after the act becomes law, its enactment and effective date shall be noted in the Florida Administrative Code, the F.A.R., or both, as appropriate;
- Provides that the act does not alter rulemaking authority or constitute a legislative preemption of, or exception to, any other provision of law regarding adoption or enforcement of the rule and is intended to preserve the status of the rule; and
- Does not cure any rulemaking defect or preempt any challenge based on a lack of authority or a violation of requirements governing adoption of the rule.

The SERC developed by the AHCA determined that the proposed rule will likely increase regulatory costs in excess of $1 million in the aggregate within 5 years after implementation of the rule. Accordingly, the rule must be ratified by the Legislature before it may go into effect.

The bill's provisions take effect upon becoming law and, at that time, the rule becomes effective.[15]

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

[13] Section 120.541(3), F.S. Legislative ratification is not required for adoption of federal standards, amendments to the Florida Building Code, or amendments to the Florida Fire Prevention Code. *See* s. 120.541(4), F.S.
[14] Summary of SERC for Rule 59A-4.1265, published in a notice of correction in the Florida Administrative Register on January 11, 2018.
[15] Section 120.54(3)(e)6., 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:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

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.)

None.

B. Amendments:

None.

By the Committee on Rules

595-03972-18 20187030__

A bill to be entitled

An act relating to ratification of Agency for Health Care Administration rules; ratifying a specified rule relating to emergency environmental control for nursing homes for the sole and exclusive purpose of satisfying any condition on effectiveness pursuant to s. 120.541(3), F.S., which requires ratification of any rule exceeding the specified thresholds for likely adverse impact on or increase in regulatory costs; providing applicability; providing an effective date.

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

Section 1. (1) The following rule is ratified for the sole and exclusive purpose of satisfying any condition on effectiveness imposed under s. 120.541(3), Florida Statutes: Rule 59A-4.1265, Florida Administrative Code, entitled "Emergency Environmental Control for Nursing Homes," as filed for adoption with the Department of State pursuant to the certification package dated February 2, 2018.

(2) This act serves no other purpose and may not be codified in the Florida Statutes. After this act becomes law, its enactment and effective date shall be noted in the Florida Administrative Code, the Florida Administrative Register, or both, as appropriate. This act does not alter rulemaking authority delegated by prior law, does not constitute legislative preemption of or exception to any provision of law governing adoption or enforcement of the cited rule, and is intended to preserve the status of the cited rule as a rule

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Florida Senate - 2018 **SB 7030**

595-03972-18 20187030__

under chapter 120, Florida Statutes. This act does not cure any rulemaking defect or preempt any challenge based on a lack of authority or a violation of the legal requirements governing the adoption of the cited rule.

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

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)

3/2/18
Meeting Date

SB 7030
Bill Number (if applicable)

Topic Ratification of AHCA's Rules

Amendment Barcode (if applicable)

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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.

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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)

3/2/18
Meeting Date

7030
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

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Email bazlobby@flhca.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Health Care Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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: 3/2/2018 9:07:04 AM
Ends: 3/2/2018 11:59:27 AM Length: 02:52:24

9:07:13 AM Sen. Bradley (Chair)
9:08:52 AM S 728
9:09:03 AM Sen. Benacquisto
9:09:44 AM S 7030
9:09:57 AM Sen. Young
9:10:30 AM Bob Asztalos, Chief Lobbyist, Florida Health Care Association (waives in support)
9:10:36 AM Dorene Barker, Assistant Staff Director, American Association of Retired Persons (waives in support)
9:11:44 AM S 1712
9:11:49 AM Sen. Montford
9:13:11 AM S 1254
9:13:57 AM Am. 481844
9:14:00 AM Sen. Passidomo
9:14:01 AM Jessica Scher, Public Policy Director, United Way of Miami-Dade (waives in support)
9:14:05 AM Carol Bracy, Consultant, Florida Childrens Council (waives in support)
9:14:06 AM Natalie King, Vice President, Helios Education Foundation (waives in support)
9:15:05 AM S 1056
9:15:21 AM PCS 293960
9:15:27 AM Sen. Passidomo
9:15:49 AM Am. 234318
9:15:52 AM Sen. Passidomo
9:16:07 AM S 1056 (cont.)
9:16:16 AM Brittney Hurt, Policy Director, Florida Chamber of Commerce (waives in support)
9:16:24 AM Corey Staniscia, Government Affairs, Code.org (waives in support)
9:16:29 AM Carol Bracy, Consultant, Florida Childrens Council (waives in support)
9:16:32 AM Leah Courtney, Communications Coordinator, Florida TaxWatch (waives in support)
9:17:41 AM S 620
9:17:52 AM PCS 741326
9:17:59 AM Sen. Passidomo
9:18:30 AM Am. 177326
9:18:44 AM Sen. Stargel
9:22:58 AM Sen. Braynon
9:23:23 AM Danielle Scoggins, Senior Public Policy Representative (waives in support)
9:23:29 AM Chris Dawson, National Association for Industrial and Office Parks (waives in support)
9:23:31 AM Tim Nungesser, Legislative Director, National Feeration of Independent Business (waives in support)
9:23:33 AM Brewster Bevis, Senior Vice President, Associated Industries of Florida (waives in support)
9:23:35 AM Adam Basford, Director of Legislative Affairs, Florida Farm Bureau (waives in support)
9:23:51 AM Sen. Stargel
9:24:25 AM S 620 (cont.)
9:24:31 AM Carolyn Johnson, Policy Director, Florida Chamber of Commerce (waives in support)
9:24:34 AM Leah Courtney, Communications Coordinator, Florida TaxWatch (waives in support)
9:24:38 AM Brewster Bevis, Senior Vice President, Associated Industries of Florida (waives in support)
9:24:40 AM Melissa Ramba, Vice President, Florida Retail Federation (waives in support)
9:26:05 AM S 844
9:26:16 AM Sen. Bean
9:27:00 AM Sen. Flores
9:28:10 AM Sen. Bean
9:29:04 AM S 732
9:29:17 AM PCS 478690
9:29:23 AM Sen. Baxley
9:29:48 AM Am. 677438
9:29:56 AM Sen. Brandes
9:30:44 AM Alexis Flowers, Manager, External Affairs (waives in support)

9:31:00 AM S 732 (cont.)
9:31:07 AM Brenda Dickson, Lobbyist, The Home Education Foundation (waives in support)
9:32:19 AM S 1532
9:32:26 AM Sen. Stargel
9:33:37 AM S 1678
9:33:45 AM Sen. Stargel
9:34:00 AM Amy Mercer, Executive Director, Florida Policy Chiefs (waives in support)
9:35:18 AM S 672
9:36:31 AM S 1396
9:36:36 AM PCS 535720
9:36:53 AM Sen. Steube
9:37:31 AM Recording Paused
9:38:10 AM Recording Resumed
9:38:31 AM Am. 830072
9:38:35 AM Sen. Steube
9:38:58 AM Am. 554532
9:39:03 AM Sen. Steube
9:39:25 AM Sen. Bradley
9:39:51 AM Brian Sullivan, Chief Legal Counsel, Florida Association of Counties
9:40:41 AM Sen. Gibson
9:41:14 AM B. Sullivan
9:42:01 AM Sen. Gibson
9:42:12 AM B. Sullivan
9:42:30 AM Sen. Gibson
9:42:34 AM B. Sullivan
9:42:53 AM Sen. Bradley
9:43:06 AM B. Sullivan
9:43:58 AM Sen. Steube
9:44:02 AM Sen. Bradley
9:44:09 AM Sen. Steube
9:44:13 AM Sen. Bradley
9:44:39 AM Sen. Steube
9:45:09 AM Sen. Bradley
9:45:45 AM Sen. Brandes
9:46:02 AM Sen. Bradley
9:47:17 AM Am. 225404
9:47:22 AM Sen. Steube
9:47:57 AM S 1396 (cont.)
9:48:04 AM Sen. Steube
9:48:59 AM S 840
9:49:15 AM PCS 514374
9:49:21 AM Sen. Hutson
9:49:34 AM Am. 184406
9:49:37 AM Sen. Hutson
9:51:36 AM Am. 578866
9:52:15 AM Sen. Braynon
9:53:01 AM Christine Graves, Attorney, Pace-O-Matic
9:54:34 AM Sen. Montford
9:55:29 AM Sen. Hutson
9:56:11 AM Sen. Braynon
9:56:29 AM Brittney Hurt, Policy Director, Florida Chamber of Commerce (waives in support)
9:57:01 AM Antonio Jefferson, City Manager, City of Gretna
9:57:42 AM Helen Franks, Mayor Pro Tempore, City of Gretna
9:59:19 AM Clarence Jackson, Commisioner, City of Gretna
9:59:23 AM Anthony Barker, Mayor, City of Gretna (waives in support)
10:00:29 AM S 840 (cont.)
10:00:36 AM Carey Thiel, Executive Director, Greyzk USA (waives in support)
10:00:44 AM Tim Parson, Director of Government Relations (waives against)
10:00:49 AM Jennifer Hobgood, Director of State Legislation, American Society for the Prevention of Cruelty to Animals (waives in support)
10:00:52 AM Jeff Kottkamp, Florida Greyhound Association/Florida Casino Watch (waives against)
10:01:16 AM Sen. Gibson

10:01:46 AM Sen. Stargel
10:02:11 AM Sen. Montford
10:03:26 AM Sen. Stewart
10:04:02 AM Sen. Hutson
10:05:21 AM Sen. Stewart
10:05:58 AM S 7028
10:06:03 AM Sen. Garcia
10:06:22 AM Bob Asztalos, Chief Lobbyist, Florida Healthcare Association (waives in support)
10:06:26 AM Dorene Barker, Assistant Staff Director, American Association for Retired Persons (waives in support)
10:06:32 AM Gail Matillo, President, Florida Senior Living Association (waives in support)
10:07:45 AM S 1548
10:07:56 AM Sen. Stargel (Chair)
10:08:19 AM Sen. Book
10:08:33 AM Am. 142946
10:08:39 AM Sen. Book
10:10:01 AM Chase Daniels, Assistant Executive Director, Pasco Sheriff's Office
10:10:14 AM S 1548 (cont.)
10:10:22 AM Alexander Anderson, Deputy Director of Government Relations, Department of Education (waives in support)
10:11:27 AM S 992
10:11:36 AM PCS 757058
10:11:43 AM Sen. Book
10:12:24 AM Edgar G. Fernandez, Resident, Palm Beach County (waives in support)
10:13:27 AM S 1450
10:13:46 AM PCS 285140
10:13:53 AM Sen. Steube
10:15:39 AM S 422
10:16:04 AM Sen. Gibson
10:16:51 AM PCS 707324
10:17:15 AM Am. 913150
10:17:17 AM Sen. Gibson
10:17:42 AM Albert Balido, Florida Certification Board (waives in support)
10:17:54 AM S 422 (cont.)
10:19:00 AM S 1646
10:19:12 AM PCS 952426
10:19:17 AM Sen. Montford
10:20:09 AM Am. 677446
10:20:15 AM Sen. Montford
10:20:44 AM S 1646 (cont.)
10:20:54 AM Carolyn Johnson, Policy Director, Florida Chamber of Commerce (waives in support)
10:20:57 AM Diane Scholz, Director of Rural Economic Development Services, North Florida Economic Development Partnership (waives in support)
10:21:00 AM Jim Spratt, Resident, Okeechobee County (waives in support)
10:21:06 AM Greg Turbeville, Florida Great Northwest (waives in support)
10:21:09 AM Chris Doolin, Consultant, Small County Coalition (waives in support)
10:22:25 AM S 424
10:22:28 AM Sen. Gibson
10:23:56 AM S 1486
10:24:03 AM Sen. Grimsley
10:24:15 AM Am. 485676
10:24:20 AM Sen. Grimsley
10:25:16 AM S 1486 (cont.)
10:26:17 AM S 744
10:26:26 AM Sen. Grimsley
10:26:40 AM Am. 128446
10:26:47 AM Sen. Grimsley
10:27:36 AM Ellyn Bogdanoff, SCHMR (waives in support)
10:27:52 AM S 744 (cont.)
10:28:11 AM Larry Gonzalez, Attorney, Electrologist Society and Electrologist Association of Florida
10:31:13 AM S 848
10:31:18 AM Sen. Grimsley
10:32:45 AM Chris Hansen, Ballard Partners, Telepharm LLC (waives in support)

10:32:51 AM Adam Chesler, Cardinal Health (waives in support)
10:33:00 AM Larry Gonzalez, Attorney, Electrologist Society and Electrologist Association of Florida (waives in support)
10:33:08 AM Michael Jackson, CEO, Florida Pharmacy Association (waives in support)
10:34:20 AM S 774
10:34:27 AM Sen. Bean
10:36:06 AM S 784
10:36:15 AM Sen. Brandes
10:37:57 AM S 1314
10:38:06 AM PCS 188068
10:38:10 AM Sen. Brandes
10:38:39 AM Dr. Lawrence Tinker, Enrepreneur in Residence, Florida Institute for the Commercialization of Public Research
10:39:55 AM S 852
10:40:12 AM PCS 859872
10:40:20 AM Sen. Brandes
10:40:43 AM Am. 136690
10:40:47 AM Sen. Brandes
10:41:07 AM Am. 819704
10:41:10 AM Sen. Brandes
10:42:19 AM S 852 (cont.)
10:43:53 AM S 1066
10:43:56 AM Sen. Baxley
10:44:05 AM Am. 723622
10:44:08 AM Sen. Baxley
10:44:22 AM S 1066 (cont.)
10:45:24 AM S 1104
10:45:35 AM PCS 472918
10:45:52 AM Sen. Brandes
10:46:52 AM Am. 419998
10:47:43 AM Sen. Powell
10:48:17 AM Sen. Brandes
10:49:30 AM Am. 796284
10:49:40 AM Sen. Brandes
10:51:02 AM Sen. Powell
10:51:05 AM Sen. Brandes
10:52:07 AM Michael Spinelli, Lobbyist, United Cabs of Pinellas (waives in support)
10:52:10 AM Travis Mitchell, Lobbyist, Tampa Taxi Coalition (waives in support)
10:52:14 AM Audrey Brown, President, Florida Association of Health Plans
10:52:50 AM S 1104 (cont.)
10:53:58 AM S 1494
10:54:01 AM Sen. Montford
10:54:31 AM Am. 722650
10:54:38 AM Am. 796750
10:54:45 AM Sen. Montford
10:55:11 AM Christopher Noland, Florida Chapter of the American College of Physicians (waives in support)
10:55:14 AM Lauren Henderson, Epic Rx (waives in support)
10:55:19 AM Larry Gonzalez, General Counsel, Florida Society of Health System Pharmacists (waives in support)
10:57:20 AM S 44
10:57:35 AM PCS 366626
10:57:49 AM Sen. Rodriguez
10:58:47 AM S 42
10:59:03 AM Sen. Rodriguez
11:00:19 AM S 40
11:00:23 AM Sen. Thurston
11:01:00 AM Sen. Gainer
11:01:24 AM Sen. Thurston
11:02:28 AM S 1612
11:02:34 AM PCS 473282
11:02:42 AM Sen. Rader
11:04:10 AM Am. 179484
11:04:13 AM Sen. Rader
11:05:10 AM Am. 639812

11:05:13 AM Sen. Rader
11:05:51 AM Lane Stephens, Florida Airboat Association (waives in support)
11:07:12 AM S 1012
11:07:19 AM PCS 291154
11:07:29 AM Sen. Passidomo
11:07:40 AM Am. 477376
11:07:47 AM Sen. Passidomo
11:08:26 AM Sen. Powell
11:08:48 AM Sen. Passidomo
11:08:55 AM Sen. Powell
11:09:39 AM S 1012 (cont.)
11:10:56 AM S 354
11:11:04 AM Sen. Stargel
11:11:33 AM Am. 522564
11:11:38 AM Sen. Stargel
11:12:19 AM Am. 104016
11:12:23 AM Sen. Bradley
11:12:55 AM Am. 110202
11:12:58 AM Sen. Stargel
11:13:23 AM Am. 263764
11:13:30 AM Sen. Stargel
11:14:11 AM Am. 703092
11:14:18 AM Sen. Stargel
11:15:25 AM Sen. Montford
11:15:48 AM Sen. Stargel
11:16:05 AM Laura Youmans, Florida Association of Counties (waives against)
11:17:00 AM Amber Hughes, Sr. Legislative Advocate, Florida League of Cities (waives against)
11:17:23 AM Sen. Powell
11:18:14 AM Sen. Stargel
11:18:42 AM Amber Hughes, Sr. Legislative Advocate, Florida League of Cities
11:20:33 AM Justin Thames, Director of Government Affairs
11:21:34 AM Sen. Stewart
11:22:10 AM Sen. Stargel
11:22:38 AM Sen. Bradley
11:23:50 AM Sen. Stargel
11:24:20 AM Sen. Bradley
11:25:09 AM Sen. Baxley
11:26:19 AM S 354 (cont.)
11:26:23 AM Sen. Powell
11:26:36 AM Sen. Stargel
11:27:18 AM Sen. Bradley
11:29:04 AM Sen. Flores (Chair)
11:29:40 AM Am. 522564 (cont.)
11:30:03 AM S 354 (cont.)
11:30:17 AM Sen. Stargel
11:32:23 AM S 272
11:32:30 AM PCS 245118
11:32:39 AM Sen. Brandes
11:34:36 AM S 1218
11:39:11 AM PCS 485662
11:39:18 AM Sen. Brandes
11:43:44 AM Am. 711458
11:43:47 AM Sen. Brandes
11:43:52 AM Am. 606820
11:43:57 AM Sen. Brandes
11:44:15 AM Am. 786578
11:44:20 AM Sen. Brandes
11:46:35 AM Sen. Bean
11:47:26 AM Sen. Brandes
11:47:49 AM Sen. Gainer
11:48:36 AM Sen. Book
11:49:18 AM Sen. Brandes

11:49:21 AM Sen. Simmons
11:49:54 AM Sen. Brandes
11:51:12 AM Tim Nungesser, Legislative Director, National Federation of Independent Business
11:52:18 AM Chelsea Murphy, Director, Right on Crime (waives in support)
11:52:27 AM Sal Nuzzo, Vice President of Policy, The James Madison Institute (waives in support)
11:52:43 AM Melissa Ramba, Vice President, Florida Retail Federation
11:53:34 AM Skylar Zander, Depty State Director, Americans for Prosperity (waives in support)
11:54:05 AM Barney Bishop, CEO, Florida Smart Justice Alliance
11:55:32 AM Nancy Stephens, Manufacturers Association of Florida
11:56:29 AM Sen. Bean
11:57:28 AM Sen. Brandes
11:58:16 AM
11:59:27 AM S 1218 (cont.)