

Tab 1	CS/CS/SB 172 by JU, CF, Passidomo (CO-INTRODUCERS) Mayfield, Powell; (Similar to CS/H 00399) Guardianship					
Tab 2	CS/SB 1108 by GO, Artiles; (Similar to CS/H 00383) Public Records/Firefighters and their Spouses and Children					
Tab 3	CS/CS/SB 346 by GO, CM, Stargel; (Similar to CS/CS/H 00169) Fictitious Name Registration					
820372	A	S	RCS	RC, Stargel	Delete L.48 - 202:	04/06 02:24 PM
Tab 4	SB 404 by Simmons; Legislative Ratification					
546448	D	S	RCS	RC, Simmons	Delete everything after	04/06 02:25 PM
Tab 5	SB 438 by Baxley; Out-of-school Suspension					
Tab 6	SB 464 by Clemens; (Similar to CS/H 00181) Natural Hazards					
Tab 7	CS/CS/SB 550 by JU, CJ, Bracy (CO-INTRODUCERS) Campbell; (Similar to CS/CS/H 00111) Public Records/Murder Witness					
Tab 8	CS/SM 572 by CM, Campbell (CO-INTRODUCERS) Rodriguez; (Identical to CS/H 00935) Haitian Independence and Flag Day/Haitian American and Caribbean American Heritage Month					
381644	A	S	RCS	RC, Campbell	Delete L.126:	04/06 02:27 PM
Tab 9	CS/SB 818 by RI, Hutson; (Similar to CS/H 00829) Timeshares					
Tab 10	CS/CS/SB 624 by JU, CJ, Steube; (Similar to CS/H 00305) Body Cameras					
463938	A	S	WD	RC, Brandes	Delete L.35:	04/06 02:28 PM
480786	A	S	WD	RC, Brandes	btw L.38 - 39:	04/06 02:28 PM
Tab 11	SB 1634 by Steube; (Identical to CS/H 01215) Residential Elevators					
236060	A	S	RCS	RC, Steube	Delete L.31 - 33:	04/06 02:28 PM
Tab 12	CS/SB 812 by BI, Perry (CO-INTRODUCERS) Gibson; (Similar to CS/CS/1ST ENG/H 00805) Insurance Policy Transfers					
720260	A	S	RCS	RC, Perry	Delete L.33:	04/06 02:29 PM
Tab 13	CS/CS/SB 886 by GO, CF, Powell; (Similar to CS/CS/H 00791) Public Records/Substance Abuse Impaired Persons					
Tab 14	SB 1024 by Stewart; (Identical to H 00381) Public Records/Homeless Management Information System					
Tab 15	SB 1694 by Torres; (Similar to CS/H 01199) Support for Parental Victims of Child Domestic Violence					
187070	A	S	RCS	RC, Torres	Delete L.17 - 21:	04/06 02:30 PM
Tab 16	CS/CS/SB 340 by JU, BI, Brandes (CO-INTRODUCERS) Galvano, Simpson, Artiles, Young, Bracy; (Similar to CS/1ST ENG/H 00221) Transportation Network Companies					
875988	A	S	WD	RC, Lee	Delete L.481 - 484:	04/06 02:32 PM
761146	SA	S	WD	RC, Lee	Delete L.481 - 484:	04/06 02:32 PM

Tab 17	CS/SB 794 by BI, Brandes ; (Similar to CS/H 00339) Motor Vehicle Service Agreement Companies
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The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

RULES
Senator Benacquisto, Chair
Senator Thurston, Vice Chair

MEETING DATE: Thursday, April 6, 2017**TIME:** 10:30 a.m.—12:30 p.m.**PLACE:** Toni Jennings Committee Room, 110 Senate Office Building**MEMBERS:** Senator Benacquisto, Chair; Senator Thurston, Vice Chair; Senators Book, Bradley, Brandes, Braynon, Flores, Galvano, Latvala, Lee, Montford, and Simpson

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	CS/CS/SB 172 Judiciary / Children, Families, and Elder Affairs / Passidomo (Similar CS/H 399)	Guardianship; Requiring each examining committee member, in a proceeding to determine a person's incapacity, to file his or her report with the clerk of the court within a specified timeframe after appointment; revising the timeframe within which specified parties must be served with all reports; increasing the timeframe within which a guardian has to file a required annual guardianship plan with the court if the court does not require filing on a calendar-year basis, etc. CF 02/06/2017 Fav/CS JU 03/14/2017 Fav/CS RC 04/06/2017 Favorable	Favorable Yeas 10 Nays 0
2	CS/SB 1108 Governmental Oversight and Accountability / Artilles (Similar CS/H 383)	Public Records/Firefighters and their Spouses and Children; Expanding an exemption from public records requirements for the personal identifying and location information of certain firefighters and their spouses and children to include the personal identifying and location information of former firefighters and their spouses and children, and the names of spouses and children of current and former firefighters; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. BI 03/14/2017 Favorable GO 03/27/2017 Fav/CS RC 04/06/2017 Favorable	Favorable Yeas 12 Nays 0
3	CS/CS/SB 346 Governmental Oversight and Accountability / Commerce and Tourism / Stargel (Similar CS/CS/H 169)	Fictitious Name Registration; Revising the information required to register a fictitious name; prohibiting a renewal of a registration if the registered fictitious name is prohibited by specified provisions; clarifying that the Division of Corporations administers the provisions of ch. 865, F.S., relating to fictitious name registration, etc. CM 02/21/2017 Fav/CS GO 03/06/2017 Fav/CS RC 04/06/2017 Fav/CS	Fav/CS Yeas 10 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Rules

Thursday, April 6, 2017, 10:30 a.m.—12:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 404 Simmons	Legislative Ratification; Providing that the maximum reimbursement allowances and manuals approved by a three-member panel for purposes of the Workers' Compensation Law are exempt from legislative ratification under the Administrative Procedure Act when the adverse impact or regulatory costs of such allowances or manuals exceed any criteria specified in provisions, etc. BI 02/21/2017 Favorable GO 03/06/2017 Favorable RC 04/06/2017 Fav/CS	Fav/CS Yeas 12 Nays 0
5	SB 438 Baxley	Out-of-school Suspension; Authorizing a parent to give public testimony regarding a district school board's out-of-school suspension policy at a specified meeting; requiring a district school board to review its rules authorizing out-of-school suspension during a specified timeframe at a district school board meeting; requiring the board to take public testimony at the meeting; providing that the rules expire under certain circumstances, etc. ED 02/21/2017 Favorable RC 04/06/2017 Favorable	Favorable Yeas 11 Nays 0
6	SB 464 Clemens (Similar CS/H 181)	Natural Hazards; Creating an interagency workgroup to share information, coordinate ongoing efforts, and collaborate on initiatives relating to natural hazards; designating the director of the Division of Emergency Management or his or her designee as the liaison to and coordinator of the workgroup, etc. MS 02/21/2017 Favorable CA 03/06/2017 Favorable GO 03/22/2017 Favorable RC 04/06/2017 Favorable	Favorable Yeas 11 Nays 0
7	CS/CS/SB 550 Judiciary / Criminal Justice / Bracy (Similar CS/CS/H 111)	Public Records/Murder Witness ; Providing that the personal identifying information of a witness to a murder remains confidential and exempt for a specified period; providing an exemption from public records requirements for criminal intelligence or criminal investigative information that reveals the personal identifying information of a witness to a murder for a specified period; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. CJ 02/21/2017 Fav/CS JU 03/07/2017 Fav/CS GO 03/27/2017 Favorable RC 04/06/2017 Favorable	Favorable Yeas 10 Nays 2

COMMITTEE MEETING EXPANDED AGENDA

Rules

Thursday, April 6, 2017, 10:30 a.m.—12:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	CS/SM 572 Commerce and Tourism / Campbell (Similar HM 933, Identical CS/HM 935, Compare HM 45, HR 8015, SM 568, SM 710)	Haitian Independence and Flag Day/Haitian American and Caribbean American Heritage Month ; Urging Congress to recognize January 1 as "Haitian Independence Day," the month of May as "Haitian American Heritage Month," May 18 as "Haitian Flag Day," and the month of June as "Caribbean American Heritage Month", etc. CM 03/27/2017 Fav/CS RC 04/06/2017 Fav/CS	Fav/CS Yeas 12 Nays 0
9	CS/SB 818 Regulated Industries / Hutson (Similar CS/H 829)	Timeshares; Revising the definition of the term "interestholder" to clarify that the term does not include certain parties to a certain multisite timeshare plan; revising requirements for the termination of a timeshare plan; specifying the percentage of votes required to extend the term of a timeshare plan under certain circumstances, etc. RI 03/08/2017 Fav/CS JU 03/22/2017 Favorable RC 04/06/2017 Favorable	Favorable Yeas 12 Nays 0
10	CS/CS/SB 624 Judiciary / Criminal Justice / Steube (Similar CS/H 305)	Body Cameras; Requiring law enforcement agencies that permit law enforcement officers to wear body cameras to establish policies and procedures that include a provision permitting a law enforcement officer using a body camera to review body camera footage before taking certain actions, etc. CJ 03/06/2017 Fav/CS JU 03/22/2017 Fav/CS RC 04/06/2017 Favorable	Favorable Yeas 11 Nays 0
11	SB 1634 Steube (Identical CS/H 1215)	Residential Elevators; Requiring that an elevator controller be capable of monitoring the closed and locked contacts of the hoistway door locking device; requiring that the elevator controller be capable of interrupting the power for the motor and brake for a hoistway door locking device under certain circumstances, etc. CA 03/22/2017 Favorable RC 04/06/2017 Fav/CS	Fav/CS Yeas 11 Nays 0
12	CS/SB 812 Banking and Insurance / Perry (Similar CS/CS/H 805)	Insurance Policy Transfers; Authorizing an insurer to transfer a personal lines residential or commercial residential property insurance policy to another authorized insurer upon expiration of the policy term if specified conditions are met, etc. BI 03/14/2017 Fav/CS CM 03/27/2017 Favorable RC 04/06/2017 Fav/CS	Fav/CS Yeas 12 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Rules

Thursday, April 6, 2017, 10:30 a.m.—12:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
13	CS/CS/SB 886 Governmental Oversight and Accountability / Children, Families, and Elder Affairs / Powell (Similar CS/CS/H 791)	Public Records/Substance Abuse Impaired Persons; Providing an exemption from public records requirements for petitions for involuntary assessment and stabilization, court orders, related records, and personal identifying information regarding substance abuse impaired persons; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. CF 03/13/2017 Fav/CS GO 03/22/2017 Fav/CS RC 04/06/2017 Favorable	Favorable Yeas 11 Nays 0
14	SB 1024 Stewart (Identical H 381)	Public Records/Homeless Management Information System; Creating a public records exemption for individual identifying information of a person contained in a Point-in-Time Count and Survey or data in a Homeless Management Information System; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. CF 03/13/2017 Favorable GO 03/27/2017 Favorable RC 04/06/2017 Favorable	Favorable Yeas 12 Nays 0
15	SB 1694 Torres (Similar CS/H 1199)	Support for Parental Victims of Child Domestic Violence; Requiring the Department of Juvenile Justice and the Florida Coalition Against Domestic Violence to collaborate to develop and maintain updated information and materials regarding specified services and resources; requiring domestic violence training for law enforcement officers to include training concerning child-to-parent cases, etc. CJ 03/21/2017 Favorable CF 03/27/2017 Favorable RC 04/06/2017 Fav/CS	Fav/CS Yeas 12 Nays 0
16	CS/CS/SB 340 Judiciary / Banking and Insurance / Brandes (Similar CS/H 221)	Transportation Network Companies; Providing that a transportation network company (TNC) driver is not required to register certain vehicles as commercial motor vehicles or for-hire vehicles; providing requirements for a TNC's digital network; providing that specified automobile insurers have a right of contribution against other insurers that provide automobile insurance to the same TNC drivers in satisfaction of certain coverage requirements under certain circumstances, etc. BI 03/14/2017 Fav/CS JU 03/28/2017 Fav/CS RC 04/06/2017 Favorable	Favorable Yeas 10 Nays 1

COMMITTEE MEETING EXPANDED AGENDA

Rules

Thursday, April 6, 2017, 10:30 a.m.—12:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
17	CS/SB 794 Banking and Insurance / Brandes (Similar CS/H 339)	Motor Vehicle Service Agreement Companies; Revising qualifications for a motor vehicle service agreement company to obtain and maintain a license; requiring specified refunds by insurers or service agreement companies if service agreements are canceled by lenders, finance companies, or creditors after a specified timeframe; providing a limitation on such cancellations, etc. BI 03/14/2017 Fav/CS CM 03/27/2017 Favorable RC 04/06/2017 Favorable	Favorable Yeas 11 Nays 0
Other Related Meeting Documents			

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/CS/SB 172

INTRODUCER: Judiciary Committee; Children, Families, and Elder Affairs Committee; and Senators Passidomo and Mayfield

SUBJECT: Guardianship

DATE: April 6, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Crosier	Hendon	CF	Fav/CS
2.	Stallard	Cibula	JU	Fav/CS
3.	Crosier	Phelps	RC	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 172 revises several aspects of Florida's guardianship statutes relating to the determination of a person's incapacity, a guardian's annual report on the incapacitated person over whom he or she has responsibility, what findings a court must make to allow a guardian to initiate a ward's divorce, and how much a guardian may spend on a ward's funeral and related expenses.

The bill has an effective date of July 1, 2017, and is not expected to have a fiscal impact.

II. Present Situation:

Procedures to determine incapacity

Section 744.331, F.S., provides the process whereby a petition to determine incapacity is filed and provided and read to the alleged incapacitated person.¹ Notice of the filing of a petition to determine incapacity must be served on certain individuals.² The notice must also contain the time and place of the hearing on the petition to determine incapacity, that an attorney has been

¹ Section 744.331(1), F.S.

² *Id.*

appointed and, if the person is determine incapable of exercising certain rights, a guardian will be appointed to exercise those rights on his or her behalf.³

Within 5 days after a petition to determine incapacity is filed the court appoints a 3 member examining committee.⁴ Each member of the examining committee must examine the person, determine the alleged incapacitated person's ability to exercise certain rights as specified in statute and submit a report within 15 days after appointment.⁵ If two of the three examining committee members conclude that the person is incapacitated then a hearing is scheduled on the petition.⁶ A copy of each examining committee member's report must be served on the petitioner and the attorney for the alleged incapacitated person within 3 days after filing and at least 5 days before a hearing is held on the petition.⁷

When the court appoints the examining committee, the court also sets the adjudicatory hearing on the petition for not more than 14 days after the filing of the examining committee reports, unless good cause is shown.⁸

Filing of annual guardianship report

The court, if it does not require a calendar-year filing, requires the guardian to file annual guardianship plan at least 60 days but no more than 90 days before the last day of the anniversary month that the letters of guardianship were signed. The plan must cover the coming fiscal year. If the court requires a calendar-year guardianship plan be filed, the plan must be filed after September 1 but no later than December 1 of the current year.

Procedures for extraordinary authority

Before the court allows a guardian to exercise extraordinary authority over certain rights of the ward as specified in s. 744.3215(4), F.S., the court must follow certain procedures.⁹ To allow a guardian to initiate a petition for dissolution of marriage for a ward, the court must find that the ward's spouse has consented to the dissolution.¹⁰ Currently, the ward's spouse has the right to absolutely bar the initiation of dissolution of marriage proceedings by either the ward or the ward's guardian.

Powers of the guardian upon court approval

The guardian must file a petition for the court's authorization to perform certain duties, including but not limited to paying reasonable funeral, interment, and grave marker expenses for the ward from the ward's estate, up to a maximum of \$6,000.¹¹

³ *Id.*

⁴ Section 744.331(3)(a), F.S.

⁵ Section 744.331(3)(e), F.S.

⁶ Section 744.331(4), F.S.

⁷ Section 744.331(3)(h), F.S.

⁸ Section 744.331(5)(a), F.S.

⁹ Section 744.3725, F.S.

¹⁰ Section 744.3725(6), F.S.

¹¹ Section 744.441(16), F.S.

III. Effect of Proposed Changes:

Section 1 amends s. 744.331(3), F.S., to require the clerk of court to serve the examining committee reports on the petitioner and the attorney for the alleged incapacitated person within 3 days of receiving the reports. The timeframe within which the examining committee reports must be received by counsel for the petitioner and the attorney for the alleged incapacitated person is increased from 5 days to 10 days. The hearing on the petition maybe continued if service of the reports is not timely.

This bill creates s. 744.331(3)(i), F.S., to allow the petitioner and the alleged incapacitated person to object to the introduction into evidence of all or any portion of the examining committee members' reports by filing and serving a written objection on the other party no later than 5 days before the adjudicatory hearing. If no objection is made then the examining committees' reports are admissible into evidence without further proof.

This section also provides that the adjudicatory hearing on the petition must be conducted at least 10 days, but no more than 30 days, after the last filed report of the examining committee members; however, this time restriction may be waived.

Section 2 amends s. 744.367(1), F.S., to require a guardian file an annual guardianship plan within 90 days after the last day of the anniversary month that the letters of guardianship were signed unless the court requires a calendar-year filing. If the court requires a calendar-year filing, the guardianship plan must be filed on or before April 1 of each year. The latest guardianship plan filed with the court will remain in effect until the court approves the subsequent plan.

Section 3 amends s. 744.3725, F.S. to remove the prohibition of the court granting the guardian the power to initiate a dissolution of marriage proceeding for a ward without the consent of the ward's spouse. However, initiating a dissolution of marriage proceeding remains an extraordinary remedy requiring the court's approval.

Section 4 amends s. 744.441(16), F.S., to remove the statutory cap of \$6,000 that may be used by the guardian to pay for reasonable funeral, interment, ad grave marker expenses from the ward's estate. The reasonable amount for funeral costs of the ward will be determined by the court on a case by case basis.

Section 5 reenacts s. 744.3215(4), F.S., to incorporate the amendment made by this act to s. 744.3725, F.S.

Section 6 provides an effective date for the bill of July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

The bill allows guardians, with court approval, to spend more than \$6,000 on a ward's funeral, interment, and grave marker expenses.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 744.331, 744.3725, 744.441, 744.3215, and 744.367.

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 March 14, 2017:

The bill required the clerk of the court to serve the examining committee's reports on the petitioner's attorney and the attorney for the alleged incapacitated person at least 10 days before the adjudicatory hearing. Under the committee substitute, the service must be on the petitioner, not his or her attorney. Also, if the reports are not complete by 10 days before the hearing, they no longer need to be served by that deadline. Nonetheless, each side is expressly authorized to move for a continuance if this service deadline is missed.

Regarding the admission of these reports into evidence at the hearing, the committee substitute no longer expressly restricts the authority to object to only the alleged incapacitated person and the petitioner. Lastly, though the adjudicatory hearing still may not occur until 10 days after the last committee report is filed, the committee substitute allows for waiver of this restriction.

CS by Children, Families, and Elder Affairs on February 6, 2017:

The amendment provides clarification that the annual guardianship plan is to be filed with the court within 90 days after the last day of the anniversary month that the letters of guardianship were signed unless the court requires calendar-year filing. If the court requires a calendar-year filing the guardianship plan is to be filed before April 1 of each year. The last annual guardianship plan approved by the court will remain in effect until the court approves the subsequent plan.

B. Amendments:

None.

By the Committees on Judiciary; and Children, Families, and Elder Affairs; and Senators Passidomo, Mayfield, and Powell

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1 A bill to be entitled
 2 An act relating to guardianship; amending s. 744.331,
 3 F.S.; requiring each examining committee member, in a
 4 proceeding to determine a person's incapacity, to file
 5 his or her report with the clerk of the court within a
 6 specified timeframe after appointment; requiring the
 7 clerk of the court to serve each report on specified
 8 persons within a specified timeframe; requiring the
 9 clerk of the court to file a certificate of service in
 10 the incapacity proceeding; revising the timeframe
 11 within which specified parties must be served with all
 12 reports; authorizing parties to agree to waive the
 13 timeframe; authorizing the petitioner or the alleged
 14 incapacitated person to move for a continuance if
 15 service is not timely carried out and to object to the
 16 introduction of all or any part of a report by filing
 17 and serving a written objection to admissibility on
 18 the other party within a specified timeframe;
 19 specifying that the admissibility of the report is
 20 governed by the rules of evidence; requiring that the
 21 adjudicatory hearing be conducted within a specified
 22 timeframe after the filing of the last filed report;
 23 amending s. 744.367, F.S.; increasing the timeframe
 24 within which a guardian has to file a required annual
 25 guardianship plan with the court if the court does not
 26 require filing on a calendar-year basis; decreasing
 27 the timeframe within which a guardian has to file a
 28 required annual guardianship plan with the court if
 29 the court requires calendar-year filing; amending s.

Page 1 of 7

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30 744.3725, F.S.; removing the requirement that a court
 31 first find that a ward's spouse has consented to
 32 dissolution of marriage before the court may authorize
 33 a guardian to exercise specified rights; amending s.
 34 744.441, F.S.; removing the cap on funeral expenses
 35 that may be paid from a ward's estate; reenacting s.
 36 744.3215(4), F.S., relating to the rights of persons
 37 determined incapacitated, to incorporate the amendment
 38 made to s. 744.3725, F.S., in a reference thereto;
 39 providing an effective date.

40
 41 Be It Enacted by the Legislature of the State of Florida:

42
 43 Section 1. Paragraphs (e) and (h) of subsection (3) and
 44 paragraph (a) of subsection (5) of section 744.331, Florida
 45 Statutes, are amended, and paragraph (i) is added to subsection
 46 (3) of that section, to read:

47 744.331 Procedures to determine incapacity.—

48 (3) EXAMINING COMMITTEE.—

49 (e) Each member of the examining committee shall examine
 50 the person. Each examining committee member must determine the
 51 alleged incapacitated person's ability to exercise those rights
 52 specified in s. 744.3215. In addition to the examination, each
 53 examining committee member must have access to, and may
 54 consider, previous examinations of the person, including, but
 55 not limited to, habilitation plans, school records, and
 56 psychological and psychosocial reports voluntarily offered for
 57 use by the alleged incapacitated person. Each member of the
 58 examining committee must file his or her report with the clerk

Page 2 of 7

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590-02446-17

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of the court ~~submit a report~~ within 15 days after appointment.

(h) Within 3 days after receipt of each examining committee member's report, the clerk shall serve the report on the petitioner and the attorney for the alleged incapacitated person by electronic mail delivery or United States mail and, upon service, shall file a certificate of service in the incapacity proceeding. The petitioner and the attorney for the alleged incapacitated person must be served with all reports at least 10 days before the hearing on the petition, unless the reports are not complete, in which case the petitioner and the attorney for the alleged incapacitated person may waive the 10-day requirement and consent to the consideration of the reports by the court at the adjudicatory hearing. If such service is not timely carried out, the petitioner or the alleged incapacitated person may move for a continuance of the hearing. A copy of each committee member's report must be served on the petitioner and on the attorney for the alleged incapacitated person within 3 days after the report is filed and at least 5 days before the hearing on the petition.

(i) The petitioner and the alleged incapacitated person may object to the introduction into evidence of all or any portion of the examining committee members' reports by filing and serving a written objection on the other party no later than 5 days before the adjudicatory hearing. The objection must state the basis upon which the challenge to admissibility is made. If an objection is timely filed and served, the court shall apply the rules of evidence in determining the reports' admissibility. For good cause shown, the court may extend the time to file and to serve the written objection.

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(5) ADJUDICATORY HEARING.—

(a) Upon appointment of the examining committee, the court shall set the date upon which the petition will be heard. The ~~date for the~~ adjudicatory hearing must be conducted at least 10 days, which time period may be waived, but no more than 30 days, after the filing of the last filed report of the examining committee members set no more than 14 days after the filing of the reports of the examining committee members, unless good cause is shown. The adjudicatory hearing must be conducted at the time and place specified in the notice of hearing and in a manner consistent with due process.

Section 2. Subsection (1) of section 744.367, Florida Statutes, is amended to read:

744.367 Duty to file annual guardianship report.—

(1) Unless the court requires filing on a calendar-year basis, each guardian of the person shall file with the court an annual guardianship plan within 90 days after at least 60 days, ~~but no more than 90 days, before~~ the last day of the anniversary month that the letters of guardianship were signed, and the plan must cover the coming fiscal year, ending on the last day in such anniversary month. If the court requires calendar-year filing, the guardianship plan ~~for the forthcoming calendar year~~ must be filed on or before April 1 of each year. The latest annual guardianship plan approved by the court will remain in effect until the court approves a subsequent plan after ~~September 1 but no later than December 1 of the current year.~~

Section 3. Section 744.3725, Florida Statutes, is amended to read:

744.3725 Procedure for extraordinary authority.—Before the

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117 court may grant authority to a guardian to exercise any of the
 118 rights specified in s. 744.3215(4), the court must:

119 (1) Appoint an independent attorney to act on the
 120 incapacitated person's behalf, and the attorney must have the
 121 opportunity to meet with the person and to present evidence and
 122 cross-examine witnesses at any hearing on the petition for
 123 authority to act;

124 (2) Receive as evidence independent medical, psychological,
 125 and social evaluations with respect to the incapacitated person
 126 by competent professionals or appoint its own experts to assist
 127 in the evaluations;

128 (3) Personally meet with the incapacitated person to obtain
 129 its own impression of the person's capacity, so as to afford the
 130 incapacitated person the full opportunity to express his or her
 131 personal views or desires with respect to the judicial
 132 proceeding and issue before the court;

133 (4) Find by clear and convincing evidence that the person
 134 lacks the capacity to make a decision about the issue before the
 135 court and that the incapacitated person's capacity is not likely
 136 to change in the foreseeable future; and

137 (5) Be persuaded by clear and convincing evidence that the
 138 authority being requested is in the best interests of the
 139 incapacitated person. ~~and~~

140 ~~(6) In the case of dissolution of marriage, find that the~~
 141 ~~ward's spouse has consented to the dissolution.~~

143 The provisions of this section and s. 744.3215(4) are procedural
 144 and do not establish any new or independent right to or
 145 authority over the termination of parental rights, dissolution

590-02446-17

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146 of marriage, sterilization, abortion, or the termination of life
 147 support systems.

148 Section 4. Subsection (16) of section 744.441, Florida
 149 Statutes, is amended to read:

150 744.441 Powers of guardian upon court approval.—After
 151 obtaining approval of the court pursuant to a petition for
 152 authorization to act, a plenary guardian of the property, or a
 153 limited guardian of the property within the powers granted by
 154 the order appointing the guardian or an approved annual or
 155 amended guardianship report, may:

156 (16) Pay reasonable funeral, interment, and grave marker
 157 expenses for the ward from the ward's estate, ~~up to a maximum of~~
 158 ~~\$6,000.~~

159 Section 5. For the purpose of incorporating the amendment
 160 made by this act to section 744.3725, Florida Statutes, in a
 161 reference thereto, subsection (4) of section 744.3215, Florida
 162 Statutes, is reenacted to read:

163 744.3215 Rights of persons determined incapacitated.—

164 (4) Without first obtaining specific authority from the
 165 court, as described in s. 744.3725, a guardian may not:

166 (a) Commit the ward to a facility, institution, or licensed
 167 service provider without formal placement proceeding, pursuant
 168 to chapter 393, chapter 394, or chapter 397.

169 (b) Consent on behalf of the ward to the performance on the
 170 ward of any experimental biomedical or behavioral procedure or
 171 to the participation by the ward in any biomedical or behavioral
 172 experiment. The court may permit such performance or
 173 participation only if:

174 1. It is of direct benefit to, and is intended to preserve

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175 the life of or prevent serious impairment to the mental or
176 physical health of the ward; or
177 2. It is intended to assist the ward to develop or regain
178 his or her abilities.
179 (c) Initiate a petition for dissolution of marriage for the
180 ward.
181 (d) Consent on behalf of the ward to termination of the
182 ward's parental rights.
183 (e) Consent on behalf of the ward to the performance of a
184 sterilization or abortion procedure on the ward.
185 Section 6. This act shall take effect July 1, 2017.



The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: March 14, 2017

I respectfully request that **Senate Bill #172**, relating to Guardianship, be placed on the:

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

A handwritten signature in black ink, appearing to read "K. Passidomo", with a long horizontal stroke extending to the right.

Senator Kathleen Passidomo
Florida Senate, District 28

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/6/17

Meeting Date

172

Bill Number (if applicable)

Topic SB 172

Amendment Barcode (if applicable)

Name BRYAN CHERRY

Job Title ASSOCIATE

Address 205 S. Adams St.

Phone (850) 205-0885

Street

Tallahassee FL. 32301

City

State

Zip

Email bryan@adamsrtdadvocates.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL Public Guardian Coalition, Inc.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/6/2017

Meeting Date

172

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Brian Pitts

Job Title Trustee

Address 1119 Newton Ave S

Street

St Petersburg

City

FL

State

33705

Zip

Phone 727/897-9291

Email justice2jesus@yahoo.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Justice-2-Jesus

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/6/17
Meeting Date

172
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Amber Kelly

Job Title Director of Policy & Communications

Address 4853 S. Orange Avenue Phone (407) 418-0250
Street
Orlando FL 32806
City State Zip

Speaking: ☐ For ☒ Against ☐ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4-6-17

Meeting Date

SB 172

Bill Number (if applicable)

Topic Guardianship Bul

Amendment Barcode (if applicable)

Name Martina Edenfield

Job Title Attorney

Address 215 So Monroe St #815
Street

Phone 850-999-4100

Tallahassee FL 32301
City State Zip

Email medenfield@deanread.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing The Real Property, Probate & Trust Law Section of the Florida Bar

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SB 1108

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Ariles

SUBJECT: Public Records/Firefighters and their Spouses and Children

DATE: April 6, 2017

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Knudson	Knudson	BI	Favorable
2. Kim	Ferrin	GO	Fav/CS
3. Knudson	Phelps	RC	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1108 expands an existing public records exemption in s. 119.071(4)(d)2.b., F.S., for the personal identifying information of current firefighters, their spouses, and children. The expansion will extend the public records exemption to former firefighters and their families. The records exempted are the names of the spouses and children, home addresses, telephone numbers, dates of birth, photographs, places of employment, and the names and locations of schools and day care facilities attended by the children of firefighters.

The public records exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S. The exemption will stand repealed on October 2, 2022, unless the Legislature reviews the exemption and saves it from repeal through reenactment.

This bill requires a two-thirds vote of each chamber because it expands a public records exemption.

The bill becomes effective on October 1, 2017.

II. Present Situation:

Public Records Law

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ This applies to the official business of any public body, officer or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.²

In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.³ Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.⁴ The Public Records Act states that

it is the policy of this state that all state, county and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.⁵

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type.”⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

The Legislature may create an exemption to public records requirements.⁹ An exemption must pass by a two-thirds vote of the House and the Senate.¹⁰ In addition, an exemption must explicitly lay out the public necessity justifying the exemption, and the exemption must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹ A statutory

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

³ The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature’s records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislatures are primarily located in s. 11.0431(2)-(3), F.S.

⁴ Public records laws are found throughout the Florida Statutes.

⁵ Section 119.01(1), F.S.

⁶ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Section 119.011(2), F.S., defines “agency” to mean as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁸ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

⁹ FLA. CONST. art. I, s. 24(c).

¹⁰ *Id.*

¹¹ *Id.*

exemption which does not meet these criteria may be unconstitutional and may not be judicially saved.¹²

When creating a public records exemption, the Legislature may provide that a record is “confidential and exempt” or “exempt.”¹³ Records designated as “confidential and exempt” may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as “exempt” are not required to be made available for public inspection, but may be released at the discretion of the records custodian under certain circumstances.¹⁴

Open Government Sunset Review Act

The Open Government Sunset Review Act (referred to hereafter as the “OGSR”) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹⁵ The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.¹⁶

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.¹⁷ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;¹⁸
- Releasing sensitive personal information would be defamatory or would jeopardize an individual’s safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;¹⁹ or
- It protects trade or business secrets.²⁰

The OGSR also requires specified questions to be considered during the review process.²¹ In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

¹² *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). See also *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004).

¹³ If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

¹⁴ *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991).

¹⁵ Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to section 119.15(2), F.S.

¹⁶ Section 119.15(3), F.S.

¹⁷ Section 119.15(6)(b), F.S.

¹⁸ Section 119.15(6)(b)1., F.S.

¹⁹ Section 119.15(6)(b)2., F.S.

²⁰ Section 119.15(6)(b)3., F.S.

²¹ Section 119.15(6)(a), F.S. The specified questions are:

1. What specific records or meetings are affected by the exemption?
2. Whom does the exemption uniquely affect, as opposed to the general public?

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.²² If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.²³

Public Records Exemptions for Agency Personnel Information

Section 119.071, F.S., exempts, or holds confidential and exempt, specified records held by various state entities from the disclosure requirements of s. 119.07(1), F.S., and s. 24(a), Art. I of the Florida Constitution. One category of record that is exempt, or confidential and exempt, from public disclosure is specific governmental agency personnel information. The public records exemptions include:²⁴

- Social security numbers of all current and former agency employees held by the employing agency is confidential and exempt.
- Medical information pertaining to a prospective, current, or former officer or employee of an agency that would identify that person is exempt.
- Personal identifying information of a dependent child of a current or former officer or employee, if the child is insured by an agency group insurance plan, is exempt.
- Information revealing undercover personnel of any criminal justice agency is exempt.
- The personal identifying information of:²⁵
 - Active or former specified law enforcement personnel.
 - Firefighters.
 - Current or former justices of the Florida Supreme Court, district court of appeal judges, circuit court judges, and county court judges.
 - Current or former state attorneys, assistant state attorneys, statewide prosecutors, and assistant statewide prosecutors.
 - General magistrates, special magistrates, judges of compensation claims, administrative law judges, and child support enforcement hearing officers.
 - Current or former human resource, labor relations, or employee relations directors, assistant directors, managers, or assistant managers of any local government agency or water management district who have specified duties.
 - Current or former code enforcement officers.
 - Current or former guardians ad litem.
 - Current or former juvenile probation officers, juvenile probation supervisors, detention superintendents, assistant detention superintendents, and other specified, related persons.

3. What is the identifiable public purpose or goal of the exemption?

4. Can the information contained in the records or discussed in the meeting be readily obtained by alternative means?
If so, how?

5. Is the record or meeting protected by another exemption?

6. Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

²² FLA. CONST. art. I, s. 24(c).

²³ Section 119.15(7), F.S.

²⁴ Section 119.171(4), F.S.

²⁵ These exemptions often include personal identifying information of spouses and children.

- Current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel.
- Current or former investigators or inspectors of the Department of Business and Professional Regulation.
- County tax collectors.
- Current or former specified personnel of the Department of Health.
- Current or former impaired practitioner consultants and their employees retained by an agency to determine a person's skill and safety to practice a profession.
- Current or former emergency medical technicians or certified paramedics.
- Current or former employees of an agency's office of inspector general or internal audit department.

Firefighters

A firefighter certified in compliance with s. 633.408, F.S., has satisfactorily completed the Minimum Standards Course, or equivalent course in another state, and passed the Minimum Standards Course examination within 12 months after completing the required courses.²⁶ Firefighters must also have high school degrees, meet certain criminal history requirements, have good moral character, and be physically fit.²⁷

A public records exemption for firefighters and their families was created in Ch. 1991-149, Laws of Fla., but did not include dates of birth or former firefighters. Public records exemptions were not required to include public necessity statements at that time, so the Legislative intent was not expressed in a separate statement.²⁸ Chapter 2012-149, Laws of Fla., expanded this exemption to include the dates of birth of the enumerated personnel as well as their family members. The public necessity statement provided that dates of birth can be used to perpetrate fraud and that releasing dates of birth can cause great financial harm to an individual.

This public records exemption applies to current firefighters, but does not extend to firefighters after they change careers.

III. Effect of Proposed Changes:

Section 1 expands to former firefighters the existing public records exemption in s. 119.071(4)(d)2.b., F.S., for personal identifying information of firefighters, their spouses, and children. The bill makes the following information about current and former firefighters exempt from public disclosure: home addresses, telephone numbers, dates of birth, and photographs. The bill also makes exempt from public disclosure requirements the following information about current or former firefighters' spouses and their children: names, home addresses, telephone numbers, photographs, dates of birth, and places of employment. Finally, the bill exempts the names and locations of schools and day care facilities attended by the children of firefighters.

²⁶ Section 633.408(4), F.S.

²⁷ Section 633.412, F.S.

²⁸ Public necessity statements were required for public records exemptions after 1992, when Article I, section 24, Florida Constitution was adopted.

The bill also makes the records exempt from the public records requirements of the State Constitution. This would require that the Legislature and the Judiciary to keep the records exempt from public disclosure.

The public records exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S. The exemption will stand repealed on October 2, 2022, unless the Legislature reviews and saves it from repeal through reenactment.

Section 2 contains legislative findings that the expansion of the public records exemption is a public necessity. The findings note that personal identifying information of other types of former first responders, such as law enforcement, are currently exempt from public disclosure. The bill also states firefighters often respond to emergency situations such as domestic violence and homicide, and the release of their personal identifying and location information may place former firefighters and their families in danger of physical or emotional harm by hostile individuals.

The public necessity statement provides that the names of spouses and children should be exempt because people may seek revenge against firefighters by targeting their spouses or children.

The public necessity statement also provides that it is necessary to at a reference to s. 24(a) Art. I of the Florida Constitution to ensure that a firefighter's records are exempt in all three branches of government.

The public necessity statement appears to justify the need for the public records exemption, and the exemption appears to be no broader than necessary.²⁹

Section 3 provides the bill is effective on October 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Article I, s. 24(c), of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public records exemption.

C. Trust Funds Restrictions:

None.

²⁹ FLA CONST. art I, s. 24(c).

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 119.071 of the Florida Statutes.

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

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

CS by Governmental Oversight and Accountability on March 27, 2017:

- adds the names of spouses and children to the public records exemption;
- adds a public necessity statement for the names of spouses and children;
- adds a public necessity statement for the addition of s. 24(a) Art. I of the Constitution;
and
- changes the effective date to October 1, 2017.

B. Amendments:

None.

By the Committee on Governmental Oversight and Accountability;
and Senator Artiles

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A bill to be entitled

An act relating to public records; amending s. 119.071, F.S.; expanding an exemption from public records requirements for the personal identifying and location information of certain firefighters and their spouses and children to include the personal identifying and location information of former firefighters and their spouses and children, and the names of spouses and children of current and former firefighters; specifying the application of s. 24(a), Article I of the State Constitution to the exemption; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing an effective date.

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

Section 1. Paragraph (d) of subsection (4) of section 119.071, Florida Statutes, is amended to read:

119.071 General exemptions from inspection or copying of public records.—

(4) AGENCY PERSONNEL INFORMATION.—

(d)1. For purposes of this paragraph, the term "telephone numbers" includes home telephone numbers, personal cellular telephone numbers, personal pager telephone numbers, and telephone numbers associated with personal communications devices.

2.a.(I) The home addresses, telephone numbers, social security numbers, dates of birth, and photographs of active or

Page 1 of 13

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585-02945A-17

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former sworn or civilian law enforcement personnel, including correctional and correctional probation officers, personnel of the Department of Children and Families whose duties include the investigation of abuse, neglect, exploitation, fraud, theft, or other criminal activities, personnel of the Department of Health whose duties are to support the investigation of child abuse or neglect, and personnel of the Department of Revenue or local governments whose responsibilities include revenue collection and enforcement or child support enforcement; the home addresses, telephone numbers, social security numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1).

(II) The names of the spouses and children of active or former sworn or civilian law enforcement personnel and the other specified agency personnel identified in sub-sub-subparagraph (I) are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(III) Sub-sub-subparagraph (II) is subject to the Open Government Sunset Review Act in accordance with s. 119.15, and shall stand repealed on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature.

(IV) The home addresses, telephone numbers, dates of birth, and photographs of current or former nonsworn investigative personnel of the Department of Financial Services whose duties include the investigation of fraud, theft, workers' compensation coverage requirements and compliance, other related criminal activities, or state regulatory requirement violations; the

Page 2 of 13

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585-02945A-17

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names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

b. The home addresses, telephone numbers, dates of birth, and photographs of current or former firefighters certified in compliance with s. 633.408; the names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such firefighters; and the names and locations of schools and day care facilities attended by the children of such firefighters are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15, and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

c. The home addresses, dates of birth, and telephone numbers of current or former justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges; the home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of current or former justices and judges; and the names and locations of schools and day care facilities attended by the children of current or former justices and judges are exempt

585-02945A-17

20171108c1

from s. 119.07(1).

d.(I) The home addresses, telephone numbers, social security numbers, dates of birth, and photographs of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors; the home addresses, telephone numbers, social security numbers, photographs, dates of birth, and places of employment of the spouses and children of current or former state attorneys, assistant state attorneys, statewide prosecutors; and the names and locations of schools and day care facilities attended by the children of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(II) The names of the spouses and children of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(III) Sub-sub-subparagraph (II) is subject to the Open Government Sunset Review Act in accordance with s. 119.15, and shall stand repealed on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature.

e. The home addresses, dates of birth, and telephone numbers of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers; the home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of general magistrates, special magistrates, judges of

585-02945A-17

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117 compensation claims, administrative law judges of the Division
 118 of Administrative Hearings, and child support enforcement
 119 hearing officers; and the names and locations of schools and day
 120 care facilities attended by the children of general magistrates,
 121 special magistrates, judges of compensation claims,
 122 administrative law judges of the Division of Administrative
 123 Hearings, and child support enforcement hearing officers are
 124 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 125 Constitution if the general magistrate, special magistrate,
 126 judge of compensation claims, administrative law judge of the
 127 Division of Administrative Hearings, or child support hearing
 128 officer provides a written statement that the general
 129 magistrate, special magistrate, judge of compensation claims,
 130 administrative law judge of the Division of Administrative
 131 Hearings, or child support hearing officer has made reasonable
 132 efforts to protect such information from being accessible
 133 through other means available to the public.

134 f. The home addresses, telephone numbers, dates of birth,
 135 and photographs of current or former human resource, labor
 136 relations, or employee relations directors, assistant directors,
 137 managers, or assistant managers of any local government agency
 138 or water management district whose duties include hiring and
 139 firing employees, labor contract negotiation, administration, or
 140 other personnel-related duties; the names, home addresses,
 141 telephone numbers, dates of birth, and places of employment of
 142 the spouses and children of such personnel; and the names and
 143 locations of schools and day care facilities attended by the
 144 children of such personnel are exempt from s. 119.07(1) and s.
 145 24(a), Art. I of the State Constitution.

585-02945A-17

20171108c1

146 g. The home addresses, telephone numbers, dates of birth,
 147 and photographs of current or former code enforcement officers;
 148 the names, home addresses, telephone numbers, dates of birth,
 149 and places of employment of the spouses and children of such
 150 personnel; and the names and locations of schools and day care
 151 facilities attended by the children of such personnel are exempt
 152 from s. 119.07(1) and s. 24(a), Art. I of the State
 153 Constitution.

154 h. The home addresses, telephone numbers, places of
 155 employment, dates of birth, and photographs of current or former
 156 guardians ad litem, as defined in s. 39.820; the names, home
 157 addresses, telephone numbers, dates of birth, and places of
 158 employment of the spouses and children of such persons; and the
 159 names and locations of schools and day care facilities attended
 160 by the children of such persons are exempt from s. 119.07(1) and
 161 s. 24(a), Art. I of the State Constitution, if the guardian ad
 162 litem provides a written statement that the guardian ad litem
 163 has made reasonable efforts to protect such information from
 164 being accessible through other means available to the public.

165 i. The home addresses, telephone numbers, dates of birth,
 166 and photographs of current or former juvenile probation
 167 officers, juvenile probation supervisors, detention
 168 superintendents, assistant detention superintendents, juvenile
 169 justice detention officers I and II, juvenile justice detention
 170 officer supervisors, juvenile justice residential officers,
 171 juvenile justice residential officer supervisors I and II,
 172 juvenile justice counselors, juvenile justice counselor
 173 supervisors, human services counselor administrators, senior
 174 human services counselor administrators, rehabilitation

585-02945A-17

20171108c1

therapists, and social services counselors of the Department of Juvenile Justice; the names, home addresses, telephone numbers, dates of birth, and places of employment of spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

j. (I) The home addresses, telephone numbers, dates of birth, and photographs of current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel; the home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such defenders or counsel; and the names and locations of schools and day care facilities attended by the children of such defenders or counsel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(II) The names of the spouses and children of the specified agency personnel identified in sub-sub-subparagraph (I) are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature.

k. The home addresses, telephone numbers, and photographs of current or former investigators or inspectors of the Department of Business and Professional Regulation; the names, home addresses, telephone numbers, and places of employment of the spouses and children of such current or former investigators

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and inspectors; and the names and locations of schools and day care facilities attended by the children of such current or former investigators and inspectors are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if the investigator or inspector has made reasonable efforts to protect such information from being accessible through other means available to the public. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2017, unless reviewed and saved from repeal through reenactment by the Legislature.

1. The home addresses and telephone numbers of county tax collectors; the names, home addresses, telephone numbers, and places of employment of the spouses and children of such tax collectors; and the names and locations of schools and day care facilities attended by the children of such tax collectors are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if the county tax collector has made reasonable efforts to protect such information from being accessible through other means available to the public. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2017, unless reviewed and saved from repeal through reenactment by the Legislature.

m. The home addresses, telephone numbers, dates of birth, and photographs of current or former personnel of the Department of Health whose duties include, or result in, the determination or adjudication of eligibility for social security disability benefits, the investigation or prosecution of complaints filed against health care practitioners, or the inspection of health

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care practitioners or health care facilities licensed by the Department of Health; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if the personnel have made reasonable efforts to protect such information from being accessible through other means available to the public. This subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature.

n. The home addresses, telephone numbers, dates of birth, and photographs of current or former impaired practitioner consultants who are retained by an agency or current or former employees of an impaired practitioner consultant whose duties result in a determination of a person's skill and safety to practice a licensed profession; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such consultants or their employees; and the names and locations of schools and day care facilities attended by the children of such consultants or employees are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if a consultant or employee has made reasonable efforts to protect such information from being accessible through other means available to the public. This subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October

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2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

o. The home addresses, telephone numbers, dates of birth, and photographs of current or former emergency medical technicians or paramedics certified under chapter 401; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such emergency medical technicians or paramedics; and the names and locations of schools and day care facilities attended by the children of such emergency medical technicians or paramedics are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if the emergency medical technicians or paramedics have made reasonable efforts to protect such information from being accessible through other means available to the public. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

p. The home addresses, telephone numbers, dates of birth, and photographs of current or former personnel employed in an agency's office of inspector general or internal audit department whose duties include auditing or investigating waste, fraud, abuse, theft, exploitation, or other activities that could lead to criminal prosecution or administrative discipline; the names, home addresses, telephone numbers, dates of birth, and places of employment of spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution

585-02945A-17

20171108c1

if the personnel have made reasonable efforts to protect such information from being accessible through other means available to the public. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

3. An agency that is the custodian of the information specified in subparagraph 2. and that is not the employer of the officer, employee, justice, judge, or other person specified in subparagraph 2. shall maintain the exempt status of that information only if the officer, employee, justice, judge, other person, or employing agency of the designated employee submits a written request for maintenance of the exemption to the custodial agency.

4. The exemptions in this paragraph apply to information held by an agency before, on, or after the effective date of the exemption.

5. Except as otherwise expressly provided in this paragraph, this paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15, and shall stand repealed on October 2, 2017, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. (1) The Legislature finds that it is a public necessity to expand the exemption from public records requirements currently applicable to the home addresses, telephone numbers, dates of birth, and photographs of firefighters certified under s. 633.408, Florida Statutes; the home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such

585-02945A-17

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firefighters; and the names and locations of schools and day care facilities attended by the children of such firefighters to also include former firefighters and their spouses and children. The personal identifying and location information of other former first responders, such as former law enforcement officers, and their family members, are currently exempt from public records requirements. Firefighters often respond to serious emergency situations, ranging from domestic violence to homicide, and the release of personal identifying and location information may place former firefighters and their family members in danger of serious physical or emotional harm by hostile individuals. This danger continues after a firefighter leaves employment.

(2) The Legislature also finds that it is a public necessity to exempt the names of the spouses and children of current and former firefighters from public records requirements. A disgruntled individual may seek revenge against a firefighter by targeting his or her the spouse or child. Releasing the names of a spouses and children makes it easier to locate and target them for acts of revenge.

(3) The Legislature finds that it is a public necessity to exempt the personal identifying and location information of current and former firefighters, and their spouses and children, including the names of their spouses and children, from s. 24(a), Article I of the State Constitution in order to prevent disclosure of information that can be used to identify or locate current and former firefighters and their spouses and children. It is in the public interest to fully protect these governmental employees and their families and ensure that their identifying

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and location information is exempt from public disclosure when
it is held by an entity in the executive, legislative, or
judicial branch of government.

(4) The harm that may result from the release of personal
identifying and location information of current and former
firefighters and their families, as well as the names of the
spouses and children of current and former firefighters,
outweighs any public benefit that may be derived from the
disclosure of such information. Therefore, the Legislature finds
that it is a public necessity that the home addresses, telephone
numbers, dates of birth, and photographs of current or former
firefighters certified under s. 633.408, Florida Statutes; the
names, home addresses, telephone numbers, photographs, dates of
birth, and places of employment of the spouses and children of
such firefighters; and the names and locations of schools and
day care facilities attended by the children of such
firefighters be made exempt from s. 119.07(1), Florida Statutes,
and s. 24(a), Article I of the State Constitution.

Section 3. This act shall take effect October 1, 2017.



The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: March 29, 2017

I respectfully request that **Senate Bill #1108**, relating to Public Records/Firefighters and their Spouses and Children, be placed on the:

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



Senator Frank Artiles
Florida Senate, District 40

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/6/17

Meeting Date

1108

Bill Number (if applicable)

Topic Firefighters/Public Records

Amendment Barcode (if applicable)

Name Rocco Salvatori

Job Title Firefighter

Address 343 W Madison St

Phone 850-224-7333

Street

Tallahassee

City

FL

State

32301

Zip

Email roccosalvatori@icloud.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Professional Firefighters

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4 1 6 12017

Meeting Date

Topic _____

Bill Number 1108
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH
Street

Phone 727-897-9291

SAINT PETERSBURG FLORIDA 33705
City State Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☐ Against ☒ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/CS/CS/SB 346

INTRODUCER: Rules Committee; Governmental Oversight and Accountability Committee; Commerce and Tourism Committee; and Senator Stargel

SUBJECT: Fictitious Name Registration

DATE: April 6, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Harmsen</u>	<u>McKay</u>	<u>CM</u>	<u>Fav/CS</u>
2.	<u>Peacock</u>	<u>Ferrin</u>	<u>GO</u>	<u>Fav/CS</u>
3.	<u>Harmsen</u>	<u>Phelps</u>	<u>RC</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 346 updates the Florida Fictitious Name Act, s. 865.09, F.S., which requires any person or business entity doing business in Florida under a name other than their legal name to register a fictitious name with the Division of Corporations of the Department of State.

Specifically, the bill:

- Defines the term “registrant” to clarify and standardize who is required to file a fictitious name;
- Clarifies that foreign business entities must be in active status with the Division of Corporations to file a fictitious name;
- Updates the process for cancellation, registration, and renewal of a fictitious name, including clarifying the term of registration;
- Standardizes language to include varied business entities, rather than just corporations;
- Changes the penalty for failure to comply with the Fictitious Name Act from a misdemeanor to a noncriminal violation; and
- Makes technical and conforming changes throughout.

The bill takes effect on July 1, 2017.

II. Present Situation:

The Florida Department of State

The Florida Department of State (Department) consists of six divisions: the Division of Elections; Division of Historical Resources; Division of Library and Information Services; Division of Cultural Affairs; Division of Administration; and Division of Corporations.¹

The Division of Corporations (Division) maintains a registry for recording and retrieving commercial information that is filed or registered with the Department. In total, the Division maintains more than eight million records, including a variety of business entity filings such as articles of incorporation or other forms of business entity organization, annual reports, trade and service mark registrations, judgment lien filings, and fictitious name registrations.² The Division determines whether submitted filings and forms meet the pertinent statutory requirements and then records and indexes those filings in its database of records.³

Florida Fictitious Name Act

A fictitious name is any name other than the person's or business entity's legal name (a business entity's legal name is that which is registered with the Department).⁴ A fictitious name is also known as a "doing business as," "dba," or "assumed" name.⁵

The Florida Fictitious Name Act⁶ (Act) was enacted in 1941 to provide notice to the public and creditors of the names and addresses of those conducting business under a fictitious name.⁷ From 1941 through 1990, the Act required a business to register its fictitious name in the county circuit court located in the business' principal place of business. This decentralized process made it difficult for interested parties to search for a business' fictitious name. As a result, the Legislature transferred the duty of registering fictitious names to the Department in 1991.⁸ As of January 2017, the Division had 606,586 active registered fictitious names; in 2016 alone, the Division processed 101,604 fictitious name registrations.⁹

The current Act requires any person or business entity to register their fictitious name with the Division prior to conducting business in Florida by:

- Advertising the intention to register the business at least once in a newspaper in the county where the business' principal place of business is located;

¹ Section 20.10, F.S.

² Florida Auditor General, *Operational Audit: Department of State, Division of Corporations, Museum of Florida History, and Selected Administrative Activities* p. 2, (Mar. 2017), available at http://www.myflorida.com/audgen/pages/pdf_files/2017-195.pdf (last visited Apr. 5, 2017).

³ *Id.*

⁴ Section 865.09(2)(a), F.S.

⁵ United States Small Business Administration, *Starting and Managing a Business; Register Your Business Name*, available at <https://www.sba.gov/starting-business/choose-register-your-business/register-your-business-name> (last visited Apr. 5, 2017).

⁶ Section 865.09, F.S. This act was formerly known as the "Florida Fictitious Name Statute." See, s. 865.09, F.S.(1990).

⁷ *Jackson v. Jones*, 423 So. 2d 972, 973 (Fla. 4th DCA 1982), rev. denied, 436 So. 2d 99 (Fla. 1983).

⁸ Ch. 90-267, Laws of Fla.

⁹ Florida Department of State, Division of Corporations, *Yearly Statistics, from 2011 to Present*, (Jan. 23, 2017). Available at <http://dos.myflorida.com/sunbiz/about-us/yearly-statistics/> (last visited Apr. 5, 2017).

- Filing a sworn statement with the Division that lists the name to be registered, the business' mailing address, the name and address of each business owner, and, if a corporation, its federal employer's identification number (FEIN) and Florida incorporation or registration number; and
- Paying a \$50 filing fee to the Division.¹⁰

A fictitious name registration is valid for 5 years, but expires on December 31 of the 5th year.¹¹ As a result, depending on when the business initially registers its fictitious name, it may not realize a full 5-year registration term. Should a business operating under a fictitious name change ownership during this period, the current owner is obligated to file a cancellation and reregistration to notify of the new ownership within 30 days after the occurrence of such change.¹²

Businesses that fail to register a fictitious name under which they are doing business may not maintain any action, suit, or proceeding in any Florida court until they comply with the Act.¹³ Additionally, any person who fails to comply with the Act commits a second-degree misdemeanor.¹⁴ No business may register a fictitious name with the words "corporation," "incorporated," or any form thereof unless the business is actually incorporated.¹⁵

Certain businesses are exempt from registration under the Act,¹⁶ including:

- Entities registered with the Department that also operate under their full, registered name;
- Any business formed by and operated under the name of an attorney licensed by the Florida Bar, for the purpose of practicing law; and
- Any person or business actively licensed by the Department of Business and Professional Regulation or the Department of Health for the purpose of practicing said licensed profession; the person or entity must conduct business under the name as licensed with the State.

The Rise of Non-Corporate Business Entities

Non-corporate business entity structures have risen in popularity since the IRS clarified tax rules governing such entities in the 1990's and states adopted permitting legislation.¹⁷ These structures include the limited liability company (LLC), limited liability partnership (LLP), and the limited liability limited partnership (LLLP). Businesses have begun to favor these alternate business

¹⁰ Section 865.09(3), F.S.

¹¹ Section 865.09(5), F.S.

¹² Section 865.09(4), F.S.

¹³ Section 865.09(9)(a), F.S.

¹⁴ Section 965.09(9)(c), F.S.

¹⁵ Section 865.09(14), F.S.

¹⁶ Section 865.09(7), F.S.

¹⁷ Stephen Bainbridge, *The Inexorable (?) Rise of the LLC* (June 9, 2010). Available at: <http://www.professorbainbridge.com/professorbainbridgecom/2010/06/the-inexorable-rise-of-the-llc.html> (last visited Apr. 5, 2017). See also, Florida Department of State, Division of Corporations, *Yearly Statistics, from 2011 to Present*, (Jan. 23, 2017). Available at <http://dos.myflorida.com/sunbiz/about-us/yearly-statistics/> (last visited Apr. 5, 2017). The total number of domestic LLCs registered with the Division has risen from 145,780 in 2011 to 233,077 in 2016.

structures because they provide flexibility for purposes of taxation, and protection of the partners' personal assets.¹⁸

An LLC is a hybrid business entity that provides its members with limited liability against the entity's debts and obligations, as a corporation does, but also provides its members with the flexibility to choose the federal income tax classification of the entity.¹⁹ An LLC must file Articles of Incorporation with the Division to commence its legal existence.²⁰ A Professional Limited Liability Company ("PLLC" or "PL") is an LLC that is formed by licensed professionals for the specific purpose of practicing business in that licensed area.²¹

An LLP is a general partnership that limits the liability of each partner (but not the general partner) from liabilities of the other, and is taxed like a partnership.²² A partnership that agrees to operate as an LLP must file a statement of qualification with the Division to be granted legal status as an LLP.²³

An LLLP is a partnership that limits the liability of all of its partners, and instead places the duty of any obligations of the LLLP on the partnership itself. The LLLP is also taxed like a partnership.²⁴

Some business entities choose to remain under the corporate form as a Professional Association ("PA" or "chartered" corporation). A PA consists of shareholders who are licensed to perform a licensed service, and who formed their business entity for the purpose of practicing said service.²⁵

III. Effect of Proposed Changes:

Section 1 of the bill makes changes throughout Florida's Fictitious Name Act, s. 865.09, F.S., to incorporate clarifications and other recommendations made by the Division and the Business Law Section of the Florida Bar (Business Law Section).²⁶

Defines "Registrant"

The bill defines a "registrant" as a person who registers a fictitious name with the division. The bill adopts this term throughout the Act to standardize the language formerly used to refer to those who may register a fictitious name, including "applicant," "owner," and "person."

¹⁸ Susan Pace Hamill, *The Story of LLCs: Combining the Best Features of a Flawed Business Tax Structure*. Available at: [https://www.law.ua.edu/misc/hamill/Chapter%2010--Business%20Tax%20Stories%20\(Foundation\).pdf](https://www.law.ua.edu/misc/hamill/Chapter%2010--Business%20Tax%20Stories%20(Foundation).pdf) (last visited Apr. 5, 2017).

¹⁹ *Id.*

²⁰ Section 605.0201, F.S.

²¹ Section 621.03(3), F.S.

²² Section 620.8306(3), F.S.; Gregory Yadley, Christina Nethero, *1-1 Florida Small Business Practice*, s. 1.3 (2013 edition).

²³ Section 620.9001, F.S.

²⁴ Gregory Yadley, Christina Nethero, *1-1 Florida Small Business Practice*, s. 1.3 (2013 edition).

²⁵ Section 621.05, F.S.

²⁶ Stefan Rubin, Florida Bar Business Law Section, *Proposed Amendments to Florida Statute Section 865.09, Fictitious Name Act: Executive Summary*, (Oct., 2016) (Copy on file with the Committee on Commerce and Tourism).

The bill clarifies that the registrant of a general partnership that is not registered with the Division are the partners, not the partnership entity; however, the registrant of a general partnership that is registered and in active status with the Division is the partnership itself.

Registration, Renewal, and Cancellation of a Fictitious Name

The bill amends the registration process to require a “registration” rather than a “sworn statement.” According to the Business Law Section, this amendment conforms the law to current practice, as the Division does not currently require submission of a sworn statement.²⁷

The bill clarifies the term of initial registration to be a period of “up to five years,” and that the first year of registration is the period from initial registration through December 31 of that year. The bill additionally requires the Division to notify registrants of fictitious names that their registered fictitious name is due to expire by September 1 of the fifth year. The Department is only required to notify one of a general partnership’s registrants of an upcoming expiration of the partnership’s fictitious name.

The bill clarifies that business entity registrants, including foreign entities, must be in active status with the Division. The bill further requires business entity registrants to provide the Division with their Florida document number assigned by the Division and FEIN. This requirement does not apply to general partnerships that are not registered with the Division, but does apply to general partnerships that have chosen to register under the permissive registration statute.²⁸

The bill amends the process to transfer ownership of a fictitious name. Under the bill, a current owner or general partner is only obligated to file a notice of cancellation with the Division; the new owner or general partner may file a reregistration in accordance with the Act at the same time of the cancellation. This conforms to the Division’s use of one form for both the cancellation and reregistration of a fictitious name.²⁹ The bill changes the deadline for a registrant to timely file a renewal of a fictitious name registration and pay the processing fees from prior to December 31 to on or before December 31 of the year of the expiration.

Non-Corporate Business Entities

The bill generally replaces the term “corporation” with “business entity” to broaden application of the Act to not only corporate entities, but also LLC’s, LLP’s, LLLP’s, and other business entities. For the same purpose, the bill expands the words prohibited from use in a fictitious name to include “Limited Partnership,” “Limited Liability Limited Partnership,” “Limited Liability Partnership,” “Limited Liability Company,” “Professional Associations,” “Professional Limited Liability Companies,” and any other forms thereof, in cases where the business entity is not legally registered or organized as such. The words “corporation” and “incorporated” are already prohibited if the business entity is not registered as a corporation.

²⁷ Stefan Rubin, Florida Bar Business Law Section, *Proposed Amendments to Florida Statute Section 865.09, Fictitious Name Act: Executive Summary*, (Oct., 2016) (Copy on file with the Committee on Commerce and Tourism).

²⁸ Section 620.8105, F.S. “A partnership may file a partnership registration statement with the Department of State...”

²⁹ See, Florida Department of State, *Application for Registration of Fictitious Name*. Available at: <http://form.sunbiz.org/pdf/CR4E001.pdf> (last visited Apr. 5, 2017).

Under the bill, a fictitious name may not be renewed if it is prohibited under the Act at the time of its renewal.

Penalties

The bill reduces the penalty for failure to comply with the Act from a second-degree misdemeanor to a noncriminal violation, which is punishable only by a fine, forfeiture, or other civil penalty.³⁰

Section 2 provides an effective date of July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department foresees a minimal impact required to make necessary changes to the Division's Sunbiz online filing system to prevent the use of prohibited terms in fictitious names.³¹

VI. Technical Deficiencies:

None.

³⁰ Section 775.08, F.S. Noncriminal violations do not constitute a crime.

³¹ Department of State, *Senate Bill 346 Agency Analysis* (Feb. 6, 2017). On file with the Committee on Commerce and Tourism.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 865.09 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 Rules on April 6, 2017:

- Clarifies who serves as the registrant of a general partnership's fictitious name; where the general partnership is registered with the Division, the partnership is the registrant; where the general partnership is not registered with the Division, the partner is the registrant;
- Allows the transferee of a general partnership interest to reregister a fictitious name at the same time that the transferor's fictitious name is cancelled; and
- Requires the Division to notify only one general partnership registrant of the upcoming expiration of its fictitious name.

CS/CS by Governmental Oversight and Accountability on March 6, 2017:

The Committee Substitute:

- Clarifies that the business entity must provide its Florida document number assigned by the Florida Division of Corporations with its fictitious name registration; and
- Changes the deadline for a registrant to timely file a renewal of a fictitious name registration and pay the processing fees from prior to December 31 of the year of expiration to on or before December 31 of the year of expiration.

CS by Commerce and Tourism on February 21, 2017:

- Removes a requirement that foreign business entities file their incorporation number, document registration number, or other identifying number from their home jurisdiction;
- Clarifies that the entity must be in active registered status with the Florida Division of Corporations and must provide a Florida incorporation number with its fictitious name registration;
- Requires the Division to notify registrants of an upcoming expiration of a fictitious name by September 1 of the last year of the fictitious name's term of registration;
- Prohibits the use of "Professional Association," "Professional Limited Liability Company," and any form thereof in fictitious names where the business entity is not legally registered or organized as such; and
- Makes technical and conforming changes throughout.

B. Amendments:

None.

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



820372

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/06/2017	.	
	.	
	.	
	.	

The Committee on Rules (Stargel) recommended the following:

Senate Amendment (with title amendment)

Delete lines 48 - 202
and insert:

4. If the registrant is a business entity that was required to file incorporation or similar documents with its state of organization when it was organized, such entity must be registered with the division and in active status with the division; provide its Florida document registration number; and provide its federal employer identification number if the entity has such a number.



820372

12 5.-(d) Certification by at least one registrant the
13 ~~applicant~~ that the intention to register such fictitious name
14 has been advertised at least once in a newspaper as defined in
15 chapter 50 in the county in which ~~where~~ the principal place of
16 business of the registrant is or ~~applicant~~ will be located.

17 6.-(e) Any other information the division may reasonably
18 deem necessary to adequately inform other governmental agencies
19 and the public as to the registrant ~~persons~~ so conducting
20 business.

21 (b) Such registration ~~statement~~ shall be accompanied by the
22 applicable processing fees and any other taxes or penalties owed
23 to the state.

24 (c) With respect to a general partnership that is not
25 registered with the division, its partners are the registrants
26 and not the partnership entity. With respect to a general
27 partnership that is registered with the division, the
28 partnership is the registrant and it must be in active status
29 with the division at the time the registration is filed.

30 (4) CANCELLATION AND REREGISTRATION ~~CHANGE OF OWNERSHIP.~~—If
31 a registrant ceases to engage in business under a registered
32 fictitious name, such registrant ~~the ownership of a business~~
33 ~~registered under this section changes, the owner of record with~~
34 ~~the division~~ shall file a cancellation with the division ~~and~~
35 ~~reregistration that meets the requirements set forth in~~
36 ~~subsection (3)~~ within 30 days after the cessation occurs ~~the~~
37 ~~occurrence of such change.~~ If such cessation is in connection
38 with a transfer of the business or, with respect to a general
39 partnership that is not registered with the division, is in
40 connection with a transfer by a general partner of all or any



820372

part of the general partner's partnership interest and, as a result, a new person will engage in business under the registered fictitious name, such new person may reregister the name pursuant to subsection (3) at the same time as the cancellation is filed.

(5) TERM.—

(a) A fictitious name registered under this section shall be valid for a period beginning on the date of registration or reregistration and expiring on December 31 of the 5th calendar year thereafter, counting the period from registration or reregistration through December 31 of the year of registration or reregistration as the first calendar year.

(b) Each renewal under subsection (6) is valid for a period of 5 years beginning on January 1 of the year following the prior registration expiration date and expiring ~~of 5 years and expires~~ on December 31 of the 5th calendar year.

(6) RENEWAL.—

(a) Renewal of a fictitious name registration shall occur on or after January 1 and on or before December 31 of the expiration year. Upon timely filing of a renewal statement, the effectiveness of the name registration is continued for 5 years as provided in subsection (5).

(b) In the ~~last~~ year that a ~~of the~~ registration is to expire, the division shall notify the ~~owner or~~ registrant of the fictitious name registration of the upcoming expiration of the fictitious name no later than September 1. If the ~~owner or~~ registrant of the fictitious name has provided the division ~~department~~ with an electronic mail address, such notice shall be by electronic transmission. If the business is a general



820372

partnership that is not registered with the division and, thus, there is more than one registrant for the fictitious name, the division need only notify one of the registrants.

(c) If a registrant ~~the owner~~ of the fictitious name registration fails to timely file a renewal and pay the appropriate processing fees on or before ~~prior to~~ December 31 of the year of expiration, the fictitious name registration expires. The division shall remove any expired or canceled fictitious name registration from its records and may purge such registrations. Failure to receive the notice ~~statement~~ of expiration ~~renewal~~ required by paragraph (b) shall not constitute grounds for appeal of a registration's expiration or removal from the division's records.

(d) If a registered fictitious name is prohibited by subsection (14) at the time of renewal, the fictitious name may not be renewed.

(7) EXEMPTIONS.—A business formed by an attorney actively licensed to practice law in this state, by a person actively licensed by the Department of Business and Professional Regulation or the Department of Health for the purpose of practicing his or her licensed profession, or by any corporation, limited liability company, partnership, or other business ~~commercial~~ entity that is ~~actively~~ organized or registered and in active status with the division ~~Department of State~~ is not required to register its name pursuant to this section, unless the name under which business is to be conducted differs from the name as licensed or registered.

(8) EFFECT OF REGISTRATION.—Notwithstanding ~~the provisions~~ ~~of~~ any other law, registration under this section is for public



820372

notice only, and does not give ~~gives~~ rise to a ~~no~~ presumption of the registrant's rights to own or use the name registered, nor does it affect trademark, service mark, trade name, or corporate or other business entity name rights previously acquired by others in the same or a similar name. Registration under this section does not reserve a fictitious name against future use.

(9) PENALTIES.—

(a) If a business fails to comply with this section, neither the business nor the person or persons engaging in the, ~~its members, and those interested in doing such~~ business may ~~not~~ maintain any action, suit, or proceeding in any court of this state with respect to or on behalf of such business until this section is complied with. An action, suit, or proceeding may not be maintained in any court of this state by any successor or assignee of such business on any right, claim, or demand arising out of the transaction of business by such business in this state until this section has been complied with.

(b) The failure of a business to comply with this section does not impair the validity of any contract, deed, mortgage, security interest, lien, or act of such business and does not prevent such business from defending any action, suit, or proceeding in any court of this state. However, a party aggrieved by a noncomplying business may be awarded reasonable attorney ~~attorney's~~ fees and court costs necessitated by the noncomplying business.

(c) Any person who fails to comply with this section commits a noncriminal violation as defined in s. 775.08 ~~misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.~~



820372

(10) POWERS OF DIVISION ~~DEPARTMENT~~.—The division ~~Department~~ ~~of State~~ is granted the power reasonably necessary to enable it to administer this section efficiently and, to perform the duties herein imposed upon it.

(11) FORMS.—Registration, cancellation, and renewal shall be made on forms prescribed by the division ~~Department of State~~, which may include the uniform business report, pursuant to s. 606.06, as a means of satisfying the requirement of this section.

(12) PROCESSING FEES.—The division ~~Department of State~~ shall charge and collect nonrefundable processing fees as follows:

(a) For registration of a fictitious name, \$50.

(b) For cancellation or cancellation and reregistration of a fictitious name, \$50.

(c) For renewal of a fictitious name registration, \$50.

(d) For furnishing a certified copy of a fictitious name registration document, \$30.

(e) For furnishing a certificate of status, \$10.

(13) DEPOSIT OF FUNDS.—All funds required to be paid to the division ~~Department of State~~ pursuant to this section shall be collected and deposited into the General Revenue Fund.

(14) PROHIBITION.—A fictitious name registered as provided in this section may not contain the following words, abbreviations, or designations:

(a) "Corporation," ~~or "incorporated," or the abbreviations "Corp.,"~~ or "Inc.," unless the person or business for which the name is registered is incorporated or has obtained a certificate of authority to transact business in this state pursuant to ~~part~~



820372

~~of~~ chapter 607 or chapter 617.

(b) "Limited liability company," "LLC," or "L.L.C.," unless the person or business for which the name is registered is organized as a limited liability company or has obtained a certificate of authority to transact business in this state pursuant to chapter 605.

(c) "Limited liability partnership," "LLP," or "L.L.P.," unless the person or business for which the name is registered is registered as a limited liability partnership or has obtained a certificate of authority to transact business in this state pursuant to s. 620.9102.

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

And the title is amended as follows:

Delete lines 13 - 16

and insert:

concerning penalties for violations; specifying
additional terms that

By the Committees on Governmental Oversight and Accountability;
and Commerce and Tourism; and Senator Stargel

585-02131-17

2017346c2

1 A bill to be entitled
2 An act relating to fictitious name registration;
3 reordering and amending s. 865.09, F.S.; defining the
4 term "registrant"; revising the information required
5 to register a fictitious name; revising requirements
6 for a change in registration; revising provisions
7 concerning the expiration of a registration;
8 prohibiting a renewal of a registration if the
9 registered fictitious name is prohibited by specified
10 provisions; specifying additional forms of business
11 organization that may not be required to register
12 under certain circumstances; revising provisions
13 concerning penalties for violations; clarifying that
14 the Division of Corporations administers the
15 provisions of ch. 865, F.S., relating to fictitious
16 name registration; specifying additional terms that
17 may not be included in a fictitious name; providing an
18 effective date.
19
20 Be It Enacted by the Legislature of the State of Florida:
21
22 Section 1. Section 865.09, Florida Statutes, is reordered
23 and amended to read:
24 865.09 Fictitious name registration.—
25 (1) SHORT TITLE.—This section may be cited as the
26 "Fictitious Name Act."
27 (2) DEFINITIONS.—As used in this section, the term:
28 (c) (a) "Fictitious name" means any name under which a
29 person transacts business in this state, other than the person's

585-02131-17

2017346c2

30 legal name.
31 (a) (b) "Business" means any enterprise or venture in which
32 a person sells, buys, exchanges, barter, deals, or represents
33 the dealing in any thing or article of value, or renders
34 services for compensation.
35 (b) (c) "Division" means the Division of Corporations of the
36 Department of State.
37 (d) "Registrant" means a person who registers a fictitious
38 name with the division.
39 (3) REGISTRATION.—
40 (a) A person may not engage in business under a fictitious
41 name unless the person first registers the name with the
42 division by filing a registration ~~sworn statement~~ listing:
43 1. (a) The name to be registered.
44 2. (b) The mailing address of the business.
45 3. (c) The name and address of each registrant owner ~~and, if~~
46 ~~a corporation, its federal employer's identification number and~~
47 ~~Florida incorporation or registration number.~~
48 4. If the registrant is a business entity that was required to
49 file incorporation or similar documents with its state of
50 organization when it was organized, such entity must be
51 registered with the division and in active status with the
52 division, provide its Florida document number assigned by the
53 division, and provide its federal employer identification number
54 if the entity has such a number.
55 5. (d) Certification by at least one registrant ~~the~~
56 ~~applicant~~ that the intention to register such fictitious name
57 has been advertised at least once in a newspaper as defined in
58 chapter 50 in the county in which ~~where~~ the principal place of

585-02131-17

2017346c2

business of the registrant is or applicant will be located.

6.(e) Any other information the division may reasonably deem necessary to adequately inform other governmental agencies and the public as to the registrant persons so conducting business.

(b) Such registration statement shall be accompanied by the applicable processing fees and any other taxes or penalties owed to the state.

(c) If the registrant is a general partnership that is not registered with the division, its partners are the registrants and not the partnership entity. If the registrant is a general partnership that is registered with the division, the partnership is the registrant and must be in active status with the division.

(4) CANCELLATION AND REREGISTRATION CHANGE OF OWNERSHIP.—If a registrant ceases to engage in business under a registered fictitious name, such registrant the ownership of a business registered under this section changes, the owner of record with the division shall file a cancellation with the division and reregistration that meets the requirements set forth in subsection (3) within 30 days after the cessation occurs the occurrence of such change. If such cessation is in connection with a transfer of the business and, as a result, a new person will engage in business under the registered fictitious name, such new person may reregister the name pursuant to subsection (3) at the same time as the cancellation is filed.

(5) TERM.—

(a) A fictitious name registered under this section shall be valid for a period beginning on the date of registration and

585-02131-17

2017346c2

expiring on December 31 of the 5th calendar year thereafter, counting the period from registration through December 31 of the year of registration as the first calendar year.

(b) Each renewal under subsection (6) is valid for a period of 5 years beginning on January 1 of the year following the prior registration expiration date and expiring of 5 years and expires on December 31 of the 5th calendar year.

(6) RENEWAL.—

(a) Renewal of a fictitious name registration shall occur on or after January 1 and on or before December 31 of the expiration year. Upon timely filing of a renewal statement, the effectiveness of the name registration is continued for 5 years as provided in subsection (5).

(b) In the last year that a of the registration is to expire, the division shall notify the owner of registrant of the fictitious name registration of the upcoming expiration of the fictitious name no later than September 1. If the owner of registrant of the fictitious name has provided the division department with an electronic mail address, such notice shall be by electronic transmission.

(c) If a registrant the owner of the fictitious name registration fails to timely file a renewal and pay the appropriate processing fees on or before prior to December 31 of the year of expiration, the fictitious name registration expires. The division shall remove any expired or canceled fictitious name registration from its records and may purge such registrations. Failure to receive the notice statement of expiration renewal required by paragraph (b) does shall not constitute grounds for appeal of a registration's expiration or

585-02131-17

2017346c2

removal from the division's records.

(d) If a registered fictitious name is prohibited by subsection (14) at the time of renewal, the fictitious name may not be renewed.

(7) EXEMPTIONS.—A business formed by an attorney actively licensed to practice law in this state, by a person actively licensed by the Department of Business and Professional Regulation or the Department of Health for the purpose of practicing his or her licensed profession, or by any corporation, limited liability company, partnership, or other business ~~commercial~~ entity that is ~~actively~~ organized or registered and in active status with the division ~~Department of State~~ is not required to register its name pursuant to this section, unless the name under which business is to be conducted differs from the name as licensed or registered.

(8) EFFECT OF REGISTRATION.—Notwithstanding ~~the provisions of~~ any other law, registration under this section is for public notice only, and does not give ~~gives~~ rise to a ~~no~~ presumption of the registrant's rights to own or use the name registered, nor does it affect trademark, service mark, trade name, or corporate or other business entity name rights previously acquired by others in the same or a similar name. Registration under this section does not reserve a fictitious name against future use.

(9) PENALTIES.—

(a) If a business fails to comply with this section, the business or the person or persons engaging in the, ~~its members,~~ ~~and those interested in doing such~~ business may not maintain any action, suit, or proceeding in any court of this state with respect to or on behalf of such business until this section is

585-02131-17

2017346c2

complied with. An action, suit, or proceeding may not be maintained in any court of this state by any successor or assignee of such business on any right, claim, or demand arising out of the transaction of business by such business in this state until this section has been complied with.

(b) The failure of a business to comply with this section does not impair the validity of any contract, deed, mortgage, security interest, lien, or act of such business and does not prevent such business from defending any action, suit, or proceeding in any court of this state. However, a party aggrieved by a noncomplying business may be awarded reasonable attorney ~~attorney's~~ fees and court costs necessitated by the noncomplying business.

(c) Any person who fails to comply with this section commits a noncriminal violation as defined in s. 775.08 ~~misdemeanor of the second degree~~, punishable as provided in ~~s. 775.082~~ or s. 775.083.

(10) POWERS OF DIVISION ~~DEPARTMENT~~.—The division ~~Department of State~~ is granted the power reasonably necessary to enable it to administer this section efficiently and, to perform the duties herein imposed upon it.

(11) FORMS.—Registration, cancellation, and renewal shall be made on forms prescribed by the division ~~Department of State~~, which may include the uniform business report, pursuant to s. 606.06, as a means of satisfying the requirement of this section.

(12) PROCESSING FEES.—The division ~~Department of State~~ shall charge and collect nonrefundable processing fees as follows:

585-02131-17

2017346c2

- 175 (a) For registration of a fictitious name, \$50.
- 176 (b) For cancellation or for cancellation and reregistration
- 177 of a fictitious name, \$50.
- 178 (c) For renewal of a fictitious name registration, \$50.
- 179 (d) For furnishing a certified copy of a fictitious name
- 180 registration document, \$30.
- 181 (e) For furnishing a certificate of status, \$10.
- 182 (13) DEPOSIT OF FUNDS.—All funds required to be paid to the
- 183 division ~~Department of State~~ pursuant to this section shall be
- 184 collected and deposited into the General Revenue Fund.
- 185 (14) PROHIBITION.—A fictitious name registered as provided
- 186 in this section may not contain the following words,
- 187 abbreviations, or designations:
- 188 (a) "Corporation," ~~or~~ "incorporated," ~~or the abbreviations~~
- 189 "Corp.," or "Inc.," unless the person or business for which the
- 190 name is registered is incorporated or has obtained a certificate
- 191 of authority to transact business in this state pursuant to ~~part~~
- 192 ~~of~~ chapter 607 or chapter 617.
- 193 (b) "Limited liability company," "LLC," or "L.L.C.," unless
- 194 the person or business for which the name is registered is
- 195 organized as a limited liability company or has obtained a
- 196 certificate of authority to transact business in this state
- 197 pursuant to chapter 605.
- 198 (c) "Limited liability partnership," "LLP," or "L.L.P.,"
- 199 unless the person or business for which the name is registered
- 200 is organized as a limited liability partnership or has in effect
- 201 a statement of foreign qualification in this state pursuant to
- 202 ss. 620.81001-620.9902.
- 203 (d) "Limited partnership," "limited liability limited

585-02131-17

2017346c2

- 204 partnership," "LP," "L.P.," "LLLP," or "L.L.L.P.," unless the
- 205 person or business for which the name is registered is organized
- 206 as a limited partnership or has obtained a certificate of
- 207 authority to transact business in this state pursuant to ss.
- 208 620.1101-620.2205.
- 209 (e) "Professional association," "P.A.," or "chartered,"
- 210 unless the person or business for which the name is registered
- 211 is organized as a professional corporation pursuant to chapter
- 212 621, or is organized as a professional corporation pursuant to a
- 213 similar law of another jurisdiction and has obtained a
- 214 certificate of authority to transact business in this state
- 215 pursuant to chapter 607.
- 216 (f) "Professional limited liability company," "PLLC,"
- 217 "P.L.L.C.," "PL," or "P.L.," unless the person or business for
- 218 which the name is registered is organized as a professional
- 219 limited liability company pursuant to chapter 621, or is
- 220 organized as a professional limited liability company pursuant
- 221 to a similar law of another jurisdiction and has obtained a
- 222 certificate of authority to transact business in this state
- 223 pursuant to chapter 605.
- 224 (15) LEGAL DESIGNATION OF ENTITY.—Notwithstanding any other
- 225 ~~provision of~~ law to the contrary, a fictitious name registered
- 226 as provided in this section for a corporation, limited liability
- 227 company, limited liability partnership, or limited partnership
- 228 is not required to contain the designation of the type of legal
- 229 entity in which the person or business is organized, including
- 230 the terms "corporation," "limited liability company," "limited
- 231 liability partnership," "limited partnership," or any
- 232 abbreviation or derivative thereof.

585-02131-17

2017346c2

233

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Appropriations Subcommittee on Finance and Tax,
Chair
Appropriations Subcommittee on Health and
Human Services, *Vice Chair*
Appropriations
Children, Families, and Elder Affairs
Communications, Energy, and Public Utilities
Military and Veterans Affairs, Space, and Domestic
Security

SENATOR KELLI STARGEL
22nd District

March 28, 2017

The Honorable Lizbeth Benacquisto
Senate Rules Committee, Chair
402 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

Dear Chair Benacquisto:

I respectfully request that SB 346, related to *Fictitious Names*, be placed on the next committee on Rules agenda. The House companion bill, HB 169, has been placed on Special Order Calendar in the House.

Thank you for your consideration and please do not hesitate to contact me should you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Kelli Stargel". The signature is fluid and cursive, with a long horizontal stroke extending from the end.

Kelli Stargel
State Senator, District 22

Cc: John B. Phelps/ Staff Director
Cynthia Futch/ AA

REPLY TO:

- ☐ 2033 East Edgewood Drive, Suite 1, Lakeland, Florida 33803
- ☐ 322 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5022

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/6
Meeting Date

346
Bill Number (if applicable)

Topic Fictitious Names Registration

Amendment Barcode (if applicable)

Name Greg Black

Job Title Attorney

Address 119 S. Monroe St, Ste 200

Phone 205-9000

Street

TLH
City

FL
State

32301
Zip

Email greg.black@MHAfirm.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Business Law Section of the Florida Bar

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SB 404

INTRODUCER: Rules Committee and Senator Simmons

SUBJECT: Legislative Ratification

DATE: April 7, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Knudson</u>	<u>Knudson</u>	<u>BI</u>	Favorable
2.	<u>Kim</u>	<u>Ferrin</u>	<u>GO</u>	Favorable
3.	<u>Knudson</u>	<u>Phelps</u>	<u>RC</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 404 ratifies rules 69L-7.100 and 69L-7.501, F.A.C.

The Department of Financial Services (DFS) has adopted amended versions of Rule 69L-7.501, F.A.C., incorporating by reference the Florida Workers' Compensation Hospital Reimbursement Manual (hospital manual), 2016 Edition and Rule 69L-7.100, incorporating by reference the Florida Worker's Compensation Ambulatory Surgical Centers Reimbursement Manual (ASC manual), 2016 Edition. The rules also update incorporating references to other materials used for provider reimbursement together with each manual. Each manual sets out the policies, guidelines, codes, and maximum reimbursement allowances for services and supplies furnished under the Workers' Compensation statutes.

The National Council on Compensation Insurance, Inc. (NCCI) estimates that the 2016 hospital manual will increase workers' compensation system costs by 2.2 percent (\$80 million) and that the 2016 ambulatory surgical center manual will increase workers' compensation system costs by 0.6 percent (\$22 million). Because the Statement of Estimated Regulatory Costs (SERC) for these rules exceeds \$1 million within 5 years of adoption, Legislative ratification is required for these rules to become effective, pursuant to s. 120.541(3), F.S.

The bill is effective upon becoming law.

II. Present Situation:

Rulemaking Authority and Legislative Ratification

A rule is an “agency statement of general applicability that implements, interprets, or prescribes law or policy.”¹ Rulemaking authority is delegated by the Legislature in law to an agency, and authorizes an agency to adopt, develop, establish, or otherwise create a rule.² An agency may not engage in rulemaking unless it has a legislative grant of authority to do so.³ The statutory authority for rulemaking must be specific enough to guide an agency’s rulemaking and an agency rule must not exceed the bounds of authority granted by the Legislature.⁴

Prior to the adoption, amendment, or repeal of any rule, an agency must file a notice of the proposed rule in the Florida Administrative Register.⁵ The notice of the proposed rule must include:

- An explanation of the purpose and effect;
- The specific legal authority for the rule;
- The full text of the rule; and
- A summary of the agency’s statement of estimated regulatory costs (SERC), if one is prepared.⁶

Within 21 days of the notice, the public may provide an agency with information regarding the SERC or provide proposals for a lower cost alternative to the rule.⁷

SERC Requirements

Agencies must prepare the SERC for a rule that has an adverse impact on small businesses or that increases regulatory costs more than \$200,000 within one 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 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

¹ Section 120.52(16), F.S.

² Section 120.52(17), F.S.

³ See ss. 120.52(8) and 120.536, F.S.

⁴ See *Sloban v. Florida Board of Pharmacy*, 982 So.2d 26 (Fla. 1st DCA 2008) and *Southwest Florida Water Management District v. Save the Manatee Club, Inc.*, 773 So.2d 594 (Fla 1st DCA 2000).

⁵ See ss. 120.54(2)(a) and 120.55(1)(b), F.S.

⁶ Section 120.54(3)(a)1., F.S.

⁷ See ss. 120.54(3)(a)1., and 120.541(1)(a), F.S.

⁸ Section 120.541(1)(a), 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.

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 five 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

If the economic analysis results in an adverse impact or regulatory costs in excess of \$1 million within five years after implementation of the rule, then the Legislature must ratify the rule in order for it to take effect.¹²

Workers' Compensation Maximum Reimbursement Allowances

The Department of Financial Services (DFS), Division of Workers' Compensation, provides regulatory oversight of Florida's workers' compensation system. Florida's workers' compensation law provides medically necessary treatment and care for injured employees, including medications. The law provides reimbursement formulas and methodologies to compensate providers of health services, subject to maximum reimbursement allowances (MRAs).

A three-member panel (panel) consisting of the CFO or CFO's designee and two Governor's appointees sets the MRAs.¹³ The DFS incorporates the statewide schedules of the MRAs by rule in reimbursement manuals. In establishing the MRA manuals, the panel considers the usual and customary levels of reimbursement for treatment, services, and care;¹⁴ the cost impact to employers for providing reimbursement that ensures that injured workers have access to necessary medical care;¹⁵ the financial impact of the MRAs on healthcare providers and facilities;¹⁶ and the Health Care Board's most recent maximum allowable rate of increase for hospitals.¹⁷ Florida law requires the panel to develop MRA manuals that are reasonable, promote the workers' compensation system's healthcare cost containment and efficiency, and are sufficient to ensure that medically necessary treatment is available for injured workers.¹⁸

The panel develops four different reimbursement manuals to determine statewide schedules of maximum reimbursement allowances. The healthcare provider manual limits the maximum reimbursement for licensed physicians to 110 percent of Medicare reimbursement,¹⁹ while reimbursement for surgical procedures is limited to 140 percent of Medicare.²⁰ The hospital manual sets maximum reimbursement for outpatient scheduled surgeries at 60 percent of usual

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 Section 120.541(2)(a), F.S.

¹² 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.

¹³ Section 440.13(12)(a), F.S.

¹⁴ Section 440.13(12)(d)1., F.S.

¹⁵ Section 440.13(12)(d)2., F.S.

¹⁶ Section 440.13(12)(d)3., F.S.

¹⁷ Section 440.13(12)(d)4., F.S.

¹⁸ Section 440.13(12)(d)3., F.S.

¹⁹ Section 440.13(12)(b)4., F.S.

²⁰ Section 440.13(12)(b)5., F.S.

and customary charges,²¹ while other outpatient services are limited to 75 percent of usual and customary charges.²² Reimbursement of inpatient hospital care is limited based on a schedule of per diem rates approved by the panel.²³ The ambulatory surgical centers manual limits reimbursement to 60 percent of usual and customary as such services are generally scheduled outpatient surgeries. The prescription drug reimbursement manual limits reimbursement to the average wholesale price plus a \$4.18 dispensing fee.²⁴ Repackaged or relabeled prescription medication dispensed by a dispensing practitioner has a maximum reimbursement of 112.5 percent of the average wholesale price plus an \$8.00 dispensing fee.²⁵ Fees may not exceed the schedules adopted under Ch. 440, F.S., and department rule.²⁶

The 2016 Legislature ratified Rule 69L-7.020, F.A.C., which incorporates by reference the Florida Workers' Compensation Health Care Provider Reimbursement Manual, 2015 Edition, (manual) providing for reimbursement of healthcare providers under the increased MRAs approved by the panel. According to the Statement of Estimated Regulatory Costs (SERC), the revisions to MRAs in the updated manual were projected to result in increased costs to the overall compensation system of \$272 million over the next five years.²⁷

The DFS has subsequently adopted amended versions of Rule 69L-7.501, F.A.C., incorporating by reference the 2016 Edition of the Manual for Hospitals and Rule 69L-7.100, incorporating by reference the 2016 Edition of the Manual for Ambulatory Surgical Centers. The rules also update incorporating references to other materials used for provider reimbursement together with the manual. The National Council on Compensation Insurance, Inc. (NCCI) estimates that the 2016 hospital manual will increase workers' compensation system costs by 2.2 percent (\$80 million) and that the 2016 ambulatory surgical center manual will increase workers' compensation system costs by 0.6 percent (\$22 million). Because the SERC for these rules exceeds \$1 million within five years of adoption, Legislative ratification is required for these rules to become effective, pursuant to s. 120.541(3), F.S.

III. Effect of Proposed Changes:

The bill ratifies rules 69L-7.501 and 69L-7.100, F.A.C., allowing the rules to go into effect. The bill solely meets the condition for effectiveness imposed by s. 120.541(3), F.S. The bill expressly limits ratification to the effectiveness of the rules. The bill provides that it will not be codified in the Florida Statutes but only noted in the historical comments to each rule by the Department of State.

The effective date is July 1, 2017.

²¹ Section 440.13(12)(b)3., F.S.

²² Section 440.13(12)(a), F.S.

²³ Section 440.13(12)(a), F.S.

²⁴ Section 440.13(12)(c), F.S.

²⁵ *Id.*

²⁶ Section 440.13(13)(b), F.S. The department also has broad rulemaking authority under s. 440.591, F.S.

²⁷ Department of Financial Services Statement of Estimated Regulatory Costs, Workers' Compensation, *Rule 69L-7.020, F.A.C., Florida's Workers' Compensation Health Care Provider Reimbursement Manual* (on file with the Senate Committee on Banking and Insurance).

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 NCCI estimates that implementing the 2016 Edition of the Manual for the Ambulatory Surgical Center Reimbursement will increase workers' compensation costs by \$22 million.²⁸ The NCCI also estimates that implementing the 2016 Edition of the Reimbursement Manual for Hospitals will increase overall workers' compensation costs by \$80 million.²⁹

C. Government Sector Impact:

The Department of Financial Services estimates that adoption of the hospital reimbursement manual and the ambulatory surgical center reimbursement manual will have the following financial impact on the workers' compensation expenses of the Department of Risk Management:³⁰

- Hospital reimbursement manual:
 - Fiscal year 2017-18 = \$2,356,502
 - Fiscal year 2018-19 = \$2,437,902
 - Fiscal year 2019-20 = \$2,517,102
- Ambulatory surgical center reimbursement manual:
 - Fiscal year 2017-18 = \$642,682
 - Fiscal year 2018-19 = \$664,882

²⁸ National Council on Compensation Insurance, Inc., *Analysis of Proposed Changes to the Florida ASC Maximum Reimbursements Proposed to be Effective July 1, 2017*, April 13, 2016 (on file with the Senate Committee on Banking and Insurance).

²⁹ National Council on Compensation Insurance, Inc., *Analysis of Proposed Changes to the Florida Reimbursement Manual for Hospitals Proposed to be Effective July 1, 2017*, April 14, 2016 (on file with the Senate Committee on Banking and Insurance).

³⁰ Florida Department of Financial Services, *Analysis of SB 404 to the Senate Budget Committee*, February 7, 2017 (on file with the Senate Committee on Banking and Insurance).

- Fiscal year 2019-20 = \$686,482

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

None.

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 Rules on April 6, 2017:

The CS ratifies rules 69L-7.100 and 69L-7.501, F.A.C. Previously the bill exempted rules incorporating workers' compensation reimbursement manuals approved by the three-member panel from rule ratification under s. 120.541, F.S.

- B. Amendments:

None.



546448

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/06/2017	.	
	.	
	.	
	.	

The Committee on Rules (Simmons) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. (1) The following rules are ratified for the sole and exclusive purpose of satisfying any condition on effectiveness imposed under s. 120.541(3), Florida Statutes: rule 69L-7.501, Florida Administrative Code, titled "Florida Workers' Compensation Reimbursement Manual for Hospitals," and rule 69L-7.100, Florida Administrative Code, titled "Florida Workers' Compensation Reimbursement Manual for Ambulatory



546448

Surgical Centers," as filed for adoption with the Department of
State pursuant to the certification package dated December 19,
2016.

(2) This act serves no other purpose and shall 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
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 July 1, 2017.

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled

An act relating to ratification of Department of
Financial Services rules; ratifying specified rules
relating to the Florida Workers' Compensation
Reimbursement Manual for Hospitals and Florida
Workers' Compensation Reimbursement Manual for
Ambulatory Surgical Centers for the sole and exclusive



546448

41 purpose of satisfying any condition on effectiveness
42 imposed under s. 120.541(3), F.S., which requires
43 ratification of any rule exceeding the specified
44 thresholds for likely adverse impact or increase in
45 regulatory costs; providing construction; providing
46 for a certain notice in the Florida Administrative
47 Code, the Florida Administrative Register, or both;
48 providing an effective date.

By Senator Simmons

9-00490-17

2017404__

A bill to be entitled

An act relating to legislative ratification; amending
s. 120.80, F.S.; providing that the maximum
reimbursement allowances and manuals approved by a
three-member panel for purposes of the Workers'
Compensation Law are exempt from legislative
ratification under the Administrative Procedure Act
when the adverse impact or regulatory costs of such
allowances or manuals exceed any criteria specified in
s. 120.541(2)(a), F.S.; providing an effective date.

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

Section 1. Subsection (19) is added to section 120.80,
Florida Statutes, to read:

120.80 Exceptions and special requirements; agencies.—

(19) DEPARTMENT OF FINANCIAL SERVICES.—Section 120.541(3)
does not apply to the adoption of maximum reimbursement
allowances and manuals approved by a three-member panel pursuant
to s. 440.13(12).

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



The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: March 6, 2017

I respectfully request that **Senate Bill 404**, relating to Legislative Ratification, be placed on the:

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

A handwritten signature in black ink, appearing to read "David Simmons", is written over a horizontal line.

Senator David Simmons
Florida Senate, District 9

A large handwritten checkmark is drawn in the lower right area of the page.

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-6-17

Meeting Date

404

Bill Number (if applicable)

Topic SB 404

Amendment Barcode (if applicable)

Name Elizabeth Boyd

Job Title Director of Legislative Affairs

Address 400 N. Monroe St

Phone 850-413-2863

Street

Tallahassee FL 32399

Email elizabeth.boyd@myfloridaleg.com

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

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

Representing CFO Atwater

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

41 6/2017

Meeting Date

Topic _____

Bill Number 404
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH
Street

Phone 727-897-9291

SAINT PETERSBURG FLORIDA 33705
City State Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☐ Against ☒ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: SB 438

INTRODUCER: Senator Baxley

SUBJECT: Out-of-school Suspension

DATE: April 6, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Androff	Graf	ED	Favorable
2.	Androff	Phelps	RC	Favorable

I. Summary:

SB 438 revises parents' rights and school districts' duties regarding the suspension of public school students. Specifically, the bill:

- Grants parents the right to give public testimony at a district school board meeting during which the board reviews its out-of-school suspension rules;
- Requires a district school board to review, once every 3 years, its rules authorizing out-of-school suspension during a district school board meeting; and
- Specifies that a district school board's rules authorizing out-of-school suspension expire if the board does not conduct its review of these rules in accordance with the law.

The bill takes effect July 1, 2017.

II. Present Situation:

Florida law provides for both parent and student rights and specifies district school board duties related to student discipline and school safety.

Student and Parent Rights

Parents of public school students are entitled to receive accurate and timely information regarding their child's academic performance and ways to help their child succeed in school.¹ Additionally, Florida law affords students and parents other rights including, but not limited to, rights regarding the discipline of a public school student.²

¹ Section 1002.20, F.S.

² *Id.*

A student may be suspended pursuant to a district school board's rules.³ A good faith effort must be made to immediately inform the parent, by telephone, of the suspension and related reason.⁴ Each suspension must be reported in writing within 24 hours to the parent by U.S. mail.⁵ A good faith effort must be made to use parental assistance before suspension, unless the situation requires immediate suspension.⁶ Additionally, a student with a disability may only be recommended for suspension or expulsion in accordance with State Board of Education rules.⁷

District School Board Duties

A district school board is responsible for the proper accounting for all students, for the attendance and control of students at school, and for proper attention to the health, safety and welfare of students.⁸ Specifically, a district school board must adopt rules for the control, discipline, in-school suspension, suspension, and expulsion of students and decide all cases recommended for expulsion.⁹ Additionally, a district school board must adopt a code of student conduct for elementary, middle, and high schools and distribute the appropriate code to all teachers, school personnel, students and parents at the beginning of every school year.¹⁰

A district school board must hold at least one regular meeting each month and convene for special session when called by the district school superintendent or on request of a majority of the district school board members.¹¹ All district school board meetings are open to the public.¹²

Currently, the School Environmental Safety Incident Reporting (SESIR) System assists schools, districts, and the Florida Department of Education (DOE) staff assess the extent and nature of problems in school safety.¹³ The SESIR system requires schools to report 26 types of serious safety incidents that occur on school grounds, on school transportation, and at off-campus, school-sponsored events.¹⁴ SESIR data is reported statewide and by school district within the Florida Statewide Report on School Safety and Discipline and must include the disciplinary action taken for each reported incident (e.g., suspension, expulsion, corporal punishment).¹⁵ DOE also collects annual data on the types and number of disciplinary action administered when students violate district school board rules.¹⁶

³ Section 1002.20(4)(a)(1), F.S.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ Section 1002.20(4)(a)(2), F.S.; Rule 6A-6.03312, F.A.C.

⁸ Section 1006.07, F.S.

⁹ Section 1006.07(1)(a), F.S.

¹⁰ Section 1006.07(2), F.S.

¹¹ Section 1001.372(1), F.S. A district school board must also convene for special session when called by the district school superintendent on request of the chair of the district school board.

¹² Section 286.011, F.S.

¹³ Florida Department of Education, *School Environmental Safety Incident Reporting (SESIR)*, <http://www.fldoe.org/schools/safe-healthy-schools/safe-schools/sesir-discipline-data/> (last visited February 20, 2017).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

III. Effect of Proposed Changes:

SB 438 revises parents' rights and school districts' duties regarding the suspension of public school students. Specifically, the bill:

- Grants parents the right to give public testimony at a district school board meeting during which the board reviews its out-of-school suspension rules;
- Requires a district school board to review, once every 3 years, its rules authorizing out-of-school suspension during a district school board meeting; and
- Specifies that a district school board's rules authorizing out-of-school suspension expire if the board does not conduct its review of these rules in accordance with the law.

Student and Parent Rights

The bill grants parents the right to give public testimony at a district school board meeting at which the district board reviews its out-of-school suspension rules. This may allow parents to gain insight into how the out-of-school suspension rules are administered and comment on the review and improvement of such rules.

District School Board Duties

The bill requires a district school board to review, once every three years, its rules authorizing out-of-school suspension as a form of discipline at a district school board meeting. Currently, there is no statutory requirement that a district school board review its out-of-suspension rules during a district school board meeting. The bill requires the board to accept public testimony at the district school board meeting reviewing these rules. The bill provides that if a district does not review its out-of-school suspension rules and accept public testimony at a district school board meeting reviewing such rules, the rules authorizing out-of-school suspension will expire.

The bill creates information collection requirements related to the review of a district school board's out-of-school rules. The information must include the disability status, race, gender, and rate of recidivism of each student in the district who has received out-of-school suspension since the district school board's last review. Schools currently collect information regarding disciplinary actions through the School Environmental Safety Incident Reporting (SESIR) System.¹⁷ The SESIR system requires schools to collect data on 26 specified incidents of crime, violence and disruptive behaviors that occur on school grounds, on school transportation, and at off-campus, school sponsored events. Incidents are reported by the schools to the districts, which provide the data to the Florida Department of Education (DOE).¹⁸ However, it does not appear that the SESIR system contains demographic data regarding the disability status, race, gender and rate of recidivism of each student in the district who has received out-of-school suspension.

¹⁷ Florida Department of Education, *School Environmental Safety Incident Reporting (SESIR)*, <http://www.fldoe.org/schools/safe-healthy-schools/safe-schools/sesir-discipline-data/> (last visited February 20, 2017).

¹⁸ Florida Department of Education, *Statewide Report on School Safety & Discipline Data*, <http://www.fldoe.org/schools/safe-healthy-schools/safe-schools/sesir-discipline-data/discipline-incident-data/statewide-report-on-school-safety-disc.stml> (last visited February 20, 2017).

The bill may increase awareness of a district school board's rules authorizing out-of-school suspension as a form of disciplinary action. Public input and specified information that must be collected may help district school boards in reviewing and improving their rules authorizing out-of-school suspension.

The bill takes effect July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 1002.20 and 1006.07.

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 Baxley

12-00460A-17

2017438__

A bill to be entitled

An act relating to out-of-school suspension; amending s. 1002.20, F.S.; authorizing a parent to give public testimony regarding a district school board's out-of-school suspension policy at a specified meeting; amending s. 1006.07, F.S.; requiring a district school board to review its rules authorizing out-of-school suspension during a specified timeframe at a district school board meeting; requiring the board to take public testimony at the meeting; providing that the rules expire under certain circumstances; providing an effective date.

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

Section 1. Paragraph (a) of subsection (4) of section 1002.20, Florida Statutes, is amended to read:

1002.20 K-12 student and parent rights.—Parents of public school students must receive accurate and timely information regarding their child's academic progress and must be informed of ways they can help their child to succeed in school. K-12 students and their parents are afforded numerous statutory rights including, but not limited to, the following:

(4) DISCIPLINE.—

(a) *Suspension of public school student.*—In accordance with the provisions of s. 1006.09(1)-(4):

1. A student may be suspended only as provided by rule of the district school board. A good faith effort must be made to immediately inform the parent by telephone of the student's suspension and the reason. Each suspension and the reason must be reported in writing within 24 hours to the parent by United States mail. A good faith effort must be made to use parental

Page 1 of 3

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

12-00460A-17

2017438__

assistance before suspension unless the situation requires immediate suspension.

2. A student with a disability may only be recommended for suspension or expulsion in accordance with State Board of Education rules.

3. A parent may give public testimony at a district school board meeting that reviews the board's rules authorizing out-of-school suspension as provided in s. 1006.07(1)(a).

Section 2. Paragraph (a) of subsection (1) 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:

(1) CONTROL OF STUDENTS.—

(a) Adopt rules for the control, discipline, in-school suspension, suspension, and expulsion of students and decide all cases recommended for expulsion. Once every 3 years, the district school board shall review its rules authorizing out-of-school suspension as a form of discipline during a district school board meeting held pursuant to s. 1001.372. The review must include school district data regarding the disability status, race, gender, and rate of recidivism of each student in the school district who has received out-of-school suspension since the district school board's last review. The district school board shall take public testimony at the meeting. If such a meeting is not held in accordance with this paragraph, the

Page 2 of 3

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

12-00460A-17

2017438__

board's rules authorizing out-of-school suspension expire.

Suspension hearings are exempted from the provisions of chapter 120. Expulsion hearings shall be governed by ss. 120.569 and 120.57(2) and are exempt from s. 286.011. However, the student's parent must be given notice of the provisions of s. 286.011 and may elect to have the hearing held in compliance with that section. The district school board may prohibit the use of corporal punishment, if the district school board adopts or has adopted a written program of alternative control or discipline.

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



SENATOR DENNIS BAXLEY
12th District

THE FLORIDA SENATE

COMMITTEES:
Governmental Oversight and Accountability, *Chair*
Criminal Justice, *Vice Chair*
Appropriations Subcommittee on Criminal and
Civil Justice
Appropriations Subcommittee on Health and
Human Services
Transportation

SELECT COMMITTEE:
Joint Select Committee on Collective Bargaining

JOINT COMMITTEE:
Joint Legislative Auditing Committee

February 21, 2017

The Honorable Lizbeth Benacquisto
400 Senate Office Building
Tallahassee, Florida 32399

Dear Chairman Benacquisto,

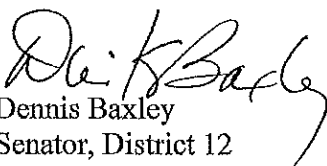
I respectfully request that you place SB 438 Out of School Suspension on your Rules agenda at your earliest convenience.

This bill authorizes parents to give public testimony regarding a district school board's out-of-school suspension policy. It requires a district school board to review, once every 3 years, its rules authorizing out-of-school suspension policies during a school board meeting, and specifies that a district school board's rules authorizing out-of-school suspension expire if the board does not conduct its review of these rules in accordance with the law.

It passed its first committee of reference; Education with a 7-0 vote.

I appreciate your favorable consideration.

Onward & Upward,


Dennis Baxley
Senator, District 12

DKB/dd

cc: John Phelps, 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)

4/6/2017

Meeting Date

438

Bill Number (if applicable)

Topic Out of School Suspension

Amendment Barcode (if applicable)

Name Jessica Janasiewicz

(Jan-ah-see-witz)

Job Title Governmental Consultant

Address 119 S Monroe Street

Phone 850-681-6788

Street

Tallahassee

FL

32301

City

State

Zip

Email jessica@rutledge-ecenia.com

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

Representing Florida Association of School Administrators

Appearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4 1 6 12017

Meeting Date

Topic _____

Bill Number 438
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG

FLORIDA

33705

City

State

Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☐ Against ☒ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: SB 464

INTRODUCER: Senator Clemens

SUBJECT: Natural Hazards

DATE: April 6, 2017

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Sanders	Ryon	MS	Favorable
2. Cochran	Yeatman	CA	Favorable
3. Peacock	Ferrin	GO	Favorable
4. Sanders	Phelps	RC	Favorable

I. Summary:

SB 464 creates an interagency workgroup to address the impacts of natural hazards in this state. Natural hazards are defined to include, but are not limited to, extreme heat, drought, wildfires, sea-level change, high tides, storm surge, saltwater intrusion, stormwater runoff, flash floods, inland flooding, and coastal flooding.

The natural hazards interagency workgroup is comprised of a liaison from each agency within the executive branch of state government, each water management district, and the Florida Public Service Commission. The director of the Florida Division of Emergency Management (FDEM), or his or her designee, will serve as both the agency liaison and the coordinator of the workgroup.

The bill requires the FDEM to prepare an annual progress report on the implementation of the state's enhanced hazard mitigation plan as it relates to natural hazards. The annual report is due to the Governor, President of the Senate, and Speaker of the House of Representatives by January 1, 2019, and each year thereafter. Each liaison is responsible for posting the workgroup's annual report to their respective agency's website.

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

II. Present Situation:

Natural Hazards in Florida

A hazard is any event or condition with the potential to cause fatalities, injuries, property damage, infrastructure damage, agricultural loss, environmental damage, business interruption,

or other structural and financial loss.¹ Hazards are categorized as either natural, human-caused, or technological.² The Florida Division of Emergency Management identifies the following natural hazards that pose the greatest threat to Florida:

- Floods, to include potential for dam failure and sea level rise;
- Tropical cyclones;³
- Severe storms and tornadoes;
- Wildfires;
- Drought;
- Extreme heat;
- Winter storms and freezes;
- Erosion; and
- Sinkholes, landslides, and seismic events.⁴

Since 1980, the United States has sustained 203 weather and climate disasters where overall damages and costs reached or exceeded \$1 billion, costing U.S. taxpayers in excess of \$1.1 trillion.⁵ Of those 203 events, 44 had some impact to Florida.⁶ During that same period of time, Florida received 62 major disaster or emergency declarations for natural hazards and 57 Fire Management Assistance⁷ declarations.⁸

FEMA Mitigation Grant Programs

The Federal Emergency Management Agency (FEMA) was established in 1979 to centralize federal emergency and disaster activities.⁹ FEMA's mission is to support citizens and first responders to build, sustain, and improve capabilities to prepare for, protect against, respond to, recover from, and mitigate all hazards.

The latter of FEMA's primary mission areas, hazard mitigation, is defined as any sustained action taken to reduce or eliminate the long-term risk to human life and property from hazards.¹⁰

¹ FDEM, *State of Florida Enhanced Hazard Mitigation Plan, Executive Summary*, page 2 (Aug. 2013), available at <http://www.floridadisaster.org/mitigation/State/Index.htm> (last visited February 24, 2017).

² FDEM, *State of Florida Enhanced Hazard Mitigation Plan, Section 3.0: State Risk Assessment*, page 3.7 (Aug. 2013).

³ Tropical cyclones are classified as a tropical depression, tropical storm, hurricane, or major hurricane. See National Hurricane Center, *Tropical Cyclone Climatology*, available at <http://www.nhc.noaa.gov/climo/> (last visited Feb. 24, 2017).

⁴ FDEM, *State of Florida Enhanced Hazard Mitigation Plan, Section 3.0: State Risk Assessment*, pages 3.12-3.14 (Aug. 2013).

⁵ National Oceanic and Atmospheric Administration, *Billion-Dollar Weather and Climate Disasters*, available at <http://www.ncdc.noaa.gov/billions> (last visited Feb. 24, 2017).

⁶ See National Oceanic and Atmospheric Administration, *Billion-Dollar Weather and Climate Disasters: Mapping*, available at <http://www.ncdc.noaa.gov/billions/mapping> (last visited Feb. 24, 2017).

⁷ A FEMA Fire Management Assistance declaration makes funding through the Fire Management Assistance Grant Program available to states, local, and tribal governments for the mitigation, management, and control of fires on publicly or privately owned forests or grasslands, which threaten such destruction as would constitute a major disaster. See FEMA, *Fire Management Assistance Grant Program*, available at <https://www.fema.gov/fire-management-assistance-grant-program> (last visited Feb. 24, 2017).

⁸ FEMA, *Disaster Declarations*, available at https://www.fema.gov/disasters?field_state_tid_selective=47&field_disaster_type_term_tid=All&field_disaster_declaration_type_value=All&items_per_page=20 (last visited Feb. 24, 2017).

⁹ FEMA, *About the Agency* (May 11, 2016), available at <https://www.fema.gov/about-agency> (last visited Feb. 24, 2017).

¹⁰ 44 C.F.R. s. 201.2.

FEMA administers five mitigation grant programs designed to reduce community vulnerability to disasters and their effects, promote individual and community safety and resilience, and promote community vitality after an incident.¹¹ Mitigation programs are also intended to reduce response and recovery resource requirements in the wake of a disaster or incident, which results in a safer community that is less reliant on external financial assistance.¹²

Four of the FEMA mitigation grant programs are authorized by the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act).¹³ These programs include the Hazard Mitigation Grant Program, the Pre-Disaster Mitigation Grant Program, the Public Assistance Grant Program, and the Fire Management Assistance Grant Program.¹⁴ The National Flood Insurance Act authorizes the fifth grant program called the Flood Mitigation Assistance grant, which was created with the goal of reducing or eliminating claims under the National Flood Insurance Program.¹⁵ Funds received from any one of these grants can be used for hazard mitigation planning, mitigation activities,¹⁶ or both.¹⁷

In order for state, tribal, and local governments to receive a FEMA mitigation grant, the applicant must produce a hazard mitigation plan approved by FEMA that conforms to a specified set of requirements.¹⁸ At a minimum, a hazard mitigation plan must outline processes for identifying the natural hazards, risks, and vulnerabilities of the area under the jurisdiction of the government.¹⁹ Jurisdictions must update their plans and re-submit them to FEMA every 5 years to maintain eligibility.²⁰

Florida Division of Emergency Management

The Florida Division of Emergency Management (FDEM) administers programs to rapidly apply all available aid to impacted communities stricken by emergency.²¹ The FDEM is responsible for maintaining a comprehensive statewide program of emergency management to ensure that Florida is prepared to respond to emergencies, recover from them, and mitigate against their impacts. In doing so, the FDEM coordinates efforts with and among the federal government, other state agencies, local governments, school boards, and private agencies that have a role in

¹¹ FEMA, *Hazard Mitigation Assistance Guidance*, (Feb. 27, 2015), available at https://www.fema.gov/media-library-data/1424983165449-38f5dfc69c0bd4ea8a161e8bb7b79553/HMA_Guidance_022715_508.pdf (last visited Feb. 24, 2017).

¹² *Id.*

¹³ 42 U.S.C. 5121 et seq.

¹⁴ See FEMA, *Hazard Mitigation Planning Laws, Regulations, and Policies* (Sept. 12, 2016), available at <https://www.fema.gov/hazard-mitigation-planning-laws-regulations-policies> (last visited Feb. 24, 2017).

¹⁵ *Id.*

¹⁶ Examples of hazard mitigation activities include, but are not limited to, the elevation or relocation of chronically flood-damaged homes away from flood hazard areas, retrofitting buildings to make them resistant to earthquakes or strong winds, and adoption and enforcement of adequate building codes and standards set by local, state, and federal governments. See FEMA, *Mitigation Ideas* (Jan. 2013), available at https://www.fema.gov/media-library-data/20130726-1904-25045-2423/fema_mitigation_ideas_final_01252013.pdf (last visited Feb. 24, 2017).

¹⁷ FEMA, *Hazard Mitigation Plan Requirement*, (Dec. 23, 2016), available at <https://www.fema.gov/hazard-mitigation-plan-requirement> (last visited Feb. 24, 2017).

¹⁸ See 44 C.F.R. ss.201.4-201.7.

¹⁹ 42 U.S.C. 5165(b)(2).

²⁰ Supra note 17.

²¹ Section 14.2016, F.S.

emergency management.²² The FDEM also serves as the administrator of federal funds awarded to the state and local governments through FEMA's mitigation grant programs.

State of Florida Enhanced Hazard Mitigation Plan

As described above, FEMA requires all states to have a FEMA-approved hazard mitigation plan as a condition to receive some types of federal disaster assistance.²³ As specified in the Stafford Act, a state's hazard mitigation plan must:

- Identify the natural hazards, risks, and vulnerabilities of all areas in the state;
- Support development of local government mitigation plans;
- Provide for technical assistance to local and tribal governments for mitigation planning; and
- Identify and prioritize mitigation actions that the state will support, as resources become available.²⁴

The current State of Florida Enhanced Hazard Mitigation Plan, effective August 2013, identifies potential hazards and vulnerabilities, sets goals, and establishes specific mitigation actions to reduce risk to people, buildings, infrastructure, and the environment.²⁵ Within the plan is a section dedicated to profiling Florida's natural, technological, and manmade hazards in extensive detail.²⁶ Of those natural hazards, the plan profiles flooding, to include flash floods, inland floods, and coastal floods; tropical cyclones, to include storm surge; severe storms and tornadoes; wildfires; drought; extreme heat; winter storms and freezes; erosion; sinkholes, earthquakes, and landslides; tsunamis; and solar storms.²⁷

The FDEM is responsible for developing and coordinating efforts to maintain and update the state hazard mitigation plan. The FDEM accomplishes this with the collaboration and coordination of an advisory team known as the State Hazard Mitigation Plan Advisory Team (SHMPAT).²⁸ The SHMPAT participants include numerous state agencies, regional planning councils, water management districts, state universities, other government entities, and community stakeholders. The primary function of the SHMPAT is to assist the FDEM with the development, implementation, and maintenance of the state hazard mitigation plan, comment on draft versions, and to maximize the leveraging potential of all state mitigation related resources.²⁹

The current State of Florida Enhanced Hazard Mitigation Plan took effect in August 2013. The FDEM and the SHMPAT are in the process of updating the current plan for FEMA to approve in 2018.

²² Section 252.35(1), F.S.

²³ Supra note 17.

²⁴ 42 U.S.C. s.5165(c).

²⁵ Supra note 1.

²⁶ FDEM, *State of Florida Enhanced Hazard Mitigation Plan, Section 3.3: Profiling Florida's Hazards* (Aug. 2013).

²⁷ *Id.*

²⁸ FDEM, *State of Florida Enhanced Hazard Mitigation Plan, Section 2.0: Planning Process* (Aug. 2013).

²⁹ *Id.*

III. Effect of Proposed Changes:

Section 1 of the bill creates s. 252.3655, F.S., to establish a natural hazards interagency workgroup. This workgroup is directed to share information on the current and potential impacts of natural hazards throughout the state, coordinate the ongoing efforts of state agencies in addressing the impacts of natural hazards, and collaborate on statewide initiatives to address the impacts of natural hazards.

The term “natural hazards” includes, but is not limited to, extreme heat, drought, wildfires, sea-level change, high tides, storm surge, saltwater intrusion, stormwater runoff, flash floods, inland flooding, and coastal flooding.

The workgroup is comprised of a liaison from each agency within the executive branch of state government, each water management district, and the Florida Public Service Commission. The director of the Florida Division of Emergency Management, or his or her designee, will serve as both the agency liaison and the coordinator of the workgroup.

Each agency liaison must provide information on the current and potential impacts of natural hazards to his or her agency, agency resources available to mitigate against natural hazards, and efforts made by the agency to address the impacts of natural hazards.

The workgroup must meet in person or by teleconference on a quarterly basis to share information, leverage agency resources, coordinate ongoing efforts, and provide information for inclusion in annual progress report.

The FDEM is responsible for preparing an annual progress report on behalf of the workgroup on the implementation of the state’s enhanced hazard mitigation plan, developed and submitted in accordance with 42 U.S.C. s. 5165 and any implementing regulations, as it relates to natural hazards. The annual report is due to the Governor, President of the Senate, and Speaker of the House of Representatives by January 1, 2019, and each year thereafter. Each liaison is responsible for posting the workgroup’s annual report to their respective agency’s website. The report shall, at a minimum:

- Assess the relevance, level, and significance of current agency efforts to address the impacts of natural hazards; and
- Strategize and prioritize ongoing efforts to address the impacts of natural hazards.

Section 2 of the bill provides an effective date of July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties or municipalities to spend funds, reduce the counties’ or municipalities’ ability to raise revenue or reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill directs the FDEM to serve as the coordinator of the natural hazards interagency workgroup and prepare an annual report on behalf of the workgroup. According to the FDEM, the resources and manpower needed to develop the workgroup and organize quarterly teleconferences exceed the FDEM's current resources.³⁰ The FDEM estimates it would need at least one additional full-time employee to manage the added responsibilities provided in the bill.³¹

Additionally, the bill may increase the workload for existing agency personnel designated as an agency's liaison to the natural hazards interagency workgroup.

VI. Technical Deficiencies:

None.

VII. Related Issues:

According to the FDEM, implementation of a natural hazards interagency workgroup may duplicate many of the functions currently undertaken by the State Hazard Mitigation Plan Advisory Team.³² The FDEM also states that in addition to the federally mandated 5-year update, the FDEM maintains and updates the State Hazard Mitigation Plan as needed.³³

VIII. Statutes Affected:

This bill creates section 252.3655 of the Florida Statutes.

³⁰ FDEM, *Senate Bill 464 Agency Analysis* (Jan. 26, 2017) (on file with the Senate Committee on Military and Veterans Affairs, Space, and Domestic Security).

³¹ *Id.*

³² *Id.*

³³ *Id.*

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

By Senator Clemens

31-00783-17

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A bill to be entitled

An act relating to natural hazards; creating s. 252.3655, F.S.; creating an interagency workgroup to share information, coordinate ongoing efforts, and collaborate on initiatives relating to natural hazards; defining the term "natural hazards"; requiring certain agencies to designate liaisons to the workgroup; designating the director of the Division of Emergency Management or his or her designee as the liaison to and coordinator of the workgroup; specifying duties and responsibilities of each liaison and the workgroup; requiring the division to prepare an annual report; specifying report requirements; requiring each agency liaison to ensure that the report is posted on his or her agency's website; requiring the workgroup to submit the report to the Governor and the Legislature; providing an effective date.

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

Section 1. Section 252.3655, Florida Statutes, is created to read:

252.3655 Natural hazards interagency workgroup.—

(1) (a) An interagency workgroup is created for the purpose of sharing information on the current and potential impacts of natural hazards throughout the state, coordinating the ongoing efforts of state agencies in addressing the impacts of natural hazards, and collaborating on statewide initiatives to address the impacts of natural hazards. As used in this section, the term "natural hazards" includes, but is not limited to, extreme heat, drought, wildfire, sea-level change, high tides, storm

Page 1 of 3

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surge, saltwater intrusion, stormwater runoff, flash floods, inland flooding, and coastal flooding.

(b) Each agency within the executive branch of state government, each water management district, and the Florida Public Service Commission shall select from within such agency a person to be designated as the agency liaison to the workgroup.

(c) The director of the Division of Emergency Management or his or her designee shall serve as the liaison to and coordinator of the workgroup.

(d) Each liaison shall provide information from his or her respective agency on the current and potential impacts of natural hazards to his or her agency, agency resources available to mitigate against natural hazards, and efforts made by the agency to address the impacts of natural hazards.

(e) The workgroup shall meet in person or by teleconference on a quarterly basis to share information, leverage agency resources, coordinate ongoing efforts, and provide information for inclusion in the annual progress report submitted pursuant to subsection (2).

(2) (a) On behalf of the workgroup, the Division of Emergency Management shall prepare an annual progress report on the implementation of the state's hazard mitigation plan, developed and submitted in accordance with 42 U.S.C. s. 5165 and any implementing regulations, as it relates to natural hazards. At a minimum, the annual progress report must:

1. Assess the relevance, level, and significance of current agency efforts to address the impacts of natural hazards; and

2. Strategize and prioritize ongoing efforts to address the impacts of natural hazards.

Page 2 of 3

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62 (b) Each liaison is responsible for ensuring that the
63 workgroup's annual progress report is posted on his or her
64 agency's website.

65 (c) By January 1, 2019, and each year thereafter, the
66 workgroup shall submit the annual progress report to the
67 Governor, the President of the Senate, and the Speaker of the
68 House of Representatives.

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/6/17

Meeting Date

464

Bill Number (if applicable)

Topic

Natural Hazards

Amendment Barcode (if applicable)

Name

Diana Ferguson

Job Title

Lobbyist

Address

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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

Miami - Dade County

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☐

Yes

☐

No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4 1 6 / 2017

Meeting Date

Topic _____

Bill Number 464
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

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Phone 727-897-9291

Street

SAINT PETERSBURG

FLORIDA

33705

City

State

Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☐ Against ☒ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/CS/SB 550

INTRODUCER: Judiciary Committee; Criminal Justice Committee; and Senators Bracy and Campbell

SUBJECT: Public Records/Murder Witness

DATE: April 6, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon</u>	<u>Hrdlicka</u>	<u>CJ</u>	Fav/CS
2.	<u>Stallard</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
3.	<u>Kim</u>	<u>Ferrin</u>	<u>GO</u>	Favorable
4.	<u>Cellon</u>	<u>Phelps</u>	<u>RC</u>	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 550 modifies the authority of a state agency to grant access to or disclose criminal intelligence or investigative information that reveals the personal identifying information of a murder witness. Currently, if this information is held by a state agency, then it is a public record that is accessible by every person. The bill designates this information as confidential and exempt from access or disclosure, thus requiring state entities to deny public records requests for the information. The confidentiality and exemption apply to each witness for a period of two years after the commission of the murder observed by the witness.

Two-thirds of the members of each chamber must vote for this bill in order for it to pass because this bill creates a new public records exemption.

The exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

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

II. Present Situation:

Public Records Law

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ This applies to the official business of any public body, officer or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.²

In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.³ Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.⁴ The Public Records Act states that

it is the policy of this state that all state, county and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.⁵

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type.”⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

The Legislature may create an exemption to public records requirements.⁹ An exemption must pass by a two-thirds vote of the House and the Senate.¹⁰ In addition, an exemption must explicitly lay out the public necessity justifying the exemption, and the exemption must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹ A statutory

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature’s records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislatures are primarily located in s. 11.0431(2)-(3), F.S.

⁴ Public records laws are found throughout the Florida Statutes.

⁵ Section 119.01(1), F.S.

⁶ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Section 119.011(2), F.S., defines “agency” to mean as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁸ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ *Id.*

¹¹ *Id.*

exemption which does not meet these criteria may be unconstitutional and may not be judicially saved.¹²

When creating a public records exemption, the Legislature may provide that a record is “confidential and exempt” or “exempt.”¹³ Records designated as “confidential and exempt” may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as “exempt” are not required to be made available for public inspection, but may be released at the discretion of the records custodian under certain circumstances.¹⁴

Public Records Exemptions for Criminal Investigative and Intelligence Information

Active criminal intelligence information and active criminal investigative information are exempt from s. 119.07(1), F.S., and Article I, s. 24(a), of the Florida Constitution.¹⁵

Section 119.011(3)(a), F.S., defines “criminal intelligence information” as “information with respect to an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity.” Section 119.011(3)(b), F.S., defines criminal investigative information as,

information with respect to an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators or informants, or any type of surveillance.

The definitions of criminal intelligence and investigative information do not include some specific types of information, which is therefore public. This public information includes the time, date, location and nature of the crime, the charges, and the identities of the arrested person and the victims of the crime.¹⁶ Also excluded from the definition of criminal intelligence and investigative information are documents that must be given to the person who is arrested, because of a law or agency rule.¹⁷ An example of such a rule would be the discovery rules under the Florida Rules of Criminal Procedure.

Criminal intelligence and investigative information becomes public under two circumstances: 1) when information is given to the defendant through a pretrial discovery request; and 2) when the defendant’s conviction and sentence are final.

¹² *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). See also *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004).

¹³ If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

¹⁴ *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991).

¹⁵ Section 119.071(2)(c)1., F.S. The definition of “active” is located at s. 119.011(3)(d), F.S.

¹⁶ Section 119.011(c), F.S.

¹⁷ Section 119.011(c)5., F.S.

After active criminal intelligence investigative information have been provided to a defendant through discovery, that information becomes public under certain circumstances.¹⁸ Those circumstances include considerations about whether making discovery documents public will impede the defendant's right to a fair trial or the right of privacy of third parties.¹⁹ A court may temporarily seal pretrial discovery, even if some of the pretrial discovery information is already public.²⁰ In addition, in criminal cases, discovery may be kept confidential and exempt from public disclosure until trial if the following conditions are met: 1) the information would defamatory or would jeopardize the safety of the witness; and 2) releasing the information would hurt the state attorney's ability to locate or prosecute a codefendant.²¹

Criminal intelligence and investigative information are considered "active" when they are "directly related to pending prosecutions or appeals."²² Therefore, criminal intelligence investigative information becomes public "when the conviction and sentence becomes final... after direct appeal" (emphasis omitted).²³

Public Records Exemptions for Certain Investigative Information

Currently, s. 119.071(2), F.S., in relevant part, designates several types of personal information related to criminal intelligence or criminal investigations as confidential or exempt. Some types of information that are currently confidential or exempt include information revealing the identity of a confidential informant or a confidential source (exempt),²⁴ information revealing the identity of a victim of a child abuse offense (confidential and exempt),²⁵ and information revealing the identity of a victim of any sexual offense (confidential and exempt).²⁶ The personal identifying information of a witness to a murder is not currently confidential or exempt.²⁷

Limited Effect of a "Confidential" or "Exempt" Designation

The designation of a record as exempt, or as confidential and exempt, is effective only as to a public records request brought under Florida's public records laws. Therefore, these exemptions and confidentiality do not block access to government documents if there is an independent basis for that access.²⁸

¹⁸ *Post-Newsweek Stations, Fla. v. Doe*, 612 So. 2d 549, 551 (Fla. 1992). *Florida Freedom Newspapers, Inc., v. McCrary*, 520 So. 2d 32 (Fla. 1988). *Bludworth v. Palm Beach Newspapers, Inc.*, 176 So. 2d 775 (Fla. 5th DCA 1985).

¹⁹ *Post-Newsweek Stations*, 612 So. 2d at 551. *Florida Freedom Newspapers*, 520 So. 2d.

²⁰ *Florida Freedom Newspapers*, 520 So. 2d at 36.

²¹ Section 119.011(c)5.a. and b., F.S.

²² Section 119.011(3)(d)2., F.S. However, "active" does not apply to information in cases which are barred from prosecution under the provisions of s. 775.15 or other statute of limitation. Section 119.011(3)(d)2., F.S. Section 775.15, F.S., is where the criminal statute of limitations is located.

²³ *Allen v. Butterworth*, 756 So. 2d 52, 66 (FLA 2000).

²⁴ Section 119.071(2)(f), F.S.

²⁵ Section 119.071(2)(h)1.a., F.S.

²⁶ Section 119.071(2)(h)1.b., F.S.

²⁷ Section 119.011(3)(c)5., F.S., states in pertinent part that, "the court in a criminal case may order that certain information required by law or agency rule to be given to the person arrested be maintained in a confidential manner and exempt from the provisions of s. 119.07(1) until released at trial if it is found that the release of such information would . . . jeopardize the safety of such victim or witness."

²⁸ Generally, any confidentiality or exemption from public disclosure is eliminated by a record's entering a court file. Certain records remain confidential or exempt, however, even if they enter a court file. See s. 119.0714(1), F.S.

One such basis is a discovery request in a criminal case. The Florida Rules of Criminal Procedure require a prosecutor to disclose information about witnesses in discovery.²⁹ This requirement, at least in principle if not in a strict legal sense, is rooted in the “confrontation clause” of the United States Constitution.³⁰ The confrontation clause preserves a defendant’s right to confront a witness against him or her and to bring forward information that aids the jury in determining the truthfulness and reliability of the witness.³¹ For example, the defendant might expose a witness’s prejudice, bias, or ulterior motivation to lie; expose lies; test a witness’s ability to perceive and remember; or expose weaknesses in the witness’s testimony. This right to confront a witness “minimizes the risk that a judgment will be predicated on incomplete, misleading, or even deliberately fabricated testimony.”³²

The Problem of Witness Fear, Intimidation, and Murder

According to one law professor, “[a] witness’s fear is perhaps the greatest threat to the criminal justice system’s ability to prosecute cases.”³³ Whether or not this fear is indeed the *greatest* threat to the criminal justice system’s ability to prosecute cases, it is common knowledge that it is a very serious problem. A witness’s intimidation may cause him or her to decide not to come forward and provide crucial evidence to police or to refuse to testify in a case. As one judge observed,

[I]nstances of witness intimidation create the perception that the law cannot protect its citizens and thereby undermines public confidence in the police and government. If individuals believe that they cannot be adequately protected, they are less likely to cooperate with the police, which in turn impedes the ability of the police to gather evidence in an attempt to stop criminal behavior.³⁴

Providing anecdotal evidence of the threat to witnesses, news articles have recently reported on several homicides that occurred in 2015 in the Tampa area that remain unsolved.³⁵ The victim of

²⁹ Fla. R. Crim. P. 3.220(b) (Discovery: Prosecutor’s Discovery Obligation). Section 119.07(8), F.S., addresses the relationship between discovery obligations and public records. However, the rules allow a court, on its own initiative or upon a motion of counsel, to restrict disclosure if the court finds that “there is a substantial risk to any person of physical harm, intimidation, bribery, economic reprisals, or unnecessary annoyance or embarrassment resulting from the disclosure, that outweighs any usefulness of the disclosure to either party.” Fla. R. Crim. P. 3.220(e) (Discovery: Restricting Disclosure).

³⁰ The Sixth Amendment of the U.S. Constitution provides: In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

³¹ *Id.*

³² Judge Joan Comparet-Cassani, *Balancing the Anonymity of Threatened Witnesses Versus a Defendant’s Right of Confrontation: The Waiver Doctrine After Alvarado*, 39 SAN DIEGO L. REV. 1165 (Fall, 2002).

³³ Lisa I. Karsai, *You Can’t Give My Name: Rethinking Witness Anonymity In Light of the United States and British Experience*, 79 TENN. L. REV. 29 (Fall, 2011).

³⁴ Judge Joan Comparet-Cassani, *Balancing the Anonymity of Threatened Witnesses Versus a Defendant’s Right of Confrontation: The Waiver Doctrine After Alvarado*, 39 SAN DIEGO L. REV. 1165 (Fall, 2002) (“Even though the United States Department of Justice has conducted surveys about witness intimidation, the results of which indicate that it is increasing and widespread, the Department acknowledged that the exact extent of intimidation is unknown.”).

³⁵ Dan Sullivan, *Federal officials increase rewards, offer protection, to solve four unsolved Tampa murders*, TAMPA BAY TIMES, Oct. 29, 2015, <http://www.tampabay.com/news/publicsafety/crime/federal-officials-increase-rewards-offer-protection-to-solve-four-unsolved/2251784>; Sue Carlton, *Solutions to street violence elusive amid anti-snitching culture*,

one of the unsolved murders was Edward Harris, a 14-year-old boy who was murdered in a park.³⁶ A spokeswoman for the Tampa Police Department stated that between October 2014 and April 2015, Mr. Harris was the witness to multiple crimes that resulted in arrests.³⁷ Mr. Harris's family members have indicated that they believe he was murdered as a result of talking to police.³⁸

Open Government Sunset Review Act

The Open Government Sunset Review Act (referred to hereafter as the "OGSR") prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.³⁹ The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.⁴⁰

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.⁴¹ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;⁴²
- Releasing sensitive personal information would be defamatory or would jeopardize an individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;⁴³ or
- It protects trade or business secrets.⁴⁴

The OGSR also requires specified questions to be considered during the review process.⁴⁵ In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

TAMPA BAY TIMES, Jun. 2, 2015, <http://www.tampabay.com/news/publicsafety/crime/carlton-no-snitching-no-answers/2232047>.

³⁶ Stephanie Slifer, *Dad believes son was killed in Tampa drive-by shooting for talking to cops*, CBS NEWS, Jun. 2, 2015, <http://www.cbsnews.com/news/dad-believes-son-was-killed-in-tampa-drive-by-shooting-for-talking-to-cops/>.

³⁷ *Id.*

³⁸ *Id.*

³⁹ Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to section 119.15(2), F.S.

⁴⁰ Section 119.15(3), F.S.

⁴¹ Section 119.15(6)(b), F.S.

⁴² Section 119.15(6)(b)1., F.S.

⁴³ Section 119.15(6)(b)2., F.S.

⁴⁴ Section 119.15(6)(b)3., F.S.

⁴⁵ Section 119.15(6)(a), F.S. The specified questions are:

1. What specific records or meetings are affected by the exemption?
2. Whom does the exemption uniquely affect, as opposed to the general public?
3. What is the identifiable public purpose or goal of the exemption?
4. Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.⁴⁶ If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.⁴⁷

III. Effect of Proposed Changes:

Current Florida law expressly requires each branch of this state's government to grant every person access to government records. However, several types of government records are exempt from this requirement. Thus, when a member of the public seeks access to exempt records by submitting a request pursuant to this state's public records laws, the government is not required to grant the request. In addition to being exempt, some records are confidential. These confidential records may not be inspected by the public and may only be disclosed to the persons or organizations designated in statute. Records that are currently exempt, or confidential and exempt, include several types of criminal investigative records, such as the names of confidential informants and victims of certain crimes. However, the personal identifying information of a murder witness is not currently confidential or exempt; the bill changes this, as set forth below.

Personal Identifying Information of a Murder Witness is Confidential and Exempt

The bill designates "criminal intelligence or investigative information that reveals the personal identifying information of a witness to a murder" as confidential and exempt from the disclosure requirements under the public records laws. Therefore, if a person submits a public records request for records containing this information to a state agency, the agency may not provide access to or disclose the information. This confidentiality survives the information entering a court file. The confidential and exempt status of these records applies for a period of two years following the commission of the murder observed by the witness. This means that even if the state provided witness' identity to the defendant during discovery, the information would not be public for a two-year window.

Exceptions to the Confidentiality and Exemption of Murder Witness Information

As exceptions to the general prohibition on disclosing these murder witness records, a state agency may disclose these records:

- In the furtherance of its official duties and responsibilities;
- To assist in locating or identifying the witness if the witness is believed to be missing or endangered;
- To another governmental agency for use in the performance of its official duties and responsibilities; or
- To the parties in a pending criminal prosecution as required by law.

5. Is the record or meeting protected by another exemption?

6. Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

⁴⁶ FLA. CONST. art. I, s. 24(c).

⁴⁷ Section 119.15(7), F.S.

The Limited Nature of Every Public Records Exemption and Confidentiality Provision

Because a public records exemption generally applies only to public records requests, the bill does not prevent disclosure of information through discovery under the Rules of Criminal Procedure. Accordingly, for example, the defendant in a murder case will be able to access this information through discovery and potentially pass it on to others. With or without the bill, however, if a witness testifies at trial, his or her identity would be revealed to the defendant and anyone else in the courtroom.

OFSR Provision

The bill is subject to the Open Government Sunset Review Act, and therefore stands repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.⁴⁸

Statement of Public Necessity

The bill also provides a statement of public necessity as required by the Florida Constitution.⁴⁹ This statement includes the following findings:

- The judicial system cannot function without the participation of witnesses.
- Complete cooperation and truthful testimony of witnesses are essential to the determination of the facts of a case.
- The public disclosure of personal identifying information of a witness to a murder could have a chilling effect on persons stepping forward and providing their accounts of a murder that has been witnessed.
- A witness to a murder may be unwilling to cooperate fully with law enforcement officers if the witness knows his or her personal identifying information can be made publicly available.
- A witness may be less likely to call a law enforcement officer and report a murder if his or her personal identifying information is made available in connection with the murder that is being reported or under investigation.
- A witness could become the subject of intimidation tactics or threats by the perpetrator of the murder⁵⁰ if the witness's personal identifying information is publicly available.

The bill takes effect on July 1, 2017.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

⁴⁸ See s. 119.15(3), F.S.

⁴⁹ FLA. CONST. art. I, s. 24(c).

⁵⁰ Murder is defined by reference to s. 782.04, F.S., which is the murder statute.

B. Public Records/Open Meetings Issues:**Vote Requirement**

Article I, Section 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, Section 24(c) of the Florida Constitution requires a public necessity statement for a newly created public record exemption. The bill creates a public record exemption and includes a public necessity statement.

Breadth of Exemption

Article I, Section 24(c) of the Florida Constitution requires a newly created public record exemption to be no broader than necessary to accomplish the stated purpose of the law. Based on the legislative findings in the statement of public necessity, the bill does not appear to be in conflict with this constitutional requirement.

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:

Lines 66-67 of the bill provide that the murder witness' identification information may be provided to the parties in a pending criminal prosecution. This language appears to be redundant since public records laws do not infringe on the discovery rights of parties.⁵¹

⁵¹ In, *Ivester v. State*, 398 So. 2d 926, 931 (Fla. 1st DCA 1981), the court stated "[w]hile Section 119.07(3), Florida Statutes, does foreclose certain items from public inspection the provisions of Section 119.07, Florida Statutes, are not intended to limit the effect of Rule 3.220, the discovery provisions, of the Florida Rules of Criminal Procedure." Citing *Ivester*, the Fifth DCA noted that in the context of a criminal proceeding, "a public records exemption cannot limit a criminal defendant's access to discovery." *B.B. v. Department of Children and Family Services*, 731 So. 2d 30, 34 (Fla. 5th DCA 1999).

The current law provides that discovery may be provided to the defendant because it is “required by law or *agency rule* to be given to the person arrested.” Line 67 of the bill provides that criminal intelligence information or criminal investigative information may be provided to the parties pending criminal prosecution “as required by law.” It is not clear if, in this case, the Rules of Judicial Administration or the Florida Rules of Criminal Procedure would be inapplicable because they are not considered a “law.”⁵²

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 119.011, 119.071, and 119.0714.

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 March 7, 2017:

The committee substitute expressly allows a criminal justice agency to disclose the personal identifying information of a witness to a murder to the parties in a pending criminal prosecution as required by law.

CS by Criminal Justice on February 21, 2017:

The CS:

Amends s. 119.011(3)(c), F.S., to include a cross reference to the newly created s. 119.071(2)(m), F.S.

- Makes *criminal intelligence information or criminal investigative information that reveals* the personal identifying information of a witness to a murder confidential and exempt for two years after the date on which the murder is observed by the witness in s. 119.071(2)(m), F.S.; provides for disclosure of that information under limited circumstances.
- Eliminates the creation of s. 119.0714(1)(k), F.S., and instead amends s. 119.0714(1)(h), F.S., to create a cross reference to s. 119.071(2)(m), F.S.

⁵² Article V, section 2(a) of the Florida Constitution, provides that the Supreme Court has the power to adopt the rule of practice, procedure, and administration for all courts. The Supreme Court found that portions of a public records statute fast-tracking production of public records in capital cases were unconstitutional, commenting, “the adoption of time limitations and procedures governing the production of public records in capital cases is within the exclusive province of this Court.” *Allen v. Butterworth*, 756 So. 2d 52, 66 (Fla. 2000).

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 Bracy

590-02190-17

2017550c2

1 A bill to be entitled
2 An act relating to public records; amending s.
3 119.011, F.S.; providing that the personal identifying
4 information of a witness to a murder remains
5 confidential and exempt for a specified period;
6 amending s. 119.071, F.S.; providing an exemption from
7 public records requirements for criminal intelligence
8 or criminal investigative information that reveals the
9 personal identifying information of a witness to a
10 murder for a specified period; authorizing specified
11 entities and parties to receive the information;
12 providing for future legislative review and repeal of
13 the exemption; amending s. 119.0714, F.S.; providing
14 that the public records exemption applies to personal
15 identifying information of a witness to a murder that
16 is made part of a court file; providing a statement of
17 public necessity; providing an effective date.
18
19 Be It Enacted by the Legislature of the State of Florida:
20
21 Section 1. Paragraph (c) of subsection (3) of section
22 119.011, Florida Statutes, is amended to read:
23 119.011 Definitions.—As used in this chapter, the term:
24 (3)
25 (c) "Criminal intelligence information" and "criminal
26 investigative information" shall not include:
27 1. The time, date, location, and nature of a reported
28 crime.
29 2. The name, sex, age, and address of a person arrested or

590-02190-17

2017550c2

30 of the victim of a crime except as provided in s. 119.071(2)(h).
31 3. The time, date, and location of the incident and of the
32 arrest.
33 4. The crime charged.
34 5. Documents given or required by law or agency rule to be
35 given to the person arrested, except as provided in s.
36 119.071(2)(h) or (2)(m), and, except that the court in a
37 criminal case may order that certain information required by law
38 or agency rule to be given to the person arrested be maintained
39 in a confidential manner and exempt from the provisions of s.
40 119.07(1) until released at trial if it is found that the
41 release of such information would:
42 a. Be defamatory to the good name of a victim or witness or
43 would jeopardize the safety of such victim or witness; and
44 b. Impair the ability of a state attorney to locate or
45 prosecute a codefendant.
46 6. Informations and indictments except as provided in s.
47 905.26.
48 Section 2. Paragraph (m) is added to subsection (2) of
49 section 119.071, Florida Statutes, to read:
50 119.071 General exemptions from inspection or copying of
51 public records.—
52 (2) AGENCY INVESTIGATIONS.—
53 (m)1. Criminal intelligence information or criminal
54 investigative information that reveals the personal identifying
55 information of a witness to a murder, as described in s. 782.04,
56 is confidential and exempt from s. 119.07(1) and s. 24(a), Art.
57 I of the State Constitution for 2 years after the date on which
58 the murder is observed by the witness. A criminal justice agency

590-02190-17

2017550c2

59 may disclose such information:

60 a. In the furtherance of its official duties and
61 responsibilities.

62 b. To assist in locating or identifying the witness if the
63 agency believes the witness to be missing or endangered.

64 c. To another governmental agency for use in the
65 performance of its official duties and responsibilities.

66 d. To the parties in a pending criminal prosecution as
67 required by law.

68 2. This paragraph is subject to the Open Government Sunset
69 Review Act in accordance with s. 119.15 and shall stand repealed
70 on October 2, 2022, unless reviewed and saved from repeal
71 through reenactment by the Legislature.

72 Section 3. Paragraph (h) of subsection (1) of section
73 119.0714, Florida Statutes, is amended to read:

74 119.0714 Court files; court records; official records.—

75 (1) COURT FILES.—Nothing in this chapter shall be construed
76 to exempt from s. 119.07(1) a public record that was made a part
77 of a court file and that is not specifically closed by order of
78 court, except:

79 (h) Criminal intelligence information or criminal
80 investigative information that is confidential and exempt as
81 provided in s. 119.071(2)(h) or (2)(m).

82 Section 4. The Legislature finds that it is a public
83 necessity that personal identifying information of a witness to
84 a murder, as described in s. 782.04, Florida Statutes, be made
85 confidential and exempt from s. 119.07(1), Florida Statutes, and
86 s. 24(a), Article I of the State Constitution for 2 years after
87 the date on which the murder is observed by the witness. The

590-02190-17

2017550c2

88 judicial system cannot function without the participation of
89 witnesses. Complete cooperation and truthful testimony of
90 witnesses is essential to the determination of the facts of a
91 case. The public disclosure of personal identifying information
92 of a witness to a murder could have an undesirable chilling
93 effect on witnesses stepping forward and providing their
94 eyewitness accounts of murders. A witness to a murder may be
95 unwilling to cooperate fully with law enforcement officers if
96 the witness knows his or her personal identifying information
97 can be made publicly available. A witness may be less likely to
98 call a law enforcement officer and report a murder if his or her
99 personal identifying information is made available in connection
100 with the murder that is being reported or under investigation.
101 The Legislature further finds that a witness could become the
102 subject of intimidation tactics or threats by the perpetrator of
103 the murder if the witness's personal identifying information is
104 publicly available. For these reasons, the Legislature finds
105 that it is a public necessity that the personal identifying
106 information of a witness to a murder, as described in s. 782.04,
107 Florida Statutes, be made confidential and exempt from public
108 record requirements.

109 Section 5. This act shall take effect July 1, 2017.

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/6/17
Meeting Date

550
Bill Number (if applicable)

Topic Records / Murder Witness

Amendment Barcode (if applicable)

Name GARY BRADFORD

Job Title Governmental Relations

Address 300. E. Brevard St
Street

Phone 800-733-3722

Tallahassee FL 32301
City State Zip

Email GARY@FLPBA.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing FLORIDA POLICE Benevolent Assn. (PBA)

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

April 6, 2017

Meeting Date

SB 550

Bill Number (if applicable)

Topic Public Records / murder witness

Amendment Barcode (if applicable)

Name Bernadette Howard

Job Title Government Affairs Coordinator

Address 2636 Mitcham Drive

Phone 850-219-3631

Street

Tallahassee

FL

32308

City

State

Zip

Email bhoward@fpca.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing The Florida Police Chiefs Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/6/2017

Meeting Date

Topic _____

Bill Number 550
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG

FLORIDA

33705

City

State

Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☐ Against ☒ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

SSO

Meeting Date _____

Bill Number (if applicable) _____

Topic WITNESS PROTECTION

Amendment Barcode (if applicable) _____

Name TANGILO SEARS

Job Title _____

Address 1270 NW 75 ST

Phone 786 286 1104

Street

Miami

State

Zip

Email _____

Speaking: ☒ For ☐ Against ☐ Information

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

Representing PARENTS OF MURDERED KIDS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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)

550

Bill Number (if applicable)

Amendment Barcode (if applicable)

Meeting Date _____
Topic Murder Witness

Name Lisa Henning

Job Title Legislative Director

Address 242 Office Plaza Dr.

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Tallahassee

City

FL

State

32301

Zip

Phone 850-766-8808

Email lphlegislative@aol.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Fraternal Order of Police

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date _____

550
Bill Number (if applicable)

Topic ~~SB~~ SB 550

Amendment Barcode (if applicable) _____

Name Jamayne Henderson

Job Title Attorney

Address 1028 East Park Avenue
Street

Phone (850) 216-1002

Tallahassee FL 32301
City State Zip

Email jamayne@attman-law.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing City of Orlando

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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 Rules

BILL: CS/CS/SM 572

INTRODUCER: The Committee on Rules; The Committee on Commerce and Tourism; and Senator Campbell

SUBJECT: Haitian Independence and Flag Day/Haitian Heritage Month

DATE: April 6, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Flynn</u>	<u>McKay</u>	<u>CM</u>	<u>Fav/CS</u>
2.	<u>Flynn</u>	<u>Phelps</u>	<u>RC</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SM 572 urges Congress to enact legislation recognizing:

- January 1 as “Haitian Independence Day”;
- May 18 as “Haitian Flag Day”;
- The month of May as “Haitian American Heritage Month”;
- The month of May as “Haitian Heritage Month”; and
- The month of June as “Caribbean American Heritage Month.”

Legislative memorials are not subject to the Governor’s veto power and are not presented to the Governor for review. Memorials have no force of law, as they are mechanisms for formally petitioning the federal government to act on a particular subject.

II. Present Situation:

Haitian American History

Located in the Caribbean on the western one-third of the island of Hispaniola, Haiti is a country of approximately 10.5 million people.¹ Due in part to Haiti’s close proximity to the United States, the Haitian American population amounted to roughly 880,000 in 2010, the year the most

¹ United States Central Intelligence Agency, *The World Factbook: Haiti*, <https://www.cia.gov/library/publications/the-world-factbook/geos/ha.html> (last visited Apr. 22, 2017).

recent U.S. Census was administered.² The bulk of the Haitian American population resides in Florida and New York.³ These two states were home to more than 70 percent of Haitian immigrants in the 2008-12 period.⁴

Many Haitian holidays fall in May.⁵ Haiti celebrates “Labor and Agricultural Day” on May 1, Haiti’s Mother’s Day is celebrated on the last Sunday of May each year, and Haitian Flag Day is celebrated on May 18.⁶ Toussaint L’Ouverture, one of the leaders of the Haitian Revolution, is believed to have been born on May 20, 1743.⁷

Recognition of Haitian American Events

Various governmental entities in the United States have issued resolutions or proclamations recognizing the importance of May in Haitian and Haitian American culture, including, but not limited to, the following:

- In 2001, Miami-Dade County passed a resolution designating May as “Haitian Cultural Heritage Month”⁸ and has held annual celebration in the county ever since;⁹
- In 2003, the Palm Beach County School District issued a resolution recognizing May as “Haitian Heritage Month”;¹⁰
- In 2015, the Governor of the Commonwealth of Massachusetts proclaimed the month of May 2015 to be “Haitian Heritage Month”;¹¹
- In 2015, the Mayor of the City of Boston and the City of Boston City Council issued separate proclamations to designate the month of May as “Haitian Heritage Month” and specifically to honor “Haitian Flag Day.”¹²

At the federal level, several resolutions have been introduced in the United States House of Representatives to recognize May as “Haitian American Heritage Month.” For example, House Resolution 777, sponsored by former Congressman Kendrick Meek, was introduced, but never

² United States Census Bureau, *American Fact Finder*, available at https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_10_1YR_B04003&prodType=table (last visited Apr. 5, 2017).

³ Migration Policy Institute, *Haitian Immigrants in the United States*, <http://www.migrationpolicy.org/article/haitian-immigrants-united-states> (last visited Apr. 5, 2017).

⁴ *Id.*

⁵ World Travel Guide, *Haiti Public Holidays*, <http://faculty.webster.edu/corbetre/haiti/misctopic/holidays/holidays.htm> (last visited Apr. 5, 2017).

⁶ *Id.*

⁷ Encyclopedia.com, *François Dominique Toussaint L'Ouverture*, <http://www.encyclopedia.com/people/history/haiti-history-biographies/francois-dominique-toussaint-louverture> (last visited Apr. 5 2017).

⁸ Miami-Dade Board of County Commissioners, *County Resolution R-452-01*, available at <http://www.miamidade.gov/govaction/matter.asp?matter=011622&file=false&yearFolder=Y2001> (last visited Apr. 5, 2017).

⁹ Miami-Dade County, *Haitian Cultural Heritage Month kicks off on May 1*, <http://www.miamidade.gov/district02/releases/2015-04-24-haitian-month.asp> (last visited Apr. 5, 2017).

¹⁰ A copy of the resolution, dated April 23, 1992, is on file with the House of Representatives Local & Federal Affairs Committee.

¹¹ The Official Website of the Governor of Massachusetts, *Issued Proclamations, Haitian Heritage Month*, <http://www.mass.gov/governor/constituent-services/recognition/issued-proclamations/haitian-heritage-month.html>.

¹² A copy of each resolution is on file with the House of Representatives Local & Federal Affairs Committee.

heard, during the 109th congress.¹³ Additionally, House Resolution 224, sponsored by Congresswoman Frederica Wilson, was introduced, but never heard, during the 113th Congress.¹⁴

Caribbean American History

In 2014, approximately 4 million immigrants from the Caribbean resided in the United States, accounting for 9 percent of the nation's 42.4 million immigrants.¹⁵ In the early 1900s, the United States became a major destination for Caribbean migrants due to the increased economic opportunities the industrial revolution created.¹⁶ The United States is currently the top destination for Caribbean emigrants, accounting for more than 60 percent of the 6 million Caribbean emigrants worldwide.¹⁷

Caribbean Americans have made numerous contributions to the United States.¹⁸ Some of the most famous Caribbean Americans include Alexander Hamilton, the first Secretary of the Treasury for the United States, who was born on the Caribbean Island of Nevis,¹⁹ W.E.B. Du Bois, a civil rights activist and the first African American to graduate from Harvard, was the son of a Haitian immigrant,²⁰ and Colin Powell, the first African American Secretary of State, was the son of Jamaican immigrants.²¹

History of Caribbean American Heritage Month

Federal Bill HR570 was presented to the U.S. House of Representatives in 2004.²² In 2005, the Bill was reintroduced as House Concurrent Resolution 71 with 81 bipartisan co-sponsors that originated from 26 states plus American Samoa, District of Columbia, Guam, Puerto Rico, and the US Virgin Islands.²³ On June 27, 2005, the U.S. House passed the bill declaring June as Caribbean American Heritage Month.²⁴ In 2006, Senator Schumer introduced HR71 to the

¹³ 109th Congress 2005-2006, *H. Res. 777 – Expressing the sense of the House of Representatives, in recognition of the contributions of the Haitian people to the history and culture of the United States, by establishing “Haitian-American Heritage Month”*, available at <https://www.congress.gov/bill/109th-congress/house-resolution/777?q=%7B%22search%22%5C%22hres777%5C%22%22%5D%7D&resultIndex=5>

¹⁴ 113th Congress 2013-2014, *H.Res.224 – Expressing the sense of the House of Representatives that a Haitian-American Heritage Month” should be established in recognition of the contributions of the Haitian people to the history and culture of the United States*, available at <https://www.congress.gov/bill/113th-congress/house-resolution/224?r=25>

¹⁵ Migration Policy Institute, *Caribbean Immigrants in the United States*, <http://www.migrationpolicy.org/article/caribbean-immigrants-united-states> (last visited Apr. 5, 2017).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Biographical Directory of the United States Congress, *Alexander Hamilton*, <http://bioguide.congress.gov/scripts/biodisplay.pl?index=h000101> (last visited Apr. 5, 2017).

¹⁹ *Id.*

²⁰ National Consortium on Racial and Ethnic Fairness in the Courts, *Special Recognition: Caribbean American Heritage Month*, <http://www.national-consortium.org/Special-Recognition/Caribbean.aspx> (last visited at Apr. 5, 2017).

²¹ Jonathan Power, *Colin Powell’s Jamaican connection*, (Nov. 3, 1995), available at http://articles.baltimoresun.com/1995-11-03/news/1995307066_1_michael-manley-colin-powell-jamaica (last visited Apr. 5, 2017).

²² Caribbean Heritage Organization, *Institute of Caribbean Studies: The History of National Caribbean American Heritage Month*, <http://caribbeanheritage.org/wp-content/uploads/2016/12/cam-congressional-resolution.pdf> (last visited Apr. 5, 2017).

²³ *Id.*

²⁴ *Id.*

Senate.²⁵ The measure was passed in the U.S. Senate on February 14, 2006.²⁶ In June of 2006, President George Bush issued a presidential proclamation recognizing Caribbean American Heritage Month.²⁷ In each year since, the White House has issued an annual proclamation recognizing June as Caribbean American Heritage Month.²⁸ June of 2016 marked the tenth anniversary of June as National Caribbean American Heritage Month.²⁹

Federal Recognition of Other Commemorative Events

Congress has passed legislation relating to national observances and commemorative months on several occasions. For example, Congress has passed legislation to commemorate or authorize the President to proclaim February as “National African American History Month,” November as “Native American Heritage Month,”³⁰ May as “Jewish American Heritage Month,” May as “Asian Pacific Heritage Month,” and the period beginning September 15 and ending October 15 as “National Hispanic Heritage Month.”³¹ In addition, Congress has passed legislation to commemorate or authorize the President to proclaim several days of national observance such as Flag Day on June 14,³² and Native American Heritage Day on the first Friday after Thanksgiving.³³

III. Effect of Proposed Changes:

CS/CS/SM 572 urges Congress to enact legislation to memorialize Haitian and Caribbean Americans’ contributions to the United States by recognizing:

- January 1 as “Haitian Independence Day”;
- May 18 as “Haitian Flag Day”;
- The month of May as “Haitian American Heritage Month”;
- The month of May as “Haitian Heritage Month”; and
- The month of June as “Caribbean American Heritage Month.”

Copies of the memorial will be sent to the President of the United States, to the President of the United States Senate, to the Speaker of the United States House of representatives, and to each member of the Florida Delegation to the United States Congress.

²⁵ *Id.*

²⁶ *Id.*

²⁷ National Caribbean American Heritage Foundation, *National Caribbean-American Heritage Month Marks Tenth Anniversary in 2016*, <http://www.caribbeanamericanmonth.org/> (last visited Apr. 5, 2017).

²⁸ *Id.*

²⁹ *Id.*

³⁰ The observance was first authorized by President H.W. Bush in 1990 under the title ‘National American Indian Heritage Month’ and has since been titled under several variations. The current title of the observation is ‘Native American Heritage Month.’ LIBRARY OF CONGRESS, *About Native American Heritage Month*, <http://nativeamericanheritagemonth.gov/about/> (last visited Apr. 5, 2017).

³¹ Library of Congress, *Commemorative Observances*, <http://www.loc.gov/law/help/commemorative-observations/> (Last visited Apr. 5, 2017).

³² House Joint Resolution 211, Pub. L. 99-54 (1985), available at <https://www.gpo.gov/fdsys/pkg/STATUTE-99/pdf/STATUTE-99-Pg97.pdf>

³³ House Joint Resolution 40, Pub. L. 111-33 (2009), available at <https://www.congress.gov/bill/111th-congress/house-joint-resolution/40/text>

Legislative memorials are not subject to the Governor's veto power and are not presented to the Governor for review. Memorials have no force of law, as they are mechanisms for formally petitioning the federal government to act on a particular subject.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

None.

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 Rules on April 6, 2017:

The CS/CS urges the Congress of the United States to recognize May as “Haitian Heritage Month.”

CS by Commerce and Tourism on March 27, 2017:

The CS urges the Congress of the United States to recognize June as “Caribbean American Heritage Month.”

- B. **Amendments:**

None.



381644

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/06/2017	.	
	.	
	.	
	.	

The Committee on Rules (Campbell) recommended the following:

Senate Amendment (with title amendment)

Delete line 126
and insert:
May as "Haitian Heritage Month" and "Haitian American Heritage
Month," May 18 as "Haitian

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

And the title is amended as follows:

Delete lines 4 - 40

and insert:



381644

Independence Day," the month of May as "Haitian Heritage Month" and "Haitian American Heritage Month," May 18 as "Haitian Flag Day," and the month of June as "Caribbean American Heritage Month."

WHEREAS, the United States of America has thrived as a country of immigrants, united by common values and the promise of a better tomorrow, and

WHEREAS, the Republic of Haiti, an island nation located in the West Indies on the western third of the Island of Hispaniola, declared its independence from French colonial rule on January 1, 1804, following a slave revolt under the leadership of Generals Toussaint L'Ouverture, Jean-Jacques Dessalines, and Alexandre Pétion, becoming the first and only nation created from a successful slave rebellion, and

WHEREAS, Haiti was the first independent nation in Latin America and the first postcolonial independent nation led by blacks in the world, and

WHEREAS, as educators, authors, community leaders, activists, athletes, artists, musicians, and politicians, Haitian Americans have made their mark in every facet of society and have contributed to the betterment and diversity of this nation, and

WHEREAS, the close proximity of Haiti to American shores, in conjunction with our common bond of mutual values and commitment to democracy, ensures lasting comity of nations and continued trade and diplomatic relations, and

WHEREAS, an estimated 1.5 million persons of Haitian descent now live throughout this nation, and



381644

41 WHEREAS, the United States and Haiti share a history of
42 freedom, a common belief in human rights, and diverse, complex,
43 and resilient peoples who have impacted the world through
44 vibrant cultures, democracy, and a wealth of talent and
45 achievement, and

46 WHEREAS, Haitian Independence Day is globally acknowledged
47 and annually celebrated on January 1 as an affirmation of
48 equality, freedom, and the abolition of slavery, and

49 WHEREAS, Haitian Heritage Month is a jubilant celebration
50 in the United States, embracing Haitian heritage and culture,
51 and

52 WHEREAS, first celebrated in Boston, Massachusetts, in
53 1998, Haitian Heritage Month is observed nationwide in the month
54 of May from Florida to New York with parades, festivals, and
55 school activities, and

56 WHEREAS, the importance of Haitian Heritage Month is
57 exemplified by South Florida Congressman Kendrick B. Meek's
58 introduction of bills in the United States House of
59 Representatives in 2004 and 2006 to recognize the month of May
60 as Haitian Heritage Month; by a letter from former President
61 George W. Bush and First Lady Laura Bush, sent in May 2005,
62 which congratulated the Haitian-American community on the
63 occasion of the heritage month; and by the organization of a
64 celebration at the White House that same year, and

By the Committee on Commerce and Tourism; and Senators Campbell and Rodriguez

577-02921-17

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Senate Memorial

A memorial to the Congress of the United States, urging Congress to recognize January 1 as "Haitian Independence Day," the month of May as "Haitian American Heritage Month," May 18 as "Haitian Flag Day," and the month of June as "Caribbean American Heritage Month."

WHEREAS, the United States of America has thrived as a country of immigrants, united by common values and the promise of a better tomorrow, and

WHEREAS, the Republic of Haiti, an island nation located in the West Indies on the western third of the Island of Hispaniola, declared its independence from French colonial rule on January 1, 1804, following a slave revolt under the leadership of Generals Toussaint L'Ouverture, Jean-Jacques Dessalines, and Alexandre Pétion, becoming the first and only nation created from a successful slave rebellion, and

WHEREAS, Haiti was the first independent nation in Latin America and the first postcolonial independent nation led by blacks in the world, and

WHEREAS, as educators, authors, community leaders, activists, athletes, artists, musicians, and politicians, Haitian Americans have made their mark in every facet of society and have contributed to the betterment and diversity of this nation, and

WHEREAS, the close proximity of Haiti to American shores, in conjunction with our common bond of mutual values and commitment to democracy, ensures lasting comity of nations and

Page 1 of 5

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

577-02921-17

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continued trade and diplomatic relations, and

WHEREAS, an estimated 1.5 million persons of Haitian descent now live throughout this nation, and

WHEREAS, the United States and Haiti share a history of freedom, a common belief in human rights, and diverse, complex, and resilient peoples who have impacted the world through vibrant cultures, democracy, and a wealth of talent and achievement, and

WHEREAS, Haitian Independence Day is globally acknowledged and annually celebrated on January 1 as an affirmation of equality, freedom, and the abolition of slavery, and

WHEREAS, Congresswoman Frederica S. Wilson and Congressman Kendrick B. Meek, having acknowledged the importance of Haitian Americans in this nation's history and diversity, have proposed resolutions in the United States House of Representatives to recognize the month of May as "Haitian American Heritage Month" in the United States, and

WHEREAS, Haitian American Heritage Month is held to salute the Haitian and Haitian American communities and to exhibit appreciation for their culture and heritage, which have immeasurably enriched the lives of the people of this nation, and

WHEREAS, the Haitian flag known today, a variant of which first came into use in 1806, is emblazoned with the country's coat of arms and the colors red and blue, adopted from the flag of France, the country from which Haiti gained its independence, and

WHEREAS, General Jean-Jacques Dessalines is regarded as the father of the Haitian flag, known to have dramatically cut the

Page 2 of 5

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

577-02921-17

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French tricolor with his saber at the May 1803 Congress of Arcahaie, ripping away the white of the French flag to symbolize an end to European influence and leaving two strips that Catherine Flon then sewed back together: the blue, which represented the former African slaves brought to Haiti by colonial powers, and the red, which symbolized a people of mixed ancestry, and

WHEREAS, the Haitian flag is a definitive symbol of pride for the Caribbean nation, having become the second republic, after the United States, to defeat a European colonial power in the Americas, and

WHEREAS, Haitian Flag Day events are annually observed and celebrated with pride and enthusiasm throughout the United States, and

WHEREAS, from a region that conjures images of a scenic paradise, Caribbean Americans are as vibrant as the islands from which they come, possessing a wealth of talent and history that reverberates throughout this great state and nation, and

WHEREAS, emigration from the Caribbean region to the American colonies began as early as 1619, with the arrival of indentured workers in Jamestown, Virginia, and since 1820, millions of people have emigrated from the Caribbean region to the United States, and

WHEREAS, as educators, authors, community leaders and activists, musicians, and politicians, Caribbean Americans have made their mark on every facet of our society and have contributed to the betterment and diversity of our state and nation, and

WHEREAS, counted among the many famous sons and daughters

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of the Caribbean are activist W. E. B. Du Bois; Secretary of the Treasury Alexander Hamilton; the first African American Secretary of State, Colin Powell; actress Cicely Tyson; actor Sidney Poitier, the first African American actor to receive the Academy Award for Best Actor in a Leading Role; author, poet, and civil rights activist James Weldon Johnson; musician, actor, and activist Harry Belafonte; athlete Roberto Clemente, the first Latino inducted into the National Baseball Hall of Fame; and numerous others who have displayed great strength and resiliency while serving as pioneers among the people of the Caribbean, and

WHEREAS, the modern political influences of Caribbean Americans are evident in the election of a former member of the Florida House of Representatives, Jennifer Carroll of Trinidad and Tobago, as Florida's first Caribbean American Lieutenant Governor; the election of former Maryland Lieutenant Governor Anthony G. Brown, who is of Jamaican descent; and the continued representation in local, state, and national governments by members from the Bahamas, the Cayman Islands, Haiti, Jamaica, and other Caribbean nations, and

WHEREAS, in June 2005, the United States House of Representatives unanimously adopted a concurrent resolution recognizing the significance of Caribbean people and their descendants in the history and culture of the United States and observing the month of June as "Caribbean American Heritage Month," and

WHEREAS, on February 14, 2006, the United States Senate unanimously passed the resolution, culminating a two-year bicameral effort, and

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117 WHEREAS, since the passage of the resolution in 2005, the
118 White House has issued an annual proclamation recognizing June
119 as "Caribbean American Heritage Month," exemplifying the
120 importance of this observance across the nation, NOW, THEREFORE,
121

122 Be It Resolved by the Legislature of the State of Florida:
123

124 That the Congress of the United States is urged to
125 recognize January 1 as "Haitian Independence Day," the month of
126 May as "Haitian American Heritage Month," May 18 as "Haitian
127 Flag Day," and the month of June as "Caribbean American Heritage
128 Month."

129 BE IT FURTHER RESOLVED that the Secretary of State is
130 directed to dispatch copies of this memorial to the President of
131 the United States, to the President of the United States Senate,
132 to the Speaker of the United States House of Representatives,
133 and to each member of the Florida delegation to the United
134 States Congress.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Appropriations Subcommittee on Finance and Tax
Appropriations Subcommittee on General Government
Children, Families, and Elder Affairs
Communications, Energy, and Public Utilities
Community Affairs

JOINT COMMITTEE:

Joint Administrative Procedures Committee

SENATOR DAPHNE CAMPBELL

38th District

March 27, 2017

The Honorable Senator Benacquisto
Chair, Committee on Rules
400 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

The Honorable Senator Daphne Campbell
District 38, Florida Senate
218 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

Dear Chair Benacquisto,

Please consider this letter my formal request to have SM 572 Haitian Independence and Flag Day/Haitian Heritage Month placed on the agenda for the next scheduled meeting of the Rules Committee. This memorial unanimously passed the Commerce and Tourism Committee today.

SM 572 urges Congress to recognize Haitian Independence Day, Haitian Heritage Month, Haitian American Heritage Month, Haitian Flag Day, and Caribbean American Heritage Month.

If you have any questions, please feel free to contact my office at 850-487-5038.

Sincerely,

A handwritten signature in cursive script, appearing to read "D. Campbell", is written over a horizontal line.

Senator Daphne Campbell
District 38, Florida Senate

A large handwritten checkmark is drawn in the right margin of the letter.

REPLY TO:

- ☐ 633 N.E. 167th Street, Suite 1101, North Miami Beach, Florida 33162 (305) 493-6009
- ☐ 218 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5038

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/6/17
Meeting Date

SM 5720
Bill Number (if applicable)

Topic Haitian Heritage Memorial

Amendment Barcode (if applicable)

Name Guithere Ruiz Nicolas

Job Title President, Haitian American Democratic Club

Address 10121 NW 14 St, Plantation
Street
Plantation
City

Phone 954-699-3406

Email guithere256@gmail.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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 Rules

BILL: CS/SB 818

INTRODUCER: Regulated Industries Committee and Senator Hutson

SUBJECT: Timeshares

DATE: April 6, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kraemer	McSwain	RI	Fav/CS
2.	Davis	Cibula	JU	Favorable
3.	Kraemer	Phelps	RC	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 818 amends chapter 721, F.S., the Florida Vacation Plan and Timesharing Act (act), which establishes requirements for the creation, sale, exchange, promotion, and operation of timeshare plans, including requirements for full and fair disclosure to purchasers.

The specific changes by the bill:

- Revise the term “interestholder” with respect to a multisite timeshare plan governed by Part II of the act;
- Revise requirements for instruments that establish or govern a component site property regime, including the requirement to issue or provide certain documents to creditors;
- Revise requirements for terminations of timeshare plans;
- Revise requirements for extensions of timeshare plans, which apply to all timeshare properties in the state;
- Allow reasonable termination expenses to be paid pro rata by owners of former timeshare properties; and
- Amend requirements for voting upon an extension of a term of a timeshare plan, including meeting notices, voter eligibility, proxies, and quorum requirements.

The bill has no fiscal impact on state government.

II. Present Situation:

A timeshare interest is a form of ownership of real and personal property.¹ In a timeshare, multiple parties hold the right to use a condominium unit or a cooperative unit. Each owner of a timeshare interest is allotted a period of time (typically one week) during which the owner has the exclusive right to use the property.

The Florida Vacation Plan and Timesharing Act, chapter 721, F.S., establishes requirements for the creation, sale, exchange, promotion, and operation of timeshare plans, including requirements for full and fair disclosure to purchasers and prospective purchasers.² Chapter 721, F.S., applies to all timeshare plans consisting of more than seven timeshare periods over a period of at least three years in which the accommodations and facilities are located within this state or offered within this state.³ Part I of chapter 721, F.S., relates to vacation plans and timesharing, and Part II of chapter 721, F.S., relates to multisite vacation and timeshare plans that are also known as vacation clubs.

According to information provided by the American Resort Development Association (ARDA), Florida had the greatest number of the 1,547 timeshare resorts in the United States in 2015.⁴

Definitions

A timeshare plan is any arrangement, plan, scheme, or similar device, other than an exchange program, whether by membership, agreement, tenancy in common, sale, lease, deed, rental agreement, license, or right-to-use agreement or by any other means, where a purchaser, for consideration, receives ownership rights in or a right to use accommodations and facilities, if any, for a period of time less than a full year during any given year, but not necessarily for consecutive years.⁵ The term includes both personal property timeshare and real property timeshare plans.⁶

Each timeshare plan must have a managing entity that must be the developer, a separate manager or management firm, or an owners' association. The managing entity operates or maintains the timeshare plan.⁷

A timeshare unit is an accommodation of a timeshare plan which is divided into timeshare periods or a condominium unit in which timeshare estates have been created.⁸

¹ See s. 721.05(36), F.S.

² Section 721.02(2) and (3), F.S.

³ Section 721.03, F.S.

⁴ See American Resort Development Association, U.S. Vacation Timeshare Industry Shows Increased Growth in 2015: Another Year of Substantial Growth (Jul. 6, 2016), <http://www.arda.org/arda/news-information/default.aspx?id=5575&libID=5594> (last visited Mar. 17, 2017).

⁵ Section 721.05(39), F.S.

⁶ A "personal property timeshare plan," is a timeshare plan in which the accommodations are comprised of personal property that is not permanently affixed to real property. s. 721.05(39)(a) F.S. A "real property timeshare plan," is a timeshare plan in which the accommodations of the timeshare plan are comprised of or permanently affixed to real property. S. 721.05(39)(b), F.S.

⁷ Section 721.13(1)(a), F.S. The duties of a managing entity are detailed in s. 721.13(3), F.S.

⁸ See ss. 721.05(41) and 718.103(26), F.S.

A “timeshare estate” is a right to occupy a timeshare unit, coupled with a freehold estate or an estate for years with a future interest in a timeshare property or a specified portion thereof.⁹ The term also includes an interest in a condominium unit, a cooperative unit, or a trust. Whether the term includes both direct and indirect interests in trusts is not specified. An example of an indirect interest in a trust is the interest of a trust beneficiary’s spouse or other dependent.

A “timeshare license” is the right to occupy a timeshare unit, which right is not a personal property timeshare interest or a timeshare estate.¹⁰ A “timeshare interest” is a timeshare estate, a personal property timeshare interest, or a timeshare license.¹¹

Multisite Timeshare Plans

A “multisite timeshare plan” is any method, arrangement, or procedure by which a purchaser obtains a recurring right to use and occupy accommodations or facilities of more than one component site through use of a reservation system.¹² The reservation system requires purchasers to compete with other purchases in the same multisite timeshare plan.¹³ There are two different types of multisite timeshare plans, nonspecific and specific.

A “nonspecific multisite timeshare plan” is a multisite timeshare plan *containing timeshare licenses or personal property timeshare interests*, in which a purchaser receives a right to use all of the accommodations and facilities, if any, of the multisite timeshare plan through the reservation system, but no specific right to use any particular accommodations and facilities for the remaining term of the multisite timeshare plan in the event that the reservation system is terminated for any reason prior to the expiration of the term of the multisite timeshare plan.¹⁴

A “specific multisite timeshare plan” is a multisite timeshare plan *containing timeshare licenses or personal property timeshare interests*, in which a purchaser receives a specific right to use accommodations and facilities, if any, at one component site of a multisite timeshare plan, together with use rights in the other accommodations and facilities of the multisite timeshare plan created by or acquired through the reservation system.¹⁵

Substitutions and Deletions for Multisite Timeshare Plans

Section 721.552(2), F.S., permits substitutions of accommodations and facilities for nonspecific multisite timeshare plans that are “substantially similar” to the existing accommodations and facilities. Substitutions are limited to no more than 25 percent of the available accommodations at a given component site per year. Before a substitution occurs, notice must be provided to all the purchasers of the timeshare plan. However, under limited circumstances, a managing entity may substitute all accommodations in a given year if a written plan of substitution has been

⁹ Section 721.05(34), F.S.

¹⁰ Section 721.05(37), F.S.

¹¹ Section 721.05(36), F.S.

¹² Section 721.52(4), F.S. The purchaser may or may not be able to elect to stop participating in the multisite timeshare plan.

¹³ Section 721.52(6), F.S.

¹⁴ Section 721.52(5), F.S.

¹⁵ Section 721.52(7), F.S.

provided to each purchaser of the timeshare plan and approved by a majority of purchasers and a majority of the board of administration.¹⁶

Section 721.52(7), F.S., defines a “specific multisite timeshare plan” to mean:

a multisite timeshare with respect to which a purchaser receives a specific right to use accommodations and facilities, if any, at one component site of a multisite timeshare plan, together with use rights in the other accommodations and facilities of the multisite timeshare plan created by or acquired through the reservation system.

A timeshare plan developer must file a public offering statement and the required exhibits with the Division of Florida Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business and Professional Regulation, prior to offering the timeshare plan to the public.¹⁷

For each timeshare plan, the developer must provide for a managing entity, which must be the developer, a separate manager or management firm, or an owners’ association.¹⁸ The public offering statement must include an estimated operating budget for the timeshare plan and a schedule of the purchaser’s expenses to be paid to the timeshare plan and the managing entity.¹⁹ A common expense to be paid to the managing entity is a reserve for deferred maintenance and capital expenditures.

III. Effect of Proposed Changes:

This bill revises the term “interestholder” in s. 721.05, (21), F.S., to exclude certain persons that have interests in a multisite timeshare plan that has a component site that is also part of a single-site timeshare plan, condominium, or other property regime (component site property regime). Those excluded as interestholders in a multisite timeshare plan with a component site property regime (the non-interestholders) are:

- A developer;
- An owner of the underlying fee or personal property;
- A mortgagee, judgment creditor, or other lienor; or
- Any other person having an interest in or lien or encumbrance against a timeshare interest in a single-site timeshare plan, or an interest in or lien or encumbrance against *a unit in a condominium or property regime, unless the timeshare interest or the unit is “specifically subject to, or otherwise dedicated to, the multisite timeshare plan.”* (Emphasis added.)

The bill expresses legislative intent that the revision of the term “interestholder” is a clarification of existing law; those who are interestholders under current law are described nearly identically to those proposed to be classified as non-interestholders:

- A developer;

¹⁶ Section 721.552(2), F.S.

¹⁷ Section 721.07, F.S.

¹⁸ Section 721.13(1)(a), F.S. The duties of a managing entity are detailed in s. 721.13(3), F.S.

¹⁹ Section 721.07(5)(t)3., F.S.

- An owner of the underlying fee or personal property;
- A mortgagee, judgment creditor, or other lienor; or
- Any other person having an interest in or lien or encumbrance against a timeshare interest in a single-site timeshare plan, or an interest in or lien or encumbrance against *the accommodations or facilities of the timeshare plan*. (Emphasis added.)

The revision to the term “interestholder” creates a distinction between persons based on the type of timeshare plan they have developed, owned, provided financing for, are owed monies by, or against which they have an interest, lien, or encumbrance. This distinction impacts voting and other rights related to timeshare plans.

The bill amends s. 721.08, F.S., concerning escrow accounts, non-disturbance instruments, alternate security arrangements, and transfer of legal title; the bill expresses legislative intent that the revision is a clarification of existing law.

For a component site property regime, certain documents that establish or govern a component site property regime are deemed not to be an encumbrance²⁰ under chapter 721, F.S., the Florida Vacation Plan and Timesharing Act (act), including a:

- Timeshare instrument;
- Declaration of condominium; or
- Other instrument.

The bill provides that a document that establishes or governs a component site property regime, in addition to not being an encumbrance, does not create a requirement for a “nondisturbance and notice to creditors instrument” under s. 721.08, F.S. For each accommodation or facility of a multisite timeshare plan involving a component site property regime, a “subordination and notice to creditors instrument” is not required from the managing entity, owners’ association, or any other person. Under current law, the developer of such accommodation or facility must provide the division evidence that each interestholder has executed and recorded a subordination and notice to creditors instrument in the public records where the accommodation or facility is located.²¹

The bill amends s. 721.125, F.S., which currently relates to the extension and termination of timeshare plans, so that the section will deal only with the termination of timeshare plans. If the timeshare property is managed by an owners’ association that is separate from any underlying condominium, cooperative, or homeowners’ association, termination of a timeshare plan does not change the corporate status of the owners’ association.

However, under the bill, the owners’ association existence continues only for these limited purposes:

- Concluding its affairs;
- Prosecuting and defending actions by or against it;

²⁰ The term “encumbrance” is defined in chapter 679, F.S., Uniform Commercial Code: Secured Transactions, as a right in real property, other than an ownership interest, including mortgages and other liens on real property. See s. 679.1021(1)(ff), F.S.

²¹ See s. 721.53(1), F.S.

- Collecting and discharging obligations;
- Disposing of and conveying its property;
- Collecting and dividing its assets; and
- Otherwise complying with s. 721.125(3), F.S.

After termination of a timeshare plan, the bill provides that the board of administration of the owners' association (board) serves as the termination trustee. In that fiduciary capacity, the board may bring a partition action²² on behalf of the tenants in common²³ in each former timeshare property or may sell the former timeshare property in any manner and to any person approved by a majority of all the tenants in common. The termination trustee also has all other powers reasonably necessary to accomplish the partition or sale, including the power to maintain the property while the partition action or sale is pending, and must adopt reasonable procedures to implement the partition or sale and comply with these requirements.

The bill provides that all reasonable expenses incurred by the termination trustee relating to the performance of the trustee's duties, including reasonable fees of attorneys and other professionals, must be paid by the tenants in common, in proportion to their ownership interests. Many timeshare plans do not address the handling of costs of termination.²⁴

Additionally, the bill provides that termination of a timeshare plan in a timeshare condominium or timeshare cooperative, when the underlying condominium or cooperative is not simultaneously terminated, requires the designation of a voting representative for the unit, and the filing of a voting certificate with the underlying condominium or cooperative association. The designation is made by a majority of the tenants in common in each former timeshare unit who are present and voting in person or by proxy at a meeting of such tenants in common. The meeting is conducted by the termination trustee or by the board of administration of the condominium or cooperative association if the association managed the former timeshare property. The voting representative may vote on all matters at meetings of the condominium or cooperative association, including termination of the condominium or cooperative.

The bill creates s. 721.1255, F.S., to separately address extensions of timeshare plans,²⁵ and expresses legislative intent, including that:

- Most older timeshare properties in Florida are based on a condominium structure, and the termination dates set forth in the timeshare instruments for those properties are approaching.
- Many older timeshare properties located in Florida have been well-maintained, and continue to be financially supported, used, and enjoyed by their owners, exchangers, guests, renters, and others.
- To preserve the continued use, enjoyment, tax values, and overall viability of these timeshare properties, the public policy of Florida requires the creation of a statutory method to enable the owners of these timeshare properties to extend the terms of their timeshare plans,

²² The term "partition" is used in chapter 64, F.S., for the dividing of interests in real and personal property by a court, or if partition cannot be made without prejudice to the owners, by a court-ordered sale at public auction to the highest bidder. See ss. 64.051, 64.071, and 64.091, F.S.

²³ The term "tenants in common" is a type of simultaneous ownership of real property by two or more parties. See <http://legal-dictionary.thefreedictionary.com/tenancy+in+common> (last visited Mar. 17, 2017).

²⁴ Conversation with representatives of the American Resort Development Association (ARDA)(Mar. 3, 2017).

²⁵ All provisions within s. 721.125, F.S., which address the extension of timeshare plans, are deleted in the bill.

notwithstanding contrary provisions in their timeshare instruments which may create uncertainty for purchasers, prospective purchasers, and lenders, and which may discourage the ongoing maintenance, refurbishment, and improvement of these timeshare properties.

The bill revises the minimum required vote and the eligibility of voting interests required for an extension of a term of a timeshare plan. Unless the timeshare instrument specifically provides a lower percentage, the vote or written consent, or both, *of at least 66 percent of all eligible voting interests present in person or by proxy at a duly called and constituted meeting of the owners' association* is required. (Currently, the requirement under s. 721.125(1), F.S., is that 60 percent of all voting interests must authorize an extension of a timeshare plan, unless the timeshare instrument provides otherwise.) The bill provides that the meeting of the owners' association may be held "at any time." The bill provides that if the term of a timeshare plan is extended, all rights, privileges, duties, and obligations created under applicable law or the timeshare instrument continue in full force to the same extent as if the extended termination date of the timeshare plan were the original termination date of the timeshare plan.

The bill revises the quorum requirements for a vote to extend the term of a timeshare plan. Unless the timeshare instrument specifically provides for a lower quorum, the quorum for the owners' association meeting is 50 percent of all eligible voting interests in the timeshare plan. Under current law, unless the articles of incorporation, the bylaws, or the provisions of chapter 721, F.S. provide for a higher quorum requirement, the percentage of voting interests required to make decisions and to constitute a quorum for a members' meeting of a timeshare condominium²⁶ or owners' association is 15 percent of the voting interests.²⁷

The bill provides that a proxy for a vote to extend a timeshare plan pursuant to this section may be valid for a period of up to 3 years and is revocable unless it states that it is irrevocable. The duration and revocability of proxies for voting on matters respecting timeshare plans are not addressed in current law.

The bill provides that the board of administration of the owners' association may determine that any person or entity holding a voting interest who is delinquent in the payment of more than 2 years of assessments is ineligible to vote on any extension of the timeshare plan unless the delinquency is paid in full before the vote.

The bill restricts the effectiveness of a proposed extension for a component site of a multisite timeshare plan located in Florida. If an extension vote or consent is proposed for such a component site, the extension is effective only if the extension is approved by the person authorized to make additions or substitutions of accommodations and facilities pursuant to the timeshare instrument.

The revised procedures for extension of timeshare plans apply to all timeshare properties in Florida. Under current law, unless the timeshare instrument provides otherwise, the provisions relating to extensions or terminations of timeshare plans²⁸ apply only to a timeshare plan in

²⁶ A "timeshare condominium" is a timeshare plan that is subject to the provisions of both chapter 718, F.S., regulating condominiums, and chapter 721, F.S., regulating vacation and timeshare plans.

²⁷ Section 721.13(7), F.S.

²⁸ See s. 721.125(3), F.S.

existence for at least 25 years as of the effective date of the termination or extension vote or consent, or both, of *60 percent of all voting interests* in the timeshare plan. The vote or written consent may extend or terminate the timeshare plan at any time.²⁹

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 Department of Business and Professional Regulation (DBPR) notes there is no fiscal impact to the private sector.³⁰

C. Government Sector Impact:

The Department of Business and Professional Regulation (DBPR) notes there is no fiscal impact to state government.³¹

VI. Technical Deficiencies:

Section 4 creates s. 721.1255(2)(d), F.S., which provides that the board of administration of the owners' association may determine that a person holding a voting interest who is delinquent in paying more than two years of assessments is ineligible to vote on an extension of the timeshare plan, unless the delinquency is paid in full "before the vote." The bill does not address the timing and method for handling of payments to eliminate such a deficiency. See lines 192-197.

²⁹ See s. 721.151(1), F.S.

³⁰ Department of Business and Professional Regulation, *Senate Bill 818 Legislative Bill Analysis* (March 2, 2017) (on file with the Senate Committee on Judiciary).

³¹ *Id.*

VII. Related Issues:

The bill revises provisions affecting persons who have or may have an interest in or a lien or encumbrance against a timeshare interest, or other unit that is subject to a timeshare plan and provisions related to the termination of existing timeshare plans. Therefore, these provisions may implicate constitutional concerns relating to impairment of contract.³²

In *Pomponio v. Claridge of Pompano Condominium, Inc.*,³³ the Florida Supreme court stated that some degree of flexibility has developed over the last century in interpreting the contract clause in order to ameliorate the harshness of the original rigid application used by the United States Supreme Court. The Florida Supreme Court invalidated a statute, as an unconstitutional impairment of contract, which required the deposit of rent into a court registry during litigation involving obligations under a contract lease. The court set forth several factors to be considered in balancing whether a state law has in fact operated as a substantial impairment of a contractual relationship, stating “[t]he severity of the impairment measures the height of the hurdle the state legislation must clear.”³⁴

The court stated that if there is minimal alteration of contractual obligations, the inquiry may end at its first stage. Severe impairment pushes the inquiry into a careful examination of the nature and purpose of the state legislation. The factors to be considered are whether:

- The law was enacted to deal with a broad, generalized economic or social problem;
- The law operates in an area that was already subject to state regulation at the time the contract was entered into; and
- The effect on the contractual relationships is temporary, or whether it is severe, permanent, immediate, and retroactive.³⁵

In *United States Fidelity & Guaranty Co. v. Department of Insurance*,³⁶ the Florida Supreme Court followed *Pomponio* and said that the method requires a balancing of a person’s interest to not have his or her contracts impaired, with the state’s interest in exercising its legitimate police power. The court adopted the method used by the U.S. Supreme Court, in which the threshold inquiry is “whether the state law has, in fact, operated as a substantial impairment of a contractual relationship.”³⁷ The severity of the impairment increases the level of scrutiny.

Relevant to the extent of the impairment is whether the industry the complaining party had entered had been regulated in the past because if the party was already subject to regulation when the contract was entered, then it is understood that it would be subject to further legislation upon the same topic.³⁸ If the state regulation constitutes a substantial impairment, the state must have a

³² U.S. CONST., art. 1, s.10 and FLA. CONST. art 1, s. 10.

³³ *Pomponio v. Claridge of Pompano Condominium, Inc.*, 378 So. 2d 774, 776 (Fla. 1979).

³⁴ *Pomponio*, 378 So. 2d at 779,(quoting *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234 at 244-45 (1978)).

³⁵ *Id.*

³⁶ *United States Fidelity & Guaranty Co. v. Department of Insurance*, 453 So. 2d 1355 (Fla. 1984).

³⁷ *United States Fidelity & Guaranty Co.*, 453 So. 2d at 1360 (quoting *Allied Structural Steel Co., v. Spannaus*, 438 U.S. 234, 244 (1978)).

³⁸ *Id.* (citing *Allied Structural Steel Co.*, 438 U.S. at 242, n. 13).

significant and legitimate public purpose³⁹ and any adjustment of the rights and responsibilities of the contracting parties must be appropriate to the public purpose justifying the legislation.⁴⁰

Furthermore, although retroactive application of a law may be constitutional in certain situations,⁴¹ in 2011, the Florida Supreme Court unanimously held, in *Cohn v. The Grand Condominium Association, Inc.*,⁴² that by changing the distribution of voting power between residential owners and other owners in a mixed-use condominium, the retroactive application of the law at issue altered the rights of the unit owners in contravention of their contractual agreement and impaired the obligation of contract as applied.

VIII. Statutes Affected:

This bill substantially amends sections 721.05, 721.08, and 721.125, F.S.

This bill creates section 721.1255, Florida Statutes.

IX. Additional Information:

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

CS by Regulated Industries on March 8, 2017:

The committee substitute:

- Clarifies, for certain multisite timeshare plans that have a component site that is part of a single-site timeshare plan or condominium or other property, the parties who:
 - Are “interestholders” in the multisite timeshare plan, i.e. all timeshare interests, timeshare units, or other units specifically subject to the multisite timeshare plan; and
 - Are not “interestholders” in the multisite timeshare plan, i.e. developers; owners of the underlying land or personal property; mortgage lenders, judgment creditors, or lienholders; or any other persons with an interest, lien, or encumbrance in a single site timeshare plan, condominium, or other property;
- Clarifies that certain documents are not encumbrances, and do not create a requirement for certain notices to creditors; and
- Requires a vote to extend the term of a timeshare plan take place at a duly *noticed* meeting.

- B. Amendments:

None.

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

³⁹ *United States Fidelity & Guaranty Co.*, 453 So. 2d at 1360 (citing *U.S. Trust Co. of New York v. New Jersey*, 431 U.S. 1, 22 (1977)).

⁴⁰ *United States Fidelity & Guaranty Co.*, 453 So. 2d at 1361.

⁴¹ *Century Village, Inc. v. Wellington*, 361 So. 2d 128 (Fla. 1978).

⁴² *Cohn*, 62 So. 3d 1120, 1122 (Fla. 2011).

By the Committee on Regulated Industries; and Senator Hutson

580-02237-17

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1 A bill to be entitled
 2 An act relating to timeshares; amending s. 721.05,
 3 F.S.; revising the definition of the term
 4 "interestholder" to clarify that the term does not
 5 include certain parties to a certain multisite
 6 timeshare plan; amending s. 721.08, F.S.; clarifying
 7 current law; providing that certain instruments are
 8 not an encumbrance as they relate to certain vacation
 9 and timeshare plans; amending s. 721.125, F.S.;
 10 revising requirements for the termination of a
 11 timeshare plan; providing that the termination of a
 12 timeshare plan does not change the corporate status of
 13 an owners' association under certain circumstances;
 14 providing that the owners' association continues to
 15 exist until certain affairs are concluded; requiring
 16 the board of administration of the owners' association
 17 to serve as the termination trustee after termination
 18 of a timeshare plan; providing powers of the
 19 termination trustee; specifying that certain expenses
 20 incurred by the termination trustee must be borne by
 21 the tenants of a former timeshare property; requiring
 22 the termination trustee to adopt certain procedures to
 23 implement the partition or sale of a former timeshare
 24 property; requiring a voting representative to be
 25 designated under certain circumstances; specifying the
 26 voting rights of the voting representative; conforming
 27 provisions to changes made by the act; creating s.
 28 725.1255, F.S.; providing legislative findings;
 29 specifying the percentage of votes required to extend

580-02237-17

2017818c1

30 the term of a timeshare plan under certain
 31 circumstances; specifying what constitutes a quorum
 32 under certain circumstances; specifying that a meeting
 33 to extend a timeshare plan may be held at any time;
 34 authorizing an owners' association to determine if a
 35 person or entity holding a voting interest is
 36 ineligible to vote, subject to certain requirements;
 37 specifying the maximum duration of validity of a
 38 proxy; providing that a proxy for a vote is revocable
 39 unless otherwise stated; specifying requirements for
 40 certain extension votes to be effective; providing
 41 applicability; providing an effective date.
 42
 43 Be It Enacted by the Legislature of the State of Florida:
 44
 45 Section 1. Subsection (21) of section 721.05, Florida
 46 Statutes, is amended to read:
 47 721.05 Definitions.—As used in this chapter, the term:
 48 (21) (a) "Interestholder" means a developer, an owner of the
 49 underlying fee or owner of the underlying personal property, a
 50 mortgagee, judgment creditor, or other lienor, or any other
 51 person having an interest in or lien or encumbrance against the
 52 accommodations or facilities of the timeshare plan.
 53 (b) With respect to a multisite timeshare plan governed by
 54 part II which contains a component site that is also part of a
 55 single-site timeshare plan or condominium or other property
 56 regime, the term, except as to any timeshare interest, timeshare
 57 unit, or other unit that is specifically subject to, or
 58 otherwise dedicated to, the multisite timeshare plan, does not

580-02237-17

2017818c1

59 include a developer; an owner of the underlying fee or owner of
 60 the underlying personal property; a mortgagee, judgment
 61 creditor, or other lienor; or any other person having an
 62 interest in or lien or encumbrance against a timeshare interest
 63 in such single-site timeshare plan, or an interest in or lien or
 64 encumbrance against a timeshare unit or other unit in such
 65 condominium or property regime. This paragraph is intended only
 66 as a clarification of existing law.

67 Section 2. Subsection (11) is added to section 721.08,
 68 Florida Statutes, to read:

69 721.08 Escrow accounts; nondisturbance instruments;
 70 alternate security arrangements; transfer of legal title.—

71 (11) A timeshare instrument, declaration of condominium, or
 72 other instrument establishing or governing a component site
 73 property regime is not an encumbrance for purposes of this
 74 chapter and does not create a requirement for a nondisturbance
 75 and notice to creditors instrument for purposes of this section
 76 or a subordination and notice to creditors instrument for
 77 purposes of s. 721.53 from the managing entity, owners'
 78 association, or any other person. This subsection is intended
 79 only as a clarification of existing law.

80 Section 3. Section 721.125, Florida Statutes, is amended to
 81 read:

82 721.125 ~~Extension or~~ Termination of timeshare plans.—

83 (1) Unless the timeshare instrument provides otherwise, the
 84 vote or written consent, or both, of 60 percent of all voting
 85 interests in a timeshare plan may ~~extend or~~ terminate the term
 86 of the timeshare plan at any time. ~~If the term of a timeshare~~
 87 ~~plan is extended pursuant to this section, all rights,~~

580-02237-17

2017818c1

88 ~~privileges, duties, and obligations created under applicable law~~
 89 ~~or the timeshare instrument continue in full force to the same~~
 90 ~~extent as if the extended termination date of the timeshare plan~~
 91 ~~were the original termination date of the timeshare plan.~~ If a
 92 timeshare plan is terminated pursuant to this section, the
 93 termination has immediate effect pursuant to applicable law and
 94 the timeshare instrument as if the effective date of the
 95 termination were the original date of termination.

96 (2) If a termination ~~or extension~~ vote or consent pursuant
 97 to subsection (1) is proposed for a component site of a
 98 multisite timeshare plan located in this state, the proposed
 99 termination ~~or extension~~ is effective only if the person
 100 authorized to make additions or substitutions of accommodations
 101 and facilities pursuant to the timeshare instrument also
 102 approves the termination ~~or extension~~.

103 (3)(a) If the timeshare property is managed by an owners'
 104 association that is separate from any underlying condominium,
 105 cooperative, or homeowners' association, the termination of a
 106 timeshare plan does not change the corporate status of the
 107 owners' association. The owners' association continues to exist
 108 only for the purposes of concluding its affairs, prosecuting and
 109 defending actions by or against it, collecting and discharging
 110 obligations, disposing of and conveying its property, collecting
 111 and dividing its assets, and otherwise complying with this
 112 subsection.

113 1. After termination of a timeshare plan, the board of
 114 administration of the owners' association shall serve as the
 115 termination trustee, and in such fiduciary capacity may bring an
 116 action in partition on behalf of the tenants in common in each

580-02237-17

2017818c1

former timeshare property or sell the former timeshare property in any manner and to any person who is approved by a majority of all such tenants in common. The termination trustee also has all other powers reasonably necessary to effect the partition or sale of the former timeshare property, including the power to maintain the property during the pendency of any partition action or sale.

2. All reasonable expenses incurred by the termination trustee relating to the performance of its duties pursuant to this subsection, including the reasonable fees of attorneys and other professionals, must be paid by the tenants in common of the former timeshare property subject to partition or sale, proportionate to their respective ownership interests.

3. The termination trustee shall adopt reasonable procedures to implement the partition or sale of the former timeshare property and comply with the requirements of this subsection.

(b) If a timeshare plan is terminated in a timeshare condominium or timeshare cooperative and the underlying condominium or cooperative is not simultaneously terminated, a majority of the tenants in common in each former timeshare unit present and voting in person or by proxy at a meeting of such tenants in common conducted by the termination trustee, or conducted by the board of administration of the condominium or cooperative association, if such association managed the former timeshare property, shall designate a voting representative for the unit and file a voting certificate with the condominium or cooperative association. The voting representative may vote on all matters at meetings of the condominium or cooperative

580-02237-17

2017818c1

association, including termination of the condominium or cooperative.

~~(4)(3)~~ This section applies only to a timeshare plan that has been in existence for at least 25 years as of the effective date of the termination ~~or extension~~ vote or consent required by subsection (1).

Section 4. Section 721.1255, Florida Statutes, is created to read:

721.1255 Extension of timeshare plans.—

(1)(a) The Legislature finds that timeshare plans are created as authorized by statute. Most of the older timeshare properties located in this state are based on a condominium structure, and many of these older timeshare properties are approaching the termination dates set forth in their timeshare instruments.

(b) The Legislature further finds that there are many older timeshare properties located in this state which have been well-maintained over the years and continue to be financially supported, used, and enjoyed by their owners, exchangers, guests, renters, and others. In order to preserve the continued use, enjoyment, tax values, and overall viability of these timeshare properties, the Legislature further finds that the public policy of this state requires the creation of a statutory method to enable the owners of these timeshare properties to extend the terms of their timeshare plans, notwithstanding contrary provisions in their timeshare instruments which may create uncertainty for purchasers, prospective purchasers, and lenders, and which may discourage the ongoing maintenance, refurbishment, and improvement of these timeshare properties.

580-02237-17

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(2) (a) Unless the timeshare instrument specifically provides a lower percentage, the vote or written consent, or both, of at least 66 percent of all eligible voting interests present in person or by proxy at a duly noticed, called, and constituted meeting of the owners' association may, at any time, extend the term of the timeshare plan. If the term of a timeshare plan is extended pursuant to this section, all rights, privileges, duties, and obligations created under applicable law or the timeshare instrument continue in full force to the same extent as if the extended termination date of the timeshare plan were the original termination date of the timeshare plan.

(b) Unless the timeshare instrument specifically provides for a lower quorum, the quorum for the owners' association meeting described in paragraph (a) is 50 percent of all eligible voting interests in the timeshare plan.

(c) The owners' association meeting described in paragraph (a) may be held at any time.

(d) The board of administration of the owners' association may determine that any person or entity holding a voting interest who is delinquent in the payment of more than 2 years of assessments is ineligible to vote on any extension of the timeshare plan unless the delinquency is paid in full before the vote.

(e) A proxy for a vote to extend a timeshare plan pursuant to this section may be valid for a period of up to 3 years and is revocable unless it states that it is irrevocable.

(3) If an extension vote or consent pursuant to this section is proposed for a component site of a multisite timeshare plan located in this state, the proposed extension is

580-02237-17

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effective only if the person authorized to make additions or substitutions of accommodations and facilities pursuant to the timeshare instrument also approves the extension.

(4) This section applies to all timeshare properties located in this state.

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



The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: March 28, 2017

I respectfully request that **Senate Bill #818**, relating to Timeshares, be placed on the:

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

A handwritten signature in dark ink, appearing to read "Travis Hutson", is written over a horizontal line.

Senator Travis Hutson
Florida Senate, District 7

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/6/16
Meeting Date

818
Bill Number (if applicable)

Topic Timeshares

Amendment Barcode (if applicable)

Name Gary Hunter

Job Title Attorney

Address 119 S. Monroe St Suite 300

Phone 850-222-7500

Street

Tallahassee

FL

32301

City

State

Zip

Email gary.h@hgs1aw.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing American Resort Developers Assoc.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4 1 6 12017

Meeting Date

Topic _____

Bill Number 818
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG

FLORIDA

33705

City

State

Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☐ Against ☒ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/CS/SB 624

INTRODUCER: Judiciary Committee; Criminal Justice Committee; and Senator Steube

SUBJECT: Body Cameras

DATE: April 6, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Jones	Hrdlicka	CJ	Fav/CS
2.	Brown	Cibula	JU	Fav/CS
3.	Jones	Phelps	RC	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 624 requires a law enforcement agency to address in its policies and procedures on the use of body cameras instances in which a law enforcement officer may review body camera footage.

Section 943.1718, F.S., currently requires a law enforcement agency using body cameras to record an incident to establish policies and procedures on their use. However, Florida law does not require agencies to use body cameras or address whether a law enforcement officer may review body camera footage prior to writing a report or making a statement about a recorded incident.

The bill authorizes a law enforcement officer using a body camera to review the body camera footage before:

- Writing a report; or
- Providing a statement regarding an event arising within the scope of his or her official duties.

However, the bill provides that the authorization to review body camera footage does not apply to an officer's inherent duty to immediately disclose information necessary to secure an active crime scene or to identify suspects or witnesses.

II. Present Situation:

Body Cameras

A body camera is a portable electronic recording device that is worn on a law enforcement officer's person which records audio and video data of the officer's encounters and activities.¹ Body cameras are currently being used or considered for use by many law enforcement agencies.

Annually, the Criminal Justice Standards and Training Commission compiles the Criminal Justice Agency Profile Report, which provides compensation and benefit information for the 399 criminal justice agencies in Florida.² The 2015 report shows that 91 of the 382 responding agencies reported using body cameras and the 2016 preliminary report shows that 107 of the 368 responding agencies reported using body cameras.³

Officer Review of Body Camera Footage

Views on the Review of Body Camera Footage

The use of body cameras has raised numerous policy questions within the law enforcement community. A 2014 report from the United States Department of Justice, Police Executive Research Forum, provides recommendations to law enforcement agencies on the use of body cameras. The report specifically recommends that agencies allow a law enforcement officer to review the body camera footage of an incident before making a statement about the incident. Most of the police executives interviewed for the report believe that allowing officers to review the body camera footage provides the best evidence of the incident.⁴

Lexipol, a private company providing training on risk management to public safety organizations offers a specific online training on the use of body cameras.⁵ In the training, the presenter notes that a video is not always an accurate representation of the incident because it does not always show the fear of the officer or the force that occurred during the incident.⁶ However, viewing the video after the incident can assist the officer with memory recall of what occurred.⁷ On the other hand, an officer who views body camera footage before writing a report could make his or her account more susceptible to scrutiny based on a perception that the officer changed his or her account.⁸

¹ Section 943.1718(1)(a), F.S.

² Florida Department of Law Enforcement, *Criminal Justice Agency Profile Survey Results*, available at <http://www.fdle.state.fl.us/cms/CJSTC/Publications/CJAP/CJAP.aspx> (last visited March 15, 2017).

³ Email from Ronald Draa, Director of External Affairs, Florida Department of Law Enforcement, to Senate Criminal Justice Committee staff, (Feb. 28, 2017) (on file with the Senate Criminal Justice Committee and Senate Judiciary Committee).

⁴ Community Oriented Policing Services, U.S. Department of Justice, Police Executive Research Forum, *Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned*, pg. 29 (2014), available at <https://ric-zai-inc.com/Publications/cops-p296-pub.pdf>.

⁵ Lexipol, *About Lexipol, Public Safety Organization Policies and Resources*, available at <http://www.lexipol.com/about-us/> (last visited February 27, 2017) and Lexipol, *Officer Viewing of Body Worn Camera Footage*, available at <http://www.lexipol.com/body-worn-camera-webinar/> (last visited March 15, 2017); Ken Wallentine, Laura Scarry, and Grant Fredericks, Lexipol, *Point/Counterpoint: The Debate Over Officer Viewing of BWC Video*, December 12, 2016, available at <http://www.lexipol.com/wp-content/uploads/2016/11/BWC-Video-Viewing.pdf>.

⁶ *Id.* at p. 5-6.

⁷ *Id.* at 17.

⁸ *Id.* at 19.

Other States

Thirty states and the District of Columbia have enacted laws governing the use of body cameras by law enforcement agencies and officers.⁹ Seventeen states, including Florida, and the District of Columbia require law enforcement agencies to adopt written policies in order for law enforcement agencies to use or receive funding for body cameras.¹⁰ Some states have laws addressing whether a law enforcement officer may view body camera footage prior to writing a report or making a statement.¹¹ For example, in Texas a law enforcement agency that uses body cameras must enact policies ensuring an officer access to any recording of an incident prior to making a statement.¹²

In Connecticut, an officer may view the body camera footage when writing his or her police report. An officer may also view the body camera footage if he or she has to give a formal statement about the use of force involved or if he or she is the subject of a disciplinary investigation. The officer also has the right to view the body camera footage with an attorney or labor representative present and to review recordings of the incident from other body cameras that captured the officer's image or voice.¹³

Section 943.1718, F.S., requires a law enforcement agency using body cameras to establish certain policies and procedures on their use. However, Florida law does not require agencies to use body cameras or address whether a law enforcement officer may review body camera footage prior to writing a report or making a statement about a recorded incident.

Section 943.1718, F.S., Body Camera Policies and Procedure

In 2016, the Legislature enacted requirements for law enforcement agencies who use body cameras.¹⁴ Section 943.1718, F.S., requires a law enforcement agency using body cameras to establish policies and procedures that include:

- General guidelines for the proper use, maintenance, and storage of body cameras;
- Any limitations on which law enforcement officers are permitted to wear body cameras;
- Any limitations on law-enforcement-related encounters and activities in which law enforcement officers are permitted to wear body cameras; and
- General guidelines for the proper storage, retention, and release of audio and video data recorded by body cameras.

⁹ National Conference of State Legislatures, *Body-Worn Cameras Interactive Graphic, State Body-Worn Camera Laws*, August 30, 2016, available at <http://www.ncsl.org/research/civil-and-criminal-justice/body-worn-cameras-interactive-graphic.aspx> (last visited March 15, 2017).

¹⁰ NCSL, *Written Body-Worn Camera Policies*, available at <http://www.ncsl.org/research/civil-and-criminal-justice/body-worn-cameras-interactive-graphic.aspx#/> (last visited March 15, 2017).

¹¹ *Id.*

¹² Tex. Occ. Code s. 1701.655(b)(5).

¹³ Conn. Gen. Stat. Ann. s. 29-4(e) and (f).

¹⁴ Chapter 2016-76, L.O.F.

III. Effect of Proposed Changes:

The bill requires a law enforcement agency to address in its body camera policies and procedures instances in which a law enforcement officer may review body camera footage. Specifically, the bill requires these policies and procedures to authorize a law enforcement officer who uses a body camera to review the body camera footage before:

- Writing a report; or
- Providing a statement regarding an event arising within the scope of his or her official duties.

However, the bill provides that the authorization to review body camera footage does not apply to an officer's inherent duty to immediately disclose information necessary to secure an active crime scene or to identify suspects or witnesses.

The bill takes effect July 1, 2017.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Although this bill requires law enforcement agencies to include a new policy in their policies and procedures on the use of body cameras, little fiscal impact is expected.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 943.1718, 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 March 22, 2017:

The committee substitute clarifies that the right of a law enforcement officer to review body camera footage before providing statements or writing a report does not apply at a crime scene or to identify witnesses.

CS by Criminal Justice on March 6, 2017:

The committee substitute:

- Requires a “provision” instead of “general guidelines” by law enforcement using body cameras;
- Limits the review of footage to law enforcement officers using body cameras;
- Allows the law enforcement officer to view the body camera footage instead of “relevant audio and video recordings”;
- Specifies that the law enforcement officer can review the body camera footage for incidents within the scope of the officer’s official duties instead of incidents in which the officer was involved; and
- Prohibits a law enforcement officer using a body camera to review the body camera footage before providing information at the scene of an incident for the sole purposes of identifying and preserving the crime scene and identifying witnesses and suspects.

- B. **Amendments:**

None.



463938

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/06/2017	.	
	.	
	.	
	.	

The Committee on Rules (Brandes) recommended the following:

Senate Amendment (with title amendment)

Delete line 35
and insert:
crime scene or to identify suspects or witnesses. An officer is
prohibited from reviewing the recorded body camera footage if he
or she used any force during an event arising within the scope
of his or her official duties unless the law enforcement agency
requires the audio and video data recorded by the body camera be
digitally backed up before the officer is permitted to review
the footage.



463938

12
13 ===== T I T L E A M E N D M E N T =====
14 And the title is amended as follows:
15 Delete line 8
16 and insert:
17 taking certain actions; providing exceptions;



480786

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/06/2017	.	
	.	
	.	
	.	

The Committee on Rules (Brandes) recommended the following:

Senate Amendment (with title amendment)

Between lines 38 and 39
insert:

Section 2. The Department of Law Enforcement shall convene a work group to develop a model policy for law enforcement agencies that permit their law enforcement officers to wear body cameras.

(1) The work group shall consist of the following members:

(a) A state attorney.

(b) A public defender.



480786

(c) Two police chiefs.

(d) Two sheriffs.

(e) The Commissioner of the Department of Law Enforcement or his or her designee.

(2) Except for the Commission of the Department of Law Enforcement, the Governor shall appoint all members of the work group by August 1, 2017.

(3) The work group shall convene its first meeting by October 1, 2017. At the first meeting, the work group shall select a chair of the work group. Thereafter, the chair of the work group shall call a meeting as often as necessary to carry out the provisions of this section. The Department of Law Enforcement shall keep a complete record of the proceedings of each meeting, which includes the names of the members present at each meeting and the actions taken. The work group may meet by teleconference. The records shall be public records pursuant to chapter 119, Florida Statutes. A quorum shall consist of a majority of the group members. Members of the group shall not receive compensation.

(4) The purpose of the work group is to develop a model policy for a law enforcement agency which permits its law enforcement officers to wear body cameras. The model policy shall include policies and procedures addressing the proper use, maintenance, and storage of body cameras and the data recorded by body cameras. The model policy shall also include, but is not limited to:

(a) Any limitations on which law enforcement officers are permitted to wear body cameras.

(b) Any limitations on law-enforcement related encounters



480786

41 and activities in which law enforcement officers are permitted
42 to wear body cameras.

43 (c) Specifications for the proper storage, retention and
44 release of audio and video data recorded by body cameras.

45 (d) Any limitations on when or how a law enforcement
46 officer using a body camera can review the recorded audio and
47 video footage from the body camera.

48 (5) Relevant staff from the Department of Law Enforcement
49 who are knowledgeable in the subject area may be assigned to
50 assist the work group. The President of the Senate and the
51 Speaker of the House Representatives may also assign their
52 respective staff to provide technical guidance and assistance to
53 the work group.

54 (6) Members of the work group are entitled to reimbursement
55 for travel and per diem expenses, as provided in s. 112.061,
56 Florida Statutes, while performing their duties under this
57 section. Travel and per diem expenses of the work group members
58 and other staff who are state employees shall be reimbursed by
59 the respective state agency employing the member or staff. The
60 Department of Law Enforcement shall provide administrative
61 support for the work group, shall pay for travel and per diem
62 expenses of work group members who are not state employees, and
63 shall pay any other operational expenses of the work group as
64 deemed reasonable and appropriate.

65 (7) The model policy created by the work group shall be
66 submitted to the Legislature and post on the Department of Law
67 Enforcement's website by December 31, 2018.

68 (8) This section expires January 31, 2019.
69



480786

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

And the title is amended as follows:

Between lines 8 and 9

insert:

creating a work group within the Department of Law
Enforcement; providing work group membership and
purposes; specifying staffing requirements; providing
for per diem for members; requiring the creation of a
model policy by a certain date; providing expiration
of the work group;

By the Committees on Judiciary; and Criminal Justice; and
Senator Steube

590-02729-17

2017624c2

A bill to be entitled

An act relating to body cameras; amending s. 943.1718, F.S.; requiring law enforcement agencies that permit law enforcement officers to wear body cameras to establish policies and procedures that include a provision permitting a law enforcement officer using a body camera to review body camera footage before taking certain actions; providing an exception; providing an effective date.

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

Section 1. Subsection (2) of section 943.1718, Florida Statutes, is amended to read:

943.1718 Body cameras; policies and procedures.—

(2) A law enforcement agency that permits its law enforcement officers to wear body cameras shall establish policies and procedures addressing the proper use, maintenance, and storage of body cameras and the data recorded by body cameras. The policies and procedures must include:

(a) General guidelines for the proper use, maintenance, and storage of body cameras.

(b) Any limitations on which law enforcement officers are permitted to wear body cameras.

(c) Any limitations on law-enforcement-related encounters and activities in which law enforcement officers are permitted to wear body cameras.

(d) A provision permitting a law enforcement officer using a body camera to review the recorded footage from the body

Page 1 of 2

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

590-02729-17

2017624c2

camera, upon his or her own initiative or request, before writing a report or providing a statement regarding an event arising within the scope of his or her official duties. Any such provision may not apply to an officer's inherent duty to immediately disclose information necessary to secure an active crime scene or to identify suspects or witnesses.

(e) ~~(d)~~ General guidelines for the proper storage, retention, and release of audio and video data recorded by body cameras.

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

Page 2 of 2

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

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

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR GREG STEUBE
23rd District

March 22, 2017

The Honorable Lizbeth Benacquisto
Florida Senate
400 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Senator Benacquisto,

I am writing this letter because my bill, SB 624: Body Cameras, has been referred to the Senate Rules Committee. This bill has passed the first two committees of reference. I am respectfully requesting that you place the bill on your committee's calendar for the next committee week.

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

Very respectfully yours,

A handwritten signature in dark ink, appearing to be "W. Gregory Steube". The signature is stylized with a large, looping "W" and a distinct "S" at the end.

W. Gregory Steube, District 23

REPLY TO:

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

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/6/2017

Meeting Date

SB 624

Bill Number (if applicable)

Topic Body Cameras for Law Enforcement

Amendment Barcode (if applicable)

Name Matt Ruckoff

Job Title Lobbyist

Address 300 East Brevard St.

Phone

Street

Tallahassee

City

FL

State

32301

Zip

Email

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida 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)

April 6, 2017
Meeting Date

SB 624
Bill Number (if applicable)

Topic Body Camera

Amendment Barcode (if applicable)

Name Bernadette Howard

Job Title Government Affairs Coordinator

Address 2636 Mitcham Dr

Phone 850-219-3631

Street

Tallahassee

FL

32308

City

State

Zip

Email bhoward@fpca.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing The Florida Police Chiefs Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date

624
Bill Number (if applicable)

Topic Body Camera

Amendment Barcode (if applicable)

Name Lisa Henning

Job Title Legislative Director

Address 242 Office Plaza Dr

Phone 850-766-8808

Street

Tallahassee, FL 32301

City

State

Zip

Email foplegislative@aol.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Fraternal Order of Police

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

624
Bill Number (if applicable)

Amendment Barcode (if applicable)

Meeting Date _____

Topic Body Camera

Name Mike Tucker

Job Title PRESIDENT, FT. LAUDERDALE FRATERNAL ORDER OF POLICE

Address 735 NE 3RD AVE Phone 954-527-2606
Street

FT. LAUDERDALE FL 33304 Email PRESIDENT@fop31.org
City State Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Fraternal Order of Police

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/6/2017

624

Meeting DateBill Number (if applicable)Topic Body CamerasAmendment Barcode (if applicable)Name Matt DunaganJob Title Deputy DirectorAddress 2617 Mahan DrivePhone 850-877-2165StreetTallahasseeFL32308Email mdunagan@flsheriffs.orgCityStateZipSpeaking: ☒ For ☐ Against ☐ InformationWaive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)Representing Florida Sheriffs AssociationAppearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☒ Yes ☐ No

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

2/16/17
Meeting Date

6024
Bill Number (if applicable)

Topic Body Cam

Amendment Barcode (if applicable)

Name Dennis Strange

Job Title Captain

Address 2500 West Colonial Ave
Street

Phone 407-254-7000

Orl FL 32804
City State Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Orange County Sheriff's Office

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

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 Rules

BILL: CS/SB 1634

INTRODUCER: Rules Committee and Senator Steube

SUBJECT: Residential Elevators

DATE: April 6, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Present</u>	<u>Yeatman</u>	<u>CA</u>	Favorable
2.	<u>Present</u>	<u>Phelps</u>	<u>RC</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1634 removes the requirement that the underside of the platform of an elevator car be equipped with a device that, if the platform of the elevator car is obstructed anywhere on its underside in its downward travel, interrupts the electric power to the driving machine motor and brake and stops the elevator car's downward motion. The bill replaces the current requirement with a new requirement that all new elevator controllers in private residences must:

- Monitor the closed and locked contacts of the hoistway door locking device.
- Cut off any power to the elevator motor and brake if the closed and locked contacts of the landing locks are open while the elevator car is not in the unlocking zone for the hoistway door.
- Not allow the elevator car to restart until the owner or the owner's agent has checked for obstructions above and below the elevator car, returned the hoistway door locking device contacts to normal operating position, and manually reset the elevator controller with the master elevator key.

The bill provides that a visual indicator must be visible at all landings until the hoistway door locking device has been returned to the normal operating position and the elevator has been manually reset.

The bill also requires the Florida Building Commission to adopt a provision for a hoistway door space guard.

II. Present Situation:

Chapter 399, F.S., on elevator safety, is enforced by the Division of Hotels and Restaurants within the Department of Business and Professional Regulation (DBPR). Section 399.02(3)(u), F.S., lists elevators located in private residences as equipment not covered by the chapter. However, s. 399.031, F.S., sets forth building requirements for new elevators in private residences.

The Florida Building Code (Code) provides the requirements for “the construction, alteration, movement, enlargement, replacement, repair, equipment, use and occupancy, location, removal and demolition of detached one- and two-family dwellings and townhouses not more than three stories above grade plane in height...”¹ The Code provides that private residence elevators shall comply with American Society of Mechanical Engineers (ASME) requirements, and shall comply with the requirements set forth in s. 399.031, F.S.²

ASME develops and maintains major codes addressing safety in design, construction, installation, operation, inspection, testing, maintenance, alteration, and repair of elevators, dumbwaiters, escalators, moving walks, material lifts, and dumbwaiters with automatic transfer devices, wheelchair lifts, or inclined-stairway chair lifts.³

In the last few years, the media reported several private residential elevator accidents involving children.⁴ A major concern is that many residential elevators have a dangerous gap between the elevator and hoistway door which allows children as old as 12 to fit between them. The hoistway door is the door that opens to reveal the elevator car or elevator shaft. When the elevator is called to another floor, the hoistway door automatically locks, and the child’s body is carried along with the elevator car, often crushing the child, leading to death or permanent injuries.⁵

In January 2015, 12-year-old Maxwell Erik “Max” Grablin crawled into the elevator shaft in his home in Bradenton to find his pet hamster. The elevator’s hoistway door locked behind him, trapping him in the elevator shaft. The elevator was lowered and crushed him.

The owner of the elevator company indicated to Mrs. Grablin that the accident that resulted in Max’s death would not have happened if the elevator had an inexpensive sensor.⁶

¹ Section R101.2 of the 5th edition of the Florida Building Code (Residential).

² Section R321.1 of the 5th edition of the Florida Building Code (Residential) and s. 399.031, F.S.

³ ASME, Safety Codes and Standards, available at <https://www.asme.org/about-asme/standards/safety-codes-for-elevators-and-escalators> (last visited March 16, 2017).

⁴ See The Safety Institute, Safety Advocates Petition CPSC for Mandatory Residential Elevator Standard Citing Numerous at Deaths <http://www.thesafetyinstitute.org/safety-advocates-petition-cpsc-for-mandatory-residential-elevator-standard-citing-numerous-deaths/> (last visited March 16, 2017), and CBS News, In-home elevator accidents causing catastrophic harm to kids at <http://www.cbsnews.com/news/in-home-elevator-accidents-causing-catastrophic-harm-to-kids/> (last visited March 16, 2017).

⁵ *Id.*

⁶ Kate Irby, After Florida boy suffocates in elevator shaft chasing pet hamster, his parents on safety mission, Jan. 18, 2016, <http://www.miamiherald.com/news/state/florida/article55252190.html> (last visited March 16, 2017).

As a result, the Legislature enacted the Erik “Max” Grablin Act.⁷ The act requires that the underside of the platform of an elevator car be equipped with a device that, if the platform of the elevator car is obstructed anywhere on its underside in its downward travel, interrupts the electric power to the driving machine motor and brake and stops the elevator car's downward motion within two inches. The downward motion can only be resumed after the elevator has been manually reset. The section also provides specific measurements for clearances and requires specified force amounts for doors and gates of elevators.

The Legislature also required the Florida Building Commission to adopt s. 399.031, F.S., into the Code. The Code is implemented by the Florida Building Commission within DBPR.⁸

In order to comply with the Legislature, the Florida Building Commission enacted section R321.4.1 of the 2016 supplement to the 5th edition of the Florida Building Code (Residential).⁹ The subsection deals with the permanent installation of a nonremovable, hoistway door space guard.

The Florida Building Commission also enacted section R321.4.2 of the 2016 supplement to the 5th edition of the Florida Building Code (Residential).¹⁰ The subsection requires a device located on the underside of an elevator car to interrupt electric power to the driving machine and brake and stop the elevator car's downward motion within two inches. The downward motion can be resumed only after the elevator has been manually reset.

III. Effect of Proposed Changes:

Section 1 requires the elevator controller to monitor the closed and locked contacts of the hoistway door locking device, whether electrical or mechanical, during normal operation.

If the closed and locked contacts of the landing locks are open while the car is not in the unlocking zone for the hoistway door locking device, the elevator controller must interrupt power to the motor and brake. Additionally, the elevator controller must not allow the elevator car to restart until the owner or owner's agent, with a master elevator key, has checked for obstructions above and below the elevator car, returned the hoistway door locking device contacts to the normal operating position, and manually reset the elevator controller with the master elevator key. Furthermore, a visual indicator must be visible at all landings until the hoistway door locking device has been returned to the normal operating position and the elevator controller has been manually reset.

This requirement replaces the existing requirement that the underside of an elevator car be equipped with a device that, if the elevator car is obstructed anywhere on its underside in its downward travel, stops the elevator car's downward motion within 2 inches.

⁷ 2016-211, Laws of Fla.

⁸ Section 553.74, F.S.

⁹ Florida Building Code, 2016 Supplement to the 5th Edition (2014), available at http://www.floridabuilding.org/fbc/thecode/2017_Code_Development/Glitch_2016/2016_Supplement_to_the_5th_Edition_2014_FBC.htm (last visited March 16, 2017).

¹⁰ *Id.*

Section 2 requires the Florida Building Commission to adopt, by October 1, 2017, a provision authorizing the permanent installation of a nonremovable, hoistway door space guard to comply with section R321.4.1(c)2-5 of the 5th edition (2014) of the Florida Building Code (Residential). The provision must require the hoistway door space guard to withstand a force of 75 pounds applied horizontally using a 4 inch-diameter sphere at any location within the folds on the car door without permanent deformation. The Florida Building Commission must also adopt s. 399.031, F.S., relating to clearance requirements between elevator doors for elevators inside a private residence, into the Florida Building Code.

Section 3 provides an effective date of July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Homeowners may incur indeterminate costs of complying with the new provisions when installing new residential elevators.

C. Government Sector Impact:

Residential elevators are not regulated by DBPR, so there is no fiscal impact to the state.¹¹ Local governments will enforce the provisions of the bill while conducting building inspections, so no fiscal impact is anticipated on local governments.

VI. Technical Deficiencies:

None.

¹¹ Section 399.02(3)(u), F.S.

VII. Related Issues:

Section 399.02(3)(u), F.S., indicates that residential elevators are not covered by the chapter, but residential elevators are regulated in s. 399.031, F.S.

It is not clear if the bill requires the Florida Building Commission to remove its prior adoption of the requirement that the underside of the platform of an elevator car be equipped with a sensor device from the Code. Currently, section R321.4 of the 5th edition of the Florida Building Code (Residential) requires the underside of the platform of a residential elevator car be equipped with such a device.

In its analysis, the DBPR noted that the bill uses the phrase “owner or the owner’s agent” instead of “authorized personnel.”¹² According to DBPR, the use of the term “owner or owner’s agent” may lead a court to determine that Florida licensed elevator personnel are not required to reset an elevator in s. 399.031, F.S.¹³

VIII. Statutes Affected:

This bill substantially amends section 339.031 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 Rules Committee on April 6, 2017:

- Removes one of the triggers that causes the elevator to cut off power to the motor and brake and prevents the elevator car from restarting until certain precautions are taken.

- B. **Amendments:**

None.

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

¹² Department of Business and Professional Regulation, Legislative Bill Analysis for SB 1634, p. 5 (analyzed March 15, 2017).

¹³ *Id.*



236060

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/06/2017	.	
	.	
	.	
	.	

The Committee on Rules (Steube) recommended the following:

Senate Amendment

Delete lines 31 - 33
and insert:
locking device, whether electrical or mechanical. If the closed
and locked contacts of the landing locks are open while the car
is not in the unlocking zone for

By Senator Steube

23-01117A-17

20171634__

1 A bill to be entitled
 2 An act relating to residential elevators; amending s.
 3 399.031, F.S.; requiring that an elevator controller
 4 be capable of monitoring the closed and locked
 5 contacts of the hoistway door locking device;
 6 requiring that the elevator controller be capable of
 7 interrupting the power for the motor and brake for a
 8 hoistway door locking device under certain
 9 circumstances; prohibiting an elevator car from being
 10 restarted until certain conditions are met; requiring
 11 a visual indicator to be visible at all landings under
 12 certain circumstances; deleting a requirement that the
 13 underside of the platform of an elevator car be
 14 equipped with a specified device; deleting
 15 requirements for such devices; deleting a requirement
 16 that manual reset of an elevator resume before
 17 downward motion is allowed; requiring the Florida
 18 Building Commission to adopt certain provisions
 19 relating to residential elevators into the Florida
 20 Building Code by a specified date; providing an
 21 effective date.
 22
 23 Be It Enacted by the Legislature of the State of Florida:
 24
 25 Section 1. Subsection (3) of section 399.031, Florida
 26 Statutes, is amended to read:
 27 399.031 Clearance requirements between elevator doors for
 28 elevators inside a private residence.-
 29 (3) During normal operation, the elevator controller must

Page 1 of 3

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

23-01117A-17

20171634__

30 monitor the closed and locked contacts of the hoistway door
 31 locking device, whether electrical or mechanical. If either the
 32 closed and locked contacts of the landing locks or the car gate
 33 contacts are open while the car is not in the unlocking zone for
 34 the hoistway door locking device, the elevator controller must
 35 interrupt power to the motor and brake and must not allow the
 36 elevator car to restart until the owner or the owner's agent,
 37 with a master elevator key, has checked for obstructions above
 38 and below the elevator car, returned the hoistway door locking
 39 device contacts to the normal operating position, and manually
 40 reset the elevator controller with the master elevator key.
 41 Additionally, a visual indicator must be visible at all landings
 42 until the hoistway door locking device has been returned to the
 43 normal operating position and the elevator controller has been
 44 manually reset The underside of the platform of an elevator car
 45 shall be equipped with a device that, if the platform of the
 46 elevator car is obstructed anywhere on its underside in its
 47 downward travel, interrupts the electric power to the driving
 48 machine motor and brake, if provided, and stops the elevator
 49 car's downward motion within 2 inches. The stroke of the device
 50 may not be less than the stopping distance of the platform of
 51 the elevator car. The force required to operate the device may
 52 not exceed 15 pounds. Downward motion shall be permitted to
 53 resume only after the elevator has been manually reset.
 54 Section 2. The Florida Building Commission shall, by
 55 October 1, 2017, adopt into the Florida Building Code pursuant
 56 to s. 553.73(8), Florida Statutes:
 57 (1) A provision authorizing the permanent installation of a
 58 nonremovable, hoistway door space guard in order to comply with

Page 2 of 3

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

23-01117A-17

20171634__

59 section R321.4.1(c)2-5 of the Florida Building Code, 5th Edition
60 (2014) Residential. The door space guard must be designed and
61 installed to withstand a force of 75 pounds applied horizontally
62 using a 4-inch-diameter sphere at any location within the folds
63 on the car door without permanent deformation.

64 (2) Section 399.031, Florida Statutes, relating to
65 clearance requirements between elevator doors for elevators
66 inside a private residence.

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

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

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR GREG STEUBE

23rd District

March 22, 2017

The Honorable Lizbeth Benacquisto
Florida Senate
400 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Senator Benacquisto,

I am writing this letter because my bill, SB 1634 Residential Elevators, has been referred to the Senate Rules Committee. This bill passed the Senate Community Affairs committee on March 22. 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,

A handwritten signature in dark ink, appearing to be "W. Gregory Steube".

W. Gregory Steube, District 23

REPLY TO:

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

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/6/17

Meeting Date

1634

Bill Number (if applicable)

Topic Residential Elevators

Amendment Barcode (if applicable)

Name Kari Hebrank

Job Title _____

Address 113 E college Ave.
Street

Phone 850-514-5183

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 Florida Home Builders Association

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/6/2017
Meeting Date

1634
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Brian Pitts

Job Title Trustee

Address 1119 Newton Ave S
Street

Phone 727/897-9291

St Petersburg FL 33705
City State Zip

Email justice2jesus@yahoo.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Justice-2-Jesus

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/CS/SB 812

INTRODUCER: Rules Committee; Banking and Insurance Committee; and Senators Perry and Gibson

SUBJECT: Insurance Policy Transfers

DATE: April 7, 2017

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Billmeier	Knudson	BI	Fav/CS
2. Little	McKay	CM	Favorable
3. Billmeier	Phelps	RC	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 812 allows an insurer to transfer a personal lines residential or a commercial residential policy to another authorized insurer under certain circumstances. Under current law, an insurer is not authorized to transfer a policy providing residential property insurance coverage, unless the policy falls within the exception for specific policies relating to farm coverage. Instead, these insurers are required to cancel, nonrenew, or terminate the policy.

The bill authorizes an insurer to transfer a policy providing personal lines residential or commercial residential property insurance coverage to an authorized insurer owned by the same holding company or a member in the same group as the transferring insurer, if the following conditions are met:

- The insurer being transferred the policy is admitted to do business in Florida and other states and is writing residential property insurance in multiple states;
- The policy is not being converted to a surplus lines policy;
- The transfer results in substantially similar coverage;
- The insurer being transferred the policy provides the policyholder with at least 60 days advance notice of the change in policy terms, the policy transfer, the renewal premium, and the new insurer's financial rating;
- The policyholder of the policy being transferred is selected on a nondiscriminatory basis;
- The Office of Insurance Regulation determines the insurer being transferred the policy has the same or better financial strength as the transferring insurer; and
- The Office of Insurance Regulation approves the transfer.

II. Present Situation:

Section 627.4025, F.S., provides that residential coverage includes both personal lines residential coverage¹ and commercial lines residential coverage.²

Notice of Cancellation, Nonrenewal, or Renewal of Insurance Policies

The requirements for an insurer to provide notice of cancellation, nonrenewal, or renewal premium are set forth in s. 627.4133, F.S. The specific notice depends on the type of insurance provided and the particular circumstances of the subject policy.³

Insurers writing personal lines residential or commercial lines residential property insurance policies are generally subject to the following requirements:

- An insurer must give written notice of cancellation, nonrenewal, or termination at least 120 days prior to the effective date of the cancellation, nonrenewal, or termination and the notice is required to include the reason for nonrenewal, cancellation, or termination;⁴ and
- An insurer must give written notice of renewal premium at least 45 days prior to the renewal premium⁵ and the notice of renewal premium must specify certain information, including the dollar amount of any premium increase that is due to an approved rate increase and the total dollar amount that is due to coverage changes.⁶

Notice of Change in Policy Terms

Section 627.43141, F.S., requires an insurer to provide the policyholder and the policyholder's insurance agent with notification, entitled "Notice of Change in Policy Terms," when a renewal policy contains a change in policy terms.⁷ The insurer may enclose the notice of change of policy with the written notice of renewal premium required under ss. 627.4133 and 627.728, F.S.,⁸ or send the notification separately within the notice of nonrenewal timeframe for that line of insurance, as required under the Florida Insurance Code. The changes in policy terms are considered accepted by the policyholder when the insurer receives the premium payment for the renewal policy.⁹

¹ Personal lines residential coverage consists of the type of coverage provided by homeowner, mobile home owner, dwelling, tenant condominium unit owner, and cooperative unit owner. See s. 627.4025(1), F.S.

² Commercial lines residential coverage consists of the type of coverage provided by condominium association, cooperative association, apartment building, and similar policies, including those that cover the common elements of a homeowners association. See s. 627.4025(1), F.S.

³ An insurer writing most property and casualty policies are required to provide the policyholder with at least 45-day advance notification of cancellation or nonrenewal. See s. 627.4133(2), F.S.

⁴ Section 627.4133(2)(b), F.S.

⁵ Section 627.4133(2)(a), F.S.

⁶ Section 627.4133(7), F.S.

⁷ A change in policy terms refers to any modification, addition, or deletion of any term, coverage, duty, or condition from the previous policy.

⁸ Section 627.728, F.S., relates to cancellations and nonrenewal of motor vehicle insurance policies.

⁹ Section 627.43141, F.S.

Transfer of Insurance Policies

Upon the expiration of a commercial lines policy term, insurers writing commercial lines insurance policies may transfer a commercial lines policy to another Florida licensed insurance company if:

- The insurer being transferred the policy is owned by the same holding company¹⁰ as the transferring insurer; or
- The insurer being transferred the policy is a member of the same insurance group as the transferring insurer.

The transfer of a commercial lines policy is considered a renewal of the policy, rather than a cancellation, nonrenewal, or termination. In order to transfer a policy, the transferring insurer must provide the policyholder with a written notice of the intent to transfer at least 45 days prior to the effective date of the transfer. The notice of intent to transfer may be provided with the notice of renewal premium and is required to include the financial rating of the insurer being transferred the policy.¹¹

Under current law, insurers are not authorized to transfer policies providing residential property insurance coverage, unless the policy falls within the farm coverage exception.¹² Instead, the insurer is required to cancel, nonrenew, or terminate the policy in accordance with the notice requirements set forth in s. 627.4133, F.S.

III. Effect of Proposed Changes:

The bill allows an insurer to transfer a policy providing personal lines residential or commercial residential property insurance coverage to an authorized insurer owned by the same holding company or a member in the same group as the transferring insurer, if the following conditions are met:

- The insurer being transferred the policy must:
 - be admitted to do business in Florida and other states;
 - be writing residential property insurance in multiple states;
 - not convert the policy to a surplus lines policy; and
 - be determined by the Office of Insurance Regulation (OIR) to have the same or better financial strength as the transferring insurer;
- The transfer must result in substantially similar coverage;
- The insurer being transferred the policy provides a notice of change in policy terms and additional information;
- The policyholder of the policy being transferred must have been selected on a nondiscriminatory basis; and
- The transfer must be approved by the OIR.

¹⁰ A holding company is a company that holds a controlling share of stock in one or more other companies. Some Florida insurance companies are owned by holding companies and some holding companies own more than one insurance company.

¹¹ Section 627.4133(8), F.S.

¹² The exception allows farmowners insurance and commercial general liability policies providing farm coverage or commercial property policies providing farm coverage to be transferred as commercial lines policies. See s. 627.4133(8), F.S.

The bill requires an insurer being transferred a personal lines residential or commercial residential property insurance policy to provide the policyholder with a notice of change in policy terms at least 60 days before the effective date of the transfer. The notice of change in policy terms is required to be in compliance with s. 627.43141, F.S., and must also provide the policyholder with notification of the policy transfer, the financial rating of the insurer being transferred the policy, and the notice of renewal premium.

The bill explicitly provides that the notice and information requirements in the bill, imposed on an insurer being transferred the policy for personal lines residential or commercial residential property insurance coverage, may replace any other notice required by s. 627.4133(8), F.S. The only other notice requirements within the subsection require the transferring insurer to provide notification of intent to transfer at least 45 days before the effective date of the transfer. Therefore, it appears as though the bill relieves the insurer opting to transfer a policy for personal lines residential or commercial residential property insurance coverage from having to provide notice of intent to transfer. Instead, the bill requires the new insurer to provide the policyholder notification at least 60 days prior to the effective date of the transfer.

The bill streamlines the notification process for the transfer of a policy providing personal lines residential or commercial residential property insurance coverage. By requiring only the insurer being transferred the policy to provide notification of the policy transfer, renewal premium, and the financial rating with the notice of change in policy terms, the bill ensures the policyholder will receive all of the information relating to the policy transfer at one time.

The bill takes effect July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Allowing policies to be transferred between authorized insurers, rather than requiring the policies to be nonrenewed, cancelled, or terminated may allow insurers to more easily manage their book of business.

C. Government Sector Impact:

The Office of Insurance Regulation does not anticipate a fiscal impact.¹³

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 627.4133 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 Rules on April 6, 2017:**

The CS provides that an insurer to which a policy is being transferred must be writing business in multiple states.

CS by Banking and Insurance on March 14, 2017:

The CS provides that a transferred policy cannot be converted to a surplus lines policy and that the policyholder of a policy being transferred must be selected on a nondiscriminatory basis.

The CS provides that the insurer to which the policy is being transferred must provide a notice of change in policy terms to the policyholder in compliance with s. 627.43141, F.S. The notice must also include notice of the policy transfer and the insurer's financial rating. The notice must be provided with the notice of renewal premium. The notice and information provided must be provided to the insured at least 60 days before the effective date of the transfer.

B. Amendments:

None.

¹³ Office of Insurance Regulation, *Analysis of SB 812* (March 6, 2017).

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



720260

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/06/2017	.	
	.	
	.	
	.	

The Committee on Rules (Perry) recommended the following:

Senate Amendment

Delete line 33
and insert:
writing residential property insurance in multiple states, is
not

By the Committee on Banking and Insurance; and Senator Perry

597-02422-17

2017812c1

A bill to be entitled

An act relating to insurance policy transfers; amending s. 627.4133, F.S.; authorizing an insurer to transfer a personal lines residential or commercial residential property insurance policy to another authorized insurer upon expiration of the policy term if specified conditions are met; providing an effective date.

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

Section 1. Subsection (8) of section 627.4133, Florida Statutes, is amended to read:

627.4133 Notice of cancellation, nonrenewal, or renewal premium.—

(8) Upon expiration of the policy term, an insurer may transfer a personal lines residential, commercial residential, or commercial lines policy to another authorized insurer that is a member of the same group or owned by the same holding company as the transferring insurer. The transfer constitutes a renewal of the policy and may not be treated as a cancellation or a nonrenewal of the policy. The insurer must provide notice of its intent to transfer the policy at least 45 days before the effective date of the transfer along with the financial rating of the authorized insurer to which the policy is being transferred. Such notice may be provided in the notice of renewal premium. This subsection does not apply to a policy providing personal lines residential or commercial residential property insurance coverage, except for farmowners insurance,

597-02422-17

2017812c1

unless:

(a) The authorized insurer to which the policy is being transferred is admitted in this state and other states and writing residential property insurance in such states, is not converting the policy to a surplus lines policy, and has been determined by the office to have the same or better financial strength than the transferring insurer;

(b) The transfer results in substantially similar coverage;

(c) The authorized insurer to which the policy is being transferred provides a notice of change in policy terms to the policyholder in compliance with s. 627.43141, which must also include notice of the policy transfer and the authorized insurer's financial rating. Such notice must be provided with the notice of renewal premium. The notice and information provided under this paragraph must be provided to the insured at least 60 days before the effective date of the transfer and may replace any other notice required by this subsection;

(d) The policyholder of the policy being transferred has been selected on a nondiscriminatory basis; and

(e) The office has approved the transfer and commercial general liability policies providing farm coverage or commercial property policies providing farm coverage.

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/CS/SB 886

INTRODUCER: Governmental Oversight and Accountability Committee; Children, Families, and Elder Affairs Committee and Senator Powell

SUBJECT: Public Records/Substance Abuse Impaired Persons

DATE: April 6, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Crosier	Hendon	CF	Fav/CS
2.	Kim	Ferrin	GO	Fav/CS
3.	Crosier	Phelps	RC	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 886 creates a new exemption from the public records inspection and access requirement of Art. I, s. 24(a) of the State Constitution and s. 119.07(1), F.S., for petitions for involuntary assessment and stabilization of a substance abuse impaired person filed pursuant to s. 397.6815, F.S. The bill provides for a retroactive application of the public records exemption.

The bill requires a two-thirds vote of both chambers for passage.

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

II. Present Situation:

Public Records Law

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ This applies to the official business of any public body, officer or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.²

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.³ Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.⁴ The Public Records Act states that

it is the policy of this state that all state, county and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.⁵

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type.”⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

The Legislature may create an exemption to public records requirements.⁹ An exemption must pass by a two-thirds vote of the House and the Senate.¹⁰ In addition, an exemption must explicitly lay out the public necessity justifying the exemption, and the exemption must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹ A statutory exemption which does not meet these criteria may be unconstitutional and may not be judicially saved.¹²

When creating a public records exemption, the Legislature may provide that a record is “confidential and exempt” or “exempt.”¹³ Records designated as “confidential and exempt” may be released by the records custodian only under the circumstances defined by the Legislature.

³ The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature’s records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislatures are primarily located in s. 11.0431(2)-(3), F.S.

⁴ Public records laws are found throughout the Florida Statutes.

⁵ Section 119.01(1), F.S.

⁶ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Section 119.011(2), F.S., defines “agency” to mean as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁸ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ *Id.*

¹¹ *Id.*

¹² *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). See also *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004).

¹³ If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

Records designated as “exempt” are not required to be made available for public inspection, but may be released at the discretion of the records custodian under certain circumstances.¹⁴

Open Government Sunset Review Act

The Open Government Sunset Review Act (referred to hereafter as the “OGSR”) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹⁵ The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.¹⁶

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.¹⁷ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;¹⁸
- Releasing sensitive personal information would be defamatory or would jeopardize an individual’s safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;¹⁹ or
- It protects trade or business secrets.²⁰

The OGSR also requires specified questions to be considered during the review process.²¹ In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.²² If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote

¹⁴ *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991).

¹⁵ Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to s. 119.15(2), F.S.

¹⁶ Section 119.15(3), F.S.

¹⁷ Section 119.15(6)(b), F.S.

¹⁸ Section 119.15(6)(b)1., F.S.

¹⁹ Section 119.15(6)(b)2., F.S.

²⁰ Section 119.15(6)(b)3., F.S.

²¹ Section 119.15(6)(a), F.S. The specified questions are:

1. What specific records or meetings are affected by the exemption?
2. Whom does the exemption uniquely affect, as opposed to the general public?
3. What is the identifiable public purpose or goal of the exemption?
4. Can the information contained in the records or discussed in the meeting be readily obtained by alternative means?
If so, how?
5. Is the record or meeting protected by another exemption?
6. Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

²² FLA. CONST. art. I, s. 24(c).

for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.²³

Marchman Act

Section 397.301, F.S., creates the Hal. S. Marchman Alcohol and Other Drug Services Act (the “Marchman Act”). This act was created by the Legislature to provide assistance to substance abuse impaired persons through health and rehabilitative services.

A person’s spouse or guardian, any relative, a private practitioner, the director of a licensed service provider, or an adult who has personal knowledge of the person’s substance abuse impairment may file a petition for involuntary assessment and stabilization of an individual.²⁴ The petition for involuntary assessment and stabilization has several elements, and must include facts to support the need for involuntary assessment and stabilization, including the reason for the applicant’s belief that:

- The respondent is substance abuse impaired; and
- The respondent has lost the power of self-control with respect to substance abuse; and either that:
- The respondent has inflicted or is likely to inflict physical harm on himself or herself or others unless admitted; or
- The respondent's refusal to voluntarily receive care is based on judgment so impaired by reason of substance abuse that the respondent is incapable of appreciating his or her need for care and of making a rational decision regarding that need for care.²⁵

Once the petition is filed with the Clerk of Court, the court must schedule a hearing to take place within 10 days, or can issue an order immediately.²⁶ After hearing, the court determines whether the respondent meets the criteria for involuntary assessment and stabilization and must immediately enter an order that either dismisses the petition or authorizes the involuntary assessment and stabilization of the respondent. An order authorizing involuntary assessment and stabilization must include the court’s finding on the availability and appropriateness of the alternatives and may order that a specific service provider perform the involuntary assessment and stabilization.²⁷

If the court determines the respondent meets the criteria, it may order him or her to be admitted for a period of five days²⁸ to a hospital, licensed detoxification facility, or addictions receiving facility, for involuntary assessment and stabilization.²⁹ During that time, an assessment is completed on the individual.³⁰ After the assessment, the service provider may release the

²³ Section 119.15(7), F.S.

²⁴ Section 397.6811, F.S.

²⁵ Section 397.6814, F.S.

²⁶ Section 397.6815, F.S.

²⁷ Section 397.6818, F.S.

²⁸ Section 397.6821, F.S.

²⁹ Section 397.6811, F.S.

³⁰ Section 397.6819, F.S.

respondent, the respondent may voluntarily stay at the facility or the court may order the service provider to retain custody of the respondent.³¹

III. Effect of Proposed Changes:

Section 1 creates s. 397.6760, F.S., to provide that all petitions for involuntary assessment and stabilization, court orders, and related records filed with or by a court under Part V of Section 397, F.S., are confidential and exempt from s. 119.071(1), F.S., and s. 24(a), Art. I of the State Constitution. The pleadings and other documents may be disclosed by the clerk of court, upon request, to certain persons or agencies, such as the petitioner, the respondent and their legal representatives, as well as the Department of Corrections. The bill provides that records made confidential and exempt from public disclosure can be submitted by the clerk of the court to the Florida Department of Law Enforcement as required by s. 790.065, F.S.³²

This public records exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill provides for retroactive application of the public records exemption.

Section 2 provides a statement of public necessary as required by the State Constitution.³³ The public necessity statement provides that making petitions and court records filed under the Marchman Act confidential and exempt from s. 119.07(1), F.S. and s. 24(a), Art. I of the State Constitution protects a person's personal health information and sensitive personal information which, if released, could cause unwarranted damage to the person's reputation. Additionally, the knowledge that such information could be disclosed could have a chilling effect on the willingness of individuals to seek treatment.

Section 3 provides an effective date of July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Voting Requirement

Article I, Section 24(c) of the Florida Constitution requires a two-thirds vote of each chamber for a public records exemptions to pass.

³¹ Section 397.6822, F.S.

³² Section 790.065, F.S., concerns the sale and delivery of firearms. Clerks of the court are required to transfer the records of certain impaired people to FDLE.

³³ FLA. CONST. art. I, s. 24(c).

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 state purpose of the law. The public necessity for the bill is to protect sensitive health information of those who are involuntarily examined and to protect their reputations and reputations of their families. The media has published information from Marchman Act files and thus made public intensely private information. The bill exempts court records related to an involuntary assessments and appears to be no broader than necessary to accomplish the public necessity for this public records exemption.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

None

C. Government Sector Impact:

There is an indeterminate impact on circuit courts. Currently, circuit courts maintain the confidentiality of clinical records within Marchman Act cases. In this bill, petitions for involuntary assessment and stabilization will also be confidential. Circuit courts may see an indeterminate increase in costs to keep additional records confidential.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates s. 397.6760 of the Florida Statutes.

IX. Additional Information:

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

CS/CS by Governmental Oversight and Accountability on March 22, 2017:

CS/CS/SB 886 does the following:

- Removes redundant language.
- Adds a reference to s. 24(a) Art. I of the Florida Constitution that was inadvertently omitted.
- Adds the Department of Children and Families to the list of entities which may receive Marchman Act court documents upon request.

CS by Children, Families, and Elder Affairs on March 13, 2017:

CS/SB 886 creates s. 397.6760, F.S., to provide an exemption from public records requirements for petitions, court orders, and related records for involuntary assessment and stabilization under Part V of Ch. 397, F.S. The amendment identifies the persons and agencies that may receive the pleadings and other documents made confidential and exempt. The exemption from public records request will stand repealed on October 2, 2022, pursuant to the Open Government Sunset Review Act unless saved from repeal through reenactment by the Legislature.

- B. **Amendments:**

None.

By the Committees on Governmental Oversight and Accountability;
and Children, Families, and Elder Affairs; and Senator Powell

585-02712-17

2017886c2

1 A bill to be entitled
2 An act relating to public records; creating s.
3 397.6760, F.S.; providing an exemption from public
4 records requirements for petitions for involuntary
5 assessment and stabilization, court orders, related
6 records, and personal identifying information
7 regarding substance abuse impaired persons; providing
8 exceptions authorizing the release of such petitions,
9 orders, records, and identifying information to
10 certain persons and entities; providing applicability;
11 prohibiting a clerk of court from publishing personal
12 identifying information on a court docket or in a
13 publicly accessible file; providing for retroactive
14 application; providing for future legislative review
15 and repeal of the exemption; providing a statement of
16 public necessity; providing an effective date.
17
18 Be It Enacted by the Legislature of the State of Florida:
19
20 Section 1. Section 397.6760, Florida Statutes, is created
21 to read:
22 397.6760 Court records; confidentiality.-
23 (1) All petitions for involuntary assessment and
24 stabilization, court orders, and related records that are filed
25 with or by a court under this part are confidential and exempt
26 from s. 119.071(1) and s. 24(a), Art. I of the State
27 Constitution. Pleadings and other documents made confidential
28 and exempt by this section may be disclosed by the clerk of the
29 court, upon request, to any of the following:

Page 1 of 4

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

585-02712-17

2017886c2

30 (a) The petitioner.
31 (b) The petitioner's attorney.
32 (c) The respondent.
33 (d) The respondent's attorney.
34 (e) The respondent's guardian or guardian advocate, if
35 applicable.
36 (f) In the case of a minor respondent, the respondent's
37 parent, guardian, legal custodian, or guardian advocate.
38 (g) The respondent's treating health care practitioner.
39 (h) The respondent's health care surrogate or proxy.
40 (i) The Department of Children and Families, without
41 charge.
42 (j) The Department of Corrections, without charge, if the
43 respondent is committed or is to be returned to the custody of
44 the Department of Corrections from the Department of Children
45 and Families.
46 (k) A person or entity authorized to view records upon a
47 court order for good cause. In determining if there is good
48 cause for the disclosure of records, the court must weigh the
49 person or entity's need for the information against potential
50 harm to the respondent from the disclosure.
51 (2) This section does not preclude the clerk of the court
52 from submitting the information required by s. 790.065 to the
53 Department of Law Enforcement.
54 (3) The clerk of the court may not publish personal
55 identifying information on a court docket or in a publicly
56 accessible file.
57 (4) A person or entity receiving information pursuant to
58 this section shall maintain that information as confidential and

Page 2 of 4

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

585-02712-17

2017886c2

59 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 60 Constitution.

61 (5) The exemption under this section applies to all
 62 documents filed with a court before, on, or after July 1, 2017.

63 (6) This section is subject to the Open Government Sunset
 64 Review Act in accordance with s. 119.15 and shall stand repealed
 65 on October 2, 2022, unless reviewed and saved from repeal
 66 through reenactment by the Legislature.

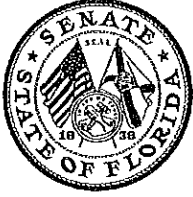
67 Section 2. The Legislature finds that it is a public
 68 necessity that petitions for involuntary assessment and
 69 stabilization and related court orders and records that are
 70 filed with or by a court under part V of chapter 397, Florida
 71 Statutes, and the personal identifying information of a
 72 substance abuse impaired person which is published on a court
 73 docket and maintained by the clerk of the court under part V of
 74 chapter 397, Florida Statutes, be made confidential and exempt
 75 from disclosure under s. 119.07(1), Florida Statutes, and s.
 76 24(a), Article I of the State Constitution. A person's health
 77 and sensitive, personal information regarding his or her actual
 78 or alleged substance abuse impairment are intensely private
 79 matters. The media have obtained, and published information
 80 from, such records without the affected person's consent. The
 81 content of such records or personal identifying information
 82 should not be made public merely because they are filed with or
 83 by a court or placed on a docket. Making such petitions, orders,
 84 records, and identifying information confidential and exempt
 85 from disclosure will protect such persons from the release of
 86 sensitive, personal information which could damage their and
 87 their families' reputations. The publication of personal

585-02712-17

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88 identifying information on a physical or virtual docket,
 89 regardless of whether any other record is published, defeats the
 90 purpose of protections otherwise provided. Further, the
 91 knowledge that such sensitive, personal information is subject
 92 to disclosure could have a chilling effect on a person's
 93 willingness to seek out and comply with substance abuse
 94 treatment services.

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



The Florida Senate

Committee Agenda Request

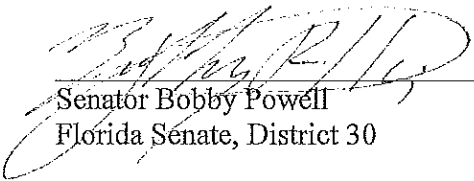
To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: March 22, 2017

I respectfully request that **Senate Bill #886**, relating to Public Records/ Substance Abuse Impaired Persons, be placed on the:

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



Senator Bobby Powell
Florida Senate, District 30

THE FLORIDA SENATE
APPEARANCE RECORD

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

41612017

Meeting Date

Topic _____

Bill Number 886
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705
City State Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☐ Against ☒ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: SB 1024

INTRODUCER: Senator Stewart

SUBJECT: Public Records/Homeless Management Information System

DATE: April 6, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hendon	Hendon	CF	Favorable
2.	Kim	Ferrin	GO	Favorable
3.	Hendon	Phelps	RC	Favorable

I. Summary:

SB 1024 creates an exemption from the public records requirements for individual identifying information on homeless persons. Such data is collected pursuant to federal and state law and if made public, could lead to discrimination, injury, and pose a barrier to homeless persons receiving services. The bill provides the exemption is subject to the Open Government Sunset Review Act and unless reviewed and saved from repeal through reenactment by the Legislature shall be repealed on October 2, 2022.

This bill requires a two-thirds vote from each chamber for passage because the bill creates a public records exemption.

This bill has no fiscal impact on the state and will become effective upon becoming law.

II. Present Situation:

Homelessness

Although recent progress has been made in reducing the number of homeless individuals and families, ending homelessness remains a priority in communities across the country. According to a Point-in-Time Count from January 2015, 564,708 people were homeless on a given night in the United States.¹ This number includes both homeless individuals and homeless families. Less than 20% of the homeless population are chronically homeless, defined as someone who has experienced homelessness for a year or longer, or who has experienced at least four episodes of homelessness in the last three years, and has a disability.² Other sub-populations that are a key focus include veterans, youth aging out of foster care, and LGBTQ youth. At the federal level,

¹ Department of Housing and Urban Development. <https://www.hudexchange.info/programs/policy-areas/#homelessness>. Last visited March 8, 2017.

² *Id.*

the Department of Housing and Urban Development (HUD) oversees efforts to reduce and eliminate homelessness.

In Florida, responsibility for addressing homelessness is shared between the Department of Children and Families (DCF) and the Department of Economic Opportunity (DEO). The State Office on Homelessness is housed within DCF to coordinate efforts relating to homelessness.³ DCF supports the Council on Homelessness (council) that oversees services and funding the homeless.⁴ The council develops policy and advises the State Office on Homelessness. The council members include: the secretary of DCF, the executive director of DEO, the State Surgeon General, the executive director of Veterans' Affairs, the secretary of the Department of Corrections, the secretary of the Agency for Health Care Administration, the commissioner of Education, the director of CareerSource Florida, Inc., one representative of the Florida Association of Counties, one representative of the Florida League of Cities, one representative of the Florida Supportive Housing Coalition, the executive director of the Florida Housing Finance Corporation, one representative of the Florida Coalition for the Homeless, and four members appointed by the Governor.⁵ The council coordinates among state, local, and private agencies and providers to produce a statewide inventory for the state's system of homeless programs which incorporates regionally developed plans.

DEO establishes local coalitions to plan, network, coordinate, and monitor the delivery of services to the homeless.⁶ The local coalitions develop the local homeless continuum of care plan⁷, for the area of the county or region served by the local homeless coalition. Unless otherwise specified in the plan, the local coalition serves as the lead agency for the local homeless assistance continuum of care. The local coalitions receive funding from a grant program to provide services to the homeless.⁸ The amount of these grants, referred to as "challenge" grants, totaled \$5 million statewide for fiscal year 2016-2017.⁹ In addition, the state provided \$3.3 million for homeless housing assistance.¹⁰ These funds were appropriated to DCF to distribute to local homeless coalitions throughout the state.

Local communities must establish a homeless assistance continuum of care.¹¹ This continuum is a framework for a comprehensive and seamless array of emergency, transitional, and permanent housing, and services to address the various needs of homeless persons and persons at risk for homelessness. Each local continuum of care plan must designate a lead agency that will serve as the point of contact and accountability to the State Office on Homelessness. The lead agency may be a local homeless coalition, municipal or county government, or other public agency or private, not-for-profit corporation.

³ Section 420.622, F.S.

⁴ *Id.*

⁵ *Id.*

⁶ Section 420.623, F.S.

⁷ Section 420.624, F.S., provides that a local homeless assistance continuum of care is a framework for a comprehensive and seamless array of emergency, transitional, and permanent housing, and services to address the various needs of homeless persons and persons at risk for homelessness.

⁸ Section 420.625, F.S.

⁹ Specific Appropriation 361, General Appropriations Act, Chapter 2016-66, Laws of Florida.

¹⁰ Specific Appropriation 363, General Appropriations Act, Chapter 2016-66, Laws of Florida.

¹¹ Section 420.624, F.S.

Data on Homelessness

In Florida, the council collects, maintains, and makes available information concerning persons who are homeless or at risk for homelessness, including demographics information, current services and resources available, the cost and availability of services and programs, and the met and unmet needs of this population. All entities that receive state funding must provide access to all data they maintain to the council. This data is provided to the council in summary form, with no individual identifying information. The State Office on Homelessness, in consultation with the council and lead agencies for a local homeless continuum of care, specifies the system and process of data collection. All lead agencies provide data for the purpose of analyzing trends and assessing impacts in the statewide homeless delivery system. Any statewide homelessness survey and database system must comply with all state and federal statutory and regulatory confidentiality requirements.

The U.S. Department of Housing and Urban Development (HUD) maintains Homeless Management Information Systems (HMIS) to better inform homeless policy and decision making at the federal, state, and local levels.¹² HUD collects national-level data on the extent and nature of homelessness over time. Specifically, a HMIS can be used to produce an unduplicated count of homeless persons, understand patterns of service use, and measure the effectiveness of homeless programs. Data on homeless persons is collected and maintained at the local level. HMIS implementations can encompass geographic areas ranging from a single county to an entire state.

The HEARTH Act, enacted into law on May 20, 2009, requires that all communities have an HMIS with the capacity to collect unduplicated counts of individuals and families experiencing homelessness.¹³ These data systems must collect the following data elements for the homeless:

- Name
- Social Security Number
- Date of Birth
- Race
- Ethnicity
- Gender
- Veteran Status
- Disabling Condition
- Residence Prior to Project Entry
- Project Entry Date
- Project Exit Date
- Destination
- Personal ID
- Household ID
- Relationship to Head of Household

¹² Department of Housing and Urban Development. <https://www.hudexchange.info/programs/hmis/>. Last visited March 8, 2017.

¹³ *Id.*

- Client Location Code
- Length of Time on Street, in an Emergency Shelter or Safe Haven

HUD is currently developing rules for basic privacy and security requirements for client-level data.¹⁴

Public Records Law

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹⁵ 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.¹⁶

In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.¹⁷ Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.¹⁸ The Public Records Act states that

it is the policy of this state that all state, county and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.¹⁹

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.²⁰ 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.”²¹ A violation of the Public Records Act may result in civil or criminal liability.²²

¹⁴ *Id.*

¹⁵ FLA. CONST., art. I, s. 24(a).

¹⁶ *Id.*

¹⁷ 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.

¹⁸ Public records laws are found throughout the Florida Statutes.

¹⁹ Section 119.01(1), F.S.

²⁰ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Section 119.011(2), F.S., defines “agency” to mean as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

²¹ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

²² Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

The Legislature may create an exemption to public records requirements.²³ An exemption must pass by a two-thirds vote of the House and the Senate.²⁴ 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.²⁵ A statutory exemption which does not meet these criteria may be unconstitutional and may not be judicially saved.²⁶

When creating a public records exemption, the Legislature may provide that a record is “confidential and exempt” or “exempt.”²⁷ 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.²⁸

Open Government Sunset Review Act

The Open Government Sunset Review Act (referred to hereafter as the “OGSR”) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.²⁹ The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.³⁰

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.³¹ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;³²
- Releasing sensitive personal information would be defamatory or would jeopardize an individual’s safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;³³ or
- It protects trade or business secrets.³⁴

²³ FLA. CONST., art. I, s. 24(c).

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). See also *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004).

²⁷ 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).

²⁸ *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991).

²⁹ Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to section 119.15(2), F.S.

³⁰ Section 119.15(3), F.S.

³¹ Section 119.15(6)(b), F.S.

³² Section 119.15(6)(b)1., F.S.

³³ Section 119.15(6)(b)2., F.S.

³⁴ Section 119.15(6)(b)3., F.S.

The OGSR also requires specified questions to be considered during the review process.³⁵ In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.³⁶ If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.³⁷

III. Effect of Proposed Changes:

The bill creates s. 420.6231, F.S., to create an exemption to the public records requirements for individual identifying information in homelessness surveys and databases. The bill defines “individual identifying information” as any information that directly or indirectly identifies a person. The bill would exempt information held before and after the effective date of the bill. The bill allows the release of aggregate information on homelessness. The bill states that the exemption is subject to the Open Government Sunset Review Act and unless reenacted by the Legislature, expires October 2, 2022.

The bill finds that it is a public necessity to exempt this information from the public records requirements because the release of such information could lead to discrimination, injury, and pose a barrier to homeless persons receiving services.

The bill shall take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Voting Requirement

Article I, Section 24(c) of the Florida Constitution requires a two-thirds vote of each

³⁵ Section 119.15(6)(a), F.S. The specified questions are:

1. What specific records or meetings are affected by the exemption?
2. Whom does the exemption uniquely affect, as opposed to the general public?
3. What is the identifiable public purpose or goal of the exemption?
4. Can the information contained in the records or discussed in the meeting be readily obtained by alternative means?
If so, how?
5. Is the record or meeting protected by another exemption?
6. Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

³⁶ FLA. CONST. art. I, s. 24(c).

³⁷ Section 119.15(7), F.S.

chamber for public records exemptions 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 state purpose of the law. The bill exempts certain identifying information of homeless persons. This bill appears to be no broader than necessary to accomplish the public necessity for this public records exemption.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Private agencies and organizations will have to ensure that identifying information on homeless persons is held in confidence.

C. Government Sector Impact:

Governmental agencies and organizations will have to ensure that identifying information on homeless persons is held in confidence.

VI. Technical Deficiencies:

The bill's effective date is July 1. Most public records exemptions have an effective date of October 1, which gives agencies time to learn and prepare for public records exemptions after the laws are published.³⁸

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 420.6231 of the Florida Statutes.

³⁸ *Manual for Drafting Legislation, Sixth Edition*, Office of Bill Drafting Service, The Florida Senate, p. 66.

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 Stewart

13-01266-17

20171024__

A bill to be entitled

An act relating to public records; creating s. 420.6231, F.S.; creating a public records exemption for individual identifying information of a person contained in a Point-in-Time Count and Survey or data in a Homeless Management Information System; defining the term "individual identifying information"; providing for retroactive application of the exemption; specifying that the exemption does not preclude the release of aggregate information; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing an effective date.

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

Section 1. Section 420.6231, Florida Statutes, is created to read:

420.6231 Individual identifying information in specified homelessness surveys and databases; public records exemption.—

(1) As used in this section, the term "individual identifying information" means information that directly or indirectly identifies a specific person, can be manipulated to identify a specific person, or can be linked with other available information to identify a specific person.

(2) Individual identifying information of a person contained in a Point-in-Time Count and Survey or data in a Homeless Management Information System collected pursuant to 42 U.S.C. chapter 119, subchapter IV, and related regulations

Page 1 of 3

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

13-01266-17

20171024__

provided in 24 C.F.R. part 91, is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption applies to individual identifying information held before, on, or after the effective date of this section.

(3) This section does not preclude the release of aggregate information in a Point-in-Time Count and Survey or data in a Homeless Management Information System that does not disclose individual identifying information of a person.

(4) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that individual identifying information of a person contained in a Point-in-Time Count and Survey or data in a Homeless Management Information System collected pursuant to 42 U.S.C. chapter 119, subchapter IV, and related regulations provided in 24 C.F.R. part 91, be made exempt from public records requirements. Pursuant to 42 U.S.C. s. 11363, the United States Secretary of Housing and Urban Development is required to instruct service providers that they are prohibited from disclosing individual identifying information about any client for purposes of the Homeless Management Information System, which includes information in a Point-in-Time Count and Survey. The public release of such sensitive information could lead to discrimination against or ridicule of such individuals and could make them reluctant to seek assistance for themselves or their family members. The public release of such information may put affected individuals at greater risk of injury as a significant

Page 2 of 3

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

13-01266-17

20171024__

59 proportion of such individuals are survivors of domestic
60 violence or suffer from mental illness or substance abuse.
61 Additionally, public access to such information may put affected
62 individuals at a heightened risk for fraud and identity theft.
63 The harm from disclosing such information outweighs any public
64 benefit that can be derived from widespread and unfettered
65 access to such information. This exemption is narrowly drawn so
66 that aggregate information may be disclosed but does not
67 authorize the disclosure of individual identifying information
68 of a person contained in a Point-in-Time Count and Survey or
69 data in a Homeless Management Information System collected
70 pursuant to 42 U.S.C. chapter 119, subchapter IV, and related
71 regulations provided in 24 C.F.R. part 91.

72 Section 3. This act shall take effect upon becoming a law.



The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: March 28, 2017

I respectfully request that **Senate Bill # 1024**, an act relating to public record exemptions and homelessness, be placed on the:

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

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

Senator Linda Stewart
Florida Senate, District 13

✓



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Appropriations Subcommittee on the Environment
and Natural Resources
Education
Environmental Preservation and Conservation
Governmental Oversight and Accountability

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR LINDA STEWART

13th District

March 28, 2017

Chair Benacquisto:

I am writing to request Senate Bill 1024, an act relating to public record exemptions and homelessness, be heard in the Committee on Rules. This bill would provide an exemption for individuals who provide personal information in surveys conducted by state and local governmental entities, continuum of care organizations, as well as the federal Department of Housing and Urban Development when allocating funds.

SB 1024 seeks to maximize the response rate from a population of Floridians that are particularly concerned with their privacy, having frequently suffered from mental illness, or undergone the trauma of domestic violence, or substance abuse. I believe that accurately collecting this data for funding purposes and ensuring that individual concerns about privacy are satisfied is one, very small thing we can do to help combat a problem that impacts every community in our state.

I look forward to working with you and members of your committee on this important issue.

Thank you for your kind consideration.

Sincerely Yours,

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

Linda Stewart
District 13

REPLY TO:

□ 1726 S. Bumby Avenue, Orlando, Florida 32806 (407) 893-2422 FAX: (888) 263-3680
□ 224 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5013

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

4 1 6 12017

Meeting Date

Topic _____

Bill Number 1028
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG

FLORIDA

33705

City

State

Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☐ Against ☒ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SB 1694

INTRODUCER: Rules Committee and Senator Torres

SUBJECT: Support for Parental Victims of Child Domestic Violence

DATE: April 6, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Jones	Hrdlicka	CJ	Favorable
2.	Crosier	Hendon	CF	Favorable
3.	Jones	Phelps	RC	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1694 requires the Department of Juvenile Justice, in collaboration with organizations that provide expertise, training, and advocacy in the areas of family and domestic violence, to develop materials detailing the resources and services available for parents and legal guardians who are victims of domestic violence. The materials must also include the resources available for a child who has committed acts of domestic violence or who has demonstrated behaviors that may escalate to domestic violence.

The bill specifies which resources and services must be included in the materials and that the Department of Juvenile Justice must post the materials on its website. The materials must also be available to certified domestic violence centers and other specified entities.

The bill requires the issues involved in child-to-parent domestic violence cases be included in the domestic violence portion of a law enforcement officer's basic skills course for his or her initial certification.

The bill may have a negative indeterminate fiscal impact on the Department of Juvenile Justice, and the Florida Department of Law Enforcement. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2017.

II. Present Situation:

Domestic Violence

Domestic violence affects thousands of individuals and families in Florida. In 2015, there were 107,666 domestic violence offenses reported to law enforcement.¹ Law enforcement officers who investigate alleged domestic violence incidents have to inform victims of the domestic violence centers where the victims can receive services.²

Section 741.28(2), F.S., defines domestic violence as any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member. A family or household member includes:

- Spouses;
- Former spouses;
- Persons related by blood or marriage;
- Persons who are presently residing together as if a family or who have resided together in the past as if a family in the same single family dwelling unit; and
- Persons who are parents of a child in common, regardless of whether they have been married.³

Certified Domestic Violence Centers

The Department of Children and Families (DCF) operates Florida's domestic violence program. The program is a clearinghouse that oversees state and federal funding for the prevention and intervention of domestic violence. Specifically, the program oversees the funding designated for Florida's certified domestic violence centers.⁴

Florida has 42 certified domestic violence centers that provide crisis intervention and support services to adult domestic violence victims. The centers provide services that include emergency shelters, safety planning, and counseling. Some centers also provide transportation, relocation assistance, and transitional housing.⁵ In Fiscal Year 2015-16 domestic violence shelters provided 16,362 individuals with emergency shelter; however, 5,205 requests for emergency shelter were denied due to lack of capacity and resources.⁶

¹ Florida Department of Law Enforcement, *Domestic Violence*, available at <http://www.fdle.state.fl.us/cms/FSAC/Crime-Trends/Domestic-Violence.aspx> (last visited March 19, 2017).

² Section 741.29(1), F.S.

³ The family or household members must be currently residing or have in the past resided together in the same single dwelling unit; this excludes persons who have a child in common. Section 741.28(3), F.S.

⁴ Florida Department of Child and Families, MyFamilies.com, Services, *Domestic Violence*, available at <http://www.myflfamilies.com/service-programs/domestic-violence> (last visited March 17, 2017).

⁵ *Id.*

⁶ Florida Coalition Against Domestic Violence, 2015-2016 Annual Report to the Florida Legislature, *Responding to Domestic Violence*, available at <https://www.fcadv.org/sites/default/files/2015-16%20Annual%20Report.pdf> (last visited March 17, 2017).

Florida Coalition Against Domestic Violence

The Florida Coalition Against Domestic Violence (FCADV) works closely with the DCF to administer Florida's activities related to the prevention of domestic violence.⁷ Specifically, the FCADV implements and evaluates the services provided by the domestic violence centers.⁸ The FCADV must annually report to the Legislature to identify which programs in the state assist victims of domestic violence.⁹ The FCADV also operates Florida's domestic violence hotline.¹⁰

Department of Juvenile Justice***Families in Need of Services***

When a child commits an act of domestic violence against a family member, the Department of Juvenile Justice (DJJ) gets involved. Specifically, s. 984.04, F.S., requires the DJJ to provide an array of services designed to preserve the unity of the family and address the family's specific needs.¹¹ Families in need of services are families that have a child:

- Who is running away;
- Who is persistently disobeying reasonable and lawful demands of the parent or legal custodian and is beyond the control of the parent or legal custodian; or
- Who is habitually truant from school or engaging in other serious behaviors that place the child at risk of future abuse, neglect, or abandonment or is at risk of entering the juvenile justice system.¹²

A family is not eligible to receive services if, at the time of the referral, there is an open investigation into an allegation of abuse, neglect, or abandonment or if the child is currently under supervision by the DJJ or the DCF due to an adjudication of dependency or delinquency.¹³

Children in Need of Services

The DJJ also provides services to children in need of services. A child in need of services is a child who:

- Does not have a pending investigation into an allegation or suspicion of abuse, neglect, or abandonment;
- Does not have a pending referral alleging that the child is delinquent; or
- Is not currently supervised by the DJJ or the DCF for an adjudication of dependency or delinquency.

⁷ Section 39.903(1), F.S.

⁸ Section 39.9035(1), F.S.

⁹ Section 39.904(3), F.S.

¹⁰ Florida Coalition Against Domestic Violence, *About FCADV*, available at <http://www.fcadv.org/about/about-fcadv> (last visited March 17, 2017).

¹¹ Section 984.04, F.S.

¹² Section 984.03(25), F.S.

¹³ *Id.*

A court must also find that the child has:

- Persistently run away from his or her parents or legal custodians despite reasonable efforts¹⁴ to remedy the conditions contributing to the behavior.
- Been habitually truant from school, while subject to compulsory school attendance, despite reasonable efforts to remedy the situation.¹⁵
- Persistently disobeyed the reasonable and lawful demands¹⁶ of his or her parents or legal custodians, and he or she is beyond control of his or her parents or legal custodians despite the efforts made by his or her parents or legal custodians and the appropriate agencies to remedy the conditions contributing to the behavior.

The Florida Network

The Florida Network of Youth and Family Services (network) provides the services for families and children in need of services for the DJJ.¹⁷ Specifically, the network provides crisis intervention for families and children through residential and counseling services.

One of the services the network provides is domestic violence respite. A domestic violence respite is a placement that is available for the care and custody for a youth charged with domestic violence.¹⁸ This is an alternative placement for the youth so he or she does not have to be placed in secure detention.¹⁹ A domestic violence respite is also available for a youth when a shelter bed for a family in need of services is unavailable.²⁰ The network has served 783 youth through the domestic violence respite program.²¹

Section 943.171, F.S., Basic Skills Training for Domestic Violence Cases

Section 943.171, F.S., requires that every basic skills course for a law enforcement officer to receive his or her initial certification must include 6 hours of training on handling domestic violence cases. Specifically, the domestic violence training has to include a training to recognize and determine the aggressor.²²

¹⁴ Reasonable efforts include voluntary participation by the child's parents or legal custodians and the child in family mediation, services, and treatment offered by the DJJ or the DCF. Section 984.03(9), F.S.

¹⁵ The child and the child's parents or legal custodians must have also voluntarily participated in family mediation, services, and treatment offered by the DJJ or the DCF. Section 984.03(9), F.S.

¹⁶ Reasonable efforts may include good faith participation in family or individual counseling. Section 984.03(9), F.S.

¹⁷ The Florida Network of Youth and Family Services, *About the Florida Network*, available at <https://www.floridanetwork.org/missionvalues.html> (last visited March 17, 2017).

¹⁸ Section 985.03(43), F.S.

¹⁹ Secure detention is a physically restricting facility for the temporary care of children who are pending adjudication, disposition, or placement. Section 985.03(45), F.S.

²⁰ Section 985.03(43), F.S.

²¹ The Florida Network of Youth and Family Services, *2015 Annual Report*, available at <https://www.floridanetwork.org/PDFs/2015AnnualReport.pdf> (last visited March 17, 2017).

²² Section 943.171, F.S.

III. Effect of Proposed Changes:

Domestic Violence

The bill requires the DJJ, in collaboration with organizations that provide expertise, training, and advocacy in the areas of family and domestic violence, to develop and maintain updated information and materials detailing the resources and services available to:

- Parents and legal custodians who are victims of domestic violence committed by children or fear that they will become victims; and
- Children who have committed acts of domestic violence or who demonstrate behaviors that may escalate into domestic violence.

The bill specifies that the materials and services must include, but are not limited to:

- The services available under ch. 984, F.S.;
- Domestic violence services available under ch. 39, F.S.; and
- Juvenile justice services available under ch. 985, F.S., including prevention, diversion, detention, and alternative placements.

The materials must also describe how to access the resources and services throughout the state.

The DJJ must post information and materials on the DJJ website and make the materials available for distribution to the public by providing it to:

- Certified domestic violence centers;
- Other organizations serving victims of domestic violence;
- The clerks of courts;
- Law enforcement agencies; and
- Other appropriate organizations.

Section 943.171, F.S., Basic Skills Training for Domestic Violence Cases

The bill requires the issues involved in child-to-parent domestic violence cases be included in the domestic violence portion of an officer's basic skills course for his or her initial certification.

The bill is effective July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill requires the DJJ to collaborate with organizations that provide expertise, training, and advocacy in the areas of family and domestic violence to develop and maintain materials specifying the resources and services available for certain victims of domestic violence. The costs of developing and making these materials available to the specified entities is unknown. It is likely that the bill will have a negative indeterminate fiscal impact on the DJJ.

The bill requires the issues involved in child-to-parent domestic violence cases be included in the domestic violence portion of an officer's basic skills course for his or her initial certification. The costs to include this new training are unknown. The bill will likely have a negative indeterminate fiscal impact on the Florida Department of Law Enforcement (the Criminal Justice Standards and Training Commission), which would have to update its basic skills course.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 984.071 and 943.171.

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 Rules on April 6, 2017:

The committee substitute changes the statute amended by the bill from s. 984.11, F.S., to s. 984.071, F.S. The committee substitute also directs the DJJ to collaborate with organizations relevant to the areas of family and domestic violence, instead of the FCADV.

B. Amendments:

None.

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



187070

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/06/2017	.	
	.	
	.	
	.	

The Committee on Rules (Torres) recommended the following:

Senate Amendment (with title amendment)

Delete lines 17 - 21
and insert:

Section 1. Section 984.071, Florida Statutes, is amended to
read:

984.071 Resources and information packet.—

(1) The Department of Juvenile Justice, in collaboration
with the Department of Children and Families and the Department
of Education, shall develop and publish an information packet
that explains the current process under this chapter for



187070

obtaining assistance for a child in need of services or a family in need of services and the community services and resources available to parents of troubled or runaway children. In preparing the information packet, the Department of Juvenile Justice shall work with school district superintendents, juvenile court judges, county sheriffs, and other local law enforcement officials in order to ensure that the information packet lists services and resources that are currently available within the county in which the packet is distributed. Each information packet shall be annually updated ~~and shall be available for distribution by January 1, 1998.~~ The school district shall distribute this information packet to parents of truant children and to other parents upon request or as deemed appropriate by the school district. In addition, the Department of Juvenile Justice shall distribute the information packet to state and local law enforcement agencies. Any law enforcement officer who has contact with the parent of a child who is locked out of the home or who runs away from home shall make the information available to the parent.

(2) The department, in collaboration with organizations that provide expertise, training, and advocacy in the areas of family and domestic violence, shall develop and maintain

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

And the title is amended as follows:

Delete lines 3 - 6

and insert:

child domestic violence; amending s. 984.071, F.S.;

deleting obsolete language; requiring the Department



187070

41 of Juvenile Justice, in collaboration with specified
42 organizations, to develop and maintain updated

By Senator Torres

15-01240B-17

20171694__

A bill to be entitled

An act relating to support for parental victims of child domestic violence; amending s. 984.11, F.S.; requiring the Department of Juvenile Justice and the Florida Coalition Against Domestic Violence to collaborate to develop and maintain updated information and materials regarding specified services and resources; requiring the department to make the information and materials available through specified means; amending s. 943.171, F.S.; requiring domestic violence training for law enforcement officers to include training concerning child-to-parent cases; providing an effective date.

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

Section 1. Subsection (5) is added to section 984.11, Florida Statutes, to read:

984.11 Services to families in need of services.—

(5) The department and the Florida Coalition Against Domestic Violence shall collaborate to develop and maintain updated information and materials describing resources and services available to parents and legal custodians who are victims of domestic violence committed by children or who fear that they will become victims of such acts and to children who have committed acts of domestic violence or who demonstrate behaviors that may escalate into domestic violence. Such resources and services shall include, but are not limited to, those available under this chapter, domestic violence services

Page 1 of 2

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

15-01240B-17

20171694__

available under chapter 39, and juvenile justice services available pursuant to chapter 985, including prevention, diversion, detention, and alternative placements. The materials shall describe how parents and legal custodians may access the resources and services in their local area. The department shall post this information on its website and make the materials available to certified domestic violence centers, other organizations serving victims of domestic violence, clerks of court, law enforcement agencies, and other appropriate organizations for distribution to the public.

Section 2. Subsection (1) of section 943.171, Florida Statutes, is amended to read:

943.171 Basic skills training in handling domestic violence cases.—

(1) The commission shall establish standards for instruction of law enforcement officers in the subject of domestic violence. Every basic skills course required in order for law enforcement officers to obtain initial certification shall, ~~after January 1, 1986,~~ include a minimum of 6 hours of training in handling domestic violence cases. Such training must include training in the recognition and determination of the primary aggressor in domestic violence cases and the issues involved in child-to-parent cases.

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

Page 2 of 2

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/6/2017

Meeting Date

1694

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name BRIAN PITTS

Job Title Trustee

Address 1119 Newton Ave S

Street

Phone 727/897-9291

St Petersburg

City

State

Zip

Email justice2jesus@yahoo.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Justice-2-Jesus

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/CS/SB 340

INTRODUCER: Judiciary Committee; Banking and Insurance Committee; and Senator Brandes and others

SUBJECT: Transportation Network Companies

DATE: April 6, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Billmeier	Knudson	BI	Fav/CS
2.	Brown	Cibula	JU	Fav/CS
3.	Billmeier	Phelps	RC	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 340 creates statewide requirements for transportation network companies (TNCs). TNCs use smartphone technology to connect individuals who want to ride with private drivers for a fee.

Preemption

This bill specifies that its provisions preempt any local ordinances or rules on TNCs, so that TNCs will be governed exclusively by state law. Therefore, local governments are prohibited from imposing taxes, licensing requirements, or other restrictions on TNCs.

Insurance Requirements

The bill provides minimum insurance requirements for TNCs and TNC drivers. Insurance may be purchased by the TNC, TNC driver, or a combination of the two.

When a TNC driver is logged onto the digital network but not engaged in a prearranged ride, the bill requires:

- Primary automobile liability coverage of at least \$50,000 for death and bodily injury per person, \$100,000 for death and bodily injury per incident, and \$25,000 for property damage;

- Personal injury protection (PIP) benefits that meet the minimum coverage amounts required under the Florida Motor Vehicle No-Fault Law; and
- Uninsured and underinsured vehicle coverage as required by law.

When a TNC driver is engaged in a prearranged ride the bill requires:

- PIP coverage of at least \$1 million for death, bodily injury, and property damage;
- PIP benefits that meet the minimum coverage amounts required of a limousine under Florida Motor Vehicle No-Fault Law; and
- Uninsured and underinsured vehicle coverage as required by law.

Limits on Insurance Coverage

The bill authorizes an automobile insurer to limit coverage provided to an owner or operator of a TNC vehicle to that afforded to the actual vehicle driven on a prearranged ride. Therefore, the coverage exclusion may not apply to other insurance policies that might otherwise provide coverage to the TNC driver, such as an umbrella policy or any stacking uninsured/underinsured motorist coverage on other vehicles in the TNC driver's household.

Background Checks on Drivers

The bill requires the TNC to conduct a local and national criminal background check on its drivers every 3 years, and a driving record check just once when the person applies as a TNC driver. Background checks may be conducted by the TNC or by a private third party. The bill prohibits the TNC from hiring a person as a TNC driver if he or she has been convicted of certain crimes or a certain number of moving violations. To ensure that the TNC has complied with the requirement of background checks, the bill requires the TNC to submit a procedures report prepared by an independent certified public accountant to the Department of Financial Services (DFS). If the DFS finds that the report indicates noncompliance, the DFS may impose fines on the TNC and seek injunctive relief.

Adoption of Policies by the TNC

The bill requires a TNC to implement a zero tolerance policy on the use of drugs and alcohol by its drivers, and to suspend a driver during the length of an investigation, if a rider registers a complaint of drug or alcohol use. Additionally, TNCs must adopt policies on nondiscrimination and disability access.

Miscellaneous

In addition, the bill:

- Requires a TNC to maintain an agent for service of process;
- Requires a TNC to disclose information on the collection of fares;
- Requires a TNC driver to carry proof of insurance;
- Requires a TNC's digital network to display a photograph of the TNC driver and the license plate number of the TNC vehicle;
- Provides that TNC drivers are independent contractors if certain conditions are met;

- Prohibits TNC drivers from accepting rides for compensation outside of the TNC's digital network and from soliciting or accepting street hail; and
- Requires TNCs to maintain records on riders and TNC drivers.

II. Present Situation:

Technological advances have led to new methods for consumers to arrange and pay for transportation, including software applications that make use of mobile smartphone applications, Internet web pages, and email and text messages. Ridesharing companies, such as Lyft, Uber, and SideCar, describe themselves as “transportation network companies” (TNCs), rather than as vehicles for hire.

Transportation Network Companies

TNCs use smartphone technology to connect individuals who want to ride with private drivers for a fee. A driver logs onto a phone application and indicates the driver is ready to accept passengers. Potential passengers log on, learn which drivers are nearby, see photographs, receive a fare estimate, and decide whether to accept a ride. If the passenger accepts a ride, the driver is notified and drives to pick up the passenger. Once at the destination, payment is made through the phone application. Some state and local governments have taken steps to recognize and regulate companies using these new technologies. Forty-five states have enacted legislation regarding transportation network companies.¹

Insurance Requirements

Drivers generally use their personal vehicles and most personal automobile policies contain a “livery” exclusion that excludes coverage if the vehicle is carrying passengers for hire.² Consequently, most personal automobile insurance policies do not cover damage or loss when a car is being used for commercial ridesharing. Some ridesharing companies provide insurance for portions of the time when the driver is transporting passengers, but such insurance is not required. This could lead to situations where drivers and passengers are involved in accidents and there is no insurance coverage. In contrast, taxis and limousines must maintain a motor vehicle liability policy with minimum limits of \$125,000 per person for bodily injury, up to \$250,000 per incident for bodily injury, and \$50,000 for property damage.³

Background Checks

Background checks may involve a search locally, at the state level, or nationally. The Florida Department of Law Enforcement (FDLE) conducts background checks through criminal history checks and criminal history records checks. These background checks may include a search of the following databases:

- The Florida Computerized Criminal History Central Repository for Florida arrests for state checks;

¹ PCI, *Transportation Network Companies*, available at: <http://www.pciaa.net/industry-issues/transportation-network-companies> (last visited March 24, 2017).

² The exclusion in Florida law is mentioned in s. 627.041(8), F.S.

³ Section 324.032(1)(a), F.S.

- The Florida Computerized Criminal History Central Repository for Florida arrests and the national criminal history database at the FBI for federal arrests and arrests from other states for state and national checks; and
- The Florida Crime Information Center for warrants and domestic violence injunctions.⁴

National criminal history record checks, as well as state checks, require the subject of the search to submit his or her fingerprints.⁵ Similarly, a check of the national criminal history at the FBI, initiated through an appropriate state agency (the FDLE in Florida), requires fingerprinting.⁶

Chapter 435, F.S., governs employment screening for government agencies. A Level 1 and a Level 2 background screening are available. Level 1 screening, which does not require fingerprinting, may include a search of criminal history databases, the National Sex Offender Public Website,⁷ and local criminal history checks through local law enforcement agencies. Level 1 screening is based on a state-only name search and an employment history check.⁸ Level 2 screening requires fingerprinting as a precursor to a statewide criminal history records checks through the FDLE, a national criminal history records check through the Federal Bureau of Investigation, and a local criminal records check through local law enforcement agencies.⁹

Private entities also perform background checks. These entities search available public records throughout the country and compile information from those sources to provide criminal history information. These searches are generally conducted without fingerprinting.¹⁰

Local Regulation of TNCs

TNCs are not expressly regulated under state law. However, some local jurisdictions have enacted ordinances with different requirements in different jurisdictions¹¹ and other Florida counties and cities have considered local ordinances. Representatives of TNCs express concern that differing regulations in different jurisdictions can lead to confusion among drivers and riders.

⁴ FDLE, *Criminal History Record Checks/Background Checks Fact Sheet*, available at: http://www.fdle.state.fl.us/cms/Criminal-History-Records/Documents/BackgroundChecks_FAQ.aspx (last visited March 24, 2017).

⁵ *Id.*

⁶ See Florida Department of Law Enforcement, *Criminal History Record Checks/Background Checks Fact Sheet* (Feb. 14, 2017), http://www.fdle.state.fl.us/cms/Criminal-History-Records/Documents/BackgroundChecks_FAQ.aspx (last accessed March 9, 2017).

⁷ The United States Department of Justice National Sex Offender Public Website (NSOPW); available at: <https://www.nsopw.gov/> (last visited March 24, 2017). The site contains information from sex offender registries for all 50 states, the District of Columbia, U.S. territories, and Indian Country.

⁸ Section 435.03(1), F.S.

⁹ Section 435.04(1)(a), F.S.

¹⁰ For a discussion of some of the problems involved with background checks performed by private entities, see, i.e., Center for Community Change, National Employment Law Project, “*The ‘Wild West’ of Employment Background Checks*” (Aug. 2014); available at: <http://www.nelp.org/content/uploads/2015/03/Wild-West-Employment-Background-Checks-Reform-Agenda.pdf> (last visited March 24, 2017).

¹¹ For example, Miami-Dade, Broward, and Palm Beach counties require vehicle inspections. Uber website, available at: <https://www.uber.com/drive/miami/inspections/> (Last visited march 24, 2017). An ordinance in Miami-Dade County requires background checks. Miami Herald website, available at: <http://miami.cbslocal.com/2016/01/20/dade-takes-up-possible-restrictions-on-uber-lyft/> (last visited March 24, 2017).

III. Effect of Proposed Changes:

SB 340 creates s. 316.68, F.S., to govern transportation network companies (TNC), such as Lyft, Uber, and SideCar. A TNC is an entity that uses a digital network¹² to connect a rider¹³ to a TNC driver¹⁴ for a prearranged ride. A prearranged ride begins when a TNC driver accepts a ride requested by a rider through the digital network, continues while the TNC driver transports the rider, and ends when the last rider exits the TNC vehicle.¹⁵

The bill provides that a TNC does not own, control, operate, direct, or manage the TNC vehicles or TNC drivers except if a written contract provides otherwise.

Insurance Requirements

The bill provides uniform statewide minimum insurance requirements for TNCs and TNC drivers. Many of the provisions of this bill are found in the National Association of Insurance Commissioners (NAIC) TNC Insurance Compromise Model Bill.¹⁶ The NAIC Model Bill requires a TNC or TNC driver to maintain primary automobile insurance that:

- Recognizes that the TNC driver is a TNC driver or otherwise uses a vehicle to transport riders for compensation; and
- Covers the TNC driver while the TNC driver is logged on to the digital network of the TNC or while the TNC driver is engaged in a prearranged ride.

The bill also requires a TNC driver or TNC on behalf of the driver to maintain primary automobile insurance that covers the TNC driver while logged on the digital network or while engaged in a prearranged ride.

When a TNC driver is logged on the digital network but not engaged in a prearranged ride, the bill requires:

- Primary automobile liability coverage of at least \$50,000 for death and bodily injury per person, \$100,000 for death and bodily injury per incident, and \$25,000 for property damage;
- PIP benefits that meet the minimum coverage amounts required under ss. 627.730-627.7405, F.S.;¹⁷ and

¹² The bill defines “digital network” as any online-enabled technology application service, website, or system offered or used by a TNC which enables the prearrangement of rides with TNC drivers.

¹³ The bill defines rider as means an individual who uses a digital network to connect with a TNC driver in order to obtain a prearranged ride in the TNC driver’s TNC vehicle between points chosen by the rider.

¹⁴ The bill defines a TNC driver as an individual who receives connections to potential riders and related services from a TNC and uses a TNC vehicle to offer or provide prearranged rides for compensation to riders upon connection to a digital network.

¹⁵ The term does not include a taxicab, for-hire vehicle, or street hail service and does not include ridesharing as defined in s. 341.031, F.S., carpool as defined s. 450.28, F.S., or any other type of service in which the driver receives a fee that does not exceed the driver’s cost to provide the ride.

¹⁶ National Association of Insurance Commissioners (NAIC), http://www.naic.org/documents/committees_c_sharing_econ_wg_related_tnc_insurance_compromise_bill_package.pdf (last visited March 24, 2017).

¹⁷ These provisions, known as the No-Fault Law, require coverage for personal injury protection to the named insured, relatives residing in the same household, persons operating the insured motor vehicle, passengers in the motor vehicle, and other persons struck by the motor vehicle and suffering bodily injury while not an occupant to a limit of \$10,000 in medical and disability benefits and \$5,000 in death benefits.

- Uninsured and underinsured vehicle coverage as required by s. 627.727, F.S.¹⁸

When a TNC driver is engaged in a prearranged ride, the following insurance requirements apply:

- Primary automobile liability coverage of at least \$1 million for death, bodily injury, and property damage;
- PIP benefits that meet the minimum coverage amounts required of a limousine under ss. 627.730-627.7405, F.S.; and
- Uninsured and underinsured vehicle coverage as required by s. 627.727, F.S.

Although the bill requires PIP coverage at the same amounts required of limousines, limousines are excluded from PIP requirements,¹⁹ so the effect of this provision is to require no PIP coverage when a driver is engaged in a prearranged ride.

The coverage requirements of this bill may be satisfied by any of the following:

- Automobile insurance maintained by the TNC driver;
- Automobile insurance maintained by the TNC; or
- A combination of insurance maintained by the TNC and insurance maintained by the TNC driver.

If the TNC driver's insurance has lapsed or does not provide the required coverage, the insurance maintained by the TNC must provide coverage and defend against a claim. Coverage under an automobile insurance policy maintained by the TNC must not be dependent on a personal automobile insurer first denying a claim, and a personal automobile insurance policy is not required to first deny a claim. An insurer authorized to do business in Florida must provide the insurance required by the bill if it is a member of the Florida Insurance Guaranty Association or an eligible surplus lines insurer that has a superior, excellent, exceptional, or equivalent financial strength rating by a rating agency acceptable to the Office of Insurance Regulation. The bill provides that insurance required by the bill satisfies financial responsibility and security requirements for any period when the TNC driver is logged onto the digital network or engaged in a prearranged ride.

The bill requires a TNC driver to carry proof of insurance²⁰ and provide coverage information to parties directly involved in an accident, automobile insurers, and an investigating law enforcement officer at the scene of an accident. The TNC driver must also disclose to these parties whether he or she was logged on the application or engaged in a prearranged ride at the time of the accident.

If a TNC's insurer makes a payment for a claim covered under comprehensive or collision coverage, the insurer must directly pay the business repairing the vehicle or jointly pay the vehicle owner and the primary lienholder.

¹⁸ Section 627.727(1), F.S., requires uninsured motor vehicle coverage if a policy provides bodily injury coverage unless it is specifically rejected.

¹⁹ Section 627.733(1)(a), F.S.

²⁰ Proof of insurance may be presented through an electronic device such as a phone application.

Insurance Disclosures

The TNC must disclose to the TNC driver:

- Details of the insurance coverage provided by the TNC while the TNC driver uses a TNC vehicle in connection with the TNC's digital network;
- That the TNC driver's own automobile insurance policy might not provide any coverage while the TNC driver is logged on to the digital network or is engaged in a prearranged ride, depending on the terms of the TNC driver's own policy; and
- That the provision of rides for compensation which are not prearranged rides subjects the driver to coverage requirements imposed under s. 324.032(1), F.S., and that failure to meet such coverage requirements subjects the TNC driver to criminal penalties.

These disclosures must be made before the TNC driver accepts a request for a prearranged ride.

Insurance Exclusions

An insurer that provides a personal automobile liability insurance policy may exclude coverage afforded under the policy issued to an owner or operator of a TNC vehicle for loss or injury that occurs while the driver is driving the TNC vehicle, meaning that the driver is logged on to the digital network or providing a prearranged ride. Therefore, a coverage exclusion may not apply to other insurance policies that might otherwise provide coverage to the TNC driver, such as an umbrella policy or any stacking uninsured/underinsured motorist coverage on other vehicles in the TNC driver's household.

Exclusions may apply to any coverage included in an automobile insurance policy, including, but not limited to:

- Liability coverage for bodily injury and property damage;
- Uninsured and underinsured motorist coverage;
- Medical payments coverage;
- Comprehensive physical damage coverage;
- Collision physical damage coverage; and
- Personal injury protection.

Exclusions are limited to coverage while a TNC driver is logged on to a digital network or while the TNC driver provides a prearranged ride. The exclusions do not affect or diminish coverage otherwise available for permissive drivers or resident relatives under the personal automobile policy of the TNC driver or owner who are not occupying the TNC vehicle at the time of the loss.

The bill does not require coverage under a personal automobile insurance policy while the TNC driver is logged on to a digital network, while the TNC driver is engaged in a prearranged ride, or while the TNC driver otherwise uses a vehicle to transport riders for compensation. However, an insurer may provide primary or excess coverage for the TNC driver's vehicle by contract or endorsement.

If an automobile insurer excludes coverage when a TNC driver is logged on to a digital network or while a TNC driver provides a prearranged ride, the insurer does not have a duty to defend or

indemnify any claim expressly excluded. The bill does not invalidate or limit an exclusion contained in a policy, including a policy in use or approved for use in this state before July 1, 2017, which excludes coverage for vehicles used to carry persons or property for a charge or available for hire by the public. If an automobile insurer defends or indemnifies a claim against a TNC driver which is excluded under the terms of its policy, the insurer has a right of contribution against other insurers that provide automobile insurance to the same TNC driver in satisfaction of the coverage requirements at the time of loss.

In a claims coverage investigation, a TNC must immediately provide, upon request by a directly involved party or any insurer of the TNC driver, the precise times that the TNC driver logged on and off the digital network in the 12-hour period immediately preceding and in the 12-hour period immediately following the accident. An insurer must disclose upon request by any other insurer involved in the particular claim, the applicable coverages, exclusions, and limits provided under any automobile insurance maintained in order to satisfy the bill requirements.

TNC Driver is an Independent Contractor

The bill provides that a TNC driver is an independent contractor and not an employee of the TNC if all of the following conditions are met:

- The TNC does not unilaterally prescribe specific hours during which the TNC driver must be logged on to the TNC's digital network;
- The TNC does not prohibit the TNC driver from using digital networks from other TNCs;
- The TNC does not restrict the TNC driver from engaging in any other occupation or business; and
- The TNC and TNC driver agree in writing that the TNC driver is an independent contractor of the TNC.

Although the status as an independent contractor is relevant in the area of who pays employment taxes, other issues may be affected. For example, the general rule is that an employer is liable for the torts of its employees but not liable for the torts of independent contractors. This rule is subject to an exception, which is that an employer may be held liable for negligent selecting, instructing, or supervising of an independent contractor, may be subject to a non-delegable duty arising out of a special relationship to the plaintiff or the public, or may be liable on the basis of work that is specially, peculiarly, or inherently dangerous.²¹ Independent contractor status is important in unemployment compensation cases²² and workers compensation cases. The bill does not address issues such as tort liability, workers compensation, or unemployment compensation.

Zero Tolerance for Drug and Alcohol Use

The bill requires a TNC to implement a zero-tolerance policy on the use of drugs and alcohol by a TNC driver while he or she provides a prearranged ride or is logged on to the digital network. The bill requires the TNC to provide notice of the policy on its website, as well as procedures to

²¹ *McCall v. Alabama Bruno's Inc.*, 647 So. 2d 175, 177 (Fla. 1st DCA 1994).

²² *McGillis v. Dept. of Econ. Opportunity*, 2017 Fla. App. Lexis 1114, 14 (Fla. 3d DCA 2017) (holding that a TNC driver is not an employee for purposes of reemployment assistance pursuant to ch. 443, F.S.).

report a complaint about a TNC driver whom a rider reasonably suspects was under the influence of drugs or alcohol during the course of the ride. Upon receipt of a rider's complaint alleging a violation of the zero-tolerance policy, the TNC must suspend a TNC driver's ability to accept any ride request through the TNC's digital network as soon as possible and investigate the incident. The suspension must last the duration of the investigation.

TNC Driver Background Check Requirements

The bill requires the TNC to do a criminal background check on its drivers. Before an individual may accept a ride request through a digital network:

- He or she must submit an application to the TNC which includes his or her address, age, driver license, motor vehicle registration, and other information required by the TNC; and
- The TNC must conduct or have a third party conduct a local and national criminal background check.

The local and national criminal background check must include:

- A search of the Multi-State/Multi-Jurisdiction Criminal Records Locator or other similar commercial nationwide database with validation of any records through a primary source search; and
- A search of the National Sex Offender Public Website maintained by the United States Department of Justice.

The TNC must conduct the required background check every 3 years. The background check required by this bill does not require fingerprinting. The bill allows the TNC or a third party to conduct a background check through private companies and does not require that the FDLE conduct the background check. Accordingly, the background check will not access the national criminal history records held by the FBI.

In addition, the bill requires the TNC to obtain and review, or have a third party obtain and review, a driving history research report for the applicant. The TNC may not authorize an individual to act as a TNC driver on its digital network if the report reveals that the individual has had more than three moving violations in the prior 3-year period. The bill does not require the TNC to obtain additional driving history research reports after the initial one.

The TNC may not authorize an individual to act as a TNC driver on its digital network if the background check conducted when the individual first seeks access to the digital network or any subsequent background check reveals that the individual has been convicted, within the past 5 years, of:

- A felony;
- A misdemeanor for driving under the influence of drugs or alcohol, for reckless driving, for hit and run, or for fleeing or attempting to elude a law enforcement officer;
- A misdemeanor for a violent offense²³ or sexual battery;²⁴ or
- A crime of lewdness or indecent exposure under chapter 800.

²³ The bill does not specify which misdemeanors would qualify as "violent offenses."

²⁴ There does not appear to be a misdemeanor for sexual battery in Florida law. Other states might have such a crime.

The TNC may not authorize an individual to act as a TNC driver on its digital network if the background check conducted when the individual first seeks access to the digital network or any subsequent background check reveals that the individual has been convicted in the past 3 years of driving with a suspended or revoked license.

The TNC may not authorize an individual to act as a TNC driver on its digital network if a background check reveals that the individual:

- Is a match in the National Sex Offender Public Website maintained by the United States Department of Justice;
- Does not possess a valid driver license; or
- Does not possess proof of registration for the motor vehicle used to provide prearranged rides.

The bill provides that no more than once every 2 years, the Department of Financial Services (DFS) shall direct a TNC to submit to the DFS an agreed-upon procedures report prepared by an independent certified public accountant for the sole purpose of verifying that the TNC is in compliance with the background check provisions of the bill. The report must be prepared in accordance with applicable attestation standards established by the American Institute of Certified Public Accountants. The TNC shall pay for the preparation and submission of the report.

Upon receipt of the report, the DFS may impose a fine of up to \$250 for each violation of the background provisions of the bill and \$500 for each repeat violation. The DFS may direct a TNC to address noncompliance with the background provisions of the bill identified in the report within a specified timeframe. The DFS may seek injunctive relief against a TNC that fails to comply with the DFS's direction and that poses an imminent threat to public safety. The bill does not extinguish any claim otherwise available under common law or another statute.

Preemption

The bill provides that it is the intent of the Legislature to provide for uniformity of laws governing TNCs, TNC drivers, and TNC vehicles. TNCs, TNC drivers, and TNC vehicles will be governed exclusively by state law, including jurisdictions that enacted a law or created rules governing TNCs, TNC drivers, or TNC vehicles before July 1, 2017.

The bill specifically provides that a county, municipality, special district, airport authority, port authority, or other local governmental entity or subdivision may not:

- Impose a tax on, or require a license for, a TNC, a TNC driver, or a TNC vehicle if such tax or license relates to providing prearranged rides or subject a TNC, a TNC driver, or a TNC vehicle to any rate, entry, operational, or other requirement; or
- Require a TNC or a TNC driver to obtain a business license or any other type of similar authorization to operate within the local governmental entity's jurisdiction.

The bill does not prohibit an airport from charging reasonable pickup fees consistent with any pickup fees charged to taxicab companies at that airport for their use of the airport's facilities or prohibit the airport from designating locations for staging, pickup, and other similar operations at the airport.

Other Provisions of the Bill

The bill provides that a TNC or TNC driver is not a common carrier, contract carrier, or motor carrier and does not provide taxicab or for-hire vehicle service. A TNC driver is not required to register the vehicle that the driver uses to provide prearranged rides as a commercial motor vehicle or a for-hire vehicle.

The bill requires a TNC to designate and maintain an agent for service of process.

The bill requires the TNC to disclose to the rider the fare or fare calculation method on its website or within the online-enabled technology application service before the beginning of the prearranged ride. If the fare is not disclosed to the rider before the beginning of the prearranged ride, the bill requires the TNC to provide an estimated fare.

The bill requires a TNC's digital network to display a photograph of the TNC driver and the license plate number of the TNC vehicle used for providing the prearranged ride before the rider enters the TNC driver's vehicle.

Within a reasonable period after the completion of a ride, the bill requires the TNC to transmit an electronic receipt to the rider on behalf of the TNC driver which lists:

- The origin and destination of the ride;
- The total time and distance of the ride; and
- The total fare paid.

The bill provides that a TNC driver may not accept a ride for compensation other than a ride arranged through a digital network and may not solicit or accept street hails.

The bill requires a TNC to adopt and notify drivers of a policy of nondiscrimination. The TNC driver must also comply with all applicable laws relating to accommodation of service animals.

The bill provides that a TNC may not impose additional charges for providing services to a person who has a physical disability because of the person's disability. A TNC that contracts with a governmental entity to provide paratransit services must comply with all applicable state and federal laws related to individuals with disabilities.

The bill requires a TNC to reevaluate a decision to remove a TNC driver's authorization to access to its digital network due to a low quality rating by riders if the TNC driver alleges, and proof exists, that the low rating was motivated by discrimination.

The bill requires the TNC to maintain individual ride records for at least 1 year after the date each ride is provided and individual records of TNC drivers for at least 1 year after the date the TNC leaves the TNC.

The bill takes effect July 1, 2017.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

To the extent that this bill reduces the ability of a county or municipality to raise revenue, the mandates provision of Art. VII, s. 18 of the Florida Constitution may apply. However, as a mandate analysis is based on revenue reduced in the aggregate, any fiscal impact is expected to be insignificant.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

To the extent that local governments currently collect fees from TNCs, these local governments will lose this source of revenue. However, fiscal impact is unknown as this bill has not been reviewed by the Revenue Estimating Conference.

B. Private Sector Impact:

The bill will create uniform statewide requirements for TNCs. TNCs might see reductions in costs incurred from complying with different ordinances in different jurisdictions.

The TNCs will incur costs from establishing and implementing policies on drugs and alcohol, antidiscrimination, and accessibility. The TNC will also have to bear the cost of producing the report on background checks to the DFS, as well as the cost of conducting the background check, unless this is borne by the individual drivers.

Whether the TNCs will incur additional costs for complying with insurance requirements is unknown, as some TNCs already maintain insurance coverage on drivers.

C. Government Sector Impact:

The fiscal impact on the DFS is indeterminate. How many TNCs will be required to submit procedures reports is unknown. Also unknown is the volume of litigation the DFS will have to pursue based on noncompliance. Pursuant to Florida Rule of Civil Procedure 1.610(b), the DFS could be required to post a bond when seeking injunctive relief. The bond could be significant. If the DFS is not required to post a bond, the DFS could be

liable for damages to a TNC if courts ultimately determine the injunction should not have been issued.²⁵

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill authorizes the TNC to order a criminal history record check through a third party company. However, the Department of Law Enforcement (FDLE) notes that in doing so, the TNCs runs the risk of receiving outdated criminal history information. The FDLE recommends that the sponsor may wish to revise the bill to require a Level 2 screening based on fingerprints, to provide the most accurate record check possible. Were the sponsor to amend the bill, a fiscal impact on the private sector would accrue at the rate of \$36 per background check.²⁶ How much a third party would charge for a background check is unknown.

VIII. Statutes Affected:

This bill creates section 627.748, 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 March 28, 2017:

The CS authorizes an automobile insurer to limit coverage provided to an owner or operator of a TNC vehicle to that afforded to the actual vehicle driven on a prearranged ride. Therefore, a coverage exclusion may not apply to other insurance policies that might otherwise provide coverage to the TNC driver, such as an umbrella policy or any stacking uninsured/underinsured motorist coverage on other vehicles in the TNC driver's household.

CS by Banking and Insurance on March 14, 2017:

The CS:

- Authorizes seaports to collect pickup fees as long as they do not exceed what a seaport charges taxis;
- Requires TNCs to contract with an independent auditor to review their background check process. The DFS is established as the enforcement mechanism for compliance with the insurance and background screening requirements of the bill;
- Strikes retroactivity of the independent contractor language;
- Modifies the definition of prearranged ride in a way that will extend insurance coverage to any time that any rider is in the vehicle and not limited to the person who requested the ride;

²⁵ Department of Financial Services, *Analysis of CS/SB 340* (March 14, 2017)(on file with the Senate Judiciary Committee).

²⁶ Florida Department of Law Enforcement, *2017 FDLE Legislative Bill Analysis* (Jan. 29, 2017) (on file with the Senate Judiciary Committee).

- Requires uninsured or underinsured vehicle coverage as required by s. 627.727, F.S.;
- Provides coverage for other insureds and resident relatives under a TNC driver's personal auto policy are unaffected by exclusions for TNC use; and
- Provides that TNCs are not granted immunity from civil liability through compliance with background check requirements.

B. Amendments:

None.

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



875988

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/06/2017	.	
	.	
	.	
	.	

The Committee on Rules (Lee) recommended the following:

Senate Amendment

Delete lines 481 - 484
and insert:

authority, or other local governmental entity or subdivision;

3. Require a TNC or a TNC driver to obtain a business
license or any other type of similar authorization to operate
within the local governmental entity's jurisdiction;

4. Enter into an agreement that gives one or more TNCs the
exclusive right to operate within the local governmental
entity's jurisdiction; or



875988

12 5. Enter into an agreement that provides disparate
13 treatment to TNCs within the local governmental entity's
14 jurisdiction.



761146

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/06/2017	.	
	.	
	.	
	.	

The Committee on Rules (Lee) recommended the following:

Senate Substitute for Amendment (875988)

Delete lines 481 - 484
and insert:
authority, or other local governmental entity or subdivision;
3. Require a TNC or a TNC driver to obtain a business
license or any other type of similar authorization to operate
within the local governmental entity's jurisdiction;
4. Enter into an agreement that gives one or more TNCs,
taxicab companies, or other for-hire vehicles the exclusive
right to operate within the local governmental entity's



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jurisdiction; or

5. Enter into an agreement that provides disparate treatment to TNCs, taxicab companies, or other for-hire vehicles within the local governmental entity's jurisdiction.

Subparagraphs 4. and 5. do not apply to contracts existing on July 1, 2017, and do not apply if the county, municipality, special district, airport authority, port authority, or other local governmental entity or subdivision enters into such agreement after a competitive procurement process.

By the Committees on Judiciary; and Banking and Insurance; and
Senators Brandes, Galvano, Simpson, Artiles, Young, and Bracy

590-02994-17

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1 A bill to be entitled
2 An act relating to transportation network companies;
3 creating s. 627.748, F.S.; defining terms; providing
4 for construction; providing that a transportation
5 network company (TNC) driver is not required to
6 register certain vehicles as commercial motor vehicles
7 or for-hire vehicles; requiring a TNC to designate and
8 maintain an agent for service of process in this
9 state; providing fare requirements; providing
10 requirements for a TNC's digital network; providing
11 for an electronic receipt, subject to certain
12 requirements; providing automobile insurance
13 requirements for a TNC and a TNC driver; providing
14 requirements for specified proof of coverage for a TNC
15 driver under certain circumstances; providing certain
16 disclosure requirements for a TNC driver in the event
17 of an accident; requiring a TNC to cause its insurer
18 to issue certain payments directly to certain parties;
19 requiring a TNC to make specified disclosures in
20 writing to TNC drivers under certain circumstances;
21 authorizing specified insurers to exclude certain
22 coverage, subject to certain limitations; providing
23 that the right to exclude coverage applies to any
24 coverage included in an automobile insurance policy;
25 providing applicability; providing for construction;
26 providing that specified automobile insurers have a
27 right of contribution against other insurers that
28 provide automobile insurance to the same TNC drivers
29 in satisfaction of certain coverage requirements under

Page 1 of 17

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

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30 certain circumstances; requiring a TNC to provide
31 specified information upon request by certain parties
32 during a claims coverage investigation; requiring
33 certain insurers to disclose specified information
34 upon request by any other insurer involved in the
35 particular claim; providing that TNC drivers are
36 independent contractors if specified conditions are
37 met; requiring a TNC to implement a zero-tolerance
38 policy for drug or alcohol use, subject to certain
39 requirements; providing TNC driver requirements;
40 requiring a TNC to conduct a certain background check
41 for a TNC driver after a specified period; requiring
42 the Department of Financial Services to direct a TNC
43 to submit to the department an agreed-upon procedures
44 report prepared by a certified public accountant,
45 subject to certain restrictions and requirements;
46 authorizing the department to impose specified fines
47 for violations and repeat violations identified in the
48 report; authorizing the department to direct a TNC to
49 address noncompliance identified in the report within
50 a timeframe prescribed by the department; authorizing
51 injunctive relief under certain circumstances;
52 specifying when a repeat violation occurs; providing
53 applicability; prohibiting a TNC driver from accepting
54 certain rides or soliciting or accepting street hails;
55 requiring a TNC to adopt a policy of nondiscrimination
56 with respect to riders and potential riders and to
57 notify TNC drivers of such policy; requiring TNC
58 drivers to comply with the nondiscrimination policy

Page 2 of 17

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and certain applicable laws regarding nondiscrimination and accommodation of service animals; prohibiting a TNC from imposing additional charges for providing services to persons who have physical disabilities; requiring a TNC that contracts with a governmental entity to provide paratransit services to comply with certain state and federal laws; requiring a TNC to reevaluate a decision to remove a TNC driver's authorization to access its digital network in certain instances; requiring a TNC to maintain specified records; providing legislative intent; specifying that TNCs, TNC drivers, and TNC vehicles are governed exclusively by state law; prohibiting local governmental entities and subdivisions from taking specified actions; providing applicability; providing an effective date.

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

Section 1. Section 627.748, Florida Statutes, is created to read:

627.748 Transportation network companies.—

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

(a) "Digital network" means any online-enabled technology application service, website, or system offered or used by a transportation network company which enables the prearrangement of rides with transportation network company drivers.

(b) "Prearranged ride" means the provision of transportation by a TNC driver to a rider, beginning when a TNC

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driver accepts a ride requested by a rider through a digital network controlled by a transportation network company, continuing while the TNC driver transports the rider, and ending when the last rider exits from and is no longer occupying the TNC vehicle. The term does not include a taxicab, for-hire vehicle, or street hail service and does not include ridesharing as defined in s. 341.031, carpool as defined s. 450.28, or any other type of service in which the driver receives a fee that does not exceed the driver's cost to provide the ride.

(c) "Rider" means an individual who uses a digital network to connect with a TNC driver in order to obtain a prearranged ride in the TNC driver's TNC vehicle between points chosen by the rider. A person may use a digital network to request a prearranged ride on behalf of a rider.

(d) "Street hail" means an immediate arrangement on a street with a driver by a person using any method other than a digital network to seek immediate transportation.

(e) "Transportation network company" or "TNC" means an entity operating in this state pursuant to this section using a digital network to connect a rider to a TNC driver, who provides prearranged rides. A TNC is not deemed to own, control, operate, direct, or manage the TNC vehicles or TNC drivers that connect to its digital network, except where agreed to by written contract, and is not a taxicab association or for-hire vehicle owner. An individual, corporation, partnership, sole proprietorship, or other entity that arranges medical transportation for individuals qualifying for Medicaid or Medicare pursuant to a contract with the state or a managed care organization is not a TNC. This section does not prohibit a TNC

590-02994-17

2017340c2

from providing prearranged rides to individuals who qualify for Medicaid or Medicare if it meets the requirements of this section.

(f) "Transportation network company driver" or "TNC driver" means an individual who:

1. Receives connections to potential riders and related services from a transportation network company; and

2. In return for compensation, uses a TNC vehicle to offer or provide a prearranged ride to a rider upon connection through a digital network.

(g) "Transportation network company vehicle" or "TNC vehicle" means a vehicle that is not a taxicab, jitney, limousine, or for-hire vehicle as defined in s. 320.01(15) and that is:

1. Used by a TNC driver to offer or provide a prearranged ride; and

2. Owned, leased, or otherwise authorized to be used by the TNC driver.

Notwithstanding any other provision of law, a vehicle that is let or rented to another for consideration may be used as a TNC vehicle.

(2) NOT OTHER CARRIERS.—A TNC or TNC driver is not a common carrier, contract carrier, or motor carrier and does not provide taxicab or for-hire vehicle service. In addition, a TNC driver is not required to register the vehicle that the TNC driver uses to provide prearranged rides as a commercial motor vehicle or a for-hire vehicle.

(3) AGENT.—A TNC must designate and maintain an agent for

590-02994-17

2017340c2

service of process in this state.

(4) FARE TRANSPARENCY.—If a fare is collected from a rider, the TNC must disclose to the rider the fare or fare calculation method on its website or within the online-enabled technology application service before the beginning of the prearranged ride. If the fare is not disclosed to the rider before the beginning of the prearranged ride, the rider must have the option to receive an estimated fare before the beginning of the prearranged ride.

(5) IDENTIFICATION OF TNC VEHICLES AND DRIVERS.—The TNC's digital network must display a photograph of the TNC driver and the license plate number of the TNC vehicle used for providing the prearranged ride before the rider enters the TNC driver's vehicle.

(6) ELECTRONIC RECEIPT.—Within a reasonable period after the completion of a ride, a TNC shall transmit an electronic receipt to the rider on behalf of the TNC driver which lists:

(a) The origin and destination of the ride;

(b) The total time and distance of the ride; and

(c) The total fare paid.

(7) TRANSPORTATION NETWORK COMPANY AND TNC DRIVER INSURANCE REQUIREMENTS.—

(a) Beginning July 1, 2017, a TNC driver or a TNC on behalf of the TNC driver shall maintain primary automobile insurance that:

1. Recognizes that the TNC driver is a TNC driver or otherwise uses a vehicle to transport riders for compensation; and

2. Covers the TNC driver while the TNC driver is logged on

590-02994-17

2017340c2

175 to the digital network of the TNC or while the TNC driver is
 176 engaged in a prearranged ride.

177 (b) The following automobile insurance requirements apply
 178 while a participating TNC driver is logged on to the digital
 179 network but is not engaged in a prearranged ride:

180 1. Automobile insurance that provides:

181 a. A primary automobile liability coverage of at least
 182 \$50,000 for death and bodily injury per person, \$100,000 for
 183 death and bodily injury per incident, and \$25,000 for property
 184 damage;

185 b. Personal injury protection benefits that meet the
 186 minimum coverage amounts required under ss. 627.730-627.7405;
 187 and

188 c. Uninsured and underinsured vehicle coverage as required
 189 by s. 627.727.

190 2. The coverage requirements of this paragraph may be
 191 satisfied by any of the following:

192 a. Automobile insurance maintained by the TNC driver;

193 b. Automobile insurance maintained by the TNC; or

194 c. A combination of sub-subparagraphs a. and b.

195 (c) The following automobile insurance requirements apply
 196 while a TNC driver is engaged in a prearranged ride:

197 1. Automobile insurance that provides:

198 a. A primary automobile liability coverage of at least \$1
 199 million for death, bodily injury, and property damage;

200 b. Personal injury protection benefits that meet the
 201 minimum coverage amounts required of a limousine under ss.
 202 627.730-627.7405; and

203 c. Uninsured and underinsured vehicle coverage as required

590-02994-17

2017340c2

204 by s. 627.727.

205 2. The coverage requirements of this paragraph may be
 206 satisfied by any of the following:

207 a. Automobile insurance maintained by the TNC driver;

208 b. Automobile insurance maintained by the TNC; or

209 c. A combination of sub-subparagraphs a. and b.

210 (d) If the TNC driver's insurance under paragraph (b) or
 211 paragraph (c) has lapsed or does not provide the required
 212 coverage, the insurance maintained by the TNC must provide the
 213 coverage required under this subsection, beginning with the
 214 first dollar of a claim, and have the duty to defend such claim.

215 (e) Coverage under an automobile insurance policy
 216 maintained by the TNC must not be dependent on a personal
 217 automobile insurer first denying a claim, and a personal
 218 automobile insurance policy is not required to first deny a
 219 claim.

220 (f) Insurance required under this subsection must be
 221 provided by an insurer authorized to do business in this state
 222 which is a member of the Florida Insurance Guaranty Association
 223 or an eligible surplus lines insurer that has a superior,
 224 excellent, exceptional, or equivalent financial strength rating
 225 by a rating agency acceptable to the Office of Insurance
 226 Regulation of the Financial Services Commission.

227 (g) Insurance satisfying the requirements under this
 228 subsection is deemed to satisfy the financial responsibility
 229 requirement for a motor vehicle under chapter 324 and the
 230 security required under s. 627.733 for any period when the TNC
 231 driver is logged onto the digital network or engaged in a
 232 prearranged ride.

590-02994-17

2017340c2

(h) A TNC driver shall carry proof of coverage satisfying paragraphs (b) and (c) with him or her at all times during his or her use of a TNC vehicle in connection with a digital network. In the event of an accident, a TNC driver shall provide this insurance coverage information to any party directly involved in the accident or the party's designated representative, automobile insurers, and investigating police officers. Proof of financial responsibility may be presented through an electronic device, such as a digital phone application, under s. 316.646. Upon request, a TNC driver shall also disclose to any party directly involved in the accident or the party's designated representative, automobile insurers, and investigating police officers whether he or she was logged on to a digital network or was engaged in a prearranged ride at the time of the accident.

(i) If a TNC's insurer makes a payment for a claim covered under comprehensive coverage or collision coverage, the TNC shall cause its insurer to issue the payment directly to the business repairing the vehicle or jointly to the owner of the vehicle and the primary lienholder on the covered vehicle.

(8) TRANSPORTATION NETWORK COMPANY AND INSURER; DISCLOSURE; EXCLUSIONS.-

(a) Before a TNC driver is allowed to accept a request for a prearranged ride on the digital network, the TNC must disclose in writing to the TNC driver:

1. The insurance coverage, including the types of coverage and the limits for each coverage, which the TNC provides while the TNC driver uses a TNC vehicle in connection with the TNC's digital network.

590-02994-17

2017340c2

2. That the TNC driver's own automobile insurance policy might not provide any coverage while the TNC driver is logged on to the digital network or is engaged in a prearranged ride, depending on the terms of the TNC driver's own automobile insurance policy.

3. That the provision of rides for compensation which are not prearranged rides subjects the driver to the coverage requirements imposed under s. 324.032(1) and that failure to meet such coverage requirements subjects the TNC driver to penalties provided in s. 324.221, up to and including a misdemeanor of the second degree.

(b)1. An insurer that provides an automobile liability insurance policy under part XI of chapter 627 may exclude any and all coverage afforded under the policy issued to an owner or operator of a TNC vehicle while driving that vehicle for any loss or injury that occurs while a TNC driver is logged on to a digital network or while a TNC driver provides a prearranged ride. Exclusions imposed under this subsection are limited to coverage while a TNC driver is logged on to a digital network or while a TNC driver provides a prearranged ride. This right to exclude all coverage may apply to any coverage included in an automobile insurance policy, including, but not limited to:

a. Liability coverage for bodily injury and property damage;

b. Uninsured and underinsured motorist coverage;

c. Medical payments coverage;

d. Comprehensive physical damage coverage;

e. Collision physical damage coverage; and

f. Personal injury protection.

590-02994-17

2017340c2

291 2. The exclusions described in subparagraph 1. apply
 292 notwithstanding any requirement under chapter 324. These
 293 exclusions do not affect or diminish coverage otherwise
 294 available for permissive drivers or resident relatives under the
 295 personal automobile insurance policy of the TNC driver or owner
 296 of the TNC vehicle who are not occupying the TNC vehicle at the
 297 time of loss. This section does not require that a personal
 298 automobile insurance policy provide coverage while the TNC
 299 driver is logged on to a digital network, while the TNC driver
 300 is engaged in a prearranged ride, or while the TNC driver
 301 otherwise uses a vehicle to transport riders for compensation.

302 3. This section must not be construed to require an insurer
 303 to use any particular policy language or reference to this
 304 section in order to exclude any and all coverage for any loss or
 305 injury that occurs while a TNC driver is logged on to a digital
 306 network or while a TNC driver provides a prearranged ride.

307 4. This section does not preclude an insurer from providing
 308 primary or excess coverage for the TNC driver's vehicle by
 309 contract or endorsement.

310 (c)1. An automobile insurer that excludes the coverage
 311 described in subparagraph (b)1. does not have a duty to defend
 312 or indemnify any claim expressly excluded thereunder. This
 313 section does not invalidate or limit an exclusion contained in a
 314 policy, including a policy in use or approved for use in this
 315 state before July 1, 2017, which excludes coverage for vehicles
 316 used to carry persons or property for a charge or available for
 317 hire by the public.

318 2. An automobile insurer that defends or indemnifies a
 319 claim against a TNC driver which is excluded under the terms of

590-02994-17

2017340c2

320 its policy has a right of contribution against other insurers
 321 that provide automobile insurance to the same TNC driver in
 322 satisfaction of the coverage requirements of subsection (7) at
 323 the time of loss.

324 (d) In a claims coverage investigation, a TNC shall
 325 immediately provide, upon request by a directly involved party
 326 or any insurer of the TNC driver, if applicable, the precise
 327 times that the TNC driver logged on and off the digital network
 328 in the 12-hour period immediately preceding and in the 12-hour
 329 period immediately following the accident. An insurer providing
 330 coverage under subsection (7) shall disclose, upon request by
 331 any other insurer involved in the particular claim, the
 332 applicable coverages, exclusions, and limits provided under any
 333 automobile insurance maintained in order to satisfy the
 334 requirements of subsection (7).

335 (9) LIMITATION ON TRANSPORTATION NETWORK COMPANIES.—A TNC
 336 driver is an independent contractor and not an employee of the
 337 TNC if all of the following conditions are met:

338 (a) The TNC does not unilaterally prescribe specific hours
 339 during which the TNC driver must be logged on to the TNC's
 340 digital network.

341 (b) The TNC does not prohibit the TNC driver from using
 342 digital networks from other TNCs.

343 (c) The TNC does not restrict the TNC driver from engaging
 344 in any other occupation or business.

345 (d) The TNC and TNC driver agree in writing that the TNC
 346 driver is an independent contractor with respect to the TNC.

347 (10) ZERO TOLERANCE FOR DRUG OR ALCOHOL USE.—

348 (a) The TNC shall implement a zero-tolerance policy

590-02994-17

2017340c2

regarding a TNC driver's activities while accessing the TNC's digital network. The zero-tolerance policy must address the use of drugs or alcohol while a TNC driver is providing a prearranged ride or is logged on to the digital network.

(b) The TNC shall provide notice of this policy on its website, as well as procedures to report a complaint about a TNC driver who a rider reasonably suspects was under the influence of drugs or alcohol during the course of the ride.

(c) Upon receipt of a rider's complaint alleging a violation of the zero-tolerance policy, the TNC shall suspend a TNC driver's ability to accept any ride request through the TNC's digital network as soon as possible and shall conduct an investigation into the reported incident. The suspension must last the duration of the investigation.

(11) TRANSPORTATION NETWORK COMPANY DRIVER REQUIREMENTS.—

(a) Before an individual is authorized to accept a ride request through a digital network:

1. The individual must submit an application to the TNC which includes information regarding his or her address, age, driver license, motor vehicle registration, and other information required by the TNC;

2. The TNC must conduct, or have a third party conduct, a local and national criminal background check that includes:

a. A search of the Multi-State/Multi-Jurisdiction Criminal Records Locator or other similar commercial nationwide database with validation of any records through primary source search; and

b. A search of the National Sex Offender Public Website maintained by the United States Department of Justice; and

590-02994-17

2017340c2

3. The TNC must obtain and review, or have a third party obtain and review, a driving history research report for the applicant.

(b) The TNC shall conduct the background check required under paragraph (a) for a TNC driver every 3 years.

(c) The TNC may not authorize an individual to act as a TNC driver on its digital network if the driving history research report conducted when the individual first seeks access to the digital network reveals that the individual has had more than three moving violations in the prior 3-year period.

(d) The TNC may not authorize an individual to act as a TNC driver on its digital network if the background check conducted when the individual first seeks access to the digital network or any subsequent background check required under paragraph (b) reveals that the individual:

1. Has been convicted, within the past 5 years, of:

a. A felony;

b. A misdemeanor for driving under the influence of drugs or alcohol, for reckless driving, for hit and run, or for fleeing or attempting to elude a law enforcement officer; or

c. A misdemeanor for a violent offense or sexual battery, or a crime of lewdness or indecent exposure under chapter 800;

2. Has been convicted, within the past 3 years, of driving with a suspended or revoked license;

3. Is a match in the National Sex Offender Public Website maintained by the United States Department of Justice;

4. Does not possess a valid driver license; or

5. Does not possess proof of registration for the motor vehicle used to provide prearranged rides.

590-02994-17

2017340c2

(e) No more often than once every 2 years, the Department of Financial Services shall direct a TNC to submit to the department an agreed-upon procedures report prepared by an independent certified public accountant for the sole purpose of verifying that the TNC is in compliance with this subsection. The report must be prepared in accordance with applicable attestation standards established by the American Institute of Certified Public Accountants. The TNC shall bear all costs associated with the preparation and submission of the report.

(f) Upon receipt of the report pursuant to paragraph (e), the Department of Financial Services may impose a fine of up to \$250 for each violation of this subsection identified in the report and \$500 for each repeat violation. The department may also direct a TNC to address any noncompliance with this subsection identified in the report within a timeframe prescribed by the department. The department may, pursuant to the Florida Rules of Civil Procedure, seek injunctive relief against a TNC that fails to comply with the department's direction under this paragraph and that poses an imminent threat to public safety as a result of such noncompliance. For purposes of this subsection, a repeat violation occurs when two consecutive reports prepared for a TNC reveal noncompliance with the same requirement.

(g) Unless otherwise explicitly provided, this subsection does not extinguish any claim otherwise available under common law or any other statute.

(12) PROHIBITED CONDUCT.—

(a) A TNC driver may not accept a ride for compensation other than by a rider arranged through a digital network.

590-02994-17

2017340c2

(b) A TNC driver may not solicit or accept street hails.

(13) NONDISCRIMINATION; ACCESSIBILITY.—

(a) A TNC shall adopt a policy of nondiscrimination with respect to riders and potential riders and shall notify TNC drivers of such policy.

(b) A TNC driver shall comply with the TNC's nondiscrimination policy.

(c) A TNC driver shall comply with all applicable laws regarding nondiscrimination against riders and potential riders.

(d) A TNC driver shall comply with all applicable laws relating to accommodation of service animals.

(e) A TNC may not impose additional charges for providing services to a person who has a physical disability because of the person's disability.

(f) A TNC that contracts with a governmental entity to provide paratransit services must comply with all applicable state and federal laws related to individuals with disabilities.

(g) A TNC shall reevaluate any decision to remove a TNC driver's authorization to access its digital network due to a low quality rating by riders if the TNC driver alleges that the low quality rating was because of a characteristic identified in the company's nondiscrimination policy and there is a plausible basis for such allegation.

(14) RECORDS.—A TNC shall maintain the following records:

(a) Individual ride records for at least 1 year after the date on which each ride is provided; and

(b) Individual records of TNC drivers for at least 1 year after the date on which the TNC driver's relationship with the TNC ends.

590-02994-17

2017340c2

(15) PREEMPTION.—

(a) It is the intent of the Legislature to provide for uniformity of laws governing TNCs, TNC drivers, and TNC vehicles throughout the state. TNCs, TNC drivers, and TNC vehicles are governed exclusively by state law, including in any locality or other jurisdiction that enacted a law or created rules governing TNCs, TNC drivers, or TNC vehicles before July 1, 2017. A county, municipality, special district, airport authority, port authority, or other local governmental entity or subdivision may not:

1. Impose a tax on, or require a license for, a TNC, a TNC driver, or a TNC vehicle if such tax or license relates to providing prearranged rides;

2. Subject a TNC, a TNC driver, or a TNC vehicle to any rate, entry, operation, or other requirement of the county, municipality, special district, airport authority, port authority, or other local governmental entity or subdivision; or

3. Require a TNC or a TNC driver to obtain a business license or any other type of similar authorization to operate within the local governmental entity's jurisdiction.

(b) This subsection does not prohibit an airport or seaport from charging reasonable pickup fees consistent with any pickup fees charged to taxicab companies at that airport or seaport for their use of the airport's or seaport's facilities or prohibit the airport or seaport from designating locations for staging, pickup, and other similar operations at the airport or seaport.

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



The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto
Committee on Rules

Subject: Committee Agenda Request

Date: March 29, 2017

I respectfully request that **Senate Bill #340**, relating to **Transportation Network Companies**, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

A handwritten signature in black ink, appearing to read "Jeff Brandes", written over a horizontal line.

Senator Jeff Brandes
Florida Senate, District 24

THE FLORIDA SENATE
APPEARANCE RECORD

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

340
Bill Number (if applicable)

Amendment Barcode (if applicable)

Meeting Date _____
Topic TNC

Name Brewster Bevis

Job Title Senior Vice President

Address 516 W Adams St
Street

Phone B 224-7173

TLH FL 32301
City State Zip

Email bbevis@aificon

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

April 6, 2017
Meeting Date

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

SB 340
Bill Number (if applicable)Topic Transportation Network Companies

Amendment Barcode (if applicable)

Name Liz ReynoldsJob Title State Affairs Director - Southeast RegionAddress 3933 Victoria Lakes Dr S
StreetPhone (317) 417-5618City JaxState FLZip 32226Email lreynolds@namic.orgSpeaking: ☐ For ☐ Against ☐ InformationWaive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)Representing National Assoc. of Mutual Insurance CompaniesAppearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

4.6.17

Meeting Date

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

340

Bill Number (if applicable)

Topic WCS

Amendment Barcode (if applicable)

Name Gina Evans

Job Title Director Government Relations

Address PO Box 20257 Tampa

Phone 813 870 7892

Street

City

State

Zip

Email g.evans@tampaairport.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Tampa International Airport

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

04/06/17

Meeting Date

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

340

Bill Number (if applicable)

Topic Transportation Network Companies

Amendment Barcode (if applicable)

Name Cesar Fernandez

Job Title Senior Public Policy Associate

Address 80 SW 8th ST # 1830

Phone 786-262-6092

Street

Miami

FL

33130

City

State

Zip

Email Fernandez@uber.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Uber Technologies, Inc.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

04/06/2017

Meeting Date

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

0340

Bill Number (if applicable)

Topic Transportation Network Companies Brandes Amendment Barcode (if applicable)

Name Marmilly Medina

Job Title CSA/BATT/DLE/Broward Sheriff's Office/FOLE

Address 2057 SW Driftwood Street

Phone 772 618 5861

Street

Port Saint Lucie FL 34953

City

State

Zip

Email medina625.mma@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

04.06.17

Meeting Date

0340

Bill Number (if applicable)

Topic Transportation Network Co

Amendment Barcode (if applicable)

Name Jo Anne Alvarez

Job Title 911 Operator

Address 16659 SW 6 Street

Phone 954 431 7564

Pembroke Pines FL 33027

City

State

Zip

Email kgjake@bellsouth.net

Speaking: ☐ For ☐ Against ☐ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date _____

340
Bill Number (if applicable) _____

Topic RIDESHARING

Amendment Barcode (if applicable) _____

Name CHRISTOPHER EMANUEL

Job Title POLICY DIRECTOR

Address 136 S. BRONOUGH

Phone _____

Street

JLH

City

FL

State

32302

Zip

Email _____

Speaking: ☒ For ☐ Against ☐ Information

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

Representing FLORIDA CHAMBER OF COMMERCE

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-6-17

Meeting Date

340

Bill Number (if applicable)

Topic

TNC

Amendment Barcode (if applicable)

Name

Ramon Farfan

Job Title

Address

6856 Tom Thum Rd

Phone

904-327-9257

Street

Jacksonville

FL

32210

Email

City

State

Zip

Speaking:

☐

For

☐

Against

☐

Information

Waive Speaking:

☐

In Support

☒

Against

(The Chair will read this information into the record.)

Representing

SELF

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☐

Yes

☒

No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

4-6-17

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

340

Meeting Date

Bill Number (if applicable)

Topic TNC

Amendment Barcode (if applicable)

Name Daniel Spivey

Job Title _____

Address 2307 Schumacher Ave

Phone 904-631-5827

Street

Jacksonville FL 32207

City

State

Zip

Email dpspivey@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-6-17

Meeting Date

SB 340

Bill Number (if applicable)

Topic Transportation Network Companies

Amendment Barcode (if applicable)

Name Trevor Mask

Job Title Lobbyist

Address 215 S. Monroe St.
Street
Tallahassee FL 32311
City State Zip

Phone 850-577-0398

Email tmask@colodnyfuss.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing PCI

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-6-17

Meeting Date

340

*Bill Number (if applicable)*Topic TNC*Amendment Barcode (if applicable)*Name Samantha SextonJob Title VP of Legislative and Regulatory AffairsAddress 215 S. Monroe Street, Suite 835Phone 321-544-1577*Street*TallahasseeFL32301*City**State**Zip*Email samantha.sexton@piff.netSpeaking: ☐ For ☐ Against ☐ InformationWaive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)Representing Personal Insurance Federation of FloridaAppearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/6

Meeting Date

SB 340

Bill Number (if applicable)

Topic SB 0340 Transportation Network C

Amendment Barcode (if applicable)

Name Edgardo Marrero

Job Title Vice President, AFSCME Local 199

Address 4349 NW 36 St

Phone 31967-4506

Street

Miami Springs

City

FL

State

33166

Zip

Email emarr1971@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/6/17
Meeting Date

340
Bill Number (if applicable)

Topic TNC

Amendment Barcode (if applicable)

Name Scadovera Brown

Job Title _____

Address 16421 NW 17 Place
Street
Opalocka FL 33054
City State Zip

365-
Phone 725-7505
Scadovera
Email @gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Myself

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

4-6-17

Meeting Date

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

340

Bill Number (if applicable)

Topic TNC

Amendment Barcode (if applicable)

Name Antonio M Eiroa

Job Title MIAMI Dade County Aviation Dep.

Address 4349 N.W 36 St Suite 102

Phone 305-885-3909

Street

MIAMI Spring

City

FL

State

33166

Zip

Email aeiroa1542@bellsouth.net

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

340
Bill Number (if applicable)

Amendment Barcode (if applicable)

Meeting Date _____
Topic _____

Name Andrew Hosek

Job Title Policy Analyst

Address 200 W College Ave

Street

Tallahassee
City

FL
State

Zip

Phone _____

Email ahosek@afhq.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)

4-6-17

Meeting Date

340

Bill Number (if applicable)

Topic Transportation Network Company

Amendment Barcode (if applicable)

Name JAMES TAYLOR

Job Title Executive Director

Address 115 E. PARK
Street

Phone 850 803 8324

TALLY FL
City State Zip

Email James.Taylor@FLTechCouncil.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Technology Council

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/6/2017
Meeting Date

340
Bill Number (if applicable)

Topic TNC's

Amendment Barcode (if applicable)

Name Dwight Mattingly

Job Title _____

Address 8907 SE Pine Cone Lane
Street

Phone 561-523-0525

Hobe Sound FL 33455
City State Zip

Email ato1577@bellsouth.net

Speaking: ☐ For ☒ Against ☐ Information

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

Representing SELF

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/6/17

Meeting Date

SB 340

Bill Number (if applicable)

Topic RIDESHARING

Amendment Barcode (if applicable)

Name TIM ALBORG

Job Title PUBLIC POLICY MANAGER

Address 185 BERRY ST.

Phone talborg@lyft.com

Street

SF.

CA

94107

City

State

Zip

Email ↓

Speaking: ☒ For ☐ Against ☐ Information

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

Representing LYFT, INC.

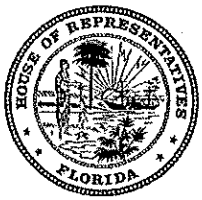
Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)



COMMITTEE/SUBCOMMITTEE APPEARANCE RECORD

Please fill out the entire form and submit both copies to the Committee Administrative Assistant at the meeting.



Bill



Amendment

Bill/PCS/PCB Number: SB 340

Amendment Number: _____

Name: Larry Clements

Representing: Myself

Title: _____

Address: 3570 Red Pontiac Dr

City: Port Orange State/Zip: FL 32129

Phone Number: 810-691-4846 Meeting Date: 4-6-17

Committee/Subcommittee: Senate Rules Committee

Presentation/Workshop Topic: State - ARS

Registered Lobbyist: YES ☐ NO ☒

State Employee: YES ☐ NO ☒



I wish to speak



Appearing in response to an inquiry for information made by member, committee, or staff



Appearing in response to subpoena



Appearing at the written request of the chair



Judge or elected officer appearing in official capacity



Lobbyist Appearance form submitted online

(If you are testifying on an amendment, please also indicate your position as a proponent or opponent on the bill as a whole.)

Bill:

Proponent ☐

Opponent ☒

Info only ☐

Amendment:

Proponent ☐

Opponent ☐

Info only ☐



COMMITTEE/SUBCOMMITTEE APPEARANCE RECORD

Please fill out the entire form and submit both copies to the Committee Administrative Assistant at the meeting.



Bill



Amendment

Bill/PCS/PCB Number: 340

Amendment Number: _____

Name: Barbara Haggerty

Representing: _____

Title: _____

Address: 16219 Fantasia Drive

City: Tampa

State/Zip: FL 33624

Phone Number: 813-391-4444

Meeting Date: 4-6-17

Committee/Subcommittee: _____

Presentation/Workshop Topic: _____

Registered Lobbyist: YES ☐ NO ☒

State Employee: YES ☐ NO ☒



I wish to speak



Appearing in response to an inquiry for information made by member, committee, or staff



Appearing in response to subpoena



Appearing at the written request of the chair



Judge or elected officer appearing in official capacity



Lobbyist Appearance form submitted online

(If you are testifying on an amendment, please also indicate your position as a proponent or opponent on the bill as a whole.)

Bill:

Proponent ☐

Opponent ☒

Info only ☐

Amendment:

Proponent ☐

Opponent ☐

Info only ☐

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/6/17
Meeting Date

SB0340
Bill Number (if applicable)

Topic TNC

Amendment Barcode (if applicable)

Name Ryan PATMINTRA

Job Title _____

Address 4300 W CYPRESS
Street

Phone _____

Tampa
City

FL
State

33611
Zip

Email RPATMINTRA@TAMPABAYFL.GOV

Speaking: ☒ For ☐ Against ☐ Information

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

Representing TAMPA BAY PARTNERSHIP

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/6/17
Meeting Date

SB 340
Bill Number (if applicable)

Topic OVERSIGHT/EDUCATION/TRANSPORTATION

Amendment Barcode (if applicable)

Name GAIL MARIE PERRY

Job Title CHAIR, COUNCIL of FLORIDA

Address PO BOX 1766

Phone 954/860 4063

Street

POMPANO BEACH FLORIDA 33061

City

State

Zip

Email workingfolk@hotmail.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing COMMUNICATIONS WORKERS of AMERICA

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/6
Meeting Date

340
Bill Number (if applicable)

Topic TRANSPORTATION NETWORK COS

Amendment Barcode (if applicable)

Name SIATER BAYLISS

Job Title _____

Address 204 S MONROE ST Phone 222 8908
Street

TLH FL 32301 Email _____
City State Zip

Speaking: ☒ For ☐ Against ☐ Information

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

Representing TECH NET

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/6/17

Meeting Date

SB 340
~~HB 7085~~

Bill Number (if applicable)

Topic SB 0340 TNC

Amendment Barcode (if applicable)

Name Arlisa Whitby

Job Title _____

Address 7535 N.W. 17th Ave

Phone 305-496-6806

Street

Miami FL

City

State

Zip

Email _____

Speaking: ☐ For ☒ Against ☐ Information

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

Representing my self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/6/17

Meeting Date

340

Bill Number (if applicable)

Topic TNR

Amendment Barcode (if applicable)

Name Jared Crawford

Job Title _____

Address 8295 NE 8295 Apt 4

Phone 305 330-8196

Street

Miami

City

FL

State

33138

Zip

Email _____

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

4.6.17

Meeting Date

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

SB 340

Bill Number (if applicable)

Topic TRANSPORTATION NETWORK COMPANIES

Amendment Barcode (if applicable)

Name MEGAN SIKYANE-SAMPLES

Job Title LEGISLATIVE ADVOCATE

Address D.C. Box 1757

Phone 850.701.3655

Street

TAMMAGREE

FL

32302

City

State

Zip

Email MSIKYANESAMPLES@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)

4 1 6 12017

Meeting Date

Topic _____

Bill Number 340
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705
City State Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☐ Against ☒ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SB 794

INTRODUCER: Banking and Insurance Committee and Senator Brandes

SUBJECT: Motor Vehicle Service Agreement Companies

DATE: April 6, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Knudson	BI	Fav/CS
2.	Harmsen	McKay	CM	Favorable
3.	Matiyow	Phelps	RC	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 794 expands the methods by which a motor vehicle service agreement company may insure its ability to pay out on its warranty claims, specifically by allowing the motor vehicle service agreement company to procure insurance to cover its motor vehicle service agreement claim exposure from a risk retention group that is authorized to do business in Florida. The risk retention group must meet certain requirements that ensure its financial health.

The bill also allows a motor vehicle service agreement company that provides vehicle protection expenses to obtain insurance coverage on its warranty claims from an insurer that is affiliated with the company.

Lastly, the bill allows a lender, finance company, or creditor to cancel a motor vehicle service agreement if those entities are authorized to do so in the underlying service agreement.

II. Present Situation:

Warranty Associations

Warranty associations, which include motor vehicle service agreement companies,¹ home

¹ Section 634.011, F.S.

warranty associations,² and service warranty associations,³ are governed under ch. 634 of the Florida Insurance Code. Service warranties, also known as “extended warranties,” are contracts between a company and consumer that are designed to protect the consumer from certain losses due to failure or improper functioning of a mechanical or other component of the warranted object, e.g., car, air conditioner, or large appliance.⁴ Service warranties are not considered traditional insurance products.⁵ Therefore, warranty associations are not required to submit their rates for approval by the Office of Insurance Regulation (OIR) like traditional insurance companies.⁶

Service warranty associations are generally regulated by the OIR, but are exempt from all other provisions of the Florida Insurance Code unless otherwise specified.⁷ The OIR’s regulatory authority includes, among other duties, the licensure of warranty associations,⁸ disapproval of noncompliant service agreement forms,⁹ annual review of a warranty association’s statistical reports,¹⁰ investigation of consumer complaints made against a warranty association,¹¹ and observation of a warranty association’s compliance with monetary reserve requirements.¹²

Motor Vehicle Service Agreement Companies

Motor vehicle service agreement companies are a type of warranty association that sell motor vehicle service agreements (warranties), also known as extended vehicle warranties. There are 90 motor vehicle service agreement companies currently licensed by the OIR in Florida.¹³

Motor Vehicle Service Agreements

Motor vehicle service agreements indemnify the service agreement holder (owner) of the motor vehicle listed on the service agreement contract from losses caused by the failure or improper function of any mechanical or other component part arising out of the ownership, operation, and use of the motor vehicle.¹⁴ The five specific types of motor vehicle service agreements included under the definition of a motor vehicle service agreement are those that provide for:

² Section 634.301, F.S.

³ Section 634.401, F.S.

⁴ Florida Department of Financial Services, *Motor Vehicle Service Agreements Overview*, available at <http://www.myfloridacfo.com/Division/Consumers/UnderstandingCoverage/MotorVehicleServiceAgreementsOverview.htm> (last visited Mar. 21, 2017).

⁵ Section 634.023, F.S. Kenneth E. Spahn, *Service Warranty Associations: Regulating Service Contracts as “Insurance” Under Florida’s Chapter 634*, 25 Stetson Law Rev. 597, 614-615, available at <http://www.stetson.edu/law/lawreview/media/service-warranty-associations-regulating-service-contracts-as-insurance-under-floridas-chapter-634-25-3.pdf> (last visited Mar. 22, 2017).

⁶ Section 634.121(11), F.S.

⁷ Sections 634.023, 634.3025, and 634.4025, F.S.

⁸ Sections 634.041 and 634.061-634.081, F.S.

⁹ Section 634.1213, F.S.

¹⁰ Section 634.137, F.S.

¹¹ Section 634.141(2)(c), F.S.

¹² Section 634.141(2)(d), F.S.

¹³ Florida Office of Insurance Regulation, *Active Company Search*, available at <http://www.floir.com/CompanySearch/>, Select “Motor Vehicle Service Agreement Company” under “Company Type” (last visited March 21, 2017).

¹⁴ Section 634.011(8), F.S.

- Coverage issued in conjunction with an additive product¹⁵ that is applied to the motor vehicle;
- Payment of vehicle protection expenses, contingent upon the use of a vehicle protection product (product or system designed to prevent theft, or assist in recovery of the motor vehicle);
- Repair or replacement of tires on a motor vehicle that is damaged as a result of a road hazard;
- Indemnification of the consumer for paintless dent-removal services; and
- Replacement of a motor vehicle's key or key fob, if the key or fob is inoperable, lost, or stolen.¹⁶

Licensure

The OIR licenses and supervises motor vehicle service agreement companies under part I of ch. 634, F.S. To become licensed by the OIR, a motor vehicle service agreement company must:¹⁷

- Prove that it is a financially solvent corporation formed under Florida or another state's law;
- Establish that the corporation's management is competent and trustworthy;
- Deposit \$200,000 with the Department of Financial Services (DFS) to ensure that the corporation will meet its warranty obligations;¹⁸
- Have and maintain at least \$500,000 in net assets, which must be kept in the United States;
- Respond, under oath of two executive officers, to any inquiries made in writing by the OIR regarding the corporation's transactions and affairs; and
- Have not violated any requirement of part I of ch. 634, F.S., or any related rules, within the previous 3 years.¹⁹

Financial Health

To ensure that motor vehicle service agreement companies will be able to pay out on claims made against the warranties they issue, the OIR also requires as a qualification for licensure that all motor vehicle service agreement companies either maintain an unearned premium reserve,²⁰ or obtain contractual liability insurance on 100 percent of its warranty claim exposure.²¹ An unearned premium reserve is a cache of unencumbered assets held by the motor vehicle service agreement company that may be used to pay an unusual number of warranty claims made against the company.²² Contractual liability insurance is an insurance policy that the motor vehicle service agreement company may purchase to cover any claims or cancellation refunds that the

¹⁵ Section 634.011(2), F.S., defines an "additive product" as "any fuel supplement, oil supplement, or any other supplement product added to a motor vehicle for the purpose of increasing or enhancing the performance or improving the longevity of such motor vehicle."

¹⁶ Section 634.011(8), F.S.

¹⁷ Section 634.041, F.S.

¹⁸ See, s. 634.052, F.S. If the company maintains less than \$750,000 in unearned gross premium, the deposit may be lowered to \$100,000. The Department of Financial Services may also lower the required deposit to no less than \$100,000 after the first year of business. For good cause shown after notice and a hearing, the OIR may require the deposit to be increased to no more than \$500,000 to protect the company's customers and creditors. The deposit must be in the form of the various securities specified in s. 625.52, F.S.

¹⁹ Section 634.041(5), F.S.

²⁰ Section 634.041(8)(a), F.S.

²¹ Section 634.041(8)(b), F.S.

²² See ss. 634.011(18), .041(8)(a), F.S.

company cannot pay in the event of an unusual number of warranty claims.²³ Currently, s. 634.041(8)(b), F.S., requires such insurance policies to be purchased exclusively from an insurer that is approved by the OIR to do business in Florida, which must have \$4 million in its reserves.²⁴

However, motor vehicle service agreement companies that provide warranties that promise “vehicle protection expenses,” or a flat amount payable to the agreement holder upon the loss or damage to the vehicle, are not given a choice regarding how they may cover their claim exposure.²⁵ These companies are required to maintain a contractual liability insurance policy on 100 percent of their warranty claim exposures; they may not use an unearned premium reserve.²⁶ Additionally, these companies must obtain their insurance from an insurer who is not affiliated with their company, unless the insurer issued the policy to the company before January 1, 2002.²⁷

Cancellation of Motor Vehicle Service Agreements

Currently, an agreement purchaser, insurer, or service agreement company are authorized under conditions specified by law to cancel a motor vehicle service agreement, depending on the length of time since the purchase of the service agreement.²⁸ An agreement holder must positively act to cancel his or her service agreement after he or she satisfies the vehicle financing, through either sale, trade-in, or pay-off of the vehicle following an insured total loss; cancellation of the warranty does not automatically occur. Cancellation allows the agreement holder to avoid unnecessary premiums and to obtain a refund of a portion of the premium paid, as provided by law.^{29, 30} In current practice, some service agreement lenders, finance companies, or creditors request the cancellation of a service agreement on behalf of a consumer when the agreement is no longer necessary, but this is not expressly permitted in law.

Warranties under the Uniform Commercial Code

Extended warranty motor vehicle service agreements are distinct from the basic manufacturer’s warranty traditionally offered by motor vehicle manufacturers. A basic motor vehicle warranty is generally provided for in Florida’s Uniform Commercial Code,³¹ which defines a warranty as any writing or promise made by the vehicle manufacturer that relates to the nature of the material

²³ Contractual liability insurance is casualty insurance. Section 624.605(1)(b), F.S. Casualty insurers are initially required to have at least \$5,000,000 in surplus as to policyholders and subsequently must maintain \$4,000,000 in surplus as to policy holders. Sections 624.407 and 624.408, F.S.

²⁴ Section 624.408(1)(e), F.S.

²⁵ Section 634.011(8)(b), F.S.

²⁶ Section 634.041(11)(a), F.S.

²⁷ *Id.*

²⁸ Section 634.121, F.S.

²⁹ Section 634.121(3), F.S. This section also governs cancellations by the service agreement company and provides detailed requirements concerning justification and process.

³⁰ “Unearned premium” is the portion of the gross written premium that has not been earned on a straight pro rata basis. Section 634.011(16), F.S. Premium is not earned until the policy period expires and are usually paid in advance. Unearned premium is that portion of a premium that the insurer has already received, but relates to future coverage during the policy period.

³¹ See ch. 681, F.S., “Motor Vehicle Warranty Enforcement Act.”

or workmanship of the vehicle, and affirms or promises that such material or workmanship is free of defects.³²

Basic warranties are not considered insurance for several reasons, namely because they are a product given to the consumer for no extra cost, and because warranties only cover defects that are under the manufacturers' control, whereas insurance or service agreements are separate contracts that indemnify consumers against harm or loss unrelated to defects found in the vehicle.³³ As a result, basic warranties are regulated by the Florida Attorney General's Office,³⁴ and the Federal Trade Commission.³⁵

Risk Retention Groups

State and federal laws authorize risk retention groups (groups).³⁶ Federal law generally preempts their regulation but for requirements that relate to the formation and operations of the groups.³⁷ Specifically, the Federal Liability Risk Retention Act³⁸ provides that a state has primary regulatory oversight of the groups to which it issues charters. While some groups are chartered under s. 627.943, F.S., and are therefore regulated by the OIR, other groups are chartered in foreign states and are therefore subject to those states' regulatory authority. Despite this, all groups that are chartered by any state, and that meet the requirements of the Federal Liability Risk Retention Act, may operate as a group in Florida.^{39,40} There are 108 risk retention groups active in Florida.⁴¹

Risk retention groups are corporations or limited liability associations that are certified or licensed as a liability insurance company, and that operate with the primary purpose of sharing any liabilities of the members of the group among the members themselves. The true hallmark of a risk retention group, however, is that its members⁴² must engage in similar businesses or activities, and those similar interests must constitute the exposed risk that the group seeks to insure.

³² Section 681.102(22), F.S.

³³ Kenneth E. Spahn, *Service Warranty Associations: Regulating Service Contracts as "Insurance" Under Florida's Chapter 634*, 25 Stetson Law Rev. 597, 610-614, available at <http://www.stetson.edu/law/lawreview/media/service-warranty-associations-regulating-service-contracts-as-insurance-under-floridas-chapter-634-25-3.pdf> (last visited Mar. 23, 2016).

³⁴ Section 681.102(6), F.S.

³⁵ 15 U.S.C. §2302; United States Federal Trade Commission, *Consumer Information: Warranties*, available at <http://www.consumer.ftc.gov/articles/0252-warranties> (last visited Mar. 23, 2016).

³⁶ 15 U.S.C. ss. 3901, et seq. (2016); part XIX of ch. 627, F.S., "Purchasing Groups and Risk Retention Groups."

³⁷ 15 U.S.C. s. 3902 (2016).

³⁸ 15 USC §3901.

³⁹ Fla. Admin. Code R. 69-O-200.006, requires insurers who write contractual liability insurance to obtain a certificate of authority from the OIR to do so. The OIR asserts that risk retention groups from outside of Florida may not receive certificates of authority under current law, and therefore the groups cannot offer contractual liability insurance in Florida. Florida Office of Insurance Regulation, *Agency Analysis of 2017 Senate Bill 794*, p. 5 (Feb. 17, 2017). This rule may conflict with federal preemption regarding risk retention groups and could be resolved by the bill.

⁴⁰ Section 627.944, F.S.

⁴¹ Florida Office of Insurance Regulation, *Active Company Search*, <http://www.floir.com/CompanySearch/>, Select "Risk Retention Group" under "Company Type" (last visited March 23, 2017).

⁴² Section 627.942(9)(e), F.S. requires that risk retention groups be owned by either their members, who must also receive insurance from the group, or by an organization made up of members who receive insurance from the group.

Risk retention groups may only insure specific risks: liability insurance, and reinsurance of other risk retention groups that share the same common interests required to form a group. Benefits of membership in a risk retention group include better control of overhead costs and profits, higher standards of underwriting, and stability of coverage.⁴³ The availability of participation in risk retention groups provide business with another option to compete in the market.

III. Effect of Proposed Changes:

Section 1 amends s. 634.041, F.S., to revise how motor vehicle service warranty companies may obtain contractual liability insurance to cover their claim exposure. Specifically, it allows motor vehicle service warranty companies to meet their reserve requirements by participating in a risk retention group, if the group covers 100 percent of the claims exposure of the company, and maintains net assets (surplus as regards policyholders) of at least \$15 million. Additionally, the bill makes the \$15 million minimum surplus as regards policyholders uniformly apply to both risk retention groups and insurers that provide claims coverage for a motor vehicle service agreement company; this represents an increase from a \$4 million surplus as regards policyholders requirement previously applied to such insurers.

Motor vehicle service warranty companies that offer vehicle protection expenses may opt to meet their reserve requirements through risk retention groups, rather than exclusively through traditional insurers. The bill also permits these specific warranty companies to purchase their claim insurance through an insurance company that is affiliated with their business.

Section 2 amends s. 634.121(3)(b), F.S., to authorize additional parties, specifically the lender, finance company, or creditor, to cancel a motor vehicle service agreement. However, these parties may only do so 60 days or more after the motor vehicle service agreement was purchased, and where such a right of cancellation is expressly provided for in the contract.

Section 3 of the bill provides an effective date of July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁴³ Golden Insurance Company, *Risk Retention Group FAQ's*, <http://www.golden-insurance.com/FAQS> (last visited Mar. 22, 2017); Captive Insurance Companies Association, *Risk Retention FAQ's: What are the advantages of risk retention groups?*, <http://www.cicaworld.com/Resources/risk-retention-faqs> (last visited Mar. 22, 2017).

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

None.

B. Private Sector Impact:

Insurers and risk retention groups providing contractual liability coverage on motor vehicle service warranties will need to maintain a surplus of at least \$15 million dollars.

The bill may increase the amount of and options related to contractual liability coverage of motor vehicle service agreements.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends ss. 634.041, and 634.121, F.S.

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

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

CS by Banking and Insurance on March 14, 2017:

- Makes technical and grammatical changes to the provision of the bill; and
- Allows a lender, finance company, or creditor to cancel service agreements, if provided for in the underlying agreement.

B. Amendments:

None.

By the Committee on Banking and Insurance; and Senator Brandes

597-02421-17

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A bill to be entitled

An act relating to motor vehicle service agreement companies; amending s. 634.041, F.S.; revising qualifications for a motor vehicle service agreement company to obtain and maintain a license; amending s. 634.121, F.S.; requiring specified refunds by insurers or service agreement companies if service agreements are canceled by lenders, finance companies, or creditors after a specified timeframe; providing a limitation on such cancellations; providing an effective date.

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

Section 1. Paragraph (b) of subsection (8) and paragraph (a) of subsection (11) of section 634.041, Florida Statutes, are amended to read:

634.041 Qualifications for license.—To qualify for and hold a license to issue service agreements in this state, a service agreement company must be in compliance with this part, with applicable rules of the commission, with related sections of the Florida Insurance Code, and with its charter powers and must comply with the following:

(8)

(b) A service agreement company does not have to establish and maintain an unearned premium reserve if it secures purchases and maintains contractual liability insurance in accordance with the following:

1. Coverage of ~~The insurance covers~~ 100 percent of the its

597-02421-17

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claim exposure ~~and~~ is obtained from an insurer that is approved by the office and that ~~which~~ holds a certificate of authority under s. 624.401 to do business within this state, or such coverage is secured through a risk retention group that is authorized to do business within this state under s. 627.943 or s. 627.944. Such insurer or risk retention group shall maintain a surplus as regards policyholders of at least \$15 million.

2. If the service agreement company does not meet its contractual obligations, the contractual liability insurance policy binds its issuer to pay or cause to be paid to the service agreement holder all legitimate claims and cancellation refunds for all service agreements issued by the service agreement company while the policy was in effect. This requirement also applies to those service agreements for which no premium has been remitted to the insurer.

3. If the issuer of the contractual liability policy is fulfilling the service agreements covered by the contractual liability policy and the service agreement holder cancels the service agreement, the issuer must make a full refund of unearned premium to the consumer, subject to the cancellation fee provisions of s. 634.121(3). The sales representative and agent must refund to the contractual liability policy issuer their unearned pro rata commission.

4. The policy may not be canceled, terminated, or nonrenewed by the insurer or the service agreement company unless a 90-day written notice thereof has been given to the office by the insurer before the date of the cancellation, termination, or nonrenewal.

5. The service agreement company must provide the office

597-02421-17

2017794c1

59 with the claims statistics.

60
61 All funds or premiums remitted to an insurer by a motor vehicle
62 service agreement company under this part shall remain in the
63 care, custody, and control of the insurer and shall be counted
64 as an asset of the insurer; provided, however, this requirement
65 does not apply when the insurer and the motor vehicle service
66 agreement company are affiliated companies and members of an
67 insurance holding company system. If the motor vehicle service
68 agreement company chooses to comply with this paragraph but also
69 maintains a reserve to pay claims, such reserve shall only be
70 considered an asset of the covered motor vehicle service
71 agreement company and may not be simultaneously counted as an
72 asset of any other entity.

73 (11)(a) A service agreement company offering service
74 agreements providing vehicle protection expenses may meet the
75 requirements for this part only by maintaining contractual
76 liability insurance covering 100 percent of its vehicle
77 protection claim exposure in accordance with paragraph (8)(b),
78 ~~which insurance must be issued by an insurance company not~~
79 ~~affiliated with the service agreement company, unless the~~
80 ~~insurance company had issued a contractual liability insurance~~
81 ~~policy to a service agreement company on or before January 1,~~
82 ~~2002.~~ Service agreements providing vehicle protection expenses
83 may be sold only to a service agreement holder that has in-force
84 comprehensive motor vehicle insurance coverage for the vehicle
85 to be covered by the service agreement.

86 Section 2. Paragraph (b) of subsection (3) of section
87 634.121, Florida Statutes, is amended to read:

597-02421-17

2017794c1

88 634.121 Forms, required procedures, provisions.—

89 (3)

90 (b) After the service agreement has been in effect for 60
91 days, it may not be canceled by the insurer or service agreement
92 company unless:

93 1. There has been a material misrepresentation or fraud at
94 the time of sale of the service agreement;

95 2. The agreement holder has failed to maintain the motor
96 vehicle as prescribed by the manufacturer;

97 3. The odometer has been tampered with or disabled and the
98 agreement holder has failed to repair the odometer; or

99 4. For nonpayment of premium by the agreement holder, in
100 which case the service agreement company shall provide the
101 agreement holder notice of cancellation by certified mail.

102
103 If the service agreement is canceled by the insurer or service
104 agreement company, the return of premium must not be less than
105 100 percent of the paid unearned pro rata premium, less any
106 claims paid on the agreement. If, after 60 days, the service
107 agreement is canceled by the service agreement holder, lender,
108 finance company, or creditor, the insurer or service agreement
109 company shall return directly to the agreement holder not less
110 than 90 percent of the unearned pro rata premium, less any
111 claims paid on the agreement. Cancellations initiated by
112 lenders, creditors, or finance companies are valid only if
113 authorized by the terms of the service agreement. The service
114 agreement company remains responsible for full refunds to the
115 consumer on canceled service agreements. However, the
116 salesperson and agent are responsible for the refund of the

597-02421-17

2017794c1

117 unearned pro rata commission. A service agreement company may
118 effectuate refunds through the issuing salesperson or agent in
119 accordance with paragraphs (c) and (d).

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



The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto,
Committee on Rules

Subject: Committee Agenda Request

Date: March 28th, 2017

I respectfully request that **Senate Bill #794**, relating to **Motor Vehicle Service Agreement Companies** be placed on the:

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

A handwritten signature in black ink, appearing to read "Jeff Brandes", written over a horizontal line.

Senator Jeff Brandes
Florida Senate, District 24

CourtSmart Tag Report

Room: EL 110
Caption: Senate Rules Committee

Case No.:
Judge:

Type:

Started: 4/6/2017 10:33:54 AM

Ends: 4/6/2017 12:07:26 PM

Length: 01:33:33

10:33:53 AM Meeting called to order by Chair Benacquisto
10:33:57 AM Roll call by Administrative Assistant Cyndi Futch
10:34:02 AM Quorum present
10:34:32 AM CS/CS/SB 172 introduced by Chair Benacquisto
10:34:39 AM Explanation of CS/CS/SB 172 by Senator Passidomo
10:35:20 AM Bryan Cherry of the Florida Public Guardian Coalition, Inc. waives in support
10:35:32 AM Brian Pitts of Justice-2-Jesus speaks in support
10:35:36 AM Amber Kelly, Director of Policy & Communications for Florida Family Action speaks in opposition
10:35:55 AM Maitna Edenfield of the Real Property, Probate & Trust Law Section of the Florida Bar waives in support
10:36:05 AM Senator Passidomo waives close
10:36:11 AM Roll call on CS/CS/SB 172 by Administrative Assistant Cyndi Futch
10:36:28 AM CS/CS/SB 172 is reported favorably
10:36:42 AM CS/CS/SB 346 is introduced by Chair Benacquisto
10:36:49 AM Explanation of CS/CS/SB 346 by Senator Stargel
10:37:12 AM Amendment Barcode No. 820372 introduced by Chair Benacquisto
10:37:22 AM Explanation of Amendment Barcode No. 820372 by Senator Stargel
10:37:28 AM Without objection, Amendment Barcode No. 820372 is adopted
10:37:42 AM Greg Black of the Business Law Section of the Florida Bar waives in support
10:37:55 AM Senator Stargel waives close
10:37:59 AM Roll call on CS/CS/CS/SB 346 by Administrative Assistant Cyndi Futch
10:38:16 AM CS/CS/CS/SB 346 is reported favorably
10:38:26 AM CS/CS/SB 886 introduced by Chair Benacquisto
10:38:34 AM Explanation of CS/CS/SB 886 by Senator Powell
10:38:56 AM Question by Senator Bradley
10:38:59 AM Response by Senator Powell
10:39:15 AM Brian Pitts of Justice-2-Jesus speaks
10:40:34 AM Question from Senator Galvano to Senator Powell
10:40:54 AM Senator Braynon provides additional comments on Senator Galvano's question
10:41:18 AM Response by Senator Powell
10:43:23 AM Comments by Chair Benacquisto
10:43:32 AM Response from Vice Chair Thurston
10:43:51 AM Senator Powell closes
10:43:57 AM Roll call on CS/SB 886 by Administrative Assistant Cyndi Futch
10:44:09 AM CS/SB 886 is reported favorably
10:44:29 AM SB 1634 introduced by Chair Benacquisto
10:44:34 AM Explanation of SB 1634 by Senator Steube
10:45:13 AM Amendment Barcode No. 236060 introduced by Chair Benacquisto
10:45:25 AM Explanation of Amendment Barcode No. 236060 by Senator Steube
10:45:30 AM Comments by Senator Galvano
10:45:55 AM Without objection, Amendment Barcode No. 236060 is adopted
10:46:05 AM Kari Hebrank of the Florida Home Builders Association waives in support
10:46:12 AM Brian Pitts of Justice-2-Jesus waives in support
10:46:20 AM Senator Steube waives close
10:46:24 AM Roll call on CS/SB 1634 by Administrative Assistant Cyndi Futch
10:46:37 AM CS/CS/SB 624 introduced by Chair Benacquisto
10:46:57 AM Explanation of CS/CS/SB 624 by Senator Steube
10:47:56 AM Amendment Barcode No. 463938 introduced by Chair Benacquisto
10:48:03 AM Explanation of Amendment Barcode No. 463938 by Senator Brandes
10:48:34 AM Senator Brandes withdraws Amendment Barcode No. 463938
10:48:36 AM Amendment Barcode No. 480786 introduced by Chair Benacquisto
10:48:42 AM Explanation of Amendment Barcode No. 480786 by Senator Brandes
10:48:45 AM Senator Brandes withdraws Amendment Barcode No. 480786

10:48:59 AM Matt Puckett of the Florida Police Benevolent Association speaks in support
 10:49:24 AM Bernadette Howard of the Florida Police Chiefs Association waives in support
 10:49:29 AM Lisa Henning of the Fraternal Order of Police waives in support
 10:49:33 AM Mike Tucker of the Fraternal Order of Police waives in support
 10:49:38 AM Matt Dunagan of the Florida Sheriffs Association waives in support
 10:49:44 AM Dennis Strange of the Orange County Sheriffs Office waives in support
 10:50:00 AM Senator Steube closes on CS/CS/SB 624
 10:50:03 AM Roll call on CS/CS/SB 624 by Administrative Assistant Cyndi Futch
 10:50:17 AM CS/CS/SB 624 is reported favorably
 10:50:33 AM CS/SB 1108 introduced by Chair Benacquisto
 10:50:39 AM Explanation of CS/SB 1108 by Senator Artiles
 10:51:00 AM Rocco Salvatori of the Florida Professional Firefighters waives in support
 10:51:06 AM Brian Pitts of Justice-2-Jesus speaks
 10:53:21 AM Comments by Senator Braynon
 10:53:42 AM Comments by Vice Chair Thurston
 10:53:51 AM Comments by Chair Benacquisto
 10:53:59 AM Senator Artiles closes on CS/SB 1108
 10:54:39 AM Roll call on CS/SB 1108 by Administrative Assistant Cyndi Futch
 10:54:47 AM CS/SB 1108 is reported favorably
 10:55:12 AM SB 404 introduced by Chair Benacquisto
 10:55:16 AM Comments by Chair Benacquisto
 10:55:30 AM CS/SB 812 introduced by Chair Benacquisto
 10:55:37 AM Explanation of CS/SB 812 by Senator Perry
 10:56:19 AM Amendment Barcode No. 720260 introduced by Chair Benacquisto
 10:56:25 AM Explanation of Amendment Barcode No. 720260 by Senator Perry
 10:56:31 AM Question by Senator Braynon
 10:56:44 AM Response by Senator Perry
 10:57:03 AM Without objection, Amendment Barcode No. 720260 is adopted
 10:57:21 AM Comments by Chair Benacquisto
 10:57:27 AM Comments by Leader Braynon
 10:57:43 AM Senator Perry waives close
 10:57:50 AM Roll call on CS/CS/SB 812 by Administrative Assistant Cyndi Futch
 10:58:04 AM CS/CS/SB 812 is reported favorably
 10:58:20 AM SB 404 introduced by Chair Benacquisto
 10:58:26 AM Explanation of SB 404 by Senator Simmons
 10:58:36 AM Late filed, strike all Amendment Barcode No. 546448 introduced by Chair Benacquisto
 10:58:40 AM No objection made to late filed, strike all Amendment Barcode No. 546448
 10:58:55 AM Explanation of Amendment Barcode No. 546448
 10:59:14 AM Without objection, Amendment Barcode No. 546448 is adopted
 10:59:30 AM Elizabeth Boyd of CFO Atwater waives in support
 10:59:35 AM Brian Pitts of Justice-2-Jesus waives in support
 10:59:50 AM Senator Simmons waives close
 10:59:55 AM Roll call on CS/SB 404 by Administrative Assistant Futch
 11:00:22 AM CS/SB 404 is reported favorably
 11:00:30 AM CS/CS/SB 550 introduced by Chair Benacquisto
 11:00:37 AM Explanation of CS/CS/SB 550 by Senator Bracy
 11:01:02 AM Gary Bradford of the Florida Police Benevolent Association waives in support
 11:01:11 AM Bernadette Howard of the Florida Police Chiefs Association waives in support
 11:01:29 AM Brian Pitts of Justice-2-Jesus speaks
 11:03:25 AM Tangelo Sears on behalf of Parents of Murdered Kids speaks in support
 11:04:30 AM Lisa Henning of the Fraternal Order of Police waives in support
 11:04:39 AM Jasmyne Henderson of the City of Orlando waives in support
 11:04:48 AM Comments by Senator Braynon
 11:05:41 AM Comments by Vice Chair Thurston
 11:06:22 AM Comments by Chair Benacquisto
 11:06:46 AM Senator Bracy closes on CS/CS/SB 550
 11:07:08 AM Roll call on CS/CS/SB 550 by Administrative Assistant Cyndi Futch
 11:07:29 AM CS/CS/SB 550 is reported favorably
 11:07:58 AM SB 1024 introduced by Chair Benacquisto
 11:08:03 AM (Vice Chair Thurston takes the chair)
 11:08:12 AM Explanation of SB 1024 by Senator Stewart
 11:09:08 AM Brian Pitts on behalf of Justice-2-Jesus speaks

11:11:39 AM Question by Senator Braynon
 11:11:56 AM Comments by Vice Chair Thurston
 11:12:10 AM Senator Stewart closes on SB 1024
 11:12:36 AM Roll call on SB 1024 by Administrative Assistant Cyndi Futch
 11:12:51 AM SB 1024 is reported favorably
 11:13:12 AM SB 1694 introduced by Vice Chair Thurston
 11:13:38 AM Explanation of SB 1694 by Senator Torres
 11:15:15 AM Amendment Barcode No. 187070 is introduced by Vice Chair Thurston
 11:15:35 AM Question by Chair Benacquisto
 11:15:40 AM Response by Senator Torres
 11:15:42 AM Brian Pitts of Justice-2-Jesus waives in support
 11:16:17 AM Without objection Amendment Barcode No. 187070 is adopted
 11:16:28 AM Question by Senator Flores
 11:16:38 AM Response by Senator Torres
 11:16:43 AM Question by Chair Benacquisto
 11:16:50 AM Response by Senator Torres
 11:17:09 AM Senator Torres closes on CS/SB 1694
 11:17:30 AM Roll call on CS/SB 1694 by Administrative Assistant Cyndi Futch
 11:17:43 AM CS/SB 1694 is reported favorably
 11:18:00 AM (Vice Chair Thurston returns the chair)
 11:18:08 AM CS/SM 572 introduced by Chair Benacquisto
 11:18:19 AM Explanation of CS/SM 572 by Senator Campbell
 11:19:32 AM Amendment Barcode No. 381664 introduced by Senator Campbell
 11:19:39 AM Explanation of Amendment Barcode No. 381664 by Senator Campbell
 11:20:17 AM Question by Senator Latvala
 11:20:58 AM Question by Senator Galvano
 11:21:32 AM Question by Senator Flores
 11:21:46 AM Responses by Senator Campbell
 11:22:25 AM Question by Senator Latvala
 11:22:33 AM Response by Senator Campbell
 11:22:47 AM Follow-up by Senator Latvala
 11:22:55 AM Response by Senator Campbell
 11:23:01 AM Without objection, Amendment Barcode No. 381644 is adopted
 11:23:15 AM Guithele Ruiz Nicolas, President of the Haitian-American Democratic Club speaks
 11:25:20 AM Comments by Senator Latvala
 11:25:39 AM Response by Ms. Nicolas
 11:26:18 AM Comments by Senator Braynon
 11:27:06 AM Comments by Vice Chair Thurston
 11:28:04 AM Senator Campbell closes on CS/CS/SM 572
 11:29:27 AM Roll call on CS/CS/SM 572 by Administrative Assistant Cyndi Futch
 11:29:48 AM CS/CS/SM 572 is reported favorably
 11:30:00 AM CS/SB 818 introduced by Chair Benacquisto
 11:30:07 AM Explanation of CS/SB 818 by Senator Hutson
 11:30:31 AM Gary Hunter of the American Resort Developer's Association speaks in support
 11:31:30 AM Brian Pitts of Justice -2-Jesus speaks
 11:33:22 AM Senator Hutson closes on CS/SB 818
 11:33:38 AM Roll call on CS/SB 818 by Administrative Assistant Cyndi Futch
 11:33:53 AM CS/SB 818 is reported favorably
 11:34:17 AM SB 438 introduced by Chair Benacquisto
 11:34:23 AM Explanation of SB 438 by Senator Baxley
 11:35:06 AM Jessica Janasiewicz of the Florida Association of School Administrators waives in support
 11:35:18 AM Brian Pitts of Justice-2-Jesus speaks
 11:37:28 AM Senator Baxley closes on SB 438
 11:37:48 AM Roll call on SB 438 by Administrative Assistant Cyndi Futch
 11:38:04 AM SB 438 is reported favorably
 11:38:20 AM SB 464 introduced by Chair Benacquisto
 11:38:26 AM Explanation of SB 464 by Senator Clemens
 11:39:22 AM Diane Ferguson of Miami-Dade County waives in support
 11:39:34 AM Brian Pitts of Justice-2-Jesus speaks
 11:40:41 AM Roll call on SB 464 by Administrative Assistant
 11:41:03 AM SB 464 is reported favorably
 11:41:12 AM CS/CS/SB 340 introduced by Chair Benacquisto

11:41:13 AM Explanation of CS/CS/SB 340 by Senator Brandes
 11:41:43 AM Late Filed Amendment Barcode No. 875988 introduced by Chair Benacquisto
 11:41:52 AM Comments by Senator Lee
 11:42:11 AM Late Filed Substitute Amendment Barcode No. 761146 introduced by Chair Benacquisto
 11:45:33 AM Explanation of Late Filed Substitute Amendment Barcode No. 761146 by Senator Lee
 11:45:38 AM Question by Senator Braynon
 11:46:11 AM Response by Senator Lee
 11:46:20 AM Comments by Senator Brandes
 11:47:13 AM Response by Senator Lee
 11:49:42 AM Discussion between Senator Brandes and Chair Benacquisto
 11:50:00 AM Comments by Senator Brandes
 11:50:59 AM In debate, comments by Senator Brandes
 11:51:19 AM Senator Lee responds
 11:51:27 AM Substitute Amendment Barcode No. 761146 is withdrawn
 11:51:42 AM Brewster Beavis of the Associated Industries of Florida waives in support
 11:51:47 AM Liz Reynolds of the National Association of Mutual Insurance Companies waives in support
 11:51:59 AM Gina Evans of Tampa International Airport waives in support
 11:52:02 AM Cesar Fernandez of Uber Technologies, Inc. waives in support
 11:52:15 AM Marmilly Medina waives in opposition
 11:52:19 AM Joanne Alvarez, 911 operator, waives in opposition
 11:52:25 AM Christopher Emmanuel of the Florida Chamber of Commerce waives in support
 11:52:29 AM Ramon Farfan waives in opposition
 11:52:39 AM Daniel Spivey waives in opposition
 11:52:42 AM Trevor Mask waives in support
 11:52:45 AM Samantha Sexton of the Personal Insurance Federation of Florida waives in support
 11:52:53 AM Edgardo Marrero waives in opposition
 11:53:07 AM Question by Senator Flores to speaker Joanne Alvarez
 11:53:36 AM Response by Ms. Alvarez
 11:53:44 AM Chair Benacquisto clarifies Amendment Barcode No. 875988 is also withdrawn
 11:53:51 AM Additional comment by Senator Flores
 11:54:09 AM Response by Ms. Alvarez
 11:54:14 AM Comment by Chair Benacquisto
 11:54:23 AM Seadorra Brown waives in opposition
 11:54:29 AM Antonio Eiroa waives in opposition
 11:54:35 AM Andrew Hosek of Americans for Prosperity waives in support
 11:54:40 AM James Taylor of the Florida Technology Council waives in support
 11:54:46 AM Dwight Mattingly speaks in opposition
 11:56:51 AM Comments by Chair Benacquisto
 11:57:16 AM Follow-up by Mr. Mattingly
 11:57:51 AM Tim Albor of Lyft, Inc. waives in support
 11:57:57 AM Larry Clemens waives in opposition
 11:58:03 AM Barbara Haggerty in opposition
 11:58:15 AM Ryan Patmintra of the Tampa Bay Partnership waives in support
 11:58:23 AM Gail Marie Perry of Communications Workers of America speaks in opposition
 12:00:23 PM Siater Bayliss of Technet waives in support
 12:00:28 PM Arlisa Whitby waives in opposition
 12:00:37 PM Jared Crawford waives in opposition
 12:00:42 PM Megan Sirjane-Samples of the Florida League of Cities waives in opposition
 12:00:51 PM Brian Pitts of Justice-2-Jesus speaks
 12:02:22 PM Comments by Senator Lee
 12:04:31 PM Senator Brandes closes on CS/CS/SB 340
 12:04:54 PM Roll call on CS/CS/SB 340 by Administrative Assistant Cyndi Futch
 12:05:19 PM CS/CS/SB 340 is reported favorably
 12:05:26 PM CS/SB 794 introduced by Chair Benacquisto
 12:05:31 PM Explanation of CS/SB 794 by Senator Brandes
 12:06:30 PM Senator Brandes waives close
 12:06:33 PM Roll call on CS/SB 794 by Administrative Assistant Cyndi Futch
 12:06:57 PM CS/SB 794 is reported favorably
 12:07:06 PM Senator Galvano moved the record show his vote as favorable on CS/CS/CS/SB 346
 12:07:09 PM Motion is adopted by unanimous consent
 12:07:10 PM Senator Simpson moved the record show his vote as favorable on SB 818
 12:07:15 PM Motion is adopted by unanimous consent

12:07:20 PM Senator Book moves to adjourn
12:07:22 PM Meeting is adjourned