Tab 1	**SB 1238** by **Bean**; (Similar to CS/H 01043) Utility Investments in Gas Reserves					
~~265888~~	A	S	WD	RC, Latvala	btw L.12 - 13:	04/25 06:58 PM
~~916352~~	A	S	WD	RC, Latvala	Delete L.27:	04/25 06:58 PM
400188	A	S	RS	RC, Latvala	Delete L.28 - 42:	04/25 06:58 PM
581278	SA	S	RCS	RC, Latvala	Delete L.28 - 42:	04/25 06:58 PM
~~246872~~	A	S	WD	RC, Latvala	Delete L.30:	04/25 06:58 PM
208122	A	S	RS	RC, Latvala	Delete L.40:	04/25 06:58 PM
827306	SA	S	RCS	RC, Latvala	Delete L.41 - 42:	04/25 06:58 PM
383720	A	S	RS	RC, Latvala	btw L.42 - 43:	04/25 06:58 PM
789608	SA	S	RCS	RC, Latvala	btw L.49 - 50:	04/25 06:58 PM
~~310804~~	A	S	WD	RC, Latvala	Delete L.42:	04/25 06:58 PM
~~461616~~	A	S	WD	RC, Latvala	btw L.49 - 50:	04/25 06:58 PM
~~440944~~	A	S	WD	RC, Latvala	btw L.49 - 50:	04/25 06:58 PM
~~793320~~	A	S	WD	RC, Latvala	btw L.49 - 50:	04/25 06:58 PM

Tab 2	**CS/CS/SB 188** by **CA, RI, Steube (CO-INTRODUCERS) Perry**; (Compare to CS/H 00425) Vacation Rentals					
379712	A	S	RCS	RC, Flores	Delete L.10 - 26:	04/25 08:45 PM
113756	A	S	RCS	RC, Latvala	btw L.26 - 27:	04/25 08:45 PM

Tab 3	**CS/SB 616** by **GO, Steube**; Concealed Weapons or Firearms

Tab 4	**CS/SB 14** by **JU, Steube**; (Identical to CS/CS/H 06529) Relief of Lillian Beauchamp by the St. Lucie County School Board

Tab 5	**CS/SB 198** by **EP, Stewart (CO-INTRODUCERS) Rodriguez**; (Similar to CS/H 00861) Environmental Regulation Commission						
904886	A	S	L	RCS	RC, Stewart	Delete L.52 - 55:	04/25 07:06 PM

Tab 6	**CS/CS/SB 200** by **JU, CF, Passidomo (CO-INTRODUCERS) Torres**; (Similar to CS/CS/H 00363) Temporary Respite Care of a Child					
596944	A	S	RCS	RC, Passidomo	Delete L.38 - 259:	04/25 07:09 PM

Tab 7	**CS/CS/SB 206** by **BI, JU, Passidomo (CO-INTRODUCERS) Brandes**; (Similar to CS/CS/H 00277) Electronic Wills					
852238	A	S	RCS	RC, Passidomo	Delete L.163 - 272:	04/25 07:12 PM
733050	A	S	RCS	RC, Passidomo	Delete L.456 - 474:	04/25 07:12 PM

Tab 8	**CS/CS/SB 588** by **CJ, HP, Passidomo**; (Similar to CS/CS/1ST ENG/H 00249) Drug Overdoses					
452464	A	S	RCS	RC, Passidomo	btw L.100 - 101:	04/25 07:18 PM

Tab 9	**SB 1622** by **Passidomo (CO-INTRODUCERS) Torres**; (Identical to H 01239) School Bus Safety

Tab 10	**SB 314** by **Farmer**; (Similar to CS/H 06545) Relief of Jerry Cunningham by Broward County

Tab 11	**CS/SB 328** by **HP, Grimsley (CO-INTRODUCERS) Perry, Campbell**; (Compare to CS/CS/1ST ENG/H 00543) Regulation of Nursing

Tab 12	**CS/CS/SB 474** by **CF, HP, Grimsley**; (Similar to CS/CS/H 00539) Hospice Care

Tab 13	**CS/CS/SB 466** by **CM, TR, Hutson (CO-INTRODUCERS) Gainer, Broxson**; (Similar to CS/CS/H 00775) Motor Vehicle Warranty Repairs and Recall Repairs

975552	A	S	RS	RC, Hutson	Delete L.74 - 122:	04/25 07:39 PM
471244	SA	S	RCS	RC, Hutson	Delete L.74 - 122:	04/25 07:39 PM

Tab 14	**CS/CS/SB 492** by **GO, CF, Young**; (Similar to CS/CS/H 00397) Public Records/Victim of Alleged Sexual Harassment/Identifying Information

Tab 15	**CS/SB 832** by **CJ, Young**; (Similar to CS/1ST ENG/H 01027) Drones

868984	D	S	RCS	RC, Brandes	Delete everything after	04/25 07:43 PM

Tab 16	**CS/SB 1348** by **RI, Young**; (Similar to CS/H 00987) Public Accountancy

Tab 17	**SB 720** by **Mayfield**; (Identical to H 00299) Central Florida Expressway Authority

Tab 18	**CS/SB 726** by **EE, Powell (CO-INTRODUCERS) Campbell**; (Similar to H 00521) Vote-by-mail Ballots

844694	A	S	L	RCS	RC, Powell	Delete L.47 - 52:	04/25 07:49 PM

Tab 19	**SB 762** by **Baxley**; (Similar to CS/H 00329) Child Protection

Tab 20	**CS/CS/SB 830** by **BI, RI, Baxley**; (Identical to CS/CS/H 00747) Mortgage Brokering

Tab 21	**SB 914** by **Baxley**; (Identical to H 00919) Public Meetings

Tab 22	**CS/CS/SB 840** by **GO, HP, Clemens**; (Similar to CS/CS/H 00557) Controlled Substance Prescribing

780884	A	S	L	RCS	RC, Clemens	Delete L.25 - 32:	04/25 07:54 PM

Tab 23	**CS/SB 1002** by **CJ, Perry (CO-INTRODUCERS) Rouson, Bradley**; (Similar to CS/H 00505) Florida Comprehensive Drug Abuse Prevention and Control Act

Tab 24	**CS/SB 1008** by **BI, Perry (CO-INTRODUCERS) Bradley**; (Similar to CS/CS/1ST ENG/H 01107) Public Records/Injured or Deceased Employee/Department of Financial Services

357448	D	S	RCS	RC, Perry	Delete everything after	04/25 07:56 PM

Tab 25	**CS/CS/SB 190** by **CA, RI, Perry**; (Similar to CS/CS/H 00241) Low-voltage Electric Fences

100630	A	S	RCS	RC, Brandes	Before L.13:	04/25 07:59 PM

Tab 26	**CS/SB 1084** by **BI, Stargel (CO-INTRODUCERS) Artiles**; (Similar to CS/CS/H 00465) Firefighters

Tab 27	**SB 1408** by **Broxson**; (Similar to CS/CS/H 00981) Public Records/Confidentiality/Department of Elderly Affairs

Tab 28	**CS/SR 1440** by **JU, Rouson (CO-INTRODUCERS) Book, Baxley, Bean, Benacquisto, Bracy, Bradley, Brandes, Braynon, Broxson, Campbell, Clemens, Flores, Gainer, Galvano, Garcia, Gibson, Grimsley, Hutson, Latvala, Lee, Mayfield, Montford, Passidomo, Perry, Powell, Rader, Rodriguez, Simmons, Simpson, Stargel, Steube, Stewart, Thurston, Young, Hukill**; (Identical to CS/H 01335) Arthur G. Dozier School for Boys/Florida School for Boys

Tab 29	**SB 1470** by **Simmons**; (Similar to H 00207) Agency Inspectors General

Tab 30	**CS/SB 1682** by **RI, Garcia (CO-INTRODUCERS) Rodriguez, Artiles**; (Similar to CS/CS/H 01237) Condominiums

421264	A	S	RCS	RC, Garcia	Delete L.68 - 1152:	04/25 08:09 PM
902636	AA	S	RCS	RC, Garcia	Delete L.405 - 409:	04/25 08:09 PM

Tab 31	**CS/SB 1678** by **TR, Garcia (CO-INTRODUCERS) Campbell**; (Identical to CS/CS/H 01175) Motor Vehicle Applicants, Licensees, and Dealers

Tab 32	**SB 7020** by **CF**; (Similar to H 07073) Ratification of a Department of Elder Affairs Rule

847080	A	S	RCS	RC, Latvala	Delete L.20:	04/25 08:13 PM

Tab 33	**SB 1526** by **Bracy**; (Similar to H 01203) Public Records/Health Information/Department of Corrections

524838	A	S	RCS	RC, Bracy	Delete L.265:	04/25 08:17 PM

Tab 34	**CS/SB 40** by **JU, Galvano (CO-INTRODUCERS) Brandes**; (Similar to CS/H 06503) Relief of Sean McNamee by the School Board of Hillsborough County

Tab 35	**SB 1252** by **Galvano**; Education

Tab 36	**CS/SB 42** by **JU, Montford**; (Similar to CS/H 06507) Relief of Angela Sanford by Leon County

Tab 37	**CS/SB 46** by **JU, Montford**; (Similar to CS/H 06521) Relief of Mary Mifflin-Gee by the City of Miami

Tab 38	**CS/SB 1206** by **HP, Montford**; (Identical to CS/H 01253) Rights and Responsibilities of Patients

Tab 39	**CS/CS/SB 110** by **GO, ED, Brandes (CO-INTRODUCERS) Rouson**; (Similar to CS/CS/H 00501) Public Records and Public Meetings/Information Technology/Postsecondary Education Institutions

Tab 40	**CS/CS/SB 496** by **ED, HP, Brandes (CO-INTRODUCERS) Passidomo**; (Similar to CS/CS/1ST ENG/H 00209) Medical Faculty and Medical Assistant Certification

~~570454~~	A	S	WD	RC, Brandes	Delete L.213:	04/25 06:22 PM
~~324252~~	AA	S	WD	RC, Brandes	Delete L.5:	04/25 06:22 PM

Tab 41	**CS/CS/SB 790** by **AP, CJ, Brandes**; (Identical to H 07091) Probation and Community Control

Tab 42	**CS/CS/SB 304** by **CA, JU, Thurston**; (Compare to CS/CS/H 06531) Relief/Altavious Carter and Dustin Reinhardt/Palm Beach County School Board

Tab 43	**SCR 1360** by **Thurston (CO-INTRODUCERS) Hutson**; National Statuary Hall

Tab 44	**SB 862** by **Lee (CO-INTRODUCERS) Galvano**; (Similar to H 00445) Public Records/Voters and Voter Registration

Tab 45	**CS/SB 1520** by **RI, Latvala**; (Similar to CS/H 07055) Termination of a Condominium Association

Tab 46	**SB 7014** by **AG**; (Identical to H 07035) OGSR/Nonpublished Reports or Data/Department of Citrus

Tab 47	**SB 7018** by **GO**; (Similar to H 07093) OGSR/Agency Personnel Information

897282	D	S	RCS	RC, Galvano	Delete everything after	04/25 08:39 PM

Tab 48	**SB 7028** by **JU**; (Similar to H 07087) OGSR/Injunction for Protection Against Domestic Violence, Repeat Violence, Sexual Violence, and Dating Violence

The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

RULES
Senator Benacquisto, Chair
Senator Thurston, Vice Chair

MEETING DATE: Tuesday, April 25, 2017
TIME: 2:00—6:00 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	**SB 1238** Bean (Similar CS/H 1043)	Utility Investments in Gas Reserves; Revising the jurisdiction of the Public Service Commission over public utilities to include the approval of cost recovery for certain gas reserve investments, etc. CU 03/14/2017 Favorable RC 04/12/2017 Temporarily Postponed RC 04/19/2017 Temporarily Postponed RC 04/25/2017 Fav/CS	Fav/CS Yeas 7 Nays 3
2	**CS/CS/SB 188** Community Affairs / Regulated Industries / Steube (Compare CS/H 425)	Vacation Rentals; Revising applicability for a preemption of certain local laws, ordinances, or regulations regarding vacation rentals, etc. RI 03/21/2017 Fav/CS CA 04/03/2017 Temporarily Postponed CA 04/17/2017 Fav/CS RC 04/25/2017 Fav/CS	Fav/CS Yeas 11 Nays 1
3	**CS/SB 616** Governmental Oversight and Accountability / Steube (Compare S 140)	Concealed Weapons or Firearms; Authorizing a concealed weapons or concealed firearms licensee to temporarily surrender a weapon or firearm if the licensee approaches courthouse security or management personnel upon arrival and follow their instructions, etc. JU 03/07/2017 Favorable GO 03/22/2017 Fav/CS RC 04/25/2017 Favorable	Favorable Yeas 6 Nays 4
4	**CS/SB 14** Judiciary / Steube (Identical CS/CS/H 6529)	Relief of Lillian Beauchamp by the St. Lucie County School Board; Providing for the relief of Lillian Beauchamp, as the personal representative of the Estate of Aaron Beauchamp, by the St. Lucie County School Board; providing for an appropriation to compensate the Estate of Aaron Beauchamp for his wrongful death as a result of the negligence of the St. Lucie County School District, etc. SM JU 03/07/2017 Temporarily Postponed JU 04/04/2017 Fav/CS CA 04/17/2017 Favorable RC 04/25/2017 Favorable	Favorable Yeas 10 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
5	**CS/SB 198** Environmental Preservation and Conservation / Stewart (Similar CS/H 861)	Environmental Regulation Commission; Requiring the Governor to appoint a new member to the commission within a certain timeframe after the occurrence of a vacancy; requiring certain proposed rules submitted to the commission to receive specified vote totals for approval or modification, etc. EP 03/22/2017 Fav/CS EE 04/04/2017 Favorable RC 04/25/2017 Fav/CS	Fav/CS Yeas 12 Nays 0
6	**CS/CS/SB 200** Judiciary / Children, Families, and Elder Affairs / Passidomo (Similar CS/CS/H 363)	Temporary Respite Care of a Child; Authorizing qualified nonprofit organizations to establish programs to provide temporary respite care for children; authorizing a volunteer respite family to enter into a contract for care to provide temporary respite care for a child; specifying that a parent may revoke or withdraw the contract for care at any time; prohibiting such contract from operating to deprive a parent of certain authority or from superseding certain court orders, etc. CF 04/03/2017 Fav/CS JU 04/19/2017 Fav/CS RC 04/25/2017 Fav/CS	Fav/CS Yeas 7 Nays 3
7	**CS/CS/SB 206** Banking and Insurance / Judiciary / Passidomo (Similar CS/CS/H 277)	Electronic Wills; Creating the "Florida Electronic Wills Act"; specifying requirements that must be satisfied in the execution of electronic wills; authorizing an electronic will of a nonresident of this state which is properly executed in this or another state to be offered for and admitted to probate in this state; providing that, for purposes of establishing the validity of the testamentary aspects of a revocable trust, the qualified custodian of the trust instrument may not also be a trustee of the trust, etc. JU 01/24/2017 Fav/CS BI 04/17/2017 Fav/CS RC 04/25/2017 Fav/CS	Fav/CS Yeas 11 Nays 0
8	**CS/CS/SB 588** Criminal Justice / Health Policy / Passidomo (Similar CS/CS/H 249, Compare CS/CS/H 61, S 558)	Drug Overdoses; Requiring a hospital with an emergency department to develop a best practices policy to promote the prevention of unintentional drug overdoses; authorizing certain entities to report controlled substance overdoses to the Department of Health; providing immunity for persons who make reports in good faith; providing that a failure to report is not a basis for licensure discipline, etc. HP 03/27/2017 Fav/CS CJ 04/17/2017 Fav/CS RC 04/25/2017 Fav/CS	Fav/CS Yeas 12 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
9	**SB 1622** Passidomo (Identical H 1239)	School Bus Safety; Citing this act as the "Cameron Mayhew Act"; providing mandatory noncriminal penalties for certain violations resulting in serious bodily injury to or death of another person, etc. CJ 04/03/2017 Favorable TR 04/19/2017 Favorable RC 04/25/2017 Favorable	Favorable Yeas 11 Nays 1
10	**SB 314** Farmer (Similar CS/H 6545)	Relief of Jerry Cunningham by Broward County; Providing for the relief of Jerry Cunningham by Broward County; providing for an appropriation to compensate him for injuries sustained as a result of the negligence of Broward County, etc. SM JU 04/04/2017 Favorable CA 04/17/2017 Favorable RC 04/25/2017 Favorable	Favorable Yeas 12 Nays 0
11	**CS/SB 328** Health Policy / Grimsley (Compare CS/CS/H 543, CS/H 7011)	Regulation of Nursing; Removing an obsolete qualification no longer sufficient to satisfy certain nursing certification requirements; authorizing the Board of Nursing to conduct certain on-site evaluations; removing a requirement that certain nursing program graduates complete a specific preparatory course; providing that a name change or the creation of a new educational institution does not reduce the waiting period for reapplication, etc. HP 03/14/2017 Fav/CS ED 03/27/2017 Favorable RC 04/25/2017 Favorable	Favorable Yeas 11 Nays 0
12	**CS/CS/SB 474** Children, Families, and Elder Affairs / Health Policy / Grimsley (Similar CS/CS/H 539, Compare S 1294)	Hospice Care; Requiring the Department of Elderly Affairs, in conjunction with the Agency for Health Care Administration, to adopt national hospice outcome measures and survey data by a specified date and to make such measures available to the public; authorizing certain hospice personnel to assist in the disposal of certain prescribed controlled substances; requiring a hospice to maintain an up-to-date interdisciplinary record of care, etc. HP 03/27/2017 Fav/CS CF 04/17/2017 Fav/CS RC 04/25/2017 Favorable	Favorable Yeas 12 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
13	**CS/CS/SB 466** Commerce and Tourism / Transportation / Hutson (Similar CS/CS/H 775)	Motor Vehicle Warranty Repairs and Recall Repairs; Prohibiting a manufacturer, factory branch, distributor, or importer from denying a claim of a motor vehicle dealer, reducing compensation to a motor vehicle dealer, or processing a chargeback to a motor vehicle dealer because of specified circumstances; requiring a manufacturer, factory branch, distributor, or importer to compensate a motor vehicle dealer for a used motor vehicle under specified circumstances, etc. TR 03/14/2017 Fav/CS CM 03/27/2017 Fav/CS RC 04/25/2017 Fav/CS	Fav/CS Yeas 12 Nays 0
14	**CS/CS/SB 492** Governmental Oversight and Accountability / Children, Families, and Elder Affairs / Young (Similar CS/CS/H 397)	Public Records/Victim of Alleged Sexual Harassment/Identifying Information; Providing an exemption from public records requirements for personal identifying information of the alleged victim in an allegation of sexual harassment; authorizing the disclosure of such information under certain circumstances; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. CF 03/21/2017 Fav/CS GO 04/03/2017 Fav/CS RC 04/25/2017 Favorable	Favorable Yeas 11 Nays 0
15	**CS/SB 832** Criminal Justice / Young (Similar CS/H 1027)	Drones; Citing this act as "Unmanned Aircraft Systems Act"; providing that, except as provided in federal regulations, authorizations, or exemptions, the authority to regulate the operation of unmanned aircraft systems is vested in the state; prohibiting a person from knowingly and willfully operating a drone over or allowing a drone to make contact with or come within a certain distance of certain critical infrastructure facilities; providing that the use of a drone by a communications service provider or contractor is not prohibited under certain provisions of ch. 934, etc. CJ 03/21/2017 Fav/CS TR 04/04/2017 Favorable CU 04/19/2017 Favorable RC 04/25/2017 Fav/CS	Fav/CS Yeas 12 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
16	**CS/SB 1348** Regulated Industries / Young (Similar CS/H 987)	Public Accountancy; Providing an exemption to the requirement for licensure of certain firms without an office in the state; providing that suspension or revocation of the right to practice before the Public Company Accounting Oversight Board is grounds for the imposition of penalties as provided by law, etc. RI 03/21/2017 Fav/CS CM 04/03/2017 Favorable RC 04/25/2017 Favorable	Favorable Yeas 12 Nays 0
17	**SB 720** Mayfield (Identical H 299)	Central Florida Expressway Authority; Increasing the number of members making up the governing body of the Central Florida Expressway Authority; adding the geographical boundary of Brevard County to the area served by the authority, etc. TR 03/14/2017 Favorable EE 03/28/2017 Favorable RC 04/25/2017 Favorable	Favorable Yeas 12 Nays 0
18	**CS/SB 726** Ethics and Elections / Powell (Similar H 521)	Vote-by-mail Ballots; Providing supervisors of elections the option to allow an elector to vote by personally delivering his or her completed vote-by-mail ballot to an early voting site in the elector's county of residence during the site's hours of operation, etc. EE 04/04/2017 Fav/CS RC 04/25/2017 Fav/CS	Fav/CS Yeas 12 Nays 0
19	**SB 762** Baxley (Similar CS/H 329)	Child Protection; Prohibiting a time-sharing plan from requiring visitation at a recovery residence between specified hours; authorizing a certified recovery residence to allow a minor child to visit a recovery residence, excluding visits during specified hours, etc. CF 03/27/2017 Favorable JU 04/04/2017 Favorable RC 04/25/2017 Favorable	Favorable Yeas 12 Nays 0
20	**CS/CS/SB 830** Banking and Insurance / Regulated Industries / Baxley (Identical CS/CS/H 747)	Mortgage Brokering; Providing an exemption from regulation under parts I and II of ch. 494, F.S., for certain securities dealers, investment advisers, and associated persons; providing requirements for certain solicitations and referrals, etc. RI 04/04/2017 Fav/CS BI 04/17/2017 Fav/CS RC 04/25/2017 Favorable	Favorable Yeas 12 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
21	**SB 914** Baxley (Identical H 919)	Public Meetings; Specifying conditions under which members of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision may participate in fact-finding exercises or excursions, etc. EE 03/07/2017 Favorable CA 04/17/2017 Favorable RC 04/25/2017 Favorable	Favorable Yeas 12 Nays 0
22	**CS/CS/SB 840** Governmental Oversight and Accountability / Health Policy / Clemens (Similar CS/CS/H 557)	Controlled Substance Prescribing; Directing the Department of Health to include information on the risks of opioid addiction as part of a practitioner's continuing medical education requirements; authorizing certain employees of the United States Department of Veterans Affairs access to certain information in the prescription drug monitoring program's database, etc. HP 04/03/2017 Fav/CS GO 04/17/2017 Fav/CS RC 04/25/2017 Fav/CS	Fav/CS Yeas 10 Nays 0
23	**CS/SB 1002** Criminal Justice / Perry (Similar CS/H 505, Compare CS/H 477, CS/CS/S 150)	Florida Comprehensive Drug Abuse Prevention and Control Act; Providing that a reference to ch. 893, F.S., or to any section or portion thereof, includes all subsequent amendments; specifying that ioflupane (123I) is not included in Schedule II of the standards and schedules of controlled substances, etc. CJ 03/27/2017 Fav/CS JU 04/04/2017 Favorable RC 04/25/2017 Favorable	Favorable Yeas 12 Nays 0
24	**CS/SB 1008** Banking and Insurance / Perry (Similar CS/CS/H 1107)	Public Records/Injured or Deceased Employee/Department of Financial Services; Providing an exemption from public records requirements for the personal identifying information of an injured or deceased employee which is contained in reports, notices, records, or supporting documentation held by the Department of Financial Services; providing a criminal penalty for willful and knowing disclosure of such information; providing for future review and repeal of the exemption; providing a statement of public necessity, etc. BI 04/03/2017 Fav/CS GO 04/17/2017 Favorable RC 04/25/2017 Fav/CS	Fav/CS Yeas 12 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
25	**CS/CS/SB 190** Community Affairs / Regulated Industries / Perry (Similar CS/CS/H 241)	Low-voltage Electric Fences; Providing requirements for a low-voltage electric fence to be permitted as a low-voltage alarm system project, etc. RI 02/08/2017 Fav/CS CA 03/14/2017 Fav/CS RC 04/19/2017 Temporarily Postponed RC 04/25/2017 Fav/CS	Fav/CS Yeas 12 Nays 0
26	**CS/SB 1084** Banking and Insurance / Stargel (Similar CS/CS/H 465)	Firefighters; Providing for the designation as a Lifetime Firefighter; providing responsibilities of the Division of State Fire Marshal within the Department of Financial Services; authorizing the division to investigate reports, complaints, or felony convictions concerning Lifetime Firefighters, etc. BI 04/03/2017 Fav/CS GO 04/17/2017 Favorable RC 04/25/2017 Favorable	Favorable Yeas 12 Nays 0
27	**SB 1408** Broxson (Similar CS/CS/H 981)	Public Records/Confidentiality/Department of Elderly Affairs; Creating an exemption from public records requirements for certain personal identifying information, personal health and financial records, and photographs and video recordings held by the Department of Elderly Affairs in connection with a complaint filed or an investigation conducted pursuant to part II of ch. 744, F.S.; specifying that information retains its confidential and exempt status for the duration of an investigation; providing for future legislative review and repeal; providing a statement of public necessity, etc. CF 03/27/2017 Favorable GO 04/17/2017 Favorable RC 04/25/2017 Favorable	Favorable Yeas 11 Nays 0
28	**CS/SR 1440** Judiciary / Rouson (Identical CS/HR 1335)	Arthur G. Dozier School for Boys/Florida School for Boys; Acknowledging the abuses experienced by children confined in the Arthur G. Dozier School for Boys and the Florida School for Boys at Okeechobee and expressing the Senate's regret for such abuses and its commitment to ensure that the children of this state are protected from the abuses and violations of fundamental human decency, etc. JU 04/04/2017 Fav/CS RC 04/25/2017 Favorable	Favorable Yeas 10 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
29	**SB 1470** Simmons (Similar H 207)	Agency Inspectors General; Prohibiting an agency from offering a bonus on work performance in an inspector general contract or agreement; prohibiting the Florida Housing Finance Corporation from offering a bonus on work performance in an inspector general contract or agreement, etc. GO 03/27/2017 Favorable CA 04/03/2017 Favorable RC 04/25/2017 Favorable	Favorable Yeas 11 Nays 0
30	**CS/SB 1682** Regulated Industries / Garcia (Similar CS/CS/H 1237)	Condominiums; Prohibiting an association from hiring an attorney that represents the management company of the association; requiring the Division of Florida Condominiums, Timeshares, and Mobile Homes to maintain and provide copies of financial reports; authorizing, rather than requiring, the division to employ full-time attorneys to conduct certain arbitration hearings; prohibiting specified parties from purchasing a unit at a foreclosure sale resulting from the association's foreclosure of association lien for unpaid assessments or from taking a deed in lieu of foreclosures, etc. JU 03/22/2017 Favorable RI 04/04/2017 Fav/CS RI 04/06/2017 RC 04/25/2017 Fav/CS	Fav/CS Yeas 11 Nays 0
31	**CS/SB 1678** Transportation / Garcia (Identical CS/CS/H 1175, Compare H 1047)	Motor Vehicle Applicants, Licensees, and Dealers; Providing that a motor vehicle dealer who constructs or alters sales or service facilities in reliance upon a program or incentive offered by an applicant or licensee is deemed to be in compliance with certain requirements for a specified period; specifying eligibility for benefits under a revised or new program, standard, policy, bonus, incentive, rebate, or other benefit; authorizing denial, suspension, or revocation of the license of an applicant or licensee who establishes certain performance measurement criteria that have a material or adverse effect on motor vehicle dealers, etc. TR 03/22/2017 Temporarily Postponed TR 03/28/2017 Temporarily Postponed TR 04/04/2017 Fav/CS CM 04/17/2017 Favorable RC 04/25/2017 Favorable	Favorable Yeas 10 Nays 1

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
32	**SB 7020** Children, Families, and Elder Affairs (Similar H 7073)	Ratification of a Department of Elder Affairs Rule; Ratifying a specific rule relating to the practice for Professional Guardians for the sole and exclusive purpose of satisfying any condition on effectiveness pursuant to s. 120.541(3), F.S., which requires ratification of any rule exceeding the specified thresholds for likely adverse impact or increase in regulatory costs, etc. RC 04/25/2017 Fav/CS	Fav/CS Yeas 11 Nays 0
33	**SB 1526** Bracy (Similar H 1203, Compare CS/CS/H 1201, Linked CS/CS/S 1604)	Public Records/Health Information/Department of Corrections; Providing that certain protected health information held by the Department of Corrections is confidential and exempt from public records requirements; providing a statement of public necessity, etc. CJ 03/21/2017 Favorable GO 04/03/2017 Favorable RC 04/25/2017 Fav/CS	Fav/CS Yeas 11 Nays 0
34	**CS/SB 40** Judiciary / Galvano (Similar CS/H 6503)	Relief of Sean McNamee by the School Board of Hillsborough County; Providing for the relief of Sean McNamee and his parents, Todd McNamee and Jody McNamee, by the School Board of Hillsborough County; providing for an appropriation to the Sean R. McNamee Irrevocable Trust as compensation for injuries and damages sustained by Sean McNamee as a result of the negligence of employees of the School Board of Hillsborough County, etc. SM JU 04/04/2017 Fav/CS CA 04/17/2017 Favorable RC 04/25/2017 Favorable	Favorable Yeas 10 Nays 0
35	**SB 1252** Galvano (Compare CS/S 868)	Education; Deleting obsolete provisions relating to a requirement that the Department of Education have an operating electronic individual education plan system in place for potential statewide use; revising the membership of the Higher Education Coordinating Council; revising the date by which the Board of Governors of the State University System must annually submit an accountability report, etc. ED 03/21/2017 Favorable RC 04/25/2017 Favorable	Favorable Yeas 9 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
36	**CS/SB 42** Judiciary / Montford (Similar CS/H 6507)	Relief of Angela Sanford by Leon County; Providing for the relief of Angela Sanford by Leon County; providing for an appropriation to compensate her for injuries and damages sustained as a result of the negligence of an employee of Leon County, etc. SM JU 02/21/2017 Fav/CS CA 04/03/2017 Favorable RC 04/25/2017 Favorable	Favorable Yeas 10 Nays 0
37	**CS/SB 46** Judiciary / Montford (Similar CS/H 6521)	Relief of Mary Mifflin-Gee by the City of Miami ; Providing for the relief of Mary Mifflin-Gee by the City of Miami; providing for an appropriation to compensate her for injuries and damages sustained as a result of the negligence of employees of the City of Miami Department of Fire-Rescue, etc. SM JU 03/28/2017 Fav/CS CA 04/17/2017 Favorable RC 04/25/2017 Favorable	Favorable Yeas 10 Nays 0
38	**CS/SB 1206** Health Policy / Montford (Identical CS/H 1253)	Rights and Responsibilities of Patients; Requiring health care facilities and providers to authorize patients to bring in any person of the patients' choosing to specified areas of the facilities or providers' offices under certain circumstances, etc. HP 03/27/2017 Fav/CS JU 04/04/2017 Favorable RC 04/25/2017 Favorable	Favorable Yeas 10 Nays 0
39	**CS/CS/SB 110** Governmental Oversight and Accountability / Education / Brandes (Similar CS/CS/H 501)	Public Records and Public Meetings/Information Technology/Postsecondary Education Institutions; Creating an exemption from public records requirements for certain records held by a state university or Florida College System institution which identify detection, investigation, or response practices for suspected or confirmed information technology security incidents; creating an exemption from public meetings requirements for portions of public meetings which would reveal such data and information; providing for future legislative review and repeal of the exemptions; providing statements of public necessity, etc. ED 03/21/2017 Fav/CS GO 04/03/2017 Fav/CS RC 04/25/2017 Favorable	Favorable Yeas 10 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
40	**CS/CS/SB 496** Education / Health Policy / Brandes (Similar CS/CS/H 209)	Medical Faculty and Medical Assistant Certification; Requiring the Department of Health to process certain applications for a temporary certificate using a personal identification number in lieu of a social security number under specified circumstances; revising the circumstances under which a visiting physician may be issued a temporary certificate to obtain limited medical privileges for instructional purposes; revising the list of institutions at which certain faculty members are eligible to receive a medical faculty certificate; revising qualifications for employment as a medical assistant in a multiphasic health testing center, etc. HP 03/14/2017 Fav/CS ED 04/03/2017 Fav/CS RC 04/25/2017 Favorable	Favorable Yeas 10 Nays 0
41	**CS/CS/SB 790** Appropriations / Criminal Justice / Brandes (Identical H 7091)	Probation and Community Control; Requiring the Department of Corrections to revise and make available to the courts, rather than develop and disseminate to the courts, uniform order of supervision forms; authorizing the court to require a probationer or offender to report to, to permit visits by, to submit to random testing as directed by, probation officers, rather than probation and parole supervisors or correctional probation officers; authorizing, rather than requiring, a court to require an offender to make a good faith effort toward completion of certain skills or a specific diploma as a condition of community control, probation, or probation following incarceration; requiring, rather than authorizing, the department to electronically monitor offenders sentenced to community control under certain circumstances, etc. CJ 03/13/2017 Fav/CS AP 04/05/2017 Fav/CS AP 04/06/2017 RC 04/25/2017 Favorable	Favorable Yeas 10 Nays 0
42	**CS/CS/SB 304** Community Affairs / Judiciary / Thurston (Compare CS/CS/H 6531, CS/H 6549, CS/S 24)	Relief/Altavious Carter and Dustin Reinhardt/Palm Beach County School Board; Providing for an appropriation to compensate Altavious Carter for injuries sustained as a result of the negligence of a bus driver of the Palm Beach County School District; providing for an appropriation and annuity to compensate Dustin Reinhardt for injuries sustained as a result of the negligence of employees of the Palm Beach County School District; providing a limitation on the payment of compensation, fees, and costs, etc. SM JU 04/04/2017 Fav/CS CA 04/17/2017 Fav/CS RC 04/25/2017 Favorable	Favorable Yeas 10 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
43	**SCR 1360** Thurston	National Statuary Hall; Requesting the Joint Committee on the Library of Congress to approve the replacement of the statue of Confederate General Edmund Kirby Smith in the National Statuary Hall Collection with a statue of Mary McLeod Bethune, etc. AP 04/13/2017 Favorable RC 04/25/2017 Favorable	Favorable Yeas 10 Nays 0
44	**SB 862** Lee (Similar H 445)	Public Records/Voters and Voter Registration; Providing an exemption from public records requirements for information concerning preregistered voter registration applicants who are minors; providing for future legislative review and repeal; providing a statement of public necessity, etc. EE 03/22/2017 Favorable GO 04/03/2017 Favorable RC 04/25/2017 Favorable	Favorable Yeas 9 Nays 0
45	**CS/SB 1520** Regulated Industries / Latvala (Similar CS/H 7055, Compare CS/CS/CS/H 653, CS/CS/S 744)	Termination of a Condominium Association; Requiring a plan of termination to be approved by the Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation and meet specified requirements for a condominium form of ownership to be terminated for all or a portion of the condominium property under certain circumstances; specifying that a plan of termination is presumed to be accepted if notice is not provided within the specified timeframe, etc. RI 04/04/2017 Fav/CS JU 04/19/2017 Favorable RC 04/25/2017 Favorable	Favorable Yeas 10 Nays 1
46	**SB 7014** Agriculture (Identical H 7035)	OGSR/Nonpublished Reports or Data/Department of Citrus; Amending provisions relating to an exemption from public records requirements for nonpublished reports or data related to certain studies or research related to citrus fruit, citrus fruit juices, and the products and byproducts thereof which is conducted, caused to be conducted, or funded by the Department of Citrus; abrogating the scheduled repeal of the exemption, etc. GO 03/22/2017 Favorable RC 04/25/2017 Favorable	Favorable Yeas 11 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
47	**SB 7018** Governmental Oversight and Accountability (Similar H 7093)	OGSR/Agency Personnel Information; Amending provisions which provides exemptions from public records requirements for certain personal identifying and location information of specified agency personnel, and the spouses and children thereof; providing an exemption from public records requirements for the names of the spouses and children of certified firefighters, current or former justices and judges, and certain magistrates, judges, and hearing officers; removing the scheduled repeal of certain exemptions; providing statements of public necessity, etc. RC 04/25/2017 Fav/CS	Fav/CS Yeas 12 Nays 0
48	**SB 7028** Judiciary (Similar H 7087)	OGSR/Injunction for Protection Against Domestic Violence, Repeat Violence, Sexual Violence, and Dating Violence; Extending the repeal dates for exemptions from public records requirements for personal identifying and location information of a petitioner who requests notification of service of an injunction for protection against domestic violence, repeat violence, sexual violence, and dating violence and other court actions related to the injunction held by clerks of the court and law enforcement agencies, etc. GO 04/17/2017 Favorable RC 04/25/2017 Favorable	Favorable Yeas 10 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/SB 1238
INTRODUCER:	Rules Committee and Senator Bean
SUBJECT:	Utility Investments in Gas Reserves
DATE:	April 25, 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Caldwell/Wiehle	Caldwell	CU	**Favorable**
2.	Wiehle	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1238 authorizes the Public Service Commission (PSC or commission) to approve cost recovery for prudently incurred natural gas reserve investments, including a rate of return and prudently incurred expenses associated with such investments, by a public utility through an adjustment clause. To qualify, the public utility must have at least 65 percent natural gas fueled generation.

The commission must adopt by rule no later than December 31, 2017, standards by which it will determine the prudence of such gas reserve investments. The standards must include, at minimum, all of the following:

- A requirement that each natural gas reserve investment be projected to generate savings for customers over the life of the investment.
- A requirement that the total volume of natural gas produced from all of a utility's natural gas reserve investments not exceed specified caps.
- A requirement that each investment have at least 50 percent of the wells within the project classified as proved gas reserves and the remaining wells classified as probable.
- A prohibition against recovery of the costs of fracking natural gas within the state.
- A prohibition against the recovery of the costs of extracting natural gas from state, U.S., or international waters.

Each public utility engaging in natural gas reserve investments must file annually with the commission a detailed comparison of all gas reserve projects entered into on behalf of the utility and any affiliate or subsidiary of the utility's parent company. The filing must show all material

assumptions relied upon to support each gas reserve project; calculate the associated revenue requirement for each gas reserve project; and provide the net present value savings for each gas reserve project entered into by any affiliate or subsidiary of a parent company. For any gas reserve project, the utility must use an independent third-party auditor in performing audits of the associated transactions. Subaccounts that correspond on a one-on-one basis with the oil and gas system of accounts must be established and used by the utility for each investment in a gas reserve project.

A public utility may enter into a gas reserves project only if there is a transportation path available to deliver the gas produced from that project to the public utility's service territory. The costs of any new transportation needed to deliver gas from a gas reserve project must be taken into consideration when analyzing the economics of that project.

The bill takes effect July 1, 2017.

II. Present Situation:

Present Regulation of Electric Industry

Economic regulation is a substitute for market forces in an industry where those forces do not function properly. As such, economic regulation is to some extent a balancing process, assigning both the utility and its customers both benefits and obligations.

The regulated electric utility[1] gets:
- A monopoly service territory with a captive customer base;
- Recovery of all prudent and reasonable costs; and
- A rate of return on capital investments, or a profit.

The regulated utility's customers get:
- The utility's obligation to serve, which consists of an obligation to provide adequate, reliable service, in both production and delivery of electricity, and an obligation to provide that service to all paying customers within its service territory; and
- Fair and reasonable rates.

An inherent element of this arrangement is that the regulated utility is almost always limited to investments within the core of the electric industry, which prevents risks from investments in other types of businesses from having a detrimental impact on reliability and fair rates for the captive customers.

[1] The statutes establish two classes of utilities. The first is a "public utility" which includes Florida Power & Light, Duke Energy Florida, Tampa Electric Company, Gulf Power, and Florida Utilities Company, but does not include either a municipal electric utility or a cooperative. This class of utility is subject to full economic regulation by the PSC. The second class is an "electric utility" which includes public utilities, municipal electric utilities, and rural cooperatives. This class is subject to grid regulation and rate design jurisdiction. This bill applies only to public utilities subject to full economic regulation. *See* s. 366.02 and chapter 366, F.S.

Typically, a regulated utility recovers its capital investments and fixed costs, including a rate of return on capital investments, through base rates, and recovers variable or short-term costs through a cost recovery clause proceeding.

The relevant recovery clause here is the fuel and purchased power recovery clause (fuel clause). The fuel clause was created by commission order, not statute, and the PSC policy and practice on the fuel clause was developed over decades through a series of PSC orders issued in evidentiary proceedings, not set forth in rules established through rulemaking proceedings. Fuel cost recovery is a simple pass-through charge of the costs incurred, and very rarely includes any capital investment or return on that investment. The commission has an annual docket on fuel cost recovery charges, and each public utility projects its fuel costs for the upcoming year and presents documentation on its costs for the past year for a "true-up" of projected compared to actual fuel costs for that year. The fuel charge for the next year is based on the projected costs and any necessary adjustment for overcharges or undercharges from the previous year.

Changes in fuel prices can be volatile, so utilities have fuel price hedging programs which "promise protection against energy-market price spikes, and they can be important to the regulatory goal of sustainable, lowest long-term service cost."[2] Most hedges are financial and consist of options, swaps, futures, basis swaps, and fixed-price swaps involving natural gas and possibly other commodities whose price movements are known to be related to energy price movements.[3] Storing natural gas provides a physical hedge against price volatility and against shortages and disruptions to pipeline operations.[4]

PSC Order on FPL Hedging Investments

On June 25, 2014, Florida Power and Light Company (FPL) filed a petition seeking PSC approval to recover through the fuel clause its costs of a joint venture with an oil and natural gas company to acquire, explore, drill, and develop natural gas wells in Oklahoma (known as the "Woodford Project"). FPL argued that the investments were permissible as a long-term physical hedge, and that, as they were capital investments, FPL was entitled to earn a rate of return on the investments. FPL also requested that the commission establish guidelines under which FPL could invest in future gas reserve projects without the commission's prior approval and recover the costs through the fuel clause.

On January 12, 2015, in a case of first impression, the commission approved FPL's petition for cost recovery, including a rate of return, through the fuel clause.[5] The PSC established two conditions on the cost recovery. First, FPL had to add the appropriate subaccounts, under the FERC system of accounting, which would correspond on a one-on-one basis with the accounts used by an FPL affiliate that had originally invested in these contracts. Second, FPL had to use an independent auditor in performing audits provided in the agreement.

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[2] Stephen Maloney, When The Price Is Right: How to measure hedging effectiveness and regulatory policy, Fortnightly Magazine - October 2007, https://www.fortnightly.com/fortnightly/2007/10/when-price-right (last accessed April 10, 2017).
[3] *Id*.
[4] *Id*.
[5] *See:* Order No. PSC-15-0038-FOF-EI, issued January 12, 2015, in Docket No. 150001-EI, *In re: Fuel and purchased power cost recovery clause with generating performance incentive factor*.

On July 14, 2015, the commission approved FPL's petition requesting guidelines under which FPL could participate in future gas reserve projects without the commission's prior approval and recover the costs through the fuel clause.[6] One effect of this is that an FPL investment that meets the guidelines is automatically deemed to be prudent and reasonable, and so recoverable from ratepayers.

Florida Supreme Court Order on Appeal of PSC's FPL Order

On January 15, 2015, the Florida Supreme Court (Court) consolidated appeals by the Office of Public Counsel (OPC) and the Florida Industrial Power Users Group of the commission's orders approving the Woodford Project and approving guidelines.[7] On May 19, 2016, the Court reversed the PSC orders, holding that the commission exceeded its statutory authority when approving recovery of FPL's investment in the Woodford Project.[8]

The Court explained this holding by addressing two possible bases for cost recovery: through base rates as part of the public utility's regulated business activities, or through the fuel cost recovery clause as a long-term physical hedge. The Court found the following:

- The exploration, drilling, and production of fuel is outside the utility's regulated business activities as defined by the Legislature, and so the costs of these investments cannot be recovered through base rates.[9]
- The costs cannot be recovered through the fuel clause as the investments are not a long-term physical hedge because:
  - the contracts are not long-term physical hedging contracts as they do not involve a certain amount of natural gas for a certain price;[10] and
  - the fuel clause is a mechanism by which costs are passed-through, without any rate of return on money spent to purchase fuel or on the cost of hedging positions purchased. [11]
- Additionally, under the terms of the PSC order "ratepayers (not FPL) bear the risk of natural gas price volatility and all of the production risks." "Accordingly, the Woodford Project is a guaranteed capital investment for FPL; it is not a hedge to stabilize fuel costs."[12]

III. Effect of Proposed Changes:

The bill amends s. 366.04(2), F.S., to authorize the commission to approve cost recovery through an adjustment clause for a utility's prudent investments in natural gas reserves, including rate of

[6] Order No. PSC-15-0284-FOF-EI, issued July 14, 2015, in Docket No. 120005-EI, *In re: Fuel and purchased power cost recovery clause with generating performance incentive factor.*
[7] *Id*.
[8] *Citizens of the State of Florida v Art Graham*, 191 So.3d 897, Fla. (May 19, 2016); Also available at http://www.floridasupremecourt.org/decisions/2016/sc15-95.pdf.
[9] *Id.*, http://www.floridasupremecourt.org/decisions/2016/sc15-95.pdf, pages 5-8.
[10] *Id.*, http://www.floridasupremecourt.org/decisions/2016/sc15-95.pdf, page 8.
[11] *Id*. As is discussed above, typically the fuel cost recovery process is a simple pass-through charge of the costs incurred, with the recovery for any given year based on the projected fuel costs for that year adjusted for overcharges or undercharges from the previous year to true-up recovery to actual costs. One effect of the lack of "a certain quantity of fuel for a certain price" is that there is no basis for a true-up.
[12] *Id*., http://www.floridasupremecourt.org/decisions/2016/sc15-95.pdf, pages 8-10.

return, and for prudently incurred expenses associated with such investments. To qualify to make these investments, a utility must have at least 65 percent natural-gas-fueled generation.[13]

The commission must adopt by rule no later than December 31, 2017, standards by which it will determine the prudence of such gas reserve investments. The standards must include, at minimum, all of the following:

- A requirement that each natural gas reserve investment be projected to generate savings for customers over the life of the investment.
- A requirement that the total volume of natural gas produced from all of a utility's natural gas reserve investments not exceed the following percentages of the utility's average daily burn of natural gas:
  - 7.5 percent in 2018;
  - 10 percent in 2019;
  - 12.5 percent in 2020; and
  - 15 percent in 2021 and thereafter.
- A requirement that each investment be made in natural gas projects that have at least 50 percent of the wells within the project classified as proved gas reserves and the remaining wells within the project classified as probable gas reserves by the Securities and Exchange Commission.
- A prohibition against the recovery by a utility of the costs of natural gas extracted from the state by means of any well-stimulation treatment, including hydraulic fracturing, acid fracturing, and matrix acidizing.
- A prohibition against the recovery by a utility of the costs of natural gas extracted from the waters of the state, from the waters of the United States, or from international waters.

Annually, each public utility must file with the commission a detailed comparison of all gas reserve projects entered into on behalf of the utility and any affiliate or subsidiary of the utility's parent company as part of its Risk Management Plan. The information must be the same for each gas reserve project entered into by any affiliate or subsidiary which was used to support or justify the appropriateness of each gas reserve project entered into during the reporting period. The filing must:

- Show all material assumptions relied upon to support each gas reserve project, including the capital investment amount;
- Calculate the associated revenue requirement for each gas reserve project; and
- Provide the net present value savings for each gas reserve project entered into by any affiliate or subsidiary of a parent company.

For any gas reserve project, the utility must use an independent third-party auditor in performing audits of the associated transactions. Subaccounts that correspond on a one-on-one basis with the

[13] The phrase "has at least 65 percent natural-gas-fueled generation" can refer either to installed power plant capacity or actual electricity generation, stated in kilowatt-hours (kWh). According to the PSC bill analysis, if the phrase refers to capacity, as of December 31, 2015, FPL was 67 percent, Duke Energy Florida, LLC (DEF) was 62 percent, Tampa Electric Company (TECO) was 58 percent, and Gulf Power Company (GPC) was 24 percent. This data set suggests only one electric generating public utility would qualify at this time. If the phrase refers to actual kWh generated, this can vary from year to year based on a variety of factors. FPL projected sustained generation from natural gas in excess of at least 65 percent. DEF projected sustained usage in excess of 65 percent after 2016. GPC could potentially qualify during the period 2016 through 2019.

oil and gas system of accounts must be established and used by the utility for each investment in a gas reserve project.

A public utility may enter into a gas reserves project only if there is a transportation path available to deliver the gas produced from that project to the public utility's service territory. The costs of any new transportation needed to deliver gas from a gas reserve project must be taken into consideration when analyzing the economics of that project.

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:

Qualifying utilities will receive a rate of return on all investments. Customers should benefit if natural gas prices increase sufficiently, but could bear additional costs if natural gas prices decrease. Additionally, customers would not benefit if there is no natural gas in a well, if less natural gas is produced than projected, or if production costs increase.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill provides:

> A public utility may enter into a gas reserves project only if there is a transportation path available to deliver the gas produced from that project to the public utility's service territory. The costs of any new transportation needed to deliver gas from a gas reserve project must be taken into consideration when analyzing the economics of that project.

These provisions are ambiguous. They could simply acknowledge: that the natural gas to be produced in these projects has to be transported to the utility's service territory to be used; that this will require the utility to use means of transportation that it has not used before and that are, therefore, "new" to that utility; and that the transportation costs are integral to the project and must be considered by the PSC in determining whether a natural gas reserve investment is projected to generate savings for customers over the life of the investment.

On the other hand, the word "new" *could* impliedly authorize a utility to construct, own, and operate a new natural gas pipeline and to recover all the costs from its ratepayers. The idea that a regulated electric utility would get into the business of constructing and operating a natural gas pipeline may not be what is contemplated, but the bill authorizes a regulated electric utility to get into the business of exploration and production of natural gas, and the gas must be transported to the utility's Florida service territory, so utility ownership and operation of a pipeline could be considered a natural extension.

FPL entered into natural gas production projects by buying project contracts from an affiliate, NextEra's US Gas Assets. Research indicates US Gas now is a partner in the proposed Sooner Trails natural gas pipeline, which will serve the Woodford Shale region in Oklahoma where FPL is drilling. These circumstances can lead to an interpretation that the language would authorize FPL to purchase US Gas' share of this proposed pipeline and recover the costs from its ratepayers.

VIII. Statutes Affected:

The bill substantially amends section 366.04 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 on April 25, 2017:

- Adds to the bill's requirement that at least 50 percent of wells in an investment be in the proved gas reserves classification a requirement that the remainder be classified as probable gas reserves;
- Prohibits recovery of the costs of fracking natural gas within the state or from state, U.S., or international waters;
- Requires an annual detailed account comparison of all gas reserve projects entered into by a public utility and by any affiliate;

- Prohibits a public utility from entering into a gas reserves project unless there is a transportation path available to deliver the gas produced to the utility's service territory; and
- Requires the PSC to consider the cost of any new transportation needed to deliver the gas when analyzing the economics of that project.

B. Amendments:

None.

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

265888

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/25/2017	.	
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The Committee on Rules (Latvala) recommended the following:

Senate Amendment (with title amendment)

Between lines 12 and 13
insert:

Section 1. Paragraph (a) of subsection (13) of section 120.80, Florida Statutes, is amended to read:

120.80 Exceptions and special requirements; agencies.—

(13) FLORIDA PUBLIC SERVICE COMMISSION.—

(a) Each agency statement meeting the definition of a rule under s. 120.52 which relates ~~statements that relate~~ to cost-recovery clauses, factors, or mechanisms implemented pursuant to


265888

chapter 366, relating to public utilities, is subject to ~~are exempt from~~ the rulemaking requirements under ~~provisions of~~ s. 120.54(1)(a). Each such rule adopted before July 1, 2020, is exempt from s. 120.541(3).

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

And the title is amended as follows:

Delete lines 2 - 3

and insert:

An act relating to the Public Service Commission; amending s. 120.80, F.S.; providing that specified agency statements are subject to certain rulemaking requirements; exempting such rules from ratification requirements if adopted before a specified date; amending s. 366.04, F.S.; revising the

916352

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/25/2017	.	
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The Committee on Rules (Latvala) recommended the following:

Senate Amendment (with title amendment)

Delete line 27

and insert:

determine the prudence of such gas reserve investments. However, such standards may not take effect until ratified by the Legislature. The

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

And the title is amended as follows:

Delete line 9

916352

and insert:

investments; requiring legislative ratification of such standards; providing requirements for such standards; providing an effective date.

400188

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
04/25/2017	.	
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	.	

The Committee on Rules (Latvala) recommended the following:

Senate Amendment

Delete lines 28 - 42
and insert:
standards must include, at a minimum, all of the following:
1. A requirement that each natural gas reserve investment be projected to generate savings for customers over the life of the investment.
2. A requirement that the total volume of natural gas produced from all of a utility's natural gas reserve investments not exceed the following percentages of the utility's average


400188

projected daily burn of natural gas:

a. 7.5 percent in 2018;

b. 10 percent in 2019;

c. 12.5 percent in 2020; and

d. 15 percent in 2021 and thereafter.

3. A requirement that each investment be made in natural gas projects that have at least 50 percent of the wells within the project classified as proved gas reserves by the Securities and Exchange Commission.

4. A prohibition against the recovery by a utility of the costs of natural gas extracted from the state by means of hydraulic fracturing.

581278

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/25/2017	.	
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	.	

The Committee on Rules (Latvala) recommended the following:

Senate Substitute for Amendment (400188)

Delete lines 28 - 42
and insert:
standards must include, at a minimum, all of the following:
1. A requirement that each natural gas reserve investment be projected to generate savings for customers over the life of the investment.
2. A requirement that the total volume of natural gas produced from all of a utility's natural gas reserve investments not exceed the following percentages of the utility's average


581278

projected daily burn of natural gas:

a. 7.5 percent in 2018;

b. 10 percent in 2019;

c. 12.5 percent in 2020; and

d. 15 percent in 2021 and thereafter.

3. A requirement that each investment be made in natural gas projects that have at least 50 percent of the wells within the project classified as proved gas reserves by the Securities and Exchange Commission.

4. A prohibition against the recovery by a utility of the costs of natural gas extracted from the state by means of any well stimulation treatment, including hydraulic fracturing, acid fracturing, and matrix acidizing.

5. A prohibition against the recovery by a utility of the costs of natural gas extracted from the waters of the state, from the waters of the United States, or from international waters.

246872

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/25/2017	.	
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The Committee on Rules (Latvala) recommended the following:

Senate Amendment

Delete line 30
and insert:
generate at least 25 percent savings on a net present value basis for customers over the life of the investment.

208122

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
04/25/2017	.	
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The Committee on Rules (Latvala) recommended the following:

Senate Amendment

Delete line 40
and insert:
that have at least 90 percent of the wells within the project

827306

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/25/2017	.	
	.	
	.	
	.	

The Committee on Rules (Latvala) recommended the following:

Senate Substitute for Amendment (208122)

Delete lines 41 - 42

and insert:

classified as proved gas reserves and the remaining wells within the project classified as probable gas reserves by the Securities and Exchange Commission.

383720

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
04/25/2017	.	
	.	
	.	
	.	

The Committee on Rules (Latvala) recommended the following:

Senate Amendment (with directory and title amendments)

Between lines 42 and 43
insert:

(8) Any third party with whom a public utility contracts with for oil or gas exploration, extraction, drilling, processing, storage, or other related activity for which the utility seeks ratepayer recovery shall contractually agree with the utility to make such party's pertinent records available to, and subject to audit and review by, the commission.

383720

====== D I R E C T O R Y C L A U S E A M E N D M E N T ======
And the directory clause is amended as follows:
Delete lines 15 - 16
and insert:
redesignated as paragraphs (e), (f), and (g), respectively, a new paragraph (d) is added to that subsection, and subsection (8) is added to that section, to read:

================ T I T L E A M E N D M E N T ================
And the title is amended as follows:
Delete line 9
and insert:
investments; requiring a third party that contracts with a public utility for oil or gas exploration, extraction, drilling, processing, storage, or other related activity to contractually agree with the utility to make such party’s records available to, and subject to audit and review by, the commission under certain conditions; providing an effective date.

789608

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/25/2017	.	
	.	
	.	
	.	

The Committee on Rules (Latvala) recommended the following:

Senate Substitute for Amendment (383720) (with title amendment)

Between lines 49 and 50

insert:

Section 2. (1) Annually, each public utility shall file with the Public Service Commission a detailed comparison of all gas reserve projects entered into on behalf of the utility and any affiliate or subsidiary of the utility's parent company as part of its Risk Management Plan. The information must be the same for each gas reserve project entered into by any affiliate

789608

or subsidiary which was used to support or justify the appropriateness of each gas reserve project entered into during the reporting period. The filing must:

(a) Show all material assumptions relied upon to support each gas reserve project, including the capital investment amount;

(b) Calculate the associated revenue requirement for each gas reserve project; and

(c) Provide the net present value savings for each gas reserve project entered into by any affiliate or subsidiary of a parent company.

(2) For any gas reserve project, the utility shall use an independent third-party auditor in performing audits of the associated transactions. Subaccounts that correspond on a one-on-one basis with the oil and gas system of accounts shall be established and used by the utility for each investment in a gas reserve project.

(3) A public utility may enter into a gas reserves project only if there is a transportation path available to deliver the gas produced from that project to the public utility's service territory. The costs of any new transportation needed to deliver gas from a gas reserve project must be taken into consideration when analyzing the economics of that project.

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

And the title is amended as follows:

Delete line 9

and insert:

investments; requiring each public utility to file

789608

with the commission a comparison of all gas reserve projects entered into on behalf of the utility and any affiliate or subsidiary of the parent company as part of its Risk Management Plan; specifying the requirements of the filing; requiring the use of a third-party auditor for audits of associated transactions for a gas reserve project; requiring a public utility entering into a gas reserves project to have a transportation path between the project and the utility's service territory; specifying the accounting of the costs of any new transportation in the economic analysis of projects; providing an effective date.

310804

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/25/2017	.	
	.	
	.	
	.	

The Committee on Rules (Latvala) recommended the following:

Senate Amendment

Delete line 42
and insert:
Commission. The authorized return on equity for projects authorized under this paragraph shall be 50 percent of the qualifying utility's commission-approved return on equity.

461616

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/25/2017	.	
	.	
	.	
	.	

The Committee on Rules (Latvala) recommended the following:

Senate Amendment (with title amendment)

Between lines 49 and 50
insert:

Section 2. Section 366.97, Florida Statures, is created to read:

366.97 Cost recovery calculations for gas reserve investments.—

(1) The commission shall annually determine if a public utility's natural gas reserve investments produced a savings to customers in the previous year.

461616

(2) In the event that such investment does not provide a savings to the customers in the previous year, the amount of the following year's cost recovery must be adjusted to remove the amount of return the company earned in the previous year, if any.

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

And the title is amended as follows:

Delete line 9

and insert:

investments; creating s. 366.97, F.S.; requiring the Public Service Commission to annually determine whether its natural gas reserve investments provided cost savings during the previous year; providing for cost recovery adjustments for natural gas reserve investments; providing an effective date.

440944

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/25/2017	.	
	.	
	.	
	.	

The Committee on Rules (Latvala) recommended the following:

Senate Amendment (with title amendment)

Between lines 49 and 50
insert:

Section 2. (1) Annually, each public utility shall file with the Public Service Commission a detailed comparison of all gas reserve projects entered into on behalf of the utility and any affiliate or subsidiary of the utility's parent company as part of its Risk Management Plan. The information must be the same for each gas reserve project entered into by any affiliate or subsidiary that was used to support or justify the



appropriateness of each gas reserve project entered into during the reporting period. The filing must:

(a) Show all material assumptions relied upon to support each gas reserve project, including the capital investment amount;

(b) Calculate the associated revenue requirement for each gas reserve project; and

(c) Provide the net present value savings for each gas reserve project entered into by any affiliate or subsidiary of a parent company.

(2) For any gas reserve project, the utility shall use an independent third-party auditor in performing audits of the associated transactions. Subaccounts that correspond on a one-on-one basis with the oil and gas system of accounts shall be established and used by the utility for each investment in a gas reserve project.

(3) Each utility recovering its investment in a natural gas reserve project through an adjustment clause shall separately identify such clause on each customer's monthly bill. Within that line item, the utility shall explain the costs and profits being recovered and the rate of return that is used to calculate the profit. Annually, the utility shall include in each customer's bill a summary describing the annual costs and profits and any loss or gain on hedging and production costs.

(4) Annually, the commission shall prepare a report and provide it to the President of the Senate and the Speaker of the House of Representatives containing the following information:

(a) The name of each utility participating in natural gas reserve projects.


440944

(b) The number of projects for each utility.

(c) The amount of investment for each project.

(d) The amount of gain or loss for the year of hedging or production.

(e) Any other information the commission deems relevant.

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

And the title is amended as follows:

Delete line 9

and insert:

investments; requiring each public utility to file with the commission with a comparison of all gas reserve projects entered into on behalf of the utility and any affiliate or subsidiary of the parent company as part of its Risk Management Plan; specifying the requirements of the filing; specifying the use of a third-party auditor; requiring public utilities to separately identify certain adjustment clauses for investments in natural gas in and annual costs and profits on customers' bills; requiring the commission to file a report with the Legislature; providing an effective date.

793320

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/25/2017	.	
	.	
	.	
	.	

The Committee on Rules (Latvala) recommended the following:

Senate Amendment (with title amendment)

Between lines 49 and 50
insert:

Section 2. Section 366.96, Florida Statutes, is created to read:

366.96 Natural gas reserve investment option.—A public utility must provide customers an option to decline to participate in the utility's investment in natural gas reserves. Utility rates for such customers may not reflect any cost recovery, cost savings, or other financial impacts related to

793320

such utility's investments in natural gas reserves.

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

And the title is amended as follows:

Delete line 9

and insert:

investments; creating s. 366.96, F.S.; requiring utilities to offer customers an option to decline participation in the utilities' natural gas reserve investments; prohibiting utility rates for customers who decline participation from reflecting certain costs related to such investments; providing an effective date.

By Senator Bean

4-01107A-17 20171238__

A bill to be entitled

An act relating to utility investments in gas reserves; amending s. 366.04, F.S.; revising the jurisdiction of the Public Service Commission over public utilities to include the approval of cost recovery for certain gas reserve investments; requiring the commission to adopt, by rule, standards by which it will determine the prudence of such investments; providing an effective date.

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

Section 1. Present paragraphs (d), (e), and (f) of subsection (2) of section 366.04, Florida Statutes, are redesignated as paragraphs (e), (f), and (g), respectively, and a new paragraph (d) is added to that subsection, to read:

366.04 Jurisdiction of commission.—

(2) In the exercise of its jurisdiction, the commission shall have power over electric utilities for the following purposes:

(d) To approve cost recovery by adjustment clause for a utility's prudent investments, including rate of return, and for prudently incurred expenses associated with such investments, in natural gas reserves if the utility has at least 65 percent natural-gas-fueled generation. The commission shall adopt by rule no later than December 31, 2017, standards by which it will determine the prudence of such gas reserve investments. The standards must require, at minimum, all of the following:

1. Each natural gas reserve investment is projected to

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

4-01107A-17 20171238__

generate savings for customers over the life of the investment.

2. The total volume of natural gas produced from all of a utility's natural gas reserve investments must not exceed the following percentages of the utility's average projected daily burn of natural gas:

a. 7.5 percent in 2018;

b. 10 percent in 2019;

c. 12.5 percent in 2020; and

d. 15 percent in 2021 and thereafter.

3. Each investment must be made in natural gas projects that have at least 50 percent of the wells within the project classified as proved gas reserves by the Securities and Exchange Commission.

No provision of this chapter shall be construed or applied to impede, prevent, or prohibit any municipally owned electric utility system from distributing at retail electrical energy within its corporate limits, as such corporate limits exist on July 1, 1974; however, existing territorial agreements shall not be altered or abridged hereby.

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

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR JACK LATVALA
16th District

COMMITTEES:
Appropriations, *Chair*
Appropriations Subcommittee on the Environment and Natural Resources
Commerce and Tourism
Environmental Preservation and Conservation
Rules

JOINT COMMITTEE:
Joint Legislative Budget Commission, *Alternating Chair*

April 10, 2017

Mr. J.R. Kelly
Office of the Public Counsel
111 West Madison Street
Room 812
Tallahassee, FL 32399

Dear Mr. Kelly,

Every year, several bills are filed effecting the statutory authority given to the Public Service Commission. This year, Senate Bill 1238 was filed, and if passed, would allow public utilities to pass through costs of natural gas exploration to its customers in the base rate. This Wednesday, April 12, 2017, the Florida Senate Committee on Rules will be considering this measure.

I am requesting you, or a representative from your office, attend the Rules Committee meeting and be prepared to answer questions from me on this issue. This has been an issue your office has been dealing with for a number of years and the background and institutional knowledge you can provide the Committee is important when it comes time to vote.

Should you have any questions, please feel free to contact me personally. I look forward to seeing you at the Committee meeting.

Sincerely,

Jack Latvala
Senator, 16th District

cc: Senator Lizbeth Benaquisto, Chair, Senate Rules Committee

REPLY TO:
☐ 26133 U.S. Highway 19 North, Suite 201, Clearwater, Florida 33763 (727) 793-2797 FAX: (727) 793-2799
☐ 412 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5016

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

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/2017
Meeting Date

Bill Number (if applicable)
581278
Amendment Barcode (if applicable)

Topic Utility Investments

Name Patti Shea

Job Title

Address 1801 Brown Street
Street

Phone 850-523-0103

Tallahassee FL 32308
City *State* *Zip*

Email gauchopatti@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Resident

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/2017
Meeting Date

Bill Number (if applicable)
581278
Amendment Barcode (if applicable)

Topic Utility Investments

Name Zayne Smith

Job Title Associate State Director

Address 200 W. College Ave.
Street

Phone 850-228-4243

Tallahassee FL 32301
City *State* *Zip*

Email zsmith@aarp.org

Speaking: ☑ For ☐ Against ☐ Information

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

Representing AARP

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/2017
Meeting Date

SB-1238
Bill Number (if applicable)

591278 ~~400188~~
Amendment Barcode (if applicable)

Topic Forcing citizens to pay for fracking via utility bills

Name Ken Hays

Job Title Concerned Citizen

Address 1935 Nanticoke Circle
Street

Phone

Tallahassee FL 32303
City *State* *Zip*

Email

Speaking: ☑ For ☐ Against ☐ Information

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

Representing

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/17
Meeting Date

1238
Bill Number (if applicable)

~~H00188~~
Amendment Barcode (if applicable)

Topic _____

Name DAVID CULLEN → 581278

Job Title _____

Address 1674 UNIVERSITY PKWY #296 Phone 941-323-2404
Street

Email cullensea@aol.com
City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

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

Representing SIERRA CLUB FLORIDA

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-25-2017
Meeting Date

Bill Number (if applicable)

581278
Amendment Barcode (if applicable)

Topic Gas Reserve

Name Susan Glickman

Job Title Florida Director

Address PO Box 310
Street

Indian Rocks Bch FL 33785
City *State* *Zip*

Phone 727 742 9003

Email susan@cleanenergy.org

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Southern Alliance for Clean Energy

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25
Meeting Date

1238
Bill Number (if applicable)

SB 1278
Amendment Barcode (if applicable)

Topic Utility Investments

Name Gerrit Van Lent

Job Title Legislative Policy Coordinator

Address 919 Old Bainbridge Rd
Street

Tallahassee FL 32304
City *State* *Zip*

Phone

Email

Speaking: ☒ For ☐ Against ☐ Information

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

Representing ReThink Energy Action Fund

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/17
Meeting Date

SB 1238
Bill Number (if applicable)

581278
Amendment Barcode (if applicable)

Topic UTILITY INVESTMENT

Name Elizabeth Bevington

Job Title

Address 1398 Freeman Rd
Street

Phone 850 545 9320

Lamont FL 32336
City *State* *Zip*

Email donkimbrell@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Rethink Energy FL; DWCF

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/17
Meeting Date

1239
Bill Number (if applicable)

Topic Utilities / Investments in Natural Gas Reserves

581278
Amendment Barcode (if applicable)

Name Jennifer Wilson

Job Title Lobbyist

Address 101 E. Kennedy Blvd., Suite 4000
Street

Phone 813-407-0703

Tampa, FL 33602
City *State* *Zip*

Email Jennifer.Wilson@arlaw.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing The Conservancy of South West Florida

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-25-17
Meeting Date

1238
Bill Number (if applicable)

581278
Amendment Barcode (if applicable)

Topic _____

Name Hunter Mathews

Job Title _____

Address _____ Phone _____
Street

_____ Email _____
City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Rethink Energy FL.

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/2017
Meeting Date

Bill Number (if applicable)

581278
Amendment Barcode (if applicable)

Topic Utility Investments

Name Cullen White

Job Title Student

Address 2350 Phillips Road
Street

Phone 860-866-6522

Tallahassee FL 32308
City *State* *Zip*

Email cullenwhite0533@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)

4-25-17
Meeting Date

1238
Bill Number (if applicable)

581278
Amendment Barcode (if applicable)

Topic Utility Investments

Name Brian Lee

Job Title Legislative Director

Address 1203 Buckingham Dr
Street

Tallahassee FL 32308
City *State* *Zip*

Phone 850-766-7209

Email brian@sethinkenergyflorida.org

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

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

Representing Food and Water Watch

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

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

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

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

Duplicate

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/2017
Meeting Date

Bill Number (if applicable)

581278
Amendment Barcode (if applicable)

Topic Utility Investments

Name Zayne Smith

Job Title Associate State Director

Address 200 W. College Ave.
Street

Phone 850-228-4243

Tallahassee | FL | 32301
City | *State* | *Zip*

Email zsmith@aarp.org

Speaking: ☑ For ☐ Against ☐ Information

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

Representing AARP

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

Duplicate

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/2017
Meeting Date

Bill Number (if applicable)

581278
Amendment Barcode (if applicable)

Topic Utility Investments

Name Patti Shea

Job Title

Address 1801 Brown Street
Street

Phone 850-523-0103

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

Email gauchopatti@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Resident

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/14/14)

Duplicate

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/2017
Meeting Date

SB-1238
Bill Number (if applicable)

~~400188~~
Amendment Barcode (if applicable)
581278

Topic Forcing citizens to pay for fracking via utility bills

Name Ken Hays

Job Title Concerned Citizen

Address 1935 Nanticoke Circle
Street

Phone

Tallahassee FL 32303
City *State* *Zip*

Email

Speaking: ☑ For ☐ Against ☐ Information

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

Representing

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/17
Meeting Date

1238
Bill Number (if applicable)

827306 ~~208122~~
Amendment Barcode (if applicable)

Topic Utility Investments

Name Kim Ross

Job Title President

Address 919 old Bainbridge rd
Street

Phone

Tallahassee Florida 32304
City *State* *Zip*

Email KimG@rethinkenergyflorida.org

Speaking: ☑ For ☐ Against ☐ Information

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

Representing ReThink Energy Florida

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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S-001 (10/14/14)

Duplicate

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/2017
Meeting Date

Bill Number (if applicable)

827306
Amendment Barcode (if applicable)

Topic Utility Investments

Name Patti Shea

Job Title

Address 1801 Brown Street
Street

Phone 850-523-0103

Tallahassee FL 32308
City *State* *Zip*

Email gauchopatti@yahoo.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Florida Resident

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-25-2017
Meeting Date

Bill Number (if applicable)

873306
Amendment Barcode (if applicable)

Topic Gas Reserves

Name Susan Glickman

Job Title Florida Director

Address PO Box 310
Street
Indian Rocks Bch FL 33785
City *State* *Zip*

Phone 7277429003

Email Susan@cleanenergy.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Southern Alliance for Clean Energy

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-25
Meeting Date

1238
Bill Number (if applicable)

827306
Amendment Barcode (if applicable)

Topic _____

Name Hunter Mathews

Job Title _____

Address _____ Phone _____
Street

_____ Email _____
City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Rethink Energy FL.

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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S-001 (10/14/14)

Duplicate

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/2017
Meeting Date

SB-1238
Bill Number (if applicable)

~~208122~~
Amendment Barcode (if applicable)
827306

Topic Forcing citizens to pay for fracking via utility bills

Name Ken Hays

Job Title Concerned Citizen

Address 1935 Nanticoke Circle
Street

Phone

Tallahassee FL 32303
City *State* *Zip*

Email

Speaking: ☑ For ☐ Against ☐ Information

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

Representing

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/17
Meeting Date

1238
Bill Number (if applicable)

→ 208122
Amendment Barcode (if applicable)

Topic _____

Name DAVID CULLEN → 827306

Job Title _____

Address 1674 UNIVERSITY PKWY #296 Phone 941-323-2404
Street

SARASOTA FL 34243 Email cullenasea@aol.com
City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

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

Representing SIERRA CLUB FLORIDA

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25
Meeting Date

1238
Bill Number (if applicable)

827306
Amendment Barcode (if applicable)

Topic Utility Investments

Name Gerrit Van Lent

Job Title

Address 919 Old Bainbridge Dr
Street

Tallahassee FL 32304
City *State* *Zip*

Phone

Email

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

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

Representing ReThink Energy Action Fund

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

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/17
Meeting Date

SB 1238
Bill Number (if applicable)

827306
Amendment Barcode (if applicable)

Topic Utility investment

Name Elizabeth Bevington

Job Title

Address 1398 Freeman Rd
Street
Lamont FL 32336
City *State* *Zip*

Phone 850 545 9320

Email donkimbrell@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Rethink Energy FL

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-25-17
Meeting Date

1238
Bill Number (if applicable)

82706
Amendment Barcode (if applicable)

Topic Utility Investments

Name Brian Lee

Job Title Legislative Director

Address 203 Buckingham Dr.
Street

Tallahassee FL 32308
City *State* *Zip*

Phone 850-766-7309

Email brian@fortnightenergy.com

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

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

Representing Food and Water Watch

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

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/2017
Meeting Date

Bill Number (if applicable)

827306
Amendment Barcode (if applicable)

Topic Utility Investments

Name Cullen White

Job Title Student

Address 2350 Phillips Road
Street

Tallahassee FL 32308
City *State* *Zip*

Phone 860-866-6522

Email cullenwhite0533@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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/2017
Meeting Date

Bill Number (if applicable)

827306
Amendment Barcode (if applicable)

Topic Utility Investments

Name Zayne Smith

Job Title Associate State Director

Address 200 W. College Ave.
Street

Phone 850-228-4243

Tallahassee FL 32301
City *State* *Zip*

Email zsmith@aarp.org

Speaking: ☑ For ☐ Against ☐ Information

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

Representing AARP

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/2017
Meeting Date

Bill Number (if applicable)

789608
Amendment Barcode (if applicable)

Topic Utility Investments

Name Cullen White

Job Title Student

Address 2350 Phillips Road
Street

Tallahassee FL 32308
City *State* *Zip*

Phone 860-866-6522

Email cullenwhite0533@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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25
Meeting Date

1238
Bill Number (if applicable)

789608
Amendment Barcode (if applicable)

Topic Utility Investment

Name Gerrit Van Lent

Job Title Legislative Policy Coordinator

Address 919 Old bainbridge rd
Street

Tallahassee FL 32304
City *State* *Zip*

Phone

Email

Speaking: ☒ For ☐ Against ☐ Information

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

Representing ReThink Energy Action Fund

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/17
Meeting Date

1238
Bill Number (if applicable)

383720
Amendment Barcode (if applicable)

Topic _____

Name DAVID CULLEN

789608

Job Title _____

Address 1674 UNIVERSITY PKWY #296
Street

Phone 941-323-2404

SARASOTA FL 34243
City *State* *Zip*

Email cullenasea@aol.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing SIERRA CLUB FLORIDA

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/2017
Meeting Date

Bill Number (if applicable)

789608
Amendment Barcode (if applicable)

Topic Utility Investments

Name Patti Shea

Job Title

Address 1801 Brown Street
Street

Phone 850-523-0103

Tallahassee FL 32308
City *State* *Zip*

Email gauchopatti@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Resident

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/2017
Meeting Date

Bill Number (if applicable)
789608
Amendment Barcode (if applicable)

Topic Utility Investments

Name Zayne Smith

Job Title Associate State Director

Address 200 W. College Ave.
Street

Phone 850-228-4243

Tallahassee | FL | 32301
City | *State* | *Zip*

Email zsmith@aarp.org

Speaking: ☑ For ☐ Against ☐ Information

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

Representing AARP

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/2017
Meeting Date

SB-1238
Bill Number (if applicable)

749608 ~~383720~~
Amendment Barcode (if applicable)

Topic Forcing citizens to pay for fracking via utility bills

Name Ken Hays

Job Title Concerned Citizen

Address 1935 Nanticoke Circle
Street

Phone

Tallahassee FL 32303
City *State* *Zip*

Email

Speaking: ☑ For ☐ Against ☐ Information

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

Representing

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/17
Meeting Date

SB 1238
Bill Number (if applicable)

789608
Amendment Barcode (if applicable)

Topic UTILITY INVESTMENT

Name Elizabeth Bevington

Job Title

Address 1398 Freeman Rd.
Street

Phone 850 545 9320

Lamont FL 32336
City *State* *Zip*

Email donkimbrell@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Rethink Energy FL; DWCD

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-25-17
Meeting Date

1238
Bill Number (if applicable)

~~3~~ 789750
Amendment Barcode (if applicable)
789605

Topic Utility Investments

Name Brian Lee

Job Title Legislative Director

Address 1203 Buckingham Dr
Street
Tallahassee FL 32308
City *State* *Zip*

Phone 850-766-7309

Email brian@rethinkenergyflorida.org

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

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

Representing Food and Water Watch

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

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-25
Meeting Date

1238
Bill Number (if applicable)

789608
Amendment Barcode (if applicable)

Topic _____

Name Hunter Mathews

Job Title _____

Address _____ Phone _____
Street

_____ Email _____
City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Rethink Energy PL.

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/17
Meeting Date

1238
Bill Number (if applicable)

Topic Utility Investments

Amendment Barcode (if applicable)

Name Brenda Lea Lenick

Job Title USH Rat

Address 420 E Park Ave
Street

Phone 850-665-8456

Tallahassee Florida
City *State* *Zip*

Email MWS Sightseer@gmail

Speaking: ☐ For ☑ Against ☐ Information

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

Representing Mother Earth & Rat Hunt

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/17
Meeting Date

1238
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Utility Investments

Name Doug Miller

Job Title Campaign Director

Address 3034 O'Brien Drive
Street

Phone 850-766-6867

Tallahassee Florida 32308
City *State* *Zip*

Email doug@rethinkenergyflorida.org

Speaking: ☐ For ☑ Against ☐ Information

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

Representing Rethink Energy Florida

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/17
Meeting Date

SB1238
Bill Number (if applicable)

Topic UTILITY INVESTMENT

Amendment Barcode (if applicable)

Name Elizabeth Bevington

Job Title member - Dem. Wom. Club Fla

Address 1398 Freeman RD
Street

LaMont FL 32336
City *State* *Zip*

Phone 8505459320

Email donkimbrell@yahoo-com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Rethink Energy FL, DWCF

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25
Meeting Date

1238
Bill Number (if applicable)

Topic Utility investments

Amendment Barcode (if applicable)

Name Gerrit Van Lent

Job Title Legislative Policy Coordinator

Address 919 Old Bainbridge Rd.
Street

Phone

Tallahassee FL 32304
City *State* *Zip*

Email

Speaking: ☐ For ☒ Against ☐ Information

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

Representing ReThink Energy Action Fund

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/17
Meeting Date

1238
Bill Number (if applicable)

Topic Utility Investments

Amendment Barcode (if applicable)

Name Kim Rossi

Job Title President

Address 919 old Bainbridge rd.
Street

Phone

Tallahassee Florida
City *State* *Zip*

Email kim@rethinkenergyflorida.org

Speaking: ☐ For ☑ Against ☐ Information

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

Representing ReThink Energy Florida

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/17
Meeting Date

1238
Bill Number (if applicable)

Topic Utility Investments

Amendment Barcode (if applicable)

Name Hunter Mathews

Job Title

Address
Street

Phone

Tallahassee
City

Florida
State

Zip

Email

Speaking: ☐ For ☑ Against ☐ Information

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

Representing Rethink Energy Fl.

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-25-2017
Meeting Date

1238
Bill Number (if applicable)

Topic Gas Reserves

Amendment Barcode (if applicable)

Name Susan Glickman

Job Title Florida Director

Address PO Box 310
Street
Indian Rocks Beach FL 33785
City *State* *Zip*

Phone 727 742 9003

Email susan@cleanenergy.org

Speaking: ☐ For ☑ Against ☐ Information

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

Representing Southern Alliance for Clean Energy

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/17
Meeting Date

1238
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Jon Moyle

Job Title _____

Address _____ Phone _____
Street

_____ Email _____
City *State* *Zip*

Speaking: ☐ For ☑ Against ☐ Information

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

Representing FIA. Industrial Power Users Group

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/2017
Meeting Date

SB 1238
Bill Number (if applicable)

Topic Utility Investments

Amendment Barcode (if applicable)

Name Cullen White

Job Title Student

Address 2350 Phillips Road
Street

Phone 860-866-6522

Tallahassee FL 32308
City *State* *Zip*

Email cullenwhite0533@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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25
Meeting Date

1238
Bill Number (if applicable)

Topic Gas Reserves

Amendment Barcode (if applicable)

Name Kelly Quintero

Job Title Legislative Advocate

Address 540 Beverly Ct
Street

Tallahassee FL 32301
City *State* *Zip*

Phone 772 204 1792

Email lwvfadvocacy@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing League of Women Voters of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/17
Meeting Date

1238
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Utility Investments

Name Cynthia S. Tebbe

Job Title

Address 3780 Baldwin Brook Circle
Street

Phone 850

Tallahassee
City

Florida
State

Zip

Email

Speaking: ☐ For ☑ Against ☐ Information

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

Representing Democratic Women's Club of Florida

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/2017
Meeting Date

SB-1238
Bill Number (if applicable)

Topic Forcing citizens to pay for fracking via utility bills

Amendment Barcode (if applicable)

Name Ken Hays

Job Title Concerned Citizen

Address 1935 Nanticoke Circle
Street

Phone

Tallahassee FL 32303
City *State* *Zip*

Email

Speaking: ☐ For ☑ Against ☐ Information

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

Representing

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/17
Meeting Date

SB 1238
Bill Number (if applicable)

Topic Natural Gas Investments

Amendment Barcode (if applicable)

Name Lance Brown

Job Title Executive Director

Address 1220 Westmoreland Avenue
Street

Phone 334-294-9673

Montgomery AL 36106
City *State* *Zip*

Email lance@energyfairness.org

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Partnership for Affordable Clean Energy (PACE)

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/17
Meeting Date

1238
Bill Number (if applicable)

Topic Natural Gas

Amendment Barcode (if applicable)

Name Melissa Ramba

Job Title VP Government Affairs

Address 227 S Adams St.
Street

Phone 850-570-0269

Tallahassee Fl. 32301
City *State* *Zip*

Email Melissa@FRF.org

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Retail Federation

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/2017
Meeting Date

1238
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Utility Investments

Name Patti Shea

Job Title

Address 1801 Brown Street
Street

Phone 850-523-0103

Tallahassee FL 32308
City *State* *Zip*

Email gauchopatti@yahoo.com

Speaking: ☐ For ☑ Against ☐ Information

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

Representing Florida Resident

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/17
Meeting Date

1235
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name DAVID CULLEN

Job Title _____

Address 1674 UNIVERSITY PKWY #296
Street

Phone 941-323-2404

SARASOTA FL 34243
City *State* *Zip*

Email cullenmsea@aol.com

Speaking: ☐ For ☑ Against ☐ Information

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

Representing SIERRA CLUB FLORIDA

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

04/25/2017 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) SB 1238

Meeting Date *Bill Number (if applicable)*

Topic Fracking pro utilities Cos. *Amendment Barcode (if applicable)*

Name Sharon Fairbanks

Job Title retired educator

Address 9601 Miccosukee Rd Phone (850) 877-5714

Street

Tallahassee FL 32309 Email fairbank@nettally.com

City *State* *Zip*

Speaking: ☐ For ☒ Against ☐ Information Waive Speaking: ☐ In Support ☒ Against

(The Chair will read this information into the record.)

Representing Citizen of Florida

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-25-17
Meeting Date

1238
Bill Number (if applicable)

Topic Utility Investments

Amendment Barcode (if applicable)

Name Brian Lee

Job Title Legislative Director

Address 1203 Buckingham Dr
Street

Tallahassee FL 32304
City *State* *Zip*

Phone 850-766-7309

Email brian@fortunenergyflorida.org

Speaking: ☐ For ☑ Against ☐ Information

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

Representing Food and Water Watch

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/17
Meeting Date

1238
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Utility Investments

Name Leslie Campbell

Job Title

Address 8546 Wakulla Springs RD
Street

Phone 850 694 2209

Tallahassee Florida
City *State* *Zip*

Email JustThis55@gmail.com

Speaking: ☐ For ☑ Against ☐ Information

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

Representing Private citizen

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/17
Meeting Date

1238
Bill Number (if applicable)

Topic GAS RESERVES

Amendment Barcode (if applicable)

Name SAM FORREST

Job Title VICE PRESIDENT

Address 700 UNIVERSE BLVD
Street

Phone 561 694 3510

JUNO BEACH FL 33408
City *State* *Zip*

Email SAM.FORREST@FPL.COM

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

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

Representing FPL

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

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/17
Meeting Date

1238
Bill Number (if applicable)

Topic Utility Investments

Amendment Barcode (if applicable)

Name Zayne Smith

Job Title ASD

Address 200 W. College Ave. (*Street*)

Phone 850 228-4243

Tally (*City*) FL (*State*) 32301 (*Zip*)

Email zsmith@aarp.org

Speaking: ☐ For ☑ Against ☐ Information

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

Representing AARP

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/CS/CS/SB 188
INTRODUCER:	Rules Committee; Community Affairs Committee; Regulated Industries Committee; and Senators Steube and Perry
SUBJECT:	Vacation Rentals
DATE:	April 25, 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	McSwain	RI	**Fav/CS**
2.	Cochran	Yeatman	CA	**Fav/CS**
3.	Oxamendi	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 188 permits local governments to amend certain vacation rental laws, ordinances, or regulations to be less restrictive, including providing regulatory relief for certain military personnel and disabled veterans. The bill maintains the prohibition in current law against local laws, ordinances, or regulations that prohibit vacation rentals or regulate the duration or frequency of rental of vacation rentals.

The bill permits a local ordinance relating to vacation rentals that is subject to the grandfather provision in s. 509.032(7)(b), F.S., to maintain its grandfathered status, if the ordinance is ratified in a local referendum by at least a two-thirds of the electors voting in the referendum.

Current law permits local laws, ordinances, or regulations "exclusively relating to property valuation as a criterion" for vacation rental if the law, ordinance or regulation is required to be approved by the state's land planning agency pursuant to an area of critical state concern designation. The bill expands the exemption to include local laws, ordinances, or regulations governing vacation rentals.

The bill takes effect upon becoming law.

II. Present Situation:

The Division of Hotels and Restaurants (division) within the Department of Business and Professional Regulation (DBPR) is the state agency charged with enforcing the provisions of ch. 509, F.S., relating to the regulation of public lodging establishments and public food service establishments for the purpose of protecting the public health, safety, and welfare.

The term "public lodging establishments" includes transient and nontransient public lodging establishments.[1] The principal differences between transient and nontransient public lodging establishments are the number of times that the establishments are rented in a calendar year and the length of the rentals.

A "transient public lodging establishment" is defined in s. 509.013(4)(a)1., F.S., as:

> any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.

A "nontransient public lodging establishment" is defined in s. 509.013(4)(a)2., F.S., as:

> any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests for periods of at least 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests for periods of at least 30 days or 1 calendar month.

Section 509.013(4)(b), F.S., exempts the following types of establishments from the definition of "public lodging establishment":

> 1. Any dormitory or other living or sleeping facility maintained by a public or private school, college, or university for the use of students, faculty, or visitors.
> 2. Any facility certified or licensed and regulated by the Agency for Health Care Administration or the Department of Children and Families or other similar place regulated under s. 381.0072.
> 3. Any place renting four rental units or less, unless the rental units are advertised or held out to the public to be places that are regularly rented to transients.
> 4. Any unit or group of units in a condominium, cooperative, or timeshare plan and any individually or collectively owned one-family, two-family, three-family, or four-family dwelling house or dwelling unit that is rented for periods of at least 30 days or 1 calendar month, whichever is less, and that is not advertised or held out to the public as a place regularly rented for periods of less than 1 calendar month, provided that no more than four rental units within a single complex of buildings are available for rent.

[1] Section 509.013(4)(a), F.S.

> 5. Any migrant labor camp or residential migrant housing permitted by the Department of Health under ss. 381.008-381.00895.
> 6. Any establishment inspected by the Department of Health and regulated by chapter 513.
> 7. Any nonprofit organization that operates a facility providing housing only to patients, patients' families, and patients' caregivers and not to the general public.
> 8. Any apartment building inspected by the United States Department of Housing and Urban Development or other entity acting on the department's behalf that is designated primarily as housing for persons at least 62 years of age. The division may require the operator of the apartment building to attest in writing that such building meets the criteria provided in this subparagraph. The division may adopt rules to implement this requirement.
> 9. Any roominghouse, boardinghouse, or other living or sleeping facility that may not be classified as a hotel, motel, timeshare project, vacation rental, nontransient apartment, bed and breakfast inn, or transient apartment under s. 509.242.

Public lodging establishments are classified as a hotel, motel, vacation rental, nontransient apartment, transient apartment, bed and breakfast inn, or timeshare project.[2]

A "vacation rental" is defined in s. 509.242(1)(c), F.S., as:

> any unit or group of units in a condominium, cooperative, or timeshare plan or any individually or collectively owned single-family, two-family, three-family, or four-family house or dwelling unit that is also a transient public lodging establishment but is not a timeshare project.

The department licenses vacation rentals as condominiums, dwellings, or timeshare projects.[3] The division may issue a vacation rental license for "a single-family house, a townhouse, or a unit or group of units in a duplex, triplex, quadruplex, or other dwelling unit that has four or less units collectively."[4]

The 40,341 public lodging establishments licensed by the division are distributed as follows:[5]

- Hotels – 1,834 licenses;
- Motels – 2,609 licenses;
- Nontransient apartments – 17,772 licenses;

[2] Section 509.242(1), F.S.
[3] Fla. Admin. Code R. 61C-1.002(4)(a)1.
[4] The division further classifies a vacation rental license as a single, group, or collective license. See Fla. Admin. Code R. 61C-1.002(4)(a)1. A single license may include one single-family house or townhouse, or a unit or group of units within a single building that are owned and operated by the same individual person or entity. A group license is a license issued by the division to a licensed agent to cover all units within a building or group of buildings in a single complex. A collective license is a license issued by the division to a licensed agent who represents a collective group of houses or units found on separate locations not to exceed 75 houses per license.
[5] *Division of Hotels and Restaurants Annual Report for FY 2015-2016*, Department of Business and Professional Regulation. A copy of the report is available at: http://www.myfloridalicense.com/dbpr/hr/reports/annualreports/documents/ar2015_16.pdf (Last visited April 25, 2017).

- Transient apartments – 981 licenses;
- Bed and Breakfast Inns – 256 licenses;
- Vacation rental condominiums – 4,402 licenses;
- Vacation rental dwellings – 12,539 licenses; and
- Vacation rental timeshare projects- 17 licenses.

Inspections of Vacation Rentals

The division must inspect each licensed public lodging establishment at least biannually, but transient and nontransient apartments must be inspected at least annually. However, the division is not required to inspect vacation rentals, but vacation rentals must be available for inspection upon a request by the division.[6] The division inspects a vacation rental in response to a consumer complaint related to sanitation issues or unlicensed activity. In Fiscal Year 2015-2016, the division received 113 consumer complaints regarding vacation rentals and inspected the vacation rentals.[7]

Preemption

Section 509.032(7)(a), F.S., provides that "the regulation of public lodging establishments and public food service establishments, including, but not limited to, sanitation standards, inspections, training and testing of personnel, and matters related to the nutritional content and marketing of foods offered in such establishments, is preempted to the state."

Section 509.032(7)(b), F.S., prohibits local laws, ordinances, or regulations that prohibit vacation rentals or regulate the duration or frequency of rental of vacation rentals. However, this prohibition does not apply to any local law, ordinance, or regulation adopted on or before June 1, 2011.

Section 509.032(7)(c), F.S., provides that the prohibition in s. 509.032(7)(b), F.S., does not apply to local laws, ordinances, or regulations exclusively relating to property valuation as a criterion for vacation rental if the law, ordinance or regulation is required to be approved by the state land planning agency pursuant to an area of critical state concern designation.[8]

Legislative History

In 2011, the Legislature preempted vacation rental regulation to the state. The preemption prevented local governments from enacting any law, ordinance, or regulation that:

- Restricted the use of vacation rentals;
- Prohibited vacation rentals; or
- Regulated vacation rentals based solely on their classification, use, or occupancy.[9]

[6] Section 509.032(2)(a), F.S.
[7] *See supra* note 5, at 20.
[8] *See* s. 163.3164(43), F.S., provides that the state land planning agency is the Department of Economic Opportunity.
[9] Chapter 2011-119, Laws of Fla.

This legislation grandfathered any local law, ordinance, or regulation that was enacted by a local government on or before June 1, 2011.[10]

In 2014, the Legislature revised the preemption to its current form with an effective date of July 1, 2014.[11] Chapter 2014-71, Laws of Fla., amended s. 509.032(7)(b), F.S., and repealed the portions of the preemption of local laws, ordinances, and regulations which prohibited "restrict[ing] the use of vacation rentals" and which prohibited regulating vacation rentals "based solely on their classification, use or occupancy."[12]

Attorney General Opinion

The office of the Attorney General issued an Informal Legal Opinion on October 22, 2013, regarding whether Flagler County could intercede and stop vacation rental operations in private homes that were zoned, prior to June 1, 2011, for single-family residential use.[13] According to the opinion, "due to an increase in the number of homes being used as vacation rentals in Flagler County, many permanent residents in neighborhoods with vacation rentals have raised concerns about the negative effects such rentals have on their quality of life and the character of their neighborhood." Flagler County had no regulation governing vacation rentals before the grandfather date of June 1, 2011, in s. 509.032(7)(b), F.S. The Attorney General concluded that the county's local zoning ordinance for single-family homes that predated June 1, 2011, did not restrict the rental of such property as a vacation rental and that the zoning ordinances could not now be interpreted to restrict vacation rentals.

A second advisory opinion was issued by the Attorney General on November 13, 2014, for the City of Wilton Manors concluding that s. 509.032(7)(b), F.S., does not permit the city to regulate the location of vacation rentals through zoning, and the city may not prohibit vacation rentals which fail to comply with the registration and licensing requirements in s. 509.241, F.S., which requires public lodging establishments to obtain a license from the division.[14]

In addition, the Attorney General issued a third advisory opinion on October 5, 2016, addressing whether a municipality could limit the spacing and concentration of vacation rentals through a proposed ordinance regarding vacation rentals.[15] The Attorney General concluded that the preemption in s. 509.032, F.S., allows local governments some regulation of vacation rentals, but prevents local governments from prohibiting vacation rentals. Consequently, the Attorney General noted that a municipality may not impose spacing or proportional regulations that would have the effect of preventing eligible housing from being used as a vacation rental.[16]

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[10] *Id.*
[11] Chapter 2014-71, Laws of Fla.; codified in s. 509.032(7)(b), F.S.
[12] *Id.*
[13] Florida Attorney General, Informal Legal Opinion to Mr. Albert Hadeed, Flagler County Attorney, regarding "Vacation Rental Operation-Local Ordinances," dated October 22, 2013.
[14] Florida Attorney General, AGO 2014-09, Vacation Rentals - Municipalities - Land Use, November 13, 2014, available at: http://www.myfloridalegal.com/ago.nsf/printview/5DFB7F27FB483C4685257D900050D65E. (last visited April 25, 2017).
[15] Florida Attorney General, AGO 2016-12, Municipalities - Vacation Rentals - Zoning, October 5, 2016, available at: http://www.myfloridalegal.com/ago.nsf/printview/3AF7050D48068C10852580440051386C (last visited April 25, 2017).
[16] *Id.*

III. Effect of Proposed Changes:

The bill allows local laws, ordinances, or regulations that were in existence on or before June 1, 2011, that prohibit vacation rentals or regulate the duration or frequency of rental of vacation rentals, to be amended to be less restrictive. These grandfathered regulations may also be amended to reduce local regulatory burdens on vacation rentals owned in whole or in part by a person who is currently serving on active duty or temporary duty in a branch of the United States Armed Services. This also applies to vacation rentals owned by a disabled veteran with a service connected evaluation of such disability of 30 percent or more, according to the United States Department of Veterans Affairs.

The bill permits a local ordinance relating to vacation rentals that is subject to the grandfather provision in s. 509.032(7)(b), F.S., to maintain its grandfathered status if the ordinance is ratified in a local referendum by at least a two-thirds of the electors voting in the referendum.

Current law permits local laws, ordinances, or regulations "exclusively relating to property valuation as a criterion" for vacation rental if the law, ordinance or regulation is required to be approved by the state's land planning agency pursuant to an area of critical state concern designation. The bill expands the exemption to include local laws, ordinances, or regulations governing vacation rentals.

The bill takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

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 509.032 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/SB by Rules on April 25, 2017:

- Permits a local ordinance relating to vacation rentals which is subject to the grandfather provision in s. 509.032(7)(b), F.S., to maintain its grandfathered status, if the ordinance is ratified in a local referendum by at least a two-thirds of the electors voting in the referendum.
- Expands the exemption in s. 509.032(7)(c), F.S., to include local laws, ordinances, or regulations governing vacation rentals.

CS/CS by Community Affairs on April 17, 2017:

- Allows local regulations that were adopted on or before June 1, 2011, that prohibit vacation rentals or regulate the duration or frequency of rental of vacation rentals, to be amended to be less restrictive and to provide relief from regulatory burdens on certain military personnel.

CS by Regulated Industries on March 21, 2017:

- Permits a local law, ordinance, or regulation that regulates activities that arise when a property is used as a vacation rental. However, such regulation must apply uniformly to all residential properties without regard to whether the property is used as a vacation rental or a long-term rental under ch. 83, F.S., or is rented by the property owner.
- Removes from the bill a prohibition against a local law, ordinance, or regulation that restricts the use, prohibits, or regulates vacation rentals based solely on their classification, use, or occupancy.
- Retains the current requirement that local governments cannot prohibit vacation rentals or regulate the duration or frequency of vacations rentals.
- Retains the grandfather provision in current law that exempts from the preemption any local law, ordinance, or regulation that was adopted by a local government on or

before June 1, 2011, and seeks to also permit a local government to amend a law, ordinance or regulation adopted on or before June 1, 2011, to be less restrictive. See Section VI, Technical Deficiencies.

B. Amendments:

None.

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

379712

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/25/2017	.	
	.	
	.	
	.	

The Committee on Rules (Flores) recommended the following:

Senate Amendment

Delete lines 10 - 26
and insert:
Section 1. Paragraphs (b) and (c) of subsection (7) of section 509.032, Florida Statutes, are amended to read:
509.032 Duties.—
(7) PREEMPTION AUTHORITY.—
(b) A local law, ordinance, or regulation may not prohibit vacation rentals or regulate the duration or frequency of rental of vacation rentals. This paragraph does not apply to any local


379712

law, ordinance, or regulation adopted on or before June 1, 2011, including when such law, ordinance, or regulation:

1. Is being amended to be less restrictive; or

2. Reduces local regulatory burdens on vacation rentals owned, in whole or in part, by a person who is currently serving on active duty or temporary duty in a branch of the United States Armed Services or owned by a disabled veteran with a service-connected evaluation of such disability of 30 percent or more, according to the United States Department of Veterans Affairs.

(c) Paragraph (b) does not apply to any local law, ordinance, or regulation governing ~~exclusively relating to property valuation as a criterion for~~ vacation rentals ~~rental~~ if the local law, ordinance, or regulation is required to be approved by the state land planning agency pursuant to an area of critical state concern designation.

113756

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/25/2017	.	
	.	
	.	
	.	

The Committee on Rules (Latvala) recommended the following:

Senate Amendment (with title amendment)

Between lines 26 and 27

insert:

Section 2. Notwithstanding s. 509.032 (7)(b), Florida Statutes, a municipality may submit an ordinance adopted by the governing body of the municipality prior to the effective date of ch. 2011-119, Laws of Florida, for ratification of the electors at a referendum. If the ordinance is approved by at least two-thirds of the electors voting in the referendum, the effective date of the ordinance is the date of its initial

113756

adoption by the governing body of the municipality.

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

And the title is amended as follows:

Delete line 5

and insert:

regarding vacation rentals; authorizing certain ordinances to be submitted for ratification by electors at a referendum; providing a retroactive effective date for such ordinances; providing an effective

By the Committees on Community Affairs; and Regulated Industries; and Senators Steube and Perry

578-03985-17 2017188c2

A bill to be entitled

An act relating to vacation rentals; amending s. 509.032, F.S.; revising applicability for a preemption of certain local laws, ordinances, or regulations regarding vacation rentals; providing an effective date.

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

Section 1. Paragraph (b) of subsection (7) of section 509.032, Florida Statutes, is amended to read:

509.032 Duties.—

(7) PREEMPTION AUTHORITY.—

(b) A local law, ordinance, or regulation may not prohibit vacation rentals or regulate the duration or frequency of rental of vacation rentals. This paragraph does not apply to any local law, ordinance, or regulation adopted on or before June 1, 2011, including when such law, ordinance, or regulation:

1. Is being amended to be less restrictive; or

2. Reduces local regulatory burdens on vacation rentals owned, in whole or in part, by a person who is currently serving on active duty or temporary duty in a branch of the United States Armed Services or owned by a disabled veteran with a service-connected evaluation of such disability of 30 percent or more, according to the United States Department of Veterans Affairs.

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

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Judiciary, *Chair*
Banking and Insurance, *Vice Chair*
Agriculture
Appropriations Subcommittee on Finance and Tax
Regulated Industries

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

SENATOR GREG STEUBE
23rd District

April 17, 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 188: Vacation Rentals, has been referred to the Senate Rules Committee. This bill passed the Senate Community Affairs Committee on April 17. I am respectfully requesting that you place these bills on your committee's calendar for the next committee week.

Thank you for your consideration. Please contact me if you have any questions.

Very respectfully yours,

W. Gregory Steube, District 23

REPLY TO:
☐ 722 Apex Road, Unit A, Sarasota, Florida 34240 (941)342-9162
☐ 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023

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

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/17
Meeting Date

SB 188
Bill Number (if applicable)

379712
Amendment Barcode (if applicable)

Topic Relating to Vacation Rentals

Name Carol Bracy

Job Title Consultant

Address 403 East Park Avenue
Street

Phone 850-577-0444

Tallahassee FL 32301
City *State* *Zip*

Email carol@ballardfl.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing City of Marathon

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-25-
Meeting Date

SB 188
Bill Number (if applicable)

Topic Vacation Rentals - Flores amendment 379712
Amendment Barcode (if applicable)

Name John Wayne Smith

Job Title Peebles & Smith

Address 301 S. Bronough St
Street

Phone 570-7242

Tall FL 32301
City *State* *Zip*

Email

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Monroe County

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

Amendment Barcode No. 113756

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-25
Meeting Date

188
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Pete Dunbar

Job Title _____

Address 215 S. Monroe
Street
Tallahassee FL 32301
City *State* *Zip*

Phone 999-4100

Email pdunbar@dunbarlaw.com

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

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

Representing Town of Redington Beach

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

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

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25
Meeting Date

SB 188
Bill Number (if applicable)

113756
Amendment Barcode (if applicable)

Topic Regulation of Vacation Rentals

Name Benjamin Stearns

Job Title Attorney

Address 215 S. Monroe St.
Street

Phone 850-425-3383

Tallahassee FL 32301
City *State* *Zip*

Email bstearns@carltonfields.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing John McKibben

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-25-17
Meeting Date

188
Bill Number (if applicable)

113756
Amendment Barcode (if applicable)

Topic Vacation Rentals

Name Lori Killinger

Job Title Legislative Counsel

Address 315 S. Calhoun St. Ste F30
Street

Tallahassee FL 32301
City *State* *Zip*

Phone 850 222 5702

Email lkillinger@flrvma.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing FL Vacation Rental Managers Assn

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/17
Meeting Date

188
Bill Number (if applicable)

Topic VACATION RENTALS

Amendment Barcode (if applicable)

Name KERRI McNULTY

Job Title ASST. CITY ATTORNEY

Address 444 SW 2ND AVE.
Street

Phone (305) 416-1800

MIAMI FL 33130
City *State* *Zip*

Email klmcnulty@miamigov.com

Speaking: ☐ For ☐ Against ☒ Information

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

Representing CITY OF MIAMI

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/17
Meeting Date

SB 188
Bill Number (if applicable)

Topic Vacation Rentals

Amendment Barcode (if applicable)

Name Travis Moore

Job Title

Address PO Box 2020
Street

St. Pete FL 33731
City *State* *Zip*

Phone

Email travis@moore-relations.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Community Associations Institute

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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4/25/17
Meeting Date

SB 188
Bill Number (if applicable)

Topic Vacation Rentals

Amendment Barcode (if applicable)

Name Troy Flanagan

Job Title

Address 310 Escambia St.
Street

Fernandina Beach FL 32034
City *State* *Zip*

Phone 202 285 4371

Email tflanagan@ahla.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing American Hotel & Lodging Assn.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/17
Meeting Date

188
Bill Number (if applicable)

Topic Vacation Rentals

Amendment Barcode (if applicable)

Name Jennifer Green

Job Title President of Liberty Partners of Tallahassee

Address 113 E. College Ave.
Street

Tallahassee FL 32302
City *State* *Zip*

Phone 850-841-1726

Email jennifer@libertypartnersfl.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing HomeAway

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-25-17
Meeting Date

188
Bill Number (if applicable)

Topic Vacation Rentals

Amendment Barcode (if applicable)

Name Loci Killinger

Job Title Legislative Counsel

Address 315 S. Calhoun St. Ste 830
Street

Phone 8502225702

Tallahassee FL 32301
City *State* *Zip*

Email lkillinger@llw-law.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL Vacation Rental Managers Assn.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/17
Meeting Date

188
Bill Number (if applicable)

Topic Vacation Rentals

Amendment Barcode (if applicable)

Name Chris Emmanuel

Job Title Policy Director

Address 136 S Bronough St
Street

Tallahassee FL 32301
City *State* *Zip*

Phone 521-1200

Email cemmanuel@flchamber.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL Chamber of Commerce

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is 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 616
INTRODUCER:	Governmental Oversight and Accountability Committee and Senator Steube
SUBJECT:	Concealed Weapons or Firearms
DATE:	April 24, 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stallard	Cibula	JU	**Favorable**
2.	Ferrin	Ferrin	GO	**Fav/CS**
3.	Stallard	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 616 defines the term "courthouse," and authorizes a person who has a concealed weapons and firearms license to carry a concealed weapon or firearm into a courthouse for as long as it takes him or her to report to courthouse security or management. Then, the licensee must follow security or management personnel's instructions for removing, securing, and storing the item, or the licensee must surrender the item until the licensee is leaving the courthouse. As such, the bill does not permit anyone to carry a concealed weapon or firearm throughout a courthouse or into a courtroom.

The bill also states that any local ordinance, administrative rule, administrative order, or regulation that conflicts with the stated definition of courthouse or the right to carry a weapon or firearm into a courthouse, as permitted by this bill, is preempted to the Legislature. Further, the bill subjects a person or entity that enacts or enforces a preempted ordinance, rule, order, or regulation to penalties including, but not limited to fines and removal from office by the Governor.

The bill is effective upon becoming a law.

II. Present Situation:

Concealed Carry of Firearms, Weapons, or Electric Weapons or Devices

Lawful Concealed Carry of Weapons or Firearms

Chapter 790, F.S., regulates who can carry weapons and firearms and where and how a person may carry them. In general, this chapter prohibits a person from carrying a concealed firearm unless the person has a concealed weapon or firearm license.[1]

Florida's concealed carry licensing scheme is set forth in s. 790.06, F.S. The license only permits the concealed carry of handguns and certain non-firearm weapons.[2] Currently, there are roughly 1.7 million Floridians holding a standard concealed carry license. [3]

To obtain a license, one must submit an application to the Department of Agriculture and Consumer Services, and the Department *shall* grant the license to each applicant who:[4]

- Is a resident of the United States and a citizen of the United States or a permanent resident alien of the United States, as determined by the United States Bureau of Citizenship and Immigration Services, or is a consular security official of a foreign government that maintains diplomatic relations and treaties of commerce, friendship, and navigation with the United States and is certified as such by the foreign government and by the appropriate embassy in this country;
- Is 21 years of age or older;
- Does not suffer from a physical infirmity which prevents the safe handling of a weapon or firearm;
- Is not ineligible to possess a firearm by virtue of having been convicted of a felony;
- Has not been committed for the abuse of a controlled substance or been found guilty of a crime relating to controlled substances within a 3-year period immediately preceding the date on which the application is submitted;
- Does not chronically and habitually use alcoholic beverages or other substances to the extent that his or her normal faculties are impaired;
- Desires a legal means to carry a concealed weapon or firearm for lawful self-defense;
- Demonstrates competence with a firearm;[5]
- Has not been adjudicated an incapacitated person in a guardianship proceeding, unless 5 years have elapsed since the applicant's restoration to capacity by court order;

---

[1] *See* ss. 790.01 and 790.06, F.S.; *but see* s.790.25(3), F.S., which provides that the prohibition against carrying a concealed weapon and the licensure requirement do not apply in certain circumstances.

[2] "For the purposes of this section, concealed firearms and concealed weapons are defined as a handgun, electronic weapon or device, tear gas gun, knife, or billie, but the term does not include a machine gun as defined" elsewhere in statute. Section 790.06(1), F.S.

[3] As of February 28, 2017, 1,721,862 Floridians held a standard concealed carry license. Fla. Dept. of Ag., *Number of Licensees by Type*, http://www.freshfromflorida.com/content/download/7471/118627/Number_of_Licensees_By_Type.pdf (last visited March 2, 2017).

[4] Section 790.06(2), F.S. Accordingly, Florida is referred to as a "shall-issue" state, as opposed to a "may-issue" state. Also, the Department must deny a license to an applicant who meets criteria set forth in s. 790.06(3), F.S.

[5] See s. 790.06(2)(h), F.S., for the list of courses and other means of demonstrating competency, and for the required documentation that one must present to the state relative to this provision.

- Has not been committed to a mental institution, unless the applicant produces a certificate from a licensed psychiatrist that he or she has not suffered from disability for at least 5 years before the date of submission of the application;
- Has not had adjudication of guilt withheld or imposition of sentence suspended on any felony, or any misdemeanor crime of domestic violence, unless 3 years have elapsed since probation or any other conditions set by the court have been fulfilled, or expunction has occurred;
- Has not been issued an injunction that is currently in force and effect and that restrains the applicant from committing acts of domestic violence or acts of repeat violence; and
- Is not prohibited from purchasing or possessing a firearm by any other provision of Florida or federal law.

The licensing statute strongly implies that licensees may carry concealed throughout Florida, as a general matter.[6] However, the statute also expressly states that the license does not permit a licensee to carry a concealed weapon or firearm into any: [7]

- *Courthouse*;
- *Courtroom*;[8]
- Place of nuisance, such as a brothel or place where criminal gang activity takes place repeatedly;
- Police, sheriff, or highway patrol station;
- Detention facility, prison, or jail;
- Polling place;
- Meeting of the governing body of a county, public school district, municipality, or special district;
- Meeting of the Legislature or a committee of the Legislature;
- School, college, or professional athletic event not related to firearms;
- Elementary or secondary school facility or administration building;
- Career center;
- Portion of an establishment licensed to dispense alcoholic beverages for consumption on the premises, which portion of the establishment is primarily devoted to such purpose;
- College or university facility unless the licensee is a registered student, employee, or faculty member of such college or university and the weapon is a stun gun or nonlethal electric weapon or device designed solely for defensive purposes and the weapon does not fire a dart or projectile;
- Airport's passenger terminal and sterile area, provided that no person shall be prohibited from carrying any legal firearm into the terminal, which firearm is encased for shipment for purposes of checking such firearm as baggage to be lawfully transported on any aircraft; or
- Place where the carrying of firearms is prohibited by federal law.

[6] The licensing statute expressly states that licensees are not subject to the statute that criminalizes concealed carry. The licensing statute also expressly states that the license does not authorize carrying into a list of places. Thus the licensing statute strongly implies, though nowhere expressly states, that licensees may carry generally throughout Florida.
[7] Section 790.06(12)(a), F.S. (Emphasis added)
[8] "Except that nothing in this section would preclude a judge from carrying a concealed weapon or determining who will carry a concealed weapon in his or her courtroom." Section 790.06(12)(a)5., F.S. Note that this provision does not refer to *firearms*, but only *weapons*.

A licensee who carries a concealed weapon or firearm into a courthouse or other prohibited place commits a second degree misdemeanor, which is punishable by up to 60 days in jail and a fine not to exceed $500.[9]

Preemption of Firearms and Ammunition Regulations

The Joe Carlucci Uniform Firearms Act (Act), codified as s. 790.33, F.S., became law in 1987.[10] The policy and intent of the Act is stated as follows:

> It is the intent of this section to provide uniform firearms laws in the state; to declare all ordinances and regulations null and void which have been enacted by any jurisdictions other than state and federal, which regulate firearms, ammunition, or components thereof; to prohibit the enactment of any future ordinances or regulations relating to firearms, ammunition, or components thereof unless specifically authorized by this section or general law; and to require local jurisdictions to enforce state firearms laws.[11]

The Act accomplished its stated purpose by "occupying the whole field of regulation of firearms and ammunition," as stated in subsection (1) of the Act:

> Except as expressly provided by the State Constitution or general law, the Legislature hereby declares that it is occupying the whole field of regulation of firearms and ammunition, including the purchase, sale, transfer, taxation, manufacture, ownership, possession, storage, and transportation thereof, to the exclusion of all existing and future county, city, town, or municipal ordinances or any administrative regulations or rules adopted by local or state government relating thereto. Any such existing ordinances are hereby declared null and void.[12]

Additionally, the Act requires the court to impose civil fines of up to $5,000 against certain government officials who willfully enact or cause an improper ordinance, regulation, or rule to be enforced. The offending government official may not use public funds to pay the fine. And the government official may be removed from office by the Governor.[13]

There are limited exceptions to the preemption provisions included in the Act, which does not prohibit:[14]

- Zoning ordinances that encompass firearms businesses along with other businesses, provided that they are not designed to restrict or prohibit the sale, purchase, transfer, or manufacture of firearms or ammunition;
- Regulations pertaining to firearms and ammunition issued to law enforcement agencies;
- Regulations prohibiting the carrying of firearms and ammunition by an employee of a local jurisdiction during and in the course of his or her official duties;

[9] Section 790.06(12)(d), F.S. See also ss. 775.082(4)(b), F.S. and 775.083(1)(e), F.S.
[10] Chapter 87-23, Laws of Fla.
[11] Section 790.33(2)(a), F.S.
[12] Section 790.33(1), F.S.
[13] Section 790.33(3), F.S.
[14] Section 790.33(4), F.S.

- A court or administrative law judge from hearing and resolving any case or controversy or issuing any opinion or order on a matter within the jurisdiction of that court or judge; or
- The Florida Fish and Wildlife Conservation Commission's regulation of the use of firearms or ammunition to take wildlife or on shooting ranges managed by the commission.

Despite the provisions of the 1987 Joe Carlucci Act and a Florida appellate court opinion upholding the Act,[15] local governments have enacted or considered enacting ordinances that required trigger locks, prohibited concealed carry permit holders from lawfully carrying their firearms on municipal or county property, required special use permits for certain sporting goods stores, and banned recreational shooting.

III. Effect of Proposed Changes:

The bill defines the term "courthouse" as a building, or that portion thereof, in which hearings and trials are conducted on a regular basis and houses judicial chambers. The bill authorizes a person who has a concealed weapons and firearms license to carry a concealed weapon or firearm into a courthouse for as long as it takes him or her to report to courthouse security or management. Then, the licensee must:

- Follow the security or management personnel's direction for removing, securing, and storing such weapon or firearm, or
- Temporarily surrender the weapon or firearm to the security or management personnel, who shall store the weapon or firearm in a locker, safe, or other secure location and return the weapon or firearm to the licensee when he or she is exiting the courthouse.

As such, the bill does not permit carrying a firearm past the entryway of most courthouses,[16] and clearly does not authorize a licensee to carry into any courtroom.

The bill also provides that a local ordinance, administrative rule, administrative order, or regulation that conflicts with this section of law and the right to carry is preempted to the Legislature, and the person or entity that enacts or enforces a preempted ordinance, order, rule, or regulation is subject to penalties set forth in 790.33, F.S. including, but not limited to civil fines and removal from office by the Governor.

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.

[15] *National Rifle Association v. City of South Miami*, 812 So. 2d 504 (Fla. 3d DCA 2002).
[16] However, some courthouses have no security checkpoints at their entrances.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Courthouses may need to purchase lockers to store handguns for persons who have a concealed weapon or firearm license.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 790.06 of the Florida Statutes.

IX. Additional Information:

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

CS by Governmental Oversight and Accountability on March 22, 2017:

- The amendment provides that for the purposes of this section, the term "courthouse" means a building, or that portion thereof, in which hearings and trials are conducted on a regular basis and houses judicial chambers.
- The amendment also provides that a local ordinance, administrative rule, administrative order, or regulation that conflicts with this section of law and the right to carry is preempted to the Legislature, and the person or entity that enacts or enforces a preempted ordinance, order, rule, or regulation is subject to penalties set forth in 790.33, F.S. including, but not limited to civil fines and removal from office by the Governor.

B. Amendments:

None.

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

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

585-02737-17 2017616c1

A bill to be entitled

An act relating to concealed weapons or firearms; amending s. 790.06, F.S.; authorizing a concealed weapons or concealed firearms licensee to temporarily surrender a weapon or firearm if the licensee approaches courthouse security or management personnel upon arrival and follow their instructions; defining the term "courthouse"; providing that inconsistent definitions are preempted to the Legislature; subjecting the persons or entities responsible for enacting, or causing the enforcement of, an inconsistent definition to specified penalties; providing an effective date.

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

Section 1. Present subsection (17) of section 790.06, Florida Statutes, is redesignated as subsection (18), a new subsection (17) is added to that section, and paragraph (a) of subsection (12) of that section is amended, to read:

790.06 License to carry concealed weapon or firearm.—

(12)(a) A license issued under this section does not authorize any person to openly carry a handgun or carry a concealed weapon or firearm into:

1. Any place of nuisance as defined in s. 823.05;

2. Any police, sheriff, or highway patrol station;

3. Any detention facility, prison, or jail;

4. Any courthouse, except when a licensee approaches security or management personnel upon arrival at a courthouse

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

585-02737-17 2017616c1

and notifies them of the presence of the weapon or firearm and follows the security or management personnel's instructions for removing, securing, and storing such weapon or firearm, or when the licensee temporarily surrenders such weapon or firearm to the security or management personnel, who shall store the weapon or firearm in a locker, safe, or other secure location and return the weapon or firearm to the licensee when he or she is exiting the courthouse;

5. Any courtroom, except that nothing in this section would preclude a judge from carrying a concealed weapon or determining who will carry a concealed weapon in his or her courtroom;

6. Any polling place;

7. Any meeting of the governing body of a county, public school district, municipality, or special district;

8. Any meeting of the Legislature or a committee thereof;

9. Any school, college, or professional athletic event not related to firearms;

10. Any elementary or secondary school facility or administration building;

11. Any career center;

12. Any portion of an establishment licensed to dispense alcoholic beverages for consumption on the premises, which portion of the establishment is primarily devoted to such purpose;

13. Any college or university facility unless the licensee is a registered student, employee, or faculty member of such college or university and the weapon is a stun gun or nonlethal electric weapon or device designed solely for defensive purposes and the weapon does not fire a dart or projectile;

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

14. The inside of the passenger terminal and sterile area of any airport, provided that no person shall be prohibited from carrying any legal firearm into the terminal, which firearm is encased for shipment for purposes of checking such firearm as baggage to be lawfully transported on any aircraft; or

15. Any place where the carrying of firearms is prohibited by federal law.

(17)(a) As used in this section, the term "courthouse" means a building in which trials and hearings are conducted on a regular basis. If a building is used primarily for purposes other than the conduct of hearings and trials and housing judicial chambers, the term includes only that portion of the building that is primarily used for hearings and trials and judicial chambers.

(b) A local ordinance, administrative rule, administrative order, or regulation that is in conflict with the definition of the term "courthouse" in this subsection or the rights set forth under subparagraph (12)(a)4. is preempted to the Legislature under s. 790.33. The person, justice, judge, county, agency, municipality, district, or other entity that enacts or causes to be enforced a local ordinance, administrative rule, administrative order, or regulation that is preempted is subject to the penalties set forth in s. 790.33, including, but not limited to, civil fines and removal from office by the Governor.

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

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Judiciary, *Chair*
Banking and Insurance, *Vice Chair*
Agriculture
Appropriations Subcommittee on Finance and Tax
Regulated Industries

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

SENATOR GREG STEUBE
23rd District

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 616 Concealed Weapons or Firearms, 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,

W. Gregory Steube, District 23

REPLY TO:
☐ 722 Apex Road, Unit A, Sarasota, Florida 34240 (941)342-9162
☐ 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023

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

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25
Meeting Date

1614
Bill Number (if applicable)

Topic Guns in Courthouses

Amendment Barcode (if applicable)

Name Kelly Quinten

Job Title Legislative Advocate

Address 540 Beverly CT
Street

Phone 772 204 1772

Tallahassee FL 32301
City *State* *Zip*

Email lwvfadvocacy@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing League of Women Voters of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
402 Senate Office Building

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

DATE	COMM	ACTION
2/28/17	SM	**Fav/1 amendment**
4/04/17	JU	**Fav/CS**
4/18/17	CA	**Favorable**
4/25/17	RC	**Favorable**

April 24, 2017

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

Re: **SB 14** – Senator Judiciary Committee; and Senators Artiles and Steube
HB 6529 – Representative Cord Byrd
Relief of Lillian Beauchamp, as the personal representative of the Estate of Aaron Beauchamp

SPECIAL MASTER'S FINAL REPORT ADDENDUM

THIS IS A SETTLED CLAIM IN THE AMOUNT OF $1.5 MILLION AGAINST THE ST. LUCIE COUNTY SCHOOL DISTRICT FOR THE WRONGFUL DEATH OF AARON BEAUCHAMP WHICH OCCURRED WHILE HE WAS A PASSENGER IN A DISTRICT SCHOOL BUS THAT WAS STRUCK BY A TRACTOR TRAILER.

CURRENT STATUS:

On April 3, 2017, the undersigned received a settlement agreement between the St. Lucie County School District and Lillian Beauchamp, as the personal representative of the Estate of Aaron Beauchamp. The settlement agreement is for $1.5 million as compensation for damages sustained in connection with the wrongful death of Aaron Beauchamp. The agreement directs the St. Lucie County School District to pay the $1.5 million on or before November 1, 2017. The claim bill has been amended to reflect the settlement agreement.

Respectfully submitted,

Lauren T. Jones
Senate Special Master

cc: Secretary of the Senate

THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
302 Senate Office Building

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

DATE	COMM	ACTION
2/28/17	SM	**Fav/1 amendment**
4/04/17	JU	**Fav/CS**
4/18/17	CA	**Favorable**
	RC	

February 28, 2017

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

Re: **CS/SB 14** – Judiciary Committee and Senator Frank Artiles
HB 6529 -- Representative Cord Byrd
Relief of Lillian Beauchamp, as the personal representative of the Estate of Aaron Beauchamp

SPECIAL MASTER'S FINAL REPORT

THIS IS A CONTESTED CLAIM IN THE AMOUNT OF $8.7 MILLION AGAINST THE ST. LUCIE COUNTY SCHOOL DISTRICT FOR THE WRONGFUL DEATH OF AARON BEAUCHAMP WHICH OCCURRED WHILE HE WAS A PASSENGER IN A DISTRICT SCHOOL BUS THAT WAS STRUCK BY A TRACTOR TRAILER.

FINDINGS OF FACT:

This matter arises out of a school bus accident that occurred on March 26, 2012, in St. Lucie County, at the intersection of Okeechobee Road and Midway Road. The intersection is located on a four-lane divided highway with a speed limit of 55 mph, and it is not controlled by an overhead traffic signal. The weather at the time of the accident was clear, and there were no visual obstructions.

The Accident

At approximately 3:45 pm, Albert Hazen, a St. Lucie County School District (district) employee, was driving a school bus westbound on Okeechobee Road. The school bus had 30 student passengers from Frances K. Sweet Elementary School on board. The school bus was equipped with four video surveillance cameras that provided various viewpoints of the crash.

Also at approximately 3:45 pm, Charles Cooper was driving a tractor trailer, owned by Cypress Trucking, in the right eastbound lane of Okeechobee Road. The tractor trailer had a flatbed semi-trailer attached and was loaded with sod.

The bus entered the left turn lane to turn left across the eastbound lanes of Okeechobee Road to reach Midway Road. As the bus turned left at the intersection, it slowed without stopping and turned in front of the tractor trailer driven by Mr. Cooper. Mr. Hazen attempted to accelerate across Okeechobee Road to avoid a collision with the tractor trailer. Mr. Cooper also attempted an evasive action by turning his steering wheel to the right prior to impact.

The front of the tractor trailer collided with the passenger side of the school bus near its rear axle. The impact caused the school bus to spin clockwise approximately 180-degrees. The accident forced the tractor trailer off of the right eastbound lane of Okeechobee Road, rolled the truck portion of the tractor trailer on its left side, and flipped the flatbed trailer upside down. The tractor trailer came to rest in the grassy area on the side of Okeechobee Road. At the time of the crash, the school bus was traveling at approximately 15 mph; whereas, the tractor trailer was traveling at 63 mph approximately 3 seconds before impact.

Mr. Hazen had been assigned an additional bus route the day of the accident, and was driving that extra route when the accident occurred. Mr. Hazen had driven this bus route ten to twelve times before. The onboard cameras captured Mr. Hazen after the crash stating, "Oh my God what I have done."

At the time of the accident, neither Mr. Hazen nor Mr. Cooper were under the influence of alcoholic beverages or narcotics. Both had valid driver licenses for the vehicles they were driving.

The accident caused one fatality and numerous injuries to the student passengers on the bus. Specifically, eight students were seriously injured, eleven students had minor injuries, and ten students were uninjured. Mr. Hazen received minor injuries and Mr. Cooper was uninjured.

Aaron Beauchamp
Aaron Beauchamp was a 9-year-old student at Frances K. Sweet Elementary School and was onboard the school bus at the time of the accident. Aaron was seated in row 10 on the driver's side of the school bus. It was determined after the accident that Aaron had been wearing his seatbelt at the time of the accident.

The accident caused Aaron to be ejected out of his seat and be thrown about the interior of the school bus. Aaron was found on the school bus floor behind the last seats of the school bus. The medical examiner determined Aaron's cause of death was multiple blunt trauma injuries, and the manner of death was an accident.

Bus Seat and Seatbelt
The National Transportation Safety Board (NTSB) investigated the crash for the limited purpose of understanding the survival factors of the student passengers in support of another ongoing NTSB investigation. The NTSB's investigation provided detailed information concerning the condition of the bus seats and seatbelts after the crash.

The bus seats were a tubular steel frame that had plyboard for the seat and the seatback. The plyboard was covered with foam and vinyl fabric. The bus seats were designed to flip up to allow for the cleaning of the floor under the seat. The front of the seat cushion was mounted to the seat frame by two steel C-shaped brackets that allowed the seat to flip up. The NTSB's investigation after the crash found that the seat cushion latch for the seat that Aaron Beauchamp was sitting in was not engaged. The two front brackets of Aaron's seat were deformed, nearly flat, and the right front bracket was missing a screw.

The seatbelt Aaron was wearing at the time of the accident was a lap seatbelt. Upon inspection, Aaron's seatbelt had a load mark, meaning it was likely in use at the time of the

accident. The seatbelt's attachment points to the seat were also rotated toward the impact point of the accident.

LEGAL PROCEEDINGS: The claimant (Lillian Beauchamp, as the Personal Representative of the Estate of Aaron Beauchamp, a deceased child) filed suit against the district, Cypress Trucking, IC BUS, and IMMI (the seatbelt manufacturer).

The claimant settled with Cypress Trucking for $575,000. The claimant also settled with IC BUS and IMMI; however, the terms of the settlement are confidential and not disclosed to the undersigned.

The district has settled all of the claims associated with this accident except for the claimant's claim.

The claimant and the district were unable to reach a settlement agreement and proceeded to trial on September 1, 2015. The trial was held in the Nineteenth Judicial Circuit Court in St. Lucie County. The jury returned a verdict on September 8, 2015, in the favor of the claimant. The jury found that the district was 87 percent negligent in the death of Aaron Beauchamp. The jury also apportioned 13 percent of negligence to Cypress Trucking and zero percent of negligence to IC BUS, though they were not parties to the lawsuit.

The jury awarded $10 million to the claimant, the Estate of Aaron Beauchamp, and apportioned it in the following manner: $1 million each for Lillian and Simon Beauchamp's past mental pain and suffering caused by the wrongful death of Aaron and $4 million each for Lillian and Simon Beauchamp's future mental pain and suffering caused by the wrongful death of Aaron.

The proportion of the jury verdict attributed to the district is $8.7 million.

CLAIMANT'S ARGUMENTS: The claimant agrees with the jury's apportionment of 87 percent liability to the district and agrees with the award of $8.7 million.

RESPONDENT'S ARGUMENTS: The district admitted negligence but disputes the amount of negligence proportioned to it by the jury. The district argues that Cypress Trucking should have received a larger portion

of the negligence percentage. The district also contends that there was clear evidence of negligence by IC BUS that contributed to the death of Aaron Beauchamp and the jury should have proportioned some liability to IC BUS.

The district is opposed to the claim bill.

CONCLUSIONS OF LAW:

The district owned the school bus driven by its employee, Mr. Hazen and is covered by the provisions of s. 768.28, F.S. Section 768.28, F.S., generally allows injured parties to sue state or local governments for damages caused by their negligence or the negligence of their employees by waiving the government's sovereign immunity from tort actions. However, the statute limits the amount of damages that a plaintiff can collect from a judgment against or settlement with a government entity to $200,000 per person and $300,000 for all claims or judgments arising out of the same incident. Funds can be paid in excess of these limits only upon the approval of a claim bill by the Legislature.

The district has settled all claims associated with this accident except for the claimant's claim. In settling with the other parties, the district has exhausted the statutory cap amount of $300,000 and its excess insurance policy in the amount of $1 million. The claimant has not received any money from the district and will not receive the full benefit of the jury verdict unless the Legislature approves a claim bill.

In a negligence action, a plaintiff bears the burden of proof to establish the four elements of negligence. These elements are duty, breach, causation, and damages. *Charron v. Birge*, 37 So. 3d 292, 296 (Fla. 5th DCA 2010) (quoting *Jefferies v. Amery Leasing, Inc.*, 698 So. 2d 368, 370-71 (Fla. 5th DCA 1997)).

Section 768.81, F.S., Florida's comparative fault statute, allows damages in negligence cases to be apportioned against each liable party. The Florida Supreme Court has found that "in determining noneconomic damages fault must be apportioned among all responsible entitles who contribute to an accident even though not all of them have been joined as defendants." *Nash v. Wells Fargo Guard Servs.*, 678 So. 2d 1262, 1263 (Fla. 1996).

The driver of a motor vehicle has a duty to use reasonable care, in light of the attendant circumstances, to prevent injuring persons within the vehicle's path. *Gowdy v. Bell*, 993 So. 2d 585, 586 (Fla. 1st DCA 2008). Reasonable care is the degree of care a reasonably careful person would have used under like circumstances. *Foster v. State*, 603 So. 2d 1312, 1316 (Fla. 1st DCA 1992).

The long-standing doctrine of *respondeat superior* provides that an employer is liable for an employee's acts committed within the course and scope of employment. *City of Boynton Beach v. Weiss*, 120 So. 3d 606, 611 (Fla. 4th DCA 2013). Florida's dangerous instrumentality doctrine imposes "vicarious liability upon the owner of a motor vehicle who voluntarily entrusts that motor vehicle to an individual whose negligent operation causes damage to another." *Aurbach v. Gallina*, 753 So. 2d 60, 62 (Fla. 2000). Motor vehicles have been considered dangerous instrumentalities under Florida law for over a century. *See Anderson v. S. Cotton Oil Co.*, 74 So. 975, 978 (Fla. 1917).

Mr. Hazen was employed by the district and was acting within the scope of his employment at the time of the accident. Accordingly, the negligence of Mr. Hazen is attributable to the district.

Mr. Cooper was employed by Cypress Trucking and was acting within the scope of his employment at the time of the accident. Accordingly, the negligence of Mr. Cooper is attributable to Cypress Trucking.

Mr. Hazen's Negligence

Section 316.122, F.S., requires drivers who are intending to turn left to yield to the right-of-way of any vehicle approaching from the opposite direction. When Mr. Hazen turned left across Okeechobee Road and failed to yield to the tractor trailer driven by Mr. Cooper, Mr. Hazen violated s. 316.122, F.S., and breached his duty to operate the school bus with reasonable care. Mr. Hazen was issued a Uniform Traffic Citation for violating s. 316.122, F.S.

Mr. Hazen's negligence and breach of duty of care caused the accident and contributed the wrongful death of Aaron Beauchamp.

Mr. Cooper's Negligence

Section 316.183(4)(a), F.S., prohibits any person from driving at a speed that is greater than reasonable and prudent and requires the driver to appropriately reduce speed when approaching and crossing an intersection. Mr. Cooper was traveling at 63 mph at the time of the crash, 8 mph faster than the posted speed limit of 55 mph. Mr. Cooper violated s. 316.183, F.S., and breached his duty to drive with reasonable care by driving 8 mph over the 55 mph speed limit and is partially at fault for the accident.

Section 316.302(1)(a), F.S., provides that all commercial motor vehicles in Florida engaged in interstate commerce are subject to the rules and regulations contained in 49 C.F.R. parts 382, 385, and 390-397.

The Florida Highway Patrol investigation of the accident found a violation of 49 C.F.R. 393.47(e), which sets the limits for clamp brakes. The investigation found that the tractor trailer's left #3 clamp-type brake was out of adjustment, with the pushrod travel measured at two and half inches. The federal regulation allows a maximum pushrod travel of two inches for clamp-type brakes.

The investigation also found a violation of 49 C.F.R. 571.121 S5.2.2(a), which requires automatic brake adjustment systems to compensate for the wear of brakes. The tractor trailer did not compensate for the wear of the brakes and thus violated 49 C.F.R. 571.121 s5.2.2(a).

Another federal regulation, 49 C.F.R. 395.8(f)(1), requires a driver to record his or her duty status. Mr. Cooper had not updated his duty status log book the day of the accident to indicate that he was on duty.

Mr. Cooper was issued three Uniform Traffic Citations after the accident. His negligence due to speeding and having faulty brakes contributed to the wrongful death of Aaron Beauchamp.

Conclusion

Florida's comparative fault statute, s. 768.81, F.S., applies to this case because Mr. Hazen and Mr. Cooper both violated Florida law in this accident.

Mr. Hazen caused the accident when he turned left across Okeechobee Road and failed to yield to the tractor trailer driven by Mr. Cooper, violating s. 316.122, F.S., and breached his duty to operate the school bus with reasonable care.

Mr. Cooper contributed to the accident by driving 63 mph when the posted speed limit was 55 mph and by failing to keep the tractor trailer in compliance with federal rules and regulations.

IC BUS manufactured the seats of the bus. The damage to the seat brackets on Aaron's seat may have contributed to his death. However, the undersigned was presented with the same evidence as the jury at trial and finds that there is insufficient evidence to alter the jury's apportionment of no fault on IC BUS.

The jury sat through a multiple-day trial, listened to all of the evidence presented, and reached a verdict based on competent and substantial evidence. While Mr. Hazen and Mr. Cooper were partially at fault in this matter, Mr. Hazen's negligence far outweighs Mr. Cooper's negligence. Aaron Beauchamp died after suffering multiple blunt force trauma injures. The undersigned finds there is no newly presented evidence to alter the jury verdict and finds that the damages of $8.7 million sought by the claimant are reasonable and justly apportionable to the district as a result of Mr. Hazen's negligence.

LEGISLATIVE HISTORY: This is the first claim bill presented to the Senate in this matter.

ATTORNEYS FEES: The claimant's attorney has agreed to limit his fees to 25 percent of any amount awarded by the Legislature in compliance with s. 768.28(8), F.S. The bill provides that the total amount paid for lobbying fees, costs, and other similar expenses relating to the claim are included in the 25 percent limit. However, the limits on lobbying fees, costs, and other similar expenses should be removed to conform to a recent opinion of the Florida Supreme Court. See *Searcy, Denney, Scarola, Barnhart & Shipley v. State*, 42 Fla. L. Weekly S92 (Fla. 2016).

FISCAL IMPACT: The district is self-insured through a self-insured consortium for the statutory cap amount of $300,000. The district also

maintained an insurance policy for excess coverage in the amount of $1 million. The statutory cap amount and the district's insurance funds have been consumed by other claims arising out of the bus accident. If the bill is approved, the district will have to pay the claim from its general operating funds.

SPECIAL ISSUES

The bill refers to the school district as the *St. Lucie School Board*. The proper name for the school district is the St. Lucie School District. The undersigned recommends the bill is amended to correct this error.

RECOMMENDATIONS:

For the reasons set forth above, the undersigned recommends that Senate Bill 14 (2017) be reported FAVORABLY, AS AMENDED.

Respectfully submitted,

Lauren Jones
Senate Special Master

cc: Secretary of the Senate

CS by Judiciary:
The committee substitute conforms the bill to the terms of a settlement between the parties for $1.5 million. The amount of the original claim was $8.7 million. The amendment also specifies the amounts that may be paid for attorney fees, lobbying fees, and costs. However, these amounts are consistent with the contractual obligations of the parties. As such, specifying the amounts for fees and costs in the claim bill is not inconsistent with the recent Florida Supreme Court opinion limiting the authority of the Legislature insert limits on fees and costs in claim bills.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is 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 198
INTRODUCER:	Rules Committee; Environmental Preservation and Conservation Committee; and Senators Stewart and Rodriguez
SUBJECT:	Environmental Regulation Commission
DATE:	April 25, 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Mitchell	Rogers	EP	**Fav/CS**
2.	Carlton	Ulrich	EE	**Favorable**
3.	Mitchell	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 198 requires the Governor to appoint a new member of the Environmental Regulation Commission (ERC) within 90 days after the occurrence of a vacancy. The bill removes language that authorizes the Governor to fill a vacancy at any time for the unexpired term of a commissioner.

The bill also requires a minimum of 4 affirmative votes to approve or modify a proposed rule submitted to the ERC which pertains to air quality standards or water quality standards.

The bill is effective July 1, 2017.

II. Present Situation:

Environmental Regulation Commission

The Environmental Regulation Commission (ERC) exists within the Department of Environmental Protection (DEP). Seven members appointed by the Governor and approved by the Senate serve on the ERC. When making appointments, the Governor must provide reasonable representation from all sections of the state. Membership of the ERC must be representative of agriculture; the development industry; local government; the environmental community; lay citizens; and members of the scientific and technical community who have

substantial expertise in the areas of the fate and transport of water pollutants, toxicology, epidemiology, geology, biology, environmental sciences, or engineering.[1] The Governor must appoint a chair of the ERC. The members of the ERC may then elect a vice-chair. The ERC members serve for 4 years.[2]

The secretary of DEP must submit any proposed rule containing a standard to the ERC for approval, modification, or disapproval.[3] A "standard" is any DEP rule relating to air and water quality, noise, solid-waste management, and electric and magnetic fields associated with electrical transmission and distribution lines and substation facilities. The term "standard" does not include rules of the DEP that relate exclusively to the internal management of the DEP, the procedural processing of applications, the administration of rulemaking or adjudicatory proceedings, the publication of notices, the conduct of hearings, or other procedural matters.[4] The ERC possess the powers to set standards for the following topics:

- Environmental control, including air quality standards; water quality and water quantity standards; waste regulation and cleanup, including hazardous waste regulation; power plant and transmission line siting; water supply; water treatment plants; and natural gas transmission lines;
- Consumptive use of water permitting;
- Certain aspects of water well construction;
- Criteria for wetlands that receive and treat domestic wastewater;
- Water quality for wetlands;
- Regulation of the construction, operation, alteration, maintenance, abandonment, and removal of stormwater management systems;
- Delineating the extent of wetlands;
- Phosphorus criteria in the Everglades Protection Area and water quality standards applicable to the Everglades Agricultural Area canals; and
- Water quality standards for the Everglades Protection Area.[5]

The ERC does not possess the power to set standards related to total maximum daily load calculations and allocations.[6] Further, the ERC may not establish DEP policies, priorities, plans, or directives. The ERC may adopt procedural rules governing the conduct of its meetings and hearings.[7]

[1] Section 20.255(6), F.S.
[2] *Id.*
[3] Section 403.805(1), F.S.
[4] Section 403.803(13), F.S.
[5] Section 403.804(1), F.S.
[6] Section 403.805(1), F.S.
[7] Section 403.804(1), F.S.

The following individuals currently serve on the ERC:[8]

Name	Term	From	Represents
Frank Gummey	12/16/16 to 07/01/17	Daytona Beach Shores	Local Governments
Joe Joyce	10/02/15 to 07/01/19	Gainesville	Agriculture
Adam R. Gelber	10/02/15 to 07/01/19	Miami	Science & Technical
Cari Roth	03/31/10 to 07/01/17	Tallahassee	Development
Sarah S. Walton	03/07/14 to 07/01/17	Pensacola	Lay Citizens
Craig D. Varn	05/10/16 to 03/01/19	Tallahassee	Lay Citizens
Jim McCarthy	12/16/16 to 07/01/19	Jacksonville	Environmental Community

Office Vacancies Filled by the Governor

Unless otherwise provided by the Florida Constitution, the Governor must fill by appointment any vacancy in a state, district, or county office for the remainder of the term of an appointed officer.[9] For any office that requires Senate confirmation, the appointee may hold an interim term until the Senate takes up their confirmation.[10] When the Senate rejects an officer, they may hold over for no more than 30 days until the Governor appoints their successor, and the successor is qualified.[11]

If the Senate votes to take no action on a confirmation or otherwise fails to consider an appointee, the seat becomes vacant and the appointee may hold over for no more than 45 days. The Governor may reappoint this appointee.[12] If the Senate votes to take no action or for any other reason fails to consider the reappointment of the same person to the same office during the regular session immediately following the effective date of the reappointment, the reappointment of such person to such office shall be deemed to have been rejected. The office shall become vacant upon the adjournment sine die of the regular session immediately following the effective date of the reappointment and the appointee shall not hold over in that office or be eligible for reappointment in that office for 1 year thereafter.[13]

The Governor may fill a vacancy on the ERC for the unexpired term at any time.[14]

[8] Department of Environmental Protection, *Environmental Regulation Commission*, http://www.dep.state.fl.us/legal/ERC/members.htm (last visited March 18, 2017).
[9] Section 114.04, F.S.
[10] *Id.*
[11] Section 114.05(1)(d), F.S.
[12] Section 114.05(1)(e), F.S.
[13] Section 114.05(1)(f), F.S.
[14] Section 20.255(6), F.S.

Human Health Criteria Rule Changes

During the summer of 2016, the ERC took up a rule proposal to change certain human health based water quality criteria, including the establishment of a new classification of waters. The DEP used a new methodology to update these standards. Some standards became more protective, while others became less protective.[15]

At the time the ERC considered the proposed rule changes, two vacancies existed on the ERC. The vacant seats were those seats on the ERC designated for the representation of local governments and the environmental community. These constituencies were not specifically represented on the ERC when it voted 3-2 to approve the new human health based water quality criteria. Some groups were concerned that the ERC took up the new standards before the Governor filled the two vacancies.[16] The revised rules became effective on November 17, 2016.[17]

III. Effect of Proposed Changes:

CS/CS/SB 198 amends the statutory section that establishes the Department of Environmental Protection (DEP) and the Environmental Regulation Commission (ERC),[18] to require the Governor to appoint a new member, subject to confirmation by the Senate, within 90 days after the occurrence of a vacancy. The bill removes language that authorizes the Governor to fill a vacancy at any time for the unexpired term of a commissioner.

The bill also requires a proposed rule containing standards submitted to the ERC for approval, modification, or disapproval to receive a simple majority vote for approval or modification, unless the rule pertains to air quality standards or water quality standards, in which case a minimum of 4 affirmative votes is required for approval or modification.

The bill provides that proposed rules that fail to receive the votes required for approval or modification are deemed disapproved.

The bill takes effect July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that

[15] DEP, *Surface Water Quality Standards*, http://www.dep.state.fl.us/water/wqssp/ (last visited March 18, 2017); Jeff Burlew, *ERC signs off on controversial water standards*, Tallahassee Democrat (July 26, 2016), http://www.tallahassee.com/story/news/2016/07/26/erc-signs-off-controversial-water-standards/87585308/ (last visited March 18, 2017).
[16] *Id*.
[17] Fla. Admin. Code R. 62-302.400 and Fla. Admin. Code R. 62-302.530.
[18] Section 20.255, F.S.

counties or municipalities have to raise revenues in the aggregate; 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 does not provide rulemaking authority or require executive branch rulemaking and is unlikely to result in significant rulemaking by DEP.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 20.255 and 403.805 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 25, 2017:

- Alters the approval or modification process for a proposed rule submitted to the ERC containing air quality standards or water quality standards to require a minimum of 4 affirmative votes instead of a super majority of 5 votes.
- Proposed rules containing water quantity standards require a simple majority for approval or modification.

CS by Environmental Preservation and Conservation on March 22, 2017:
Delete everything amendment that:

- Removes language prohibiting an appointee, if the appointment occurs when the Legislature is in session, from becoming a member of the ERC until Senate confirmation.
- Removes language providing that the appointee, if the appointment occurs when the Legislature is not in session, serves in a provisional capacity and if not confirmed in the next regular session of the Legislature is immediately terminated, the Governor at that point is required to make a new appointment.
- Provides that rules containing standards for air quality, water quality, or water quantity require a supermajority of 5 votes to be adopted or modified, but removes from the bill the same requirement for a number of other standards in rule.

The strike-all retains the remaining provisions of the underlying bill, including the requirement that the Governor make a membership appointment within 90 days after the occurrence of a vacancy on the ERC.

B. Amendments:

None.

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

904886

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/25/2017	.	
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	.	

The Committee on Rules (Stewart) recommended the following:

Senate Amendment

Delete lines 52 - 55
and insert:
following, in which case such approval or modification must be by a minimum of four affirmative votes of the commission:
(a) Air quality standards.
(b) Water quality standards.

By the Committee on Environmental Preservation and Conservation; and Senators Stewart and Rodriguez

592-02751-17 2017198c1

A bill to be entitled

An act relating to the Environmental Regulation Commission; amending s. 20.255, F.S.; requiring the Governor to appoint a new member to the commission within a certain timeframe after the occurrence of a vacancy; amending s. 403.805, F.S.; requiring certain proposed rules submitted to the commission to receive specified vote totals for approval or modification; providing an effective date.

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

Section 1. Subsection (6) of section 20.255, Florida Statutes, is amended to read:

20.255 Department of Environmental Protection.—There is created a Department of Environmental Protection.

(6) There is created as a part of the Department of Environmental Protection an Environmental Regulation Commission.

(a) The commission shall be composed of seven residents of this state appointed by the Governor, subject to confirmation by the Senate. In making appointments, the Governor shall provide reasonable representation from all sections of the state. Membership shall be representative of agriculture, the development industry, local government, the environmental community, lay citizens, and members of the scientific and technical community who have substantial expertise in the areas of the fate and transport of water pollutants, toxicology, epidemiology, geology, biology, environmental sciences, or engineering.

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

592-02751-17 2017198c1

(b) The Governor shall, within 90 days after the occurrence of a vacancy on the commission, appoint a new member, subject to confirmation by the Senate.

(c) The Governor shall appoint the chair, and the vice chair shall be elected from among the membership. All appointments shall be for 4-year terms.

(d) ~~The Governor may at any time fill a vacancy for the unexpired term.~~ The members of the commission shall serve without compensation, but shall be paid travel and per diem as provided in s. 112.061 while in the performance of their official duties. Administrative, personnel, and other support services necessary for the commission shall be furnished by the department. The commission may employ independent counsel and contract for the services of outside technical consultants.

Section 2. Subsection (4) is added to section 403.805, Florida Statutes, to read:

403.805 Secretary; powers and duties; review of specified rules.—

(4) Any proposed rule containing standards to be submitted to the commission for approval, modification, or disapproval pursuant to subsection (1) requires a simple majority for approval or modification, unless the rule pertains to any of the following, in which case approval or modification must be by a super majority of five votes:

(a) Air quality standards.

(b) Water quality and quantity standards.

Proposed rules that fail to receive the votes required for approval or modification pursuant to this subsection are deemed

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

disapproved.

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25
Meeting Date

198
Bill Number (if applicable)

Topic Environmental Reg.

Amendment Barcode (if applicable)

Name Kelly Quintero

Job Title Legislative Advocate

Address 540 Beverly CT
Street

Tallahassee
City *State* *Zip*

Phone

Email lwvfadvocacy@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing League of Women Voters of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/CS/CS/SB 200
INTRODUCER:	Rules Committee; Judiciary Committee; Children, Families, and Elder Affairs Committee; and Senator Passidomo and others
SUBJECT:	Temporary Respite Care of a Child
DATE:	April 27, 2017 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Hendon	CF	**Fav/CS**
2.	Brown	Cibula	JU	**Fav/CS**
3.	Preston	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 200 authorizes a qualified, private nonprofit organization (organization) to establish a program, through agreement or certification with a qualified association (association), to assist parents in providing respite care of a child for a period of time not to exceed 90 days in duration with only one 90 day extension. Only children who are not part of the child welfare system are eligible for care under this program. The association must develop best practice standards for operating a program that facilitates temporary respite care for children, while the organization will administer the program by matching parents and their children with a volunteer respite family.

The organization must, among other requirements:

- Verify that the Department of Children and Families has conducted required background screenings of persons who will have direct contact with the child, which is a full Level 2 screening for adults and a Level 2 screening without fingerprinting for children who are between 12 to 18 years of age;
- Supervise the volunteer respite family environment;
- Maintain records on each volunteer respite family involved in providing care of children;
- Immediately notify the Department of abuse, neglect, or other maltreatment;
- Train volunteer respite families; and
- Conduct a home study, a home safety assessment, and a home safety checklist on all respite families.

The bill authorizes the parent of a minor child to enter into a contract for care with a volunteer respite family. Through signing a contract for care, the parent agrees to delegate certain powers to the volunteer respite family. While both parents (if neither parent has had his or her rights terminated) generally must sign the contract for care before a child may be placed, 1 parent may sign if the parents do not have shared parental responsibility and timesharing of the child. Still, the parent entering into the contract for care must send notice to the other parent's last known address by certified mail with return receipt requested within 5 days after the contract for care is signed.

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

II. Present Situation:

Safe Families Model

A type of program that matches parents in crisis with a volunteer respite family has been in existence since 2002. The Safe Families for Children (SFFC) program, established by a religious organization, created a model in which parents in crisis without family or other support had a place to go for temporary help without entering the child welfare system.[1] The model involves placing a child with an unpaid volunteer host family, thereby enabling a parent the time and space to deal with a crisis. By temporarily placing the child with a host family, SFFC hopes to reduce the risk of child abuse and neglect, as well as provide a safe place for a child.[2]

SFFC states that it has three main objectives: child welfare deflection, child abuse prevention, and family support and stabilization.[3]

Programs based on the SFFC model are active in 70 cities in the U.S., Canada, and the U.K.[4] SFFC models operate in three Florida areas: Naples, Orlando, and Tampa Bay.[5] Florida law does not regulate this type of program.

Liability and Insurance

Should a child become ill or injured while in the care of a SFFC volunteer host family, the host family may have limited personal liability pursuant to the federal Volunteer Protection Act[6] (VPA) and the Florida Volunteer Protection Act[7] (FVPA). The VPA provides that a volunteer of a nonprofit organization is not liable for harm caused by his or her act or omission if:

- The volunteer is acting within the scope of his or her responsibilities for the organization; and

[1] Safe Families for Children, *available at*: http://safe-families.org/ (last visited April 11, 2017).
[2] *Id*.
[3] Safe Families for Children, Who we help, *available at*: http://safe-families.org/about/how-safe-families-works/ (last visited April 11, 2017).
[4] Safe Families for Children, About Us, *available at*: http://safe-families.org/about/ (last visited April 11, 2017).
[5] Safe Families for Children, Locations, *available at*: http://safe-families.org/about/locations (last visited April 11, 2017).
[6] Volunteer Protection Act of 1997, 42 U.S.C. s. 14501 et seq.
[7] Section 768.1355, F.S.

- The harm is not caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed by the volunteer.[8]

The FVPA also provides immunity from civil liability if the volunteer was acting in good faith within the scope of his or her duties, as an ordinary reasonable person would have acted under the same or similar circumstances, and the harm was not caused by wanton or willful misconduct.[9] Neither the VPA nor the FVPA provide immunity to the nonprofit organization itself.

Licensure of Out-of-Home Placements

The Department of Children and Families (Department) licenses most out-of-home placements, including family foster homes, residential child-caring agencies (residential group care), and child-placing agencies.[10] The following placements, however, do not require licensure:

- Relative caregivers;
- Non-relative caregivers providing care for up to 90 days[11];
- An adoptive home that has been approved by the Department or by a licensed child-placing agency for children placed for adoption; and
- Persons or neighbors who care for children in their homes for less than 90 days.[12]

A licensed out-of-home provider must meet rules and regulations pertaining to:

- The good moral character of personnel and foster parents based on background screening, education, training, and experience requirements;
- Operation, conduct, and maintenance of a home or agency;
- The provision of food, clothing, educational opportunities, services, equipment, and individual supplies to assure the healthy physical, emotional, and mental development of the children served;
- The appropriateness, safety, cleanliness, and general adequacy of the premises, including fire prevention and health standards, to provide physical comfort, care, and well-being of the children served;
- The ratio of staff to children required to provide adequate care and supervision of the children served; and
- In the case of foster homes, the maximum number of children in the home.[13]

These licensure standards are the minimum requirements that must be met to care for children within the child welfare system. The Department must issue a license for those homes and agencies that meet minimum licensure standards.[14]

[8] Volunteer Protection Act of 1997, 42 U.S.C. s. 14503.
[9] Section 768.1355(1), F.S.
[10] Section 409.175, F.S.
[11] Section 409.175(2)(e), F.S.
[12] Section 409.175(1)(d), F.S.
[13] Section 409.175(5)(a), F.S.
[14] Section 409.176(6)(b), F.S.

Background Screening

Volunteer and Employee Criminal History System

The Volunteer and Employee Criminal History System (VECHS) program, implemented in 1999, is authorized by the National Child Protection Act (NCPA) and s. 943.0542, F.S. The VECHS program provides a means to background screen the employees and volunteers of organizations who work with vulnerable individuals but are not required by law to be background screened. Examples of organizations that may use VECHS are churches and volunteer organizations that are not licensed or contracted by the state but serve children, the elderly, or persons with disabilities.

Through the VECHS program, the Florida Department of Law Enforcement (FDLE) and the Federal Bureau of Investigation (FBI) provide state and national criminal history record information on applicants, employees, and volunteers to qualified organizations (not individuals or state agencies) in Florida. With this criminal history information, the organizations can more effectively screen out those current and prospective volunteers and employees who are not suitable for contact with vulnerable persons.[15]

Unlike screenings under the Care Provider Background Screening Clearinghouse in chapter 435, F.S., individuals who are screened through the VECHS program are not actively monitored. The screenings provide a snapshot in time of that particular employee or volunteer's criminal record at the time the screen is completed. Organizations that request a background screening of an individual are not notified of any subsequent arrests or judicial actions.

Level 2 Background Screening

A Level 2 background screening includes but is not limited to fingerprinting for statewide criminal history records checks through the Florida Department of Law Enforcement (FDLE) and national criminal history checks through the Federal Bureau of Investigation (FBI). [16]And a Level 2 background screening may include local criminal records checks through local law enforcement agencies.[17] The applicant has fingerprints taken by a vendor that submits the electronic fingerprints to FDLE for the Department. FDLE then runs statewide checks and submits the electronic file to the FBI for national checks.

Once the background screening is completed, and FDLE receives the information from the FBI, the criminal history information is transmitted to the Department. The Department then determines if the screening contains any disqualifying information for employment by ensuring that the applicant has not been arrested for, found guilty, or entered a plea of nolo contendere to a prohibited offense. Prohibited offenses include crimes involving sexual misconduct, murder, assault, kidnapping, arson, exploitation, lewd and lascivious behavior, drugs, and domestic violence.[18] If the person has any of these offenses in his or her history, the Department must disqualify him or her from employment under chapter 435, F.S.

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[15] Florida Department of Law Enforcement, Volunteer and Employee Background checks, *available at*: http://www.fdle.state.fl.us/cms/Background-Checks/VECHS-Home.aspx (last visited April 11, 2017).
[16] Section 435.04, F.S.
[17] *Id*.
[18] Section 435.04(2), F.S.

III. Effect of Proposed Changes:

This bill would apply to programs such as the Safe Families for Children Program (SFCC). The bill authorizes a qualified, nonprofit organization (organization) to establish a program, through agreement or certification with a qualified association, to assist parents in providing respite care of a child for a period of time not to exceed 90 days, with only one 90 day extension allowed. Only children who are not part of the child welfare system are eligible for care under this program.

Qualified Association

A qualified association (association) is an association that establishes minimum best practice standards for operating a qualified, nonprofit organization that provides temporary respite care for children. The association must also establish and require compliance with the best practice standards.

Qualified, Nonprofit Organization

A qualified, nonprofit organization is a Florida private nonprofit organization that helps parents find a volunteer respite family to provide temporary child care in their home.

The qualified, nonprofit organization (organization) must:
- Establish its program through agreement or certification with a qualified association;
- Verify that the Department has conducted required background screenings of certain persons;
- Conduct a home study, a home safety assessment, and a home safety checklist on all respite families;
- Provide supervision of the volunteer respite family environment;
- Maintain records on each volunteer respite family;
- Annually provide information to the Department and make available to the Department or association its records for inspection at any time;
- Provide information to the association showing compliance with best practices;
- Immediately notify the Department of abuse, neglect, or other maltreatment; and
- Train volunteer respite families.

Regarding training, the bill requires a qualified, nonprofit organization to provide training to volunteer respite families on rights, duties, and limits in providing temporary respite care; working with third-party service providers; safety requirements; constructive disciplinary practices; abuse and maltreatment reporting requirements; confidentiality; and engaging in a healthy relationship with the child's parents.

Eligibility of Children

A child is eligible for placement in a temporary respite care program if he or she:
- Has not been removed from the child's parent due to abuse or neglect;
- Is not the subject of an ongoing investigation by the Department for abuse, abandonment, or neglect;
- Has not been the subject of a verified report of abuse, abandonment, or neglect; or

- Is not in the protective supervision of the Department and part of an open court in-home dependency case.

Contract for Care

The bill authorizes the parent of a minor child to enter into a contract for care with a volunteer respite family. Through signing a contract for care, the parent agrees to delegate certain powers regarding the care and custody of the child to the volunteer respite family. The delegation does not change parental rights, obligations, or authority regarding custody, visitation, or support unless determined by a court to be in the best interests of the child. However, parent(s) may separately consent to delegating to the volunteer respite family routine and emergency medical care decisions for the child.

The contract for care must contain:

- A statement that the contract does not deprive the parent any parental rights;
- A statement that the contract may be revoked or withdrawn by a parent at any time;
- Statements addressing basic services and accommodations provided to the child and the needs of the child;
- Identifying and contact information on the child, parent(s), organization, and volunteer respite family;
- A statement on disciplinary procedures;
- A statement on the minimum expected contact between the parent and the child; and
- An expiration date for the contract for care, not to exceed 90 days in duration.

The bill generally requires both parents (if neither parent has had his or her rights terminated) to sign the contract for care with the volunteer respite family before a child may be placed. However, if the parents do not have shared responsibility and timesharing of the child, the parent having sole parental responsibility may enter into the contract without consent of the other parent. Still, the parent entering into the contract for care must send notice to the other parent's last known address by certified mail, return receipt requested, within 5 days after the contract for care is signed.

Other persons who must sign the contract for care are: all members of the volunteer respite family who are 18 years of age or older; the organization representative, and two subscribing witnesses.

Background Screening

Among its other duties, prior to placing a child, a respite care organization must verify that the Department has conducted required background screenings. The bill requires background screening of certain persons with whom a child may come in contact after temporary placement with a volunteer respite family.

The bill requires Level 2 background screening for:

- Employees of the organization who will have direct contact with children; and
- Members of the volunteer respite family who are older than 18 years of age.

Persons residing with, and members of the volunteer respite family who are between 12 and 18 years of age must undergo the heightened checks of a Level 2 background screening, but do not need to be fingerprinted. This requirement is identical to that required for family members and persons who are between 12 and 18 years of age and living in a foster care home.[19]

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 proposed legislation requires a qualified nonprofit organization to complete a criminal history record check on certain individuals. The initial screening will cost $38.75 per individual, and the retention of fingerprints will cost an annual fee of $6 per individual.

C. Government Sector Impact:

The Department of Children and Families indicates that the fiscal impact is unknown. However, the fiscal impact of the bill on the Department will be based on the number of background screenings that will result from the bill.[20]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

[19] Section 409.175(2)(i), F.S.
[20] Department of Children and Families, *2017 Agency Legislative Bill Analysis* (Jan. 6, 2017) (On file with the Senate Judiciary Committee).

VIII. Statutes Affected:

The bill creates s. 409.1761, 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 25, 2017:

- Adds the definition of the term "parent."
- Adds a requirement for a home study, a home safety assessment, and a home safety checklist to be completed.
- Provides for only one 90 day extension to a contract for care.
- Amends notification requirements for a parent without shared parental responsibility and time sharing.

CS/CS by Judiciary on April 19, 2017:

The CS:

- Removes a requirement that a temporary respite care organization personally serve a petition for dependency on the parent who does not sign a contract for care.
- Provides that if a parent has sole parental responsibility of a child, he or she may enter into the contract for care but must notify the other parent (if his or her rights have not been terminated) in writing of the name and address of the volunteer respite family.
- Requires the parent entering into the contract for care to send notice to the other parent's last known address by certified mail, return receipt requested, within 5 days after the contract for care is signed.
- Removes the requirement that the standards developed by the association substantially comply with published minimum standards issued by the Department which similar licensed child-caring agencies or family foster homes must meet.
- Specifies that a Level 2 background screening is required for employees of the organization who have direct contact with the children and all members of and persons residing with the volunteer respite family who are 12 years of age and older.
- Requires the contract for care to be made between a child's parents and the respite family rather than the parents and the organization;
- Clarifies that a qualified, nonprofit organization must be in compliance with the best practice standards of the qualified association.
- Removes language that provided that placement of a child with a volunteer respite family without evidence otherwise does not constitute abuse, neglect, or abandonment and is not considered to be a placement of the child in foster care.

CS by Children, Families, and Elder Affairs on April 3, 2017:

- Limits the length of time a child may be in temporary respite care to 90 days;
- Specifies the criteria making a child ineligible for care under this program;
- Expands and clarifies the duties of the qualified nonprofit organization;
- Removes the ability of legal guardians to contract for the care of a child;

- Expands and clarifies contents of a contract for care; and
- Provides for notification to a parent who does not sign a contract for care.

B. Amendments:

None.

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

596944

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/25/2017	.	
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The Committee on Rules (Passidomo) recommended the following:

Senate Amendment (with title amendment)

Delete lines 38 - 259
and insert:
Section 1. Section 409.1761, Florida Statutes, is created to read:
(1) DEFINITIONS.—As used in this section, the term:
(a) "Parent" means the parent or parents who are required to sign the contract for care under subsection (4).
(b) "Qualified association" means an association that publishes minimum best practice standards for operating a

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qualified nonprofit organization and establishes and requires compliance with those best practice standards.

(c) "Qualified nonprofit organization" or "organization" means a private Florida nonprofit organization that:

1. Is in compliance with the best practice standards of a qualified association.

2. Assists parents by providing temporary respite care for children through the use of volunteer respite families who are under a contract for care.

3. Provides assistance and support to parents and training and support for volunteer respite families.

(d) "Temporary respite care" means care provided to a child by a volunteer respite family in their home for a period of time that is not to exceed 90 days in order to provide temporary relief to parents who are unable to care for a child.

(e) "Volunteer respite family" means an individual or a family who voluntarily agrees to provide, without compensation, temporary care for a period of time no longer than 90 days for a child under a contract for care with the child's parent with the assistance of a qualified nonprofit organization.

(2) ESTABLISHMENT OF THE PROGRAM.—A qualified nonprofit organization may establish a program that assists parents in providing temporary respite care for a child by a volunteer respite family.

(a) A child is eligible for the program if he or she:

1. Has not been removed from the child's parent due to abuse or neglect and placed in the custody of the department;

2. Is not the subject of an ongoing department investigation of abuse, abandonment, or neglect;

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3. Has not been the subject of a verified report of abuse, abandonment, or neglect; or

4. Is not the subject of an open court in-home dependency case and under protective supervision of the department.

(b) The department may refer a child to an organization's program if the department determines that the needs of the child or the needs of the child's parent do not require an out-of-home safety plan pursuant to s. 39.301(9) or other formal involvement of the department and that the child and the child's family may benefit from the temporary respite care and services provided by the organization.

(3) DUTIES OF A QUALIFIED NONPROFIT ORGANIZATION.—A qualified nonprofit organization that provides temporary respite care to children under this section shall:

(a) Establish its program under an agreement or certification with a qualified association.

(b) Verify that the department has conducted background screenings using the level 2 standards for screening under s. 409.175 and chapter 435 of the following persons before such persons have contact with a child:

1. Employees of the organization who will have direct contact with children while assisting parents in providing temporary respite care.

2. Members of the volunteer respite family and persons residing in the volunteer respite home who are 12 years of age or older. However, members of a volunteer respite family and persons residing in the volunteer respite home who are between the ages of 12 years and 18 years are not required to be fingerprinted but must be screened for delinquency records.



(c) Conduct a home study, a home safety assessment and complete a home safety checklist approved by the qualifying association of all prospective volunteer respite families to ensure that the family and home meet basic safety standards for the care of children.

(d) Train all volunteer respite families. The training must include:

1. A discussion of the rights, duties, and limitations in providing temporary respite care for a child;

2. An overview of program processes, including intake triage processes;

3. Working with third-party service providers, including schools and medical professionals;

4. General safety requirements, including the prevention of sudden unexpected death syndrome, proper supervision of children, and water and pool safety;

5. Instruction on appropriate and constructive disciplinary practices, including the prohibition of physical punishment and discipline that is severe, humiliating, or frightening, or is associated with the deprivation of food, rest, or toileting;

6. Abuse and maltreatment reporting requirements, including proper cooperation with the department;

7. Confidentiality; and

8. Building a healthy relationship with a child’s parents.

(e) Be solely responsible for ongoing supervision of each child placed with a volunteer respite family.

(f) Maintain records on each volunteer respite family and child served, including, but not limited to:

1. The name and age of the child;


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2. The name, address, telephone number, e-mail address, and other contact information for the child's parents;

3. The name, address, telephone number, e-mail address, and other contact information for the child's volunteer respite family;

4. A copy of the contract for care executed pursuant to this section; and

5. Proof that the volunteer respite family has met all the personnel screening requirements conducted by the department under this section.

(g) Provide the following information to the department on an annual basis:

1. The name, address, telephone number, e-mail address, and other contact information of the organization.

2. The name of the organization's director.

3. The names and addresses of the officers and members of the governing body.

4. The total number of volunteer respite families currently working with the organization and the total number of children who were provided temporary respite care in the previous fiscal year.

5. A copy of its agreement or certification with a qualified association for the purpose of providing volunteer respite services pursuant to this section.

(h) Provide the qualified association with data and other information as required by the qualified association to demonstrate that the qualified nonprofit organization is in substantial compliance with the minimum best practice standards published by the qualified association.

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(i) Immediately notify the department of any suspected or confirmed incident of abuse, neglect, or other maltreatment of a child while in the care of a volunteer respite family.

(j) Make available to the department or qualified association at any time for inspection all records relating to the program and children cared for by the organization's volunteer respite families to ensure compliance with this section and standards established by any entity with which the organization is affiliated.

(4) CONTRACT FOR CARE.—Before a volunteer respite family cares for a child there must be a written contract for care as provided herein. The contract for care may not exceed 90 days in duration and may only be extended for one 90 day period.

(a) The contract must be executed before a volunteer respite family cares for a child. Under a contract for care, the parent may delegate to the volunteer respite family any of the powers regarding the care and custody of the child, except the power to consent to the marriage or adoption of the child, the performance or inducement of an abortion on the child, or the termination of parental rights regarding the child. Authorization for the volunteer respite family to consent to routine and emergency medical care on behalf of the parent shall be granted only upon the separate consent of the parent pursuant to s. 743.0645. The contract for care must at a minimum be signed by:

1. The parent or both parents if both parents are living and have shared responsibility and timesharing of the child pursuant to law or a court order, except in a situation of urgent need. A "situation of urgent need" is defined as a

596944

sudden, unexpected, or impending situation in which the qualified nonprofit organization reasonably believes that urgent action is needed to prevent a worsening of the situation in order to protect the health, safety, and best interests of the child. If the parents do not have shared parental responsibility and timesharing of the child, the parent having sole parental responsibility has the authority to enter the contract for care. The qualified nonprofit organization shall make reasonable efforts to determine if there is a parent without parental responsibility and timesharing having rights to the child. The organization shall obtain last known contact information for that parent and contact that parent via phone at the time of placement. The qualified nonprofit organization must document all attempts to contact that parent. If the parent without parental responsibility and timesharing cannot be located or reached at the time of placement, the qualified nonprofit organization may place the child with a volunteer respite family, but shall assist the parent with notifying the parent without parental responsibility and timesharing in writing of the placement. Such notification must be provided by certified mail, return receipt requested, to the parent without parental responsibility and timesharing at his or her last known address within 5 days after the contract for care is signed. Notification to a parent whose parental rights have been terminated is not required.

2. All members of the volunteer respite family who are 18 years of age or older.

3. The representative of the organization who assisted with the child's placement with the volunteer respite family.



4. Two subscribing witnesses.

(b) The contract for care must include:

1. A statement that the contract does not deprive the parent of any parental or legal authority regarding the care and custody of the child or supersede a court order regarding the care and custody of the child.

2. A statement that the contract may be revoked or withdrawn at any time by the parent and that custody of the child shall be returned to the parent as soon as reasonably possible.

3. The basic services and accommodations provided by the volunteer respite family and organization.

4. Identification of the child, the parent, and the members of the volunteer respite family, including contact information for all parties.

5. Identification of the organization, including contact information for the organization and the representative who assisted with the child's placement.

6. A statement regarding disciplinary procedures that are used by the volunteer respite family and expectations regarding interactions between the volunteer respite family and the child. The statement must identify the child's known behavioral or emotional issues and how such issues are addressed by the child's parent.

7. A statement of the minimum expected frequency of contact between the parent and the child, expectations for the volunteer respite family to facilitate any reasonable request for contact with the child outside of the established schedule, and the minimum expected frequency of contact between the parent and the

596944

volunteer respite family to discuss the child's well-being and health.

8. A statement regarding the child's educational needs, including the name and address of the child's school and the names of the child's teachers.

9. A list of extracurricular, religious, or community activities and programs in which the child participates.

10. A list of any special dietary or nutritional requirements of the child.

11. A description of the child's medical needs, including any diagnoses, allergies, therapies, treatments, or medications prescribed to the child and the expectations for the volunteer respite family to address such medical needs.

12. A statement that the volunteer respite family agrees to act in the best interests of the child and to consider all reasonable wishes and expectations of the parent concerning the care and comfort of the child.

13. A statement that all appropriate members of the volunteer respite family have successfully met the personnel screening requirements pursuant to paragraph (3)(b).

14. An expiration date for each contract for care.

15. A statement that the goal of the organization, volunteer respite family, and parent is to return the child receiving temporary respite care to the parent as soon as the situation requiring such care has been resolved.

16. A requirement that the volunteer respite family immediately notify the parent of the child's need for medical care.

(c) The parent may revoke or withdraw the contract for care

596944

at any time, and the child shall be returned immediately to the custody of the parent. A contract for care executed under this section may not exceed 90 days in duration, may only be extended for one 90 day period, and may not operate to deprive a parent of any parental or legal authority regarding the care and custody of the child or supersede a court order regarding the care and custody of the child.

(c) The parent may revoke or withdraw the contract for care at any time, and the child shall be returned immediately to the custody of the parent. A contract for care executed under this section expires automatically after 90 days and may not operate to deprive a parent of any parental or legal authority regarding the care and custody of the child or supersede a court order regarding the care and custody of the child.

(5) NOTIFICATION REQUIREMENTS.—Any organization that is registered with a qualified association shall immediately notify the department if it has in its care:

(a) A child with a serious developmental disability or a physical, emotional, or mental handicap for which the organization is not qualified or able to provide care; or

(b) A child who has not been returned to a parent when the contract expires.

(6) APPLICABILITY.—Placement of a child under this section without additional evidence does not constitute abandonment, abuse, or neglect, as defined in s. 39.01, and is not considered to be placement of the child in foster care. However, this section does not prevent the department or a law enforcement agency from investigating allegations of abandonment, abuse, neglect, unlawful desertion of a child, or human trafficking.


596944

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 lines 2 - 25

and insert:

the temporary respite care of a child; creating s. 409.1761, F.S.; providing legislative findings; providing definitions; authorizing qualified nonprofit organizations to establish programs to provide temporary respite care for children; providing duties and recordkeeping requirements for such organizations; providing screening requirements for certain persons; requiring notification to the Department of Children and Families under certain circumstances; authorizing a volunteer respite family to enter into a contract for care to provide temporary respite care for a child; specifying the duration of a contract for care; specifying the form and execution of the contract; specifying that a parent may revoke or withdraw the contract for care at any time; requiring the child to be returned immediately to the custody of the parent if the contract is revoked or withdrawn; specifying that such contract expires after a specified timeframe; prohibiting such contract from operating to deprive a parent of certain authority or from superseding certain court orders; notification requirements; providing applicability; providing an effective date.

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

590-04108-17 2017200c2

A bill to be entitled

An act relating to the temporary respite care of a child; creating s. 409.1761, F.S.; providing legislative findings; providing definitions; authorizing qualified nonprofit organizations to establish programs to provide temporary respite care for children; providing duties and recordkeeping requirements for such organizations; providing screening requirements for certain persons; requiring notification to the Department of Children and Families under certain circumstances; authorizing a volunteer respite family to enter into a contract for care to provide temporary respite care for a child; specifying the duration of a contract for care; specifying the form and execution of the contract; specifying that a parent may revoke or withdraw the contract for care at any time; requiring the child to be returned immediately to the custody of the parent if the contract is revoked or withdrawn; specifying that such contract expires after a specified timeframe; prohibiting such contract from operating to deprive a parent of certain authority or from superseding certain court orders; notification requirements; providing applicability; providing an effective date.

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

Section 1. Section 409.1761, Florida Statutes, is created

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

590-04108-17 2017200c2

to read:

409.1761 Organizations providing temporary respite care for children not in the child welfare system.—The Legislature finds that in circumstances in which a parent of a minor child is temporarily unable to provide care for the child, but does not need the full support of the child welfare system, a less intrusive alternative to supervision by the department or involvement by the judiciary should be available.

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

(a) "Qualified association" means an association that publishes minimum best practice standards for operating a qualified nonprofit organization and establishes and requires compliance with those best practice standards.

(b) "Qualified nonprofit organization" or "organization" means a Florida private nonprofit organization that:

1.°Is in compliance with the best practice standards of a qualified association.

2.°Assists parents by providing temporary respite care for children through the use of volunteer respite families who are under a contract for care.

3.°Provides assistance and support to parents and training and support for volunteer respite families.

(c) "Temporary respite care" means care provided to a child by a volunteer respite family in their home for a period of time that is not to exceed 90 days in order to provide temporary relief to parents who are unable to care for a child.

(d) "Volunteer respite family" means an individual or a family who voluntarily agrees to provide, without compensation, temporary care for a period of time no longer than 90 days for a

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

child under a contract for care with the child's parent with the assistance of a qualified nonprofit organization.

(2) ESTABLISHMENT OF THE PROGRAM.—A qualified nonprofit organization may establish a program that assists parents in providing temporary respite care for a child by a volunteer respite family.

(a) A child is eligible for the program if he or she:

1. Has not been removed from the child's parent due to abuse or neglect and placed in the custody of the department;

2. Is not the subject of an ongoing department investigation of abuse, abandonment, or neglect;

3. Has not been the subject of a verified report of abuse, abandonment, or neglect; or

4. Is not the subject of an open court in-home dependency case and under protective supervision of the department.

(b) The department may refer a child to an organization's program if the department determines that the needs of the child or the needs of the child's parent do not require an out-of-home safety plan pursuant to s. 39.301(9) or other formal involvement of the department and that the child and the child's family may benefit from the temporary respite care and services provided by the organization.

(3) DUTIES OF A QUALIFIED NONPROFIT ORGANIZATION.—A qualified nonprofit organization that provides temporary respite care to children under this section shall:

(a) Establish its program under an agreement or certification with a qualified association.

(b) Verify that the department has conducted background screenings using the level 2 standards for screening under s.

409.175 and chapter 435 of the following persons before such persons have contact with a child:

1. Employees of the organization who will have direct contact with children while assisting parents in providing temporary respite care.

2. Members of the volunteer respite family and persons residing in the volunteer respite home who are 12 years of age or older. However, members of a volunteer respite family and persons residing in the volunteer respite home who are between the ages of 12 years and 18 years are not required to be fingerprinted but must be screened for delinquency records.

(c) Train all volunteer respite families. The training must include:

1. A discussion of the rights, duties, and limitations in providing temporary respite care for a child;

2. An overview of program processes, including intake triage processes;

3. Working with third-party service providers, including schools and medical professionals;

4. General safety requirements, including the prevention of sudden unexpected death syndrome, proper supervision of children, and water and pool safety;

5. Instruction on appropriate and constructive disciplinary practices, including the prohibition of physical punishment and discipline that is severe, humiliating, or frightening, or is associated with the deprivation of food, rest, or toileting;

6. Abuse and maltreatment reporting requirements, including proper cooperation with the department;

7. Confidentiality; and

8. Building a healthy relationship with a child's parents.

(d) Be solely responsible for ongoing supervision of each child placed with a volunteer respite family.

(e) Maintain records on each volunteer respite family and child served, including, but not limited to:

1. The name and age of the child;

2. The name, address, telephone number, e-mail address, and other contact information for the child's parents;

3. The name, address, telephone number, e-mail address, and other contact information for the child's volunteer respite family;

4. A copy of the contract for care executed pursuant to this section; and

5. Proof that the volunteer respite family has met all the personnel screening requirements conducted by the department under this section.

(f) Provide the following information to the department on an annual basis:

1. The name, address, telephone number, e-mail address, and other contact information of the organization.

2. The name of the organization's director.

3. The names and addresses of the officers and members of the governing body.

4. The total number of volunteer respite families currently working with the organization and the total number of children who were provided temporary respite care in the previous fiscal year.

5. A copy of its agreement or certification with a qualified association for the purpose of providing volunteer

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

respite services pursuant to this section.

(g) Provide the qualified association with data and other information as required by the qualified association to demonstrate that the qualified nonprofit organization is in substantial compliance with the minimum best practice standards published by the qualified association.

(h) Immediately notify the department of any suspected or confirmed incident of abuse, neglect, or other maltreatment of a child while in the care of a volunteer respite family.

(i) Make available to the department or qualified association at any time for inspection all records relating to the program and children cared for by the organization's volunteer respite families to ensure compliance with this section and standards established by any entity with which the organization is affiliated.

(4) CONTRACT FOR CARE.—All parents of a child must enter into a written contract with the volunteer respite family for the provision of temporary respite care of the child under this section. The contract for care may not exceed 90 days in duration and may not be extended.

(a) The contract must be executed before a volunteer respite family cares for a child. Under a contract for care, the parent may delegate to the volunteer respite family any of the powers regarding the care and custody of the child, except the power to consent to the marriage or adoption of the child, the performance or inducement of an abortion on the child, or the termination of parental rights regarding the child. Authorization for the volunteer respite family to consent to routine and emergency medical care on behalf of the parent shall

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

be granted only upon the separate consent of the parent pursuant to s. 743.0645. The contract for care must at a minimum be signed by:

1. The parent or both parents if both parents are living and have shared responsibility and timesharing of the child pursuant to law or a court order. If the parents do not have shared responsibility and timesharing of the child, the parent having sole parental responsibility of the child has the authority to enter into the contract for care but shall notify the other parent in writing of the name and address of the volunteer respite family. Such notification must be provided by certified mail, return receipt requested, to the parent without parental responsibility at his or her last known address within 5 days after the contract for care is signed. Notification to a parent whose parental rights have been terminated is not required.

2. All members of the volunteer respite family who are 18 years of age or older.

3. The representative of the organization who assisted with the child's placement with the volunteer respite family.

4. Two subscribing witnesses.

(b) The contract for care must include:

1. A statement that the contract does not deprive the parent of any parental or legal authority regarding the care and custody of the child or supersede a court order regarding the care and custody of the child.

2. A statement that the contract may be revoked or withdrawn at any time by the parent and that custody of the child shall be returned to the parent as soon as reasonably

possible.

3. The basic services and accommodations provided by the volunteer respite family and organization.

4. Identification of the child, the parent, and the members of the volunteer respite family, including contact information for all parties.

5. Identification of the organization, including contact information for the organization and the representative who assisted with the child's placement.

6. A statement regarding disciplinary procedures that are used by the volunteer respite family and expectations regarding interactions between the volunteer respite family and the child. The statement must identify the child's known behavioral or emotional issues and how such issues are addressed by the child's parent.

7. A statement of the minimum expected frequency of contact between the parent and the child, expectations for the volunteer respite family to facilitate any reasonable request for contact with the child outside of the established schedule, and the minimum expected frequency of contact between the parent and the volunteer respite family to discuss the child's well-being and health.

8. A statement regarding the child's educational needs, including the name and address of the child's school and the names of the child's teachers.

9. A list of extracurricular, religious, or community activities and programs in which the child participates.

10. A list of any special dietary or nutritional requirements of the child.

11. A description of the child's medical needs, including any diagnoses, allergies, therapies, treatments, or medications prescribed to the child and the expectations for the volunteer respite family to address such medical needs.

12. A statement that the volunteer respite family agrees to act in the best interests of the child and to consider all reasonable wishes and expectations of the parent concerning the care and comfort of the child.

13. A statement that all appropriate members of the volunteer respite family have successfully met the personnel screening requirements pursuant to paragraph (3)(b).

14. An expiration date for each contract for care, which may not exceed 90 days in duration.

15. A statement that the goal of the organization, volunteer respite family, and parent is to return the child receiving temporary respite care to the parent as soon as the situation requiring such care has been resolved.

16. A requirement that the volunteer respite family immediately notify the parent of the child's need for medical care.

(c) The parent may revoke or withdraw the contract for care at any time, and the child shall be returned immediately to the custody of the parent. A contract for care executed under this section expires automatically after 90 days and may not operate to deprive a parent of any parental or legal authority regarding the care and custody of the child or supersede a court order regarding the care and custody of the child.

(5) NOTIFICATION REQUIREMENTS.—Any organization that is registered with a qualified association shall immediately notify

the department if it has in its care:

(a) A child with a serious developmental disability or a physical, emotional, or mental handicap for which the organization is not qualified or able to provide care; or

(b) A child who has not been returned to a parent when the contract expires.

(6) APPLICABILITY.—Placement of a child under this section without additional evidence does not constitute abandonment, abuse, or neglect, as defined in s. 39.01, and is not considered to be placement of the child in foster care. However, this section does not prevent the department or a law enforcement agency from investigating allegations of abandonment, abuse, neglect, unlawful desertion of a child, or human trafficking.

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR KATHLEEN PASSIDOMO
28th District

COMMITTEES:
Ethics and Elections, *Chair*
Healthy Policy, *Vice Chair*
Appropriations Subcommittee on Health and Human Services
Appropriations Subcommittee on Transportation, Tourism, and Economic Development
Commerce and Tourism

SELECT COMMITTEE:
Joint Select Committee on Collective Bargaining

JOINT COMMITTEE:
Joint Legislative Auditing Committee

April 19, 2017

The Honorable Lizbeth Benacquisto, Chair
Senate Committee on Rules
Florida Senate
402 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chair Benacquisto:

Senate Bill 200, Temporary Respite Care of A Child, has been referred to the Committee on Rules. I would appreciate the placing of this bill on the committee agenda at your earliest convenience.

Thank you for your consideration.

Sincerely,

Kathleen C. Passidomo

Cc: John Phelps, Staff Director
Cynthia Futch, Committee Assistant

REPLY TO:
☐ 3299 East Tamiami Trail, Suite 203, Naples, Florida 34112 (239) 417-6205
☐ 318 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5028

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

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-25-17
Meeting Date

SB 200
Bill Number (if applicable)

Topic Temp. Respite Care of a Child

596944
Amendment Barcode (if applicable)

Name Andrea Reid

Job Title Attorney

Address 2300 Glades Rd Ste 203E
Street
Boca Raton FL 33431
City *State* *Zip*

Phone 561 361 8300

Email AReid@IsaacsReidLaw.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Fla Bar Family Law Section

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/17
Meeting Date

[redacted] 200
Bill Number (if applicable)

596944
Amendment Barcode (if applicable)

Topic Respite Care

Name Victoria Zepp

Job Title Exec. Dir Govt Affairs

Address 121 N. Monroe St. #9007
Street

Phone 850.241.6389

TLH FL 32301
City *State* *Zip*

Email VICTORIA@CLAMP-1.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL Coalition for Children

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/17
Meeting Date

200
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Respite Care

Name Victoria Zepp

Job Title Exec. Dir, Gov't Affairs

Address 121 N. Monroe St. #9007
Street

Phone 850.241.6309

TLH FL 32301
City *State* *Zip*

Email VICTORIA@CLARITYFL.co

Speaking: ☑ For ☐ Against ☐ Information

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

Representing FL Coalition for Children

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

4-25-17
Meeting Date

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

SB200
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Megan Rose

Job Title SWFL Regional Director

Address 4937 Del Prado S.
Street

Cape Coral FL 33904
City *State* *Zip*

Phone 239-207-4901

Email megan@flourish-now.org

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

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

Representing SB200

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

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

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

4-25-17 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) SB 200

Meeting Date *Bill Number (if applicable)*

Amendment Barcode (if applicable)

Topic Temporary Respite Care

Name ALAN ABRAMOWITZ

Job Title Director

Address 2574 Gallivan Way Phone 850-24-3232

Street

Tallahassee FL 32311 Email JOHNSON@MFN.COM

City *State* *Zip*

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against

(The Chair will read this information into the record.)

Representing GUARDIAN AD LITEM PROGRAM

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/17
Meeting Date

SB 200
Bill Number (if applicable)

Topic Temporary Care of a Child

Amendment Barcode (if applicable)

Name Andrew Brown

Job Title Exec. VP at FlourishNow / Visiting Fellow @ FGA

Address 15275 Collier Blvd., Suite 201-284
Street

Phone (850) 320-7949

Naples FL 34119
City *State* *Zip*

Email andrew@flourish-now.org

Speaking: ☑ For ☐ Against ☐ Information

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

Representing FlourishNow & Foundation for Government Accountability

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

25 Apr 17
Meeting Date

200
Bill Number (if applicable)

Topic Respite Care

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title Pres & CEO

Address 204 S. Monroe St.
Street

Phone

Tall FL 3230
City *State* *Zip*

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Fla. Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/CS/CS/SB 206
INTRODUCER:	Rules Committee; Banking and Insurance Committee; Judiciary Committee; and Senators Passidomo and Brandes
SUBJECT:	Electronic Wills
DATE:	April 26, 2017 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stallard	Cibula	JU	**Fav/CS**
2.	Billmeier	Knudson	BI	**Fav/CS**
3.	Stallard	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 206 creates the Florida Electronic Wills Act, which expressly permits the use of electronic wills, and makes several changes to the Florida Trust Code.

The Electronic Wills Act regulates how electronic wills may be executed, stored, and admitted to probate. Under current law, electronic wills are not expressly allowed or clearly prohibited.

As described in the bill, an electronic will is a will that exists in an electronic record and, like a traditional will, disposes of a person's property after death. The use of an electronic record, electronic signatures of the testator, the role of witnesses or a notary public, and a designated qualified custodian are key features of the Act.

Under the Act, an electronic will may be stored by a qualified custodian, which must be capable of storing an electronic will, and must store electronic records of electronic wills, including documents related to the execution of a given electronic will.

In addition to wills executed in this state, the bill grants the courts of this state jurisdiction over electronic wills that are executed, by nonresidents, according to the Act or according to the laws of the nonresident's state. These non-residents need not have any substantial connection to this state. Moreover, the bill makes it much easier to execute an electronic will, traditional will, or living will that is, as a matter of law, "deemed" executed in Florida.

Venue for probating an electronic will is proper anywhere current law permits for probating wills. Non-residents have additional venue options, including the county in which the "qualified custodian" of an electronic will is located. During probate proceedings, the bill expressly permits the admission to probate of the electronic will or its "true and correct copy."

Under current law, traditional wills and living wills generally must be signed by the principal[1] to the instrument and by witnesses. The bill allows these individuals to fulfill their duties while in different locations using video conferencing. These individuals may sign with an electronic signature, and they are deemed to be in the presence of each other if they are in communication with each other through a live video conference that meets a long list of requirements designed to protect the integrity of the execution of the instrument.

Additionally, the bill modifies the Trust Code to:

- Protect the trust creator's intent as paramount in trust interpretation;
- Expressly permit co-trustees to be compensated in a manner that is aggregately more than would be permissible for each individually;
- Expand certain trustees' ability to place the principal of the "first trust" into one or more second trusts in order to protect and maximize the beneficiaries' interests; and
- Address current case law that some believe to have misconstrued the timeframes in which a beneficiary may bring an action against a trustee who fails deliver a trust accounting.

II. Present Situation:

Overview

Wills and trusts are related but distinct instruments for estate planning. And what the bill does to the law of wills is largely distinct from what it does to the law of trusts. Accordingly, this section of the analysis will discuss the relevant portions of the Florida Probate Code—pertaining to wills—then discuss the relevant portions of the Florida Trust Code, instead of combining the two areas.

Part One — Wills

A will is a legal document that a person (a "testator") may use to determine who gets his or her property when he or she dies. As set forth in the Florida Probate Code, codified as chs. 731-735, F.S., the legal definition of a will is:

> an instrument, including a codicil, executed by a person in the manner prescribed by this code, which disposes of the person's property on or after his or her death and includes an instrument which merely appoints a personal representative or revokes or revises another will.[2]

Wills do not dispose of all of a testator's property, but only his or her "estate," i.e., those assets that are subject to probate administration.[3] Probate is "a court-supervised process for identifying

[1] Principal here refers, in the case of a will, to a testator.
[2] Section 731.201(40), F.S.
[3] *See*, s. 731.201(14), F.S.

and gathering the assets of a deceased person (decedent), paying the decedent's debts, and distributing the decedent's assets to his or her beneficiaries."[4] Other assets are disposed of outside of probate.[5]

Without a will, a decedent's estate will be distributed pursuant to the intestacy statutes, which devise a decedent's estate according to what might be described as default rules. With a will, however, a testator may, as a general matter, devise his or her estate to whomever he or she likes. Also, with a will, a testator may designate a person known as a personal representative to carry out the terms of the will. Otherwise, a court will choose the personal representative.

Execution of a Will

A will must be "in writing" and signed at its end by either the testator or by someone else for the testator. If someone else signs for the testator, the person must do so in the testator's presence and at the testator's direction.[6] At least two persons must witness the testator sign the will or must witness the testator's acknowledgement that he or she previously signed the will or that another person subscribed the testator's name to the will.[7] These witnesses must sign the will in the presence of each other and the testator.[8] For wills executed in other states, the requirements may be different.[9] The consequence of failing to strictly comply with these requirements is that the will is not valid.[10] A codicil (amendment) to a will must be executed in the same manner as a will.[11]

Though s. 732.502(1), F.S., specifies that a will must be "in writing" and that certain persons must "sign" or attach their "signature," these terms are not defined in the statutes. Moreover, there is no explicit statement in the Florida Probate Code that an electronic will is invalid, that an electronic signature is invalid, or that a will must be executed on paper.

Some have asserted that an electronically-signed will is not valid in Florida, but s. 668.004, F.S., states that, "[u]nless otherwise provided by law, an electronic signature may be used to sign a writing and shall have the same force and effect as a written signature."[12] An electronic signature, as defined in s. 668.003(4), F.S., is:

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[4] The Florida Bar, *Probate in Florida*, http://www.floridabar.org/tfb/tfbconsum.nsf/48e76203493b82ad852567090070c9b9/92f75229484644c985256b2f006c5a7a?OpenDocument#Untitled%20Section (last accessed April 11, 2017).

[5] For example, the terms of a decedent's bank account may include a beneficiary clause, giving the account to whomever the decedent names.

[6] Section 732.502(1)(a), F.S.

[7] Section 732.502(1)(b), F.S.

[8] Section 732.502(1)(c), F.S.

[9] *See*, s. 732.502(2), F.S. A will executed in another state is valid in Florida if the will is executed in accordance with the laws of this state, the laws of the state in which it was executed, or both. This does not apply to nuncupative wills (oral wills) or holographic wills (wills written in the hand of the testator, but not properly executed as set forth in s. 732.502(1), F.S.), which are not valid in Florida regardless of whether they were executed according to the laws of the state in which they were executed.

[10] *Allen v. Dalk*, 826 So.2d 245, 247 (Fla. 2002).

[11] Section 732.502(5), F.S.

[12] The Uniform Electronic Transaction Act is set forth in s. 668.50, F.S. It includes a statement that the "section" does not govern, among other things, a transaction that is governed by a law governing the creation and execution of wills.

> any letters, characters, or symbols, manifested by electronic or similar means, executed or adopted by a party with an intent to authenticate a writing. A writing is electronically signed if an electronic signature is logically associated with such writing.

Storing a Will

The Florida Probate Code does not specify how a will must be stored.

Probate and Proving a Will

To acquire a court order distributing the testator's estate assets in line with the terms of a will, the will must be probated.[13] The venue for a probate proceeding is set forth in s. 731.101(1), F.S., which states:

> (1) The venue for probate of wills and granting letters shall be:
> (a) In the county in this state where the decedent was domiciled.
> (b) If the decedent had no domicile in this state, then in any county where the decedent's property is located.
> (c) If the decedent had no domicile in this state and possessed no property in this state, then in the county where any debtor of the decedent resides.

For a will to be admitted to probate in Florida, it must be "proved."[14] No statute describes what it means for a will to be proved or what it is about the will or purported will that is being proved. However, it is apparent that proving a will means proving that the will is what it purports to be, i.e., the last will and testament of the testator and that it was validly executed.

Proving a Will

A will may be proved by having one of the attesting witnesses swear or affirm an oath regarding the will before a circuit judge or any of the other persons set forth in s. 733.201(2), F.S. If it appears to the court that no attesting witness can be found, that no attesting witness still has capacity, or that the testimony of an attesting witness cannot be obtained within a reasonable time, the court must resort to another method of proving a will. The other method is through an oath of the personal representative nominated by the will or a different person who has no interest in the estate under the will. This oath must include a statement that "the person believes the writing exhibited to be the last will and testament of the decedent."[15]

Section 668.004, F.S., which provides broad permission to electronically sign a document, is of course a different section. But even if it were not, or even if it did not exist, s. 668.50, F.S., would not appear to *prohibit* electronically signing a will.

[13] *See* s. 733.103(1), F.S.

[14] Section 733.201(1), F.S.

[15] Section 733.201(3), F.S.

Making a Will Self-Proved

A will may be made self-proved. A self-proved will may be admitted to probate without further proof, such as the testimony mentioned above.[16] For a will to be self-proved in this state, the testator must acknowledge the will before an officer authorized to administer oaths (e.g., a notary public). The attesting witnesses must make affidavits before the officer. Lastly, the officer must evidence the acknowledgement and affidavits by a certificate attached to or following the will.[17]

Even after a will is proved and admitted to probate, it may be contested.[18] There are several grounds, such as fraud and undue influence, on which a self-proved will might be contested.

Custodian's Duty to File with Court

The custodian of a will must deposit the will with the court within 10 days after receiving information of the testator's death.[19] If the custodian fails to do so without just or reasonable cause, he or she is be subject to liability:

> Upon petition and notice, the custodian of any will may be compelled to produce and deposit the will. All costs, damages, and a reasonable attorney's fee shall be adjudged to the petitioner against the delinquent custodian if the court finds that the custodian had no just or reasonable cause for failing to deposit the will.[20]

Living Wills

Many aging persons also choose to execute a living will. A living will, despite its name, is fundamentally different than a will. A living will is a document setting forth a person's desires regarding "providing, withholding, or withdrawal of life-prolonging procedures in the event that such person has a terminal condition, has an end-stage condition, or is in a persistent vegetative state."[21] A living will must be executed as follows, which differs from the requirement for executing a will:

> A living will must be signed by the principal in the presence of two subscribing witnesses, one of whom is neither a spouse nor a blood relative of the principal. If the principal is physically unable to sign the living will, one of the witnesses must subscribe the principal's signature in the principal's presence and at the principal's direction.[22]

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[16] Section 733.201(1), F.S.
[17] The officer's certificate must be substantially in the form set forth at s. 732.503, F.S. The form requires that the witnesses state that they witnessed the testator *sign* the will. However, the statutory requirements for executing a will do not require witnesses to witness the testator sign the will. Section 732.502, F.S., provides that the witnesses may either witness the testator sign, or witness the testator acknowledge his or her prior signature.
[18] *See*, *Powell v. Eberhardt (in Re Estate of Hartman)*, 836 So.2d 1038, 1039 (Fla.2d DCA 2002).
[19] Section 732.901(1), F.S.
[20] Section 732.901(2), F.S.
[21] Section 765.302(1), F.S.
[22] Section 765.302(1), F.S.

Other States' Treatment of Electronic Wills

It appears that Nevada is the only state that, by statute, expressly permits the use of electronic wills.[23] This statute has been in effect since 2001.

Although Virginia's statutes do not expressly permit the use of electronic wills, Virginia allows documents to be notarized through live video and audio technology.[24] In Tennessee, a court held that a testator validly signed his will when he typed his name in cursive font.[25] In Ohio, a court admitted a will to probate that was written and signed with a stylus on an electronic tablet.[26]

Part Two – Trusts

A trust is a legal instrument, into which a "settlor" places property in the care of a "trustee," who administers the property according to the terms of the trust and for the benefit of one or more "beneficiaries." For example, a father might place $100,000 in trust for the benefit of his children, the proceeds to be used only for their education, and appoint the father's certified financial planner as the trustee.

Guiding Interpretive Principles of Trusts

A trust, like any other legal document, may be ambiguous at one or more points. And ambiguous trust language can lead to lawsuits where two persons with an interest in the trust would like the language interpreted in different ways. In resolving the meaning of ambiguous trust language in these cases, it is a settled matter of this state's case law that "the polestar of trust interpretation is the settlors' intent."[27]

However, some argue that this guiding principal should be significantly tempered by, or even replaced by, the "benefit of the beneficiaries" standard. Were this standard to replace the settlors' intent standard in interpreting a trust, a court would ask how a given ambiguous term could be interpreted to benefit the beneficiaries, rather than how it could be interpreted to effectuate the settlor's intent.

There is even some concern that an *un*ambiguous trust term that a court determines is not in the best interest of the beneficiaries could effectively be undone by a court. This concern is bolstered some of the language in this state's trust statute.

For instance, s. 736.0105, F.S., sets forth default and mandatory rules for trusts. The mandatory rules include a requirement that a "trust and its terms be for the *benefit of the trust's beneficiaries* . . . ."[28] Also, the statute governing trust purposes requires that a trust and its terms be "for the benefit of its beneficiaries."[29]

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[23] See Nev. Rev. Stat. s. 133.085.
[24] Va. Code Ann. S. 47.1.
[25] *Taylor v. Holt*, 134 S.W.3d 830, 833 (Tenn. Ct. App. 2003).
[26] *In re Estate of Javier Castro, Deceased*, 2013-ES-00140 (Ct. Comm. Pl. Lorain Cnty., Probate Div., Ohio, June 19, 2013) (James T. Walther, Judge)
[27] *E.g.*, *L'Argent v. Barnett Bank, N.A.*, 730 So. 2d 395, 397 (Fla. 2d DCA 1999).
[28] Section 736.0105, F.S. Emphasis added.
[29] Section 736.040, F.S.

Trustee Compensation

A trustee is entitled to compensation for his or her efforts, either as specified in the trust or in an amount that is reasonable under the circumstances.[30] However, even when the trust specifies the trustee's compensation, a court may adjust it up or down if the trustee's duties are substantially different than contemplated at the trust's creation or if the specified compensation is unreasonably low or high.[31] Thus, one could say that a trustee is entitled to compensation that is reasonable under the circumstances, regardless of the terms of the trust.

Sometimes, however, trusts are administered by co-trustees. And the Florida Statutes are not perfectly clear as to whether these co-trustees may be compensated, in the aggregate, in an amount that would be impermissibly high for a sole trustee.

Trust "Decanting"

Under certain circumstances, a trustee may invade the corpus, or principal, of a trust to make distributions to a person. Under certain circumstances, a trustee may instead place trust principal into another trust; this is often called "decanting."[32] If a trust grants a trustee the "absolute power"[33] to invade the principal of a trust (the "first trust") in order to give it to one or more persons, the trustee may instead take the trust principal and put it into another trust (the "second trust"), if:[34]

- The beneficiaries of the second trust are only those of the first trust; and
- The second trust does not reduce any fixed income, annuity, or unitrust interest in the assets of the first trust.

Additionally, if any contributions to the first trust qualified for a specified deduction for certain federal tax purposes, the trustee may only decant if the second trust does not contain any provision that, if contained in the first trust, would have prevented it from qualifying for the reduction, or would have decreased the size of the deduction.[35]

Several of the key aspects of the current decanting statute that are modified by the bill are discussed in more detail in the Effect of Proposed Changes section of this analysis.

Charitable Trusts

A charitable trust is a trust, or portion of a trust, created for a charitable purpose.[36] These purposes include, but are not limited to, the relief of poverty; the advancement of the arts, sciences, education, or religion; and the promotion of health, governmental, or municipal

[30] Section 736.0708(1), F.S.
[31] Section 736.0708(2), F.S.
[32] Decanting is a word commonly used in relation to wine to describe the act of pouring wine from its bottle into another container before service.
[33] This term is not defined in the Florida Statutes.
[34] Section 736.04117(1)(a), F.S.
[35] Section 736.04117(1)(a)3., F.S.
[36] Section 736.0103(5), F.S.

purposes.[37] As such, charitable trusts are said to be for the benefit of the community or the public, instead of for the benefit of one or more individuals.

One of the unique characteristics of a charitable trust is the way in which it involves the local state attorney's office.[38] For instance, regarding private foundation trusts, the trustee may amend the trust instrument to permit him or her to make certain mandatory distributions only with the consent of a state attorney.[39]

Another way that the state attorney may be involved in charitable trust administration is through the process of a trustee's release of the trustee's power to select charitable donees. One way that this release may be accomplished is by specifying a charitable organization as the sole beneficiary of a trust. In order to accomplish this, the trustee must file with the state attorney proof of the consent of the organization to this arrangement.[40]

Statute of Limitations on Actions Against Trustee

The law requires a trustee to give accounting for the trust to the beneficiaries.[41] Failure to give an accounting constitutes an actionable breach of trust.[42] Current law is not perfectly clear as to when the statute of limitations begins to run on a claim for a failure to account.

Providing Documents and Notices Electronically

The Florida Trust Code requires trustees and others to provide each other several documents. For example, trustees must provide trust accounting documents to beneficiaries. One permissible method of sending these documents is by posting them to a secure electronic account or website. This method of sending, posting, and sharing of documents is subject to special regulation under the law.[43]

III. Effect of Proposed Changes:

Overview

The changes made by the bill to the law of wills are largely distinct from the changes made to the law of trusts. Accordingly, the first section of the analysis will discuss the effect of the Florida Electronic Wills Act, which is created by the bill, and the second section will then discuss the changes the bill makes to the existing Florida Trust Code.

[37] Section 736.0405(1), F.S.
[38] By *local* state attorney's office, it is meant the state attorney's office for the judicial circuit of the principal place of administration of the trust
[39] Section 736.1206(2), F.S.
[40] *See* ss. 736.1208(5) and 736.1209, F.S.
[41] Section 736.0813, F.S.
[42] *See* ss. 735.1001(1)-(2), F.S.
[43] *See* s. 736.0109(3), F.S.

Part One of the Bill — The Florida Electronic Wills Act

This bill creates the Florida Electronic Wills Act, which regulates and expressly permits the use of "electronic wills." The bill also revises several aspects of current law relating to the execution of wills and living wills.

The Act defines an electronic will as:

> an instrument, including a codicil, executed in accordance with s. 732.523 by a person in the manner prescribed by this act, which disposes of the person's property on or after his or her death and includes an instrument that merely appoints a personal representative or revokes or revises another will or electronic will.[44]

This definition is very similar to the definition of a traditional will, which is set forth in the Florida Probate Code.[45]

The bill makes it explicit that a testator may sign and store his or her will electronically. However, the bill does not prohibit traditional means of signing, witnessing, and storing wills.

Current law arguably already permits several of the key aspects of the bill, such as electronically signing and electronically storing a will. Other aspects of the bill clearly are not permitted under current law. For example, the bill allows a testator having no domicile, no property, and no debtor in this state to make a Florida will and probate the will in a Florida circuit court.

Executing an Electronic Will

In order for an electronic will to be valid under the bill, it must meet all of the following requirements:

- Exist in an electronic record[46] that is unique and identifiable;
- Be electronically signed[47] by the testator in the presence of at least two attesting witnesses; and
- Be electronically signed by the attesting witnesses in the presence of the testator and in the presence of each other.

Presence via Video Conference

The Florida Probate Code does not specify the sense in which the persons executing a will must be in each other's "presence." In contrast, the bill provides that an individual is deemed to be in the presence of or appearing before another individual if the individuals are either in the same physical location or in different physical locations while being able to communicate with each other by means of live video conference.

[44] Section 732.522(3), F.S.
[45] See s. 731.201(4), F.S., for a definition of will.
[46] An "electronic record" is a "record created, generated, sent, communicated, received, or stored by electronic means."
[47] An "electronic signature" is an "electronic mark visibly manifested in a record as a signature and executed or adopted by a person with the intent to sign the record."

However, video-conference-presence is valid only if meets a lengthy and detailed list of requirements designed to ensure the integrity of the execution of the will.[48] These requirements include that the:

- Testator or principal not be in an "end-stage condition" or be a "vulnerable adult";
- Signal transmission be live, in real time, and secure;
- Persons communicating simultaneously see speak to one another with reasonable clarity;
- Persons communicating establish the identity of the testator or principal, and must demonstrate awareness of the events taking place;
- Persons communicating include an attorney licensed to practice in this state or a notary public;
- Testator or principal provide answers to a list of questions designed to establish, among other things, their competency and their voluntary participation; and
- Electronic records include a time-stamped copy of the recording.

These provisions apply for purposes of the Electronic Wills Act, the execution and filing of a document with the court as provided in the Electronic Wills Act or the Florida Probate Rules, or the execution of a living will. The bill provides that any of these documents may be signed by electronic signature.

Documents Deemed to be Executed in Florida

The bill includes a provision, in s. 732.525(3), F.S., which specifies when an electronically signed document is "deemed" to be executed in this state.[49] An electronically signed document is deemed to be executed in this state if all of the following requirements are met:

- The person creating the document states that he or she intends to execute and understands that he or she is executing the document in, and according to, the laws of this state.[50]
- The person creating the document, the attesting witnesses, or the notary public signing the document are physically in Florida when the document is executed.[51]
- In the case of an electronic will, it designates a qualified custodian who is:
    - Domiciled in, and a resident of, this state; or
    - Organized or incorporated in this state.[52]

[48] Section 732.525(1)(b), F.S.

[49] The purpose of deeming a document to be executed in this state is not clear. One might suppose that the purpose is to allow residents of any state, irrespective of whether they have any real connection to Florida, to create an electronic will that could be probated in Florida. However, that purpose seems to be fulfilled in new s. 732.526, F.S., which provides that an electronic will may be probated in this state regardless of whether it is executed here. Perhaps the intent of the provision is instead to allow a person who has no real connection to this state to execute a valid Florida electronic will that is admissible to probate in his or her home state upon death. For example, assume a man is a resident of Mississippi and has no real or personal property in Florida and wishes to have an electronic will. But Mississippi law does not expressly permit Mississippi residents to create an electronic will under the laws of that state. However, perhaps Mississippi law recognizes a will executed out-of-state as valid as long as the will was executed according to the law of the state in which it was executed. As a result, this man could create an electronic will "deemed to be executed in Florida" pursuant to s. 732.525(3), F.S., and the electronic will would be valid in, and could be admitted to probate in, Mississippi. This process could allow a qualified custodian in Florida to make electronic wills available to a person in any state.

[50] Section 732.525(3)(a), F.S.

[51] Section 732.525(3)(b), F.S.

[52] Section 732.525(3)(c), F.S.

Qualified Custodians

Definition and Essential Duties

Under the bill, one of the requirements of a *self-proved* will is that is be held at all times by a qualified custodian, which is a person who meets all of the following requirements:

- Is not an heir or devisee of the testator.
- Is domiciled in and a resident of Florida or is incorporated or organized in Florida.
- Consistently employs a system for ensuring the safekeeping of electronic records and stores electronic records containing electronic wills under the system.
- Furnishes for any court hearing involving an electronic will that is currently or was previously stored by the qualified custodian any information requested by the court pertaining to the qualified custodian's policies and procedures.[53]

The qualified custodian of an electronic must provide access to or information concerning the electronic will, or the electronic will and the electronic record containing the electronic will, only to the testator and such other persons as directed by the written instructions of the testator, or anyone as directed by a court with jurisdiction over the matter.

The qualified custodian of the electronic record of an electronic will may elect to destroy the record at any time after the earlier of 5th anniversary of the admission of the will to probate or 20 years after the death of the testator.

Qualified Custodian's Passing Office or Being Removed from Office

A qualified custodian who at any time controls the electronic record of an electronic will may elect to cease serving in this capacity by delivering the electronic will or the electronic record containing the electronic will to the testator, if then living, or by filing the will with the court in accordance with s. 732.901, F.S.

If the outgoing qualified custodian intends to designate a successor qualified custodian, the qualified custodian may cease serving by providing written notice to the testator of the name, address, and qualifications of the proposed successor qualified custodian. The testator must provide written consent before the electronic record, including the electronic will, is delivered to a successor qualified custodian. The outgoing qualified custodian must also deliver the electronic record containing the electronic will to the successor qualified custodian. Finally, the outgoing qualified custodian must deliver to the successor qualified custodian an affidavit of the outgoing qualified custodian stating that:

- The outgoing qualified custodian is eligible to act as a qualified custodian in this state;
- The outgoing qualified custodian is the qualified custodian designated by the testator in the electronic will or appointed to act in such capacity;
- The electronic will has been in the control of one or more qualified custodians since the time the electronic record was created, and identifying such qualified custodians; and
- To the best of the qualified custodian's knowledge, the electronic will has not been altered since the time it was created.

[53] Sections 732.522(4) and 732.527(1), F.S.

In addition to voluntarily stepping down, as discussed above, a qualified custodian may also be forced out by the testator. Upon the written request of the testator, a qualified custodian who controls the electronic record of the testator's electronic will must cease serving in such capacity and must deliver to a successor qualified custodian that designated in writing by the testator the electronic will and an affidavit stating that:

- The outgoing qualified custodian is eligible to act as a qualified custodian in this state;
- The outgoing qualified custodian is the qualified custodian designated by the testator in the electronic will or appointed to act in such capacity;
- The electronic will has been in the control of one or more qualified custodians since the time the electronic record was created, and identifying such qualified custodians; and
- To the best of the qualified custodian's knowledge, the electronic will has not been altered since the time it was created.

The bill's aims to protect consumers who choose to employ the services of qualified custodians. Specifically, the bill expressly states that each qualified custodian:

- Must provide a paper copy of an electronic will and the electronic record, including the electronic will, to the testator immediately upon request. For the first such request in any 365-day period, the testator may not be charged a fee for being provided with these documents;
- Is liable for any damages caused by the negligent loss or destruction of the electronic record, including the electronic will, while it is in the possession of the qualified custodian;
- May not limit liability for these damages;
- May not terminate or suspend access to the electronic will by the testator; and
- Must at all times keep information provided by the testator confidential and may not disclose such information to any third party.

Finally, when a qualified custodian receives information that a testator is dead, the qualified custodian must deposit the electronic will with the court pursuant to s. 732.901, F.S.

Probate of a Will or an Electronic Will

Venue

The bill provides that venue for probate of an electronic will may be anywhere that venue would be proper for a traditional will. The bill provides additional venue options for the probate of electronic will *of a non-resident*. Venue for probate of a non-resident's electronic will is also proper in the county in which the qualified custodian or attorney for the petitioner or personal representative has his or her domicile or registered office.[54]

Currently, venue for probate of a will must be in:

- The county in this state where the decedent was domiciled.
- Any county where the decedent's property is located, if the decedent was not domiciled in this state.

[54] Section 732.526, F.S.

- The county where any debtor of the decedent resides, if the decedent was not domiciled in this state and had no property in this state.[55]

Jurisdiction

In addition to the right of Florida residents to probate a will executed in this state, which Florida residents already enjoy, the bill expressly grants the right to admit an electronic will of a *non-resident* to original probate in this state. However, this right only exists if the will is not a holographic or nuncupative[56] will and was "executed or deemed executed in another state in accordance with the laws of that state or of" Florida.[57] Florida courts are expressly granted jurisdiction over these electronic wills.[58]

In contrast, the existing Florida Probate Code does not appear to contain a similar provision broadly granting Florida courts with jurisdiction over validly executed wills of non-residents who do not have any property, creditors, or debtors in Florida. Moreover, the venue provision of current law discussed just above does not provide a venue option to probate the will of non-residents having no connection to this state. Together, the lack of a provision clearly granting jurisdiction, and the lack of a venue option, seem to indicate that the courts of this state currently have no jurisdiction to probate the will of a nonresident decedent with no domicile, no property, and no debtor in this state

What May Be Admitted to Probate

The bill permits the admission to probate of an electronic will[59] or a "true and correct copy" of an electronic will.[60] Apparently, in either case the will would still need to be proved by appropriate testimony at the time of admission or by making the will self-proved at some prior point. The same is required of traditional wills under current law.

Proving a Will

An electronic will that is not self-proved may be admitted to probate on the oath of the two attesting witnesses to the electronic will. These oaths must be sworn or affirmed before a circuit judge or the other persons set forth in the bill.[61] In contrast, only one attesting witness's oath is required to prove a traditional will. Under the bill, if it appears to the court that the two attesting witnesses cannot be found, have lost capacity, or cannot testify within a reasonable time, two "disinterested" witnesses must swear or affirm an oath as to the list of statements set forth in the bill.[62] However, the personal representative's swearing or affirming an oath is sufficient to prove a traditional will when the attesting witnesses are not available.

[55] Section 731.101(1), F.S.
[56] Holographic wills are those written in the hand of the testator, but not properly executed as set forth in s. 732.502(1), F.S., and nuncupative wills are oral (unwritten) wills.
[57] Section 732.526, F.S.
[58] Section 732.526, F.S. The way the bill is worded, it is unclear whether this jurisdiction applies to the type of electronic will in question even before such will is offered for and admitted to probate.
[59] Section 732.526, F.S.
[60] Section 733.201(5), F.S.
[61] Section 733.201(4), F.S.
[62] Section 733.201(4)(a)-(f), F.S.

Making an Electronic Will Self-Proved

Under current law, a will may be made self-proved. A self-proved will may be admitted to probate without further proof that it is what it purports to be or that it was executed properly.

The bill provides that an attested electronic will is self-proved, pursuant to new s. 732.524, F.S., if all of the following requirements are met:

- The will is executed in conformity with the Florida Electronic Wills Act.
- The acknowledgement of the electronic will by the testator and the affidavits of the witnesses are made in accordance with s. 732.503, F.S.
- The same acknowledgement and affidavits are made a part of, or are attached to or logically associated with, the electronic record.
- The electronic will either:
  - Is deposited with the clerk before the death of the testator in accordance with s. 732.901, F.S., with a certification the meets the requirements in the bill; or
  - Designates a qualified custodian who executes a certification that meets the requirements set forth in the bill.

Prospective Effect of the Bill as it Relates to Electronic Wills

The bill expressly states that it applies to electronic wills executed on or after July 1, 2017. The bill does not, however, state that it applies (only) to those traditional wills, powers of attorney, or living wills created on or after July 1, 2017.

Part Two of the Bill — Changes to the Florida Trust Code

A trust is a legal instrument, into which a "settlor" places property in the care of a "trustee," who administers the property according to the terms of the trust and for the benefit of one or more "beneficiaries."

Protecting Settlors' Intent

The bill removes three provisions of the Florida Trust Code that require that every trust and trust term be for the "benefit of the trust's beneficiaries." This is intended to ensure that this state's statutes are consistent with settled case law that provides that the settlor's intent is paramount in interpreting ambiguous trust terms. It is also intended to ensure that a settlor's express, unambiguous desires as set forth in a trust instrument are not undone by a court that determines that these terms do not (optimally) benefit the trust's beneficiaries.

Aggregate Co-Trustee Compensation May Exceed Maximum Solo Trustee Compensation

The Florida Statutes currently entitle a trustee to compensation that is reasonable under the circumstances. However, the compensation statute is written in the singular ("a trustee"), and thus is not as clear as it could be about co-trustee compensation. Particularly, after reading this statute, one could reasonably ask whether co-trustees may be compensated in an aggregate amount that would be impermissibly high for a sole trustee. The bill clarifies that each co-trustee is entitled to compensation that is reasonable under the circumstances, even if the aggregated amount would be too much to pay a sole trustee.

Charitable Trusts Involve the Attorney General instead of the State Attorney

Under current law, the state attorney's office in the judicial circuit where a charitable trust is administered is involved in the administration of the trust. Under the bill, the state Attorney General's Office fulfills the responsibilities currently fulfilled by the state attorneys' offices.

Trust "Decanting"

The bill extensively amends s. 736.04117, F.S., pertaining to the decanting of trusts. Decanting a trust, very generally, involves a trustee taking the principal of a trust and putting it into one or more other trusts.

"Absolute Power" Not Necessary to Decant

Under current law this may only be done by one who is expressly given "absolute power" in the first trust. Under the bill, this grant of authority is sufficient, but not always necessary.
The bill creates a new type of trustee, called an "authorized trustee," who may invade trust assets under the conditions set forth in the bill.

General Authority of Authorized Trustee to Decant

An authorized trustee who has non-absolute power under the first trust to distribute trust principal to a beneficiary may instead distribute that principal to one or more second trusts. However, if an authorized trustee exercises this power:

- The second trusts, in the aggregate, must grant each beneficiary of the first trust substantially similar interests as they had under the first trust; and
- The term of the second trust may extend beyond the term of the first trust.

Authority of Authorized Trustee to Decant to Special Needs Trust

Even if an authorized trustee does not have absolute authority or does not have general authority to decant, the authorized trustee may be able to decant trust principal to a special needs trust. A special needs trust, very generally, is a one into which money can be placed for the benefit of a disabled person, permitting the person to maintain welfare eligibility, which might be lost if he or she were to hold the money outright.

Notice of Decanting

As under current law, a trustee who intends to decant must first give notice to the persons specified in statute. However, under the bill, this notice must include a copy of the trust document for any second trust into which the principal from the first trust is to be placed.

Statute of Limitations on Actions Against Trustee

The law requires a trustee to give accounting for the trust to the beneficiaries.[63] Failure to give an account constitutes an actionable breach of trust.[64] One of the remedies that a court may award

[63] Section 736.0813, F.S.
[64] *See* Section 736.1001(1)-(2), F.S.

on this action is to force the trustee to give an account.[65] Current law is not perfectly clear as to when the statute of limitations begins to run on a claim for a failure to account. A recent case found that an action for a trustee's failure to account was subject to the general limitations statute, and could not be brought for a failure occurring more than 4 years before the date the action was filed.[66] Some take issue with the reasoning of this case.

To clarify the matter the bill expressly states that a failure to account, and even the beneficiary's knowledge of the failure, does not cause a 4-year clock to run on the beneficiary's time to file suit. Additionally, the bill expressly states that the action is not subject to the general limitations statute. As a result, the limitation on bringing this action appears to be 10, 20, or 40 years, depending on the circumstances of a given case.[67]

Providing Documents and Notices Electronically

The Florida Trust Code requires trustees and others to provide each other various documents. For example, trustees must provide trust accounting documents to beneficiaries. One permissible method of sending these documents is by posting them to a secure electronic account or website. This method of sending, posting, and sharing of documents is subject to special regulation under the law.[68] The bill amends the requirements as to documents that are provided to recipients *solely* through electronic posting and deemed sent for the purposes of the statute regulating methods of notice and waiver.[69]

Under the bill, the recipient must be able to access and print or download these documents until the earlier of:

- The date on which the recipient's access is terminated;[70] or
- Four years after the date on which the document is deemed received.

Also, if any recipient's access to the electronic account or website is terminated by the sender less than 4 years after the date the document was deemed received, the specified limitations periods in the trust limitations statute[71] that are still open are tolled as set forth in the bill.

Effective Date

The bill takes effect July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

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[65] *Id.*
[66] *See Corya v. Sanders*, 155 So. 3d 1279 (Fla. 4th DCA 2009)
[67] *See* s. 736.1008(6), F.S.
[68] *See* s. 736.0109(3), F.S.
[69] Section 736.0109, F.S.
[70] The termination of access does not invalidate the notice of sending of any document previously posted in accordance with s. 736.0109, F.S.
[71] Section 736.1008(1),(2), F.S.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may facilitate the creation and storage of wills using an Internet-based service. The associated costs are unknown. Further, if an electronic will can be easily created, many people who do not have a will may decide to execute one. However, some may use the services of an Internet-based service instead of, or in addition to, the services of an attorney.

C. Government Sector Impact:

The bill apparently allows non-Floridians with no property, no creditors, and no debtors in the state to execute a valid Florida electronic will. Florida courts are given jurisdiction over these electronic wills. The extent to which the bill will result in an increase in probate cases and associated costs to the judicial branch is unknown.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 731.201, 732.506, 732.521, 733.201, 736.0103, 736.0105, 736.0109, 736.0110, 736.0403, 736.0404, 736.04117, 736.0708, 736.08135, 736.1008, 736.1201, 736.1205, 736.1206, 736.1207, 736.1208, and 736.1209.

This bill creates the following sections of the Florida Statutes: 732.521, 732.522, 732.523, 732.524, 732.525, 732.526, and 732.527.

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 25, 2017:
The committee substitute inserts the substance of SB 1554, relating to trusts, into this bill. Specifically, these provisions modify the Florida Trust Code to:

- Protect the trust creator's intent as paramount in trust interpretation;
- Expressly permit co-trustees to be compensated in a manner that is aggregately more than would be permissible for each individually;
- Expand certain trustees' ability to place the principal of the "first trust" into one or more second trusts in order to protect and maximize the beneficiaries' interests; and
- Address current case law that some believe to have misconstrued the timeframes in which a beneficiary may bring an action against a trustee who fails deliver a trust accounting.

In addition to the changes made by the insertion of the substance of SB 1554 into this bill, the committee substitute removes language that would have permitted persons executing a durable power of attorney to be in each other's "presence" by videoconferencing technology. Also, as to wills and other documents that are executed by persons who are in each other's presence via videoconferencing, the committee substitute generally permits a person who is presented with one of these documents to presume that the document was executed according to the provisions governing execution of documents via videoconference if:

- The document contains a notary public's statement or certification that the document was executed in compliance with the section of law governing the method and place of execution; and
- The person presented with the document has no notice that this compliance is contested.

CS/CS by Banking and Insurance on April 17, 2017:
The committee substitute revises requirements for the execution of electronic wills, creates requirements for video conferencing, creates additional duties of qualified custodians, and provides that some revocable trusts can be executed with the same formalities as electronic wills.

CS by Judiciary on January 23, 2017:
The committee substitute includes several changes that appear to be designed to increase the integrity of the execution of electronic wills and other documents that are signed electronically. One such change requires the testator or the attesting witnesses to be "in the same room" as the testator when the testator signs an electronic will. In the underlying bill, none of these people need to be in the same room.

Another change requires the signature of two attesting witnesses and a notary public on an electronic will. In the underlying bill, only the notary public or the two witnesses need to sign. Relating to traditional wills, livings wills, and powers of attorney, the committee

substitute still provides that the persons signing these documents are, as a matter of law, in each other's "presence" if they can communicate via live video and audio conference. However, the committee substitute requires these signing ceremonies to be memorialized by a video recording kept in the documents' electronic record.

The committee substitute makes it easier to execute a will, electronic will, living will, or power of attorney that is deemed to be executed in Florida. This is achieved by no longer requiring that such documents state that they are governed by the laws of this state.

In many ways, the committee substitute adds consumer protections to the relationship between a testator and his or her qualified custodian. For example, the committee substitute expressly states that a qualified custodian will be liable for the negligent loss or destruction of the electronic record. Also, a qualified custodian must allow the testator access to his or her electronic will at all times. Moreover, a qualified custodian must ensure the confidentiality of all information given to the custodian by the testator. However, under the committee substitute, a qualified custodian is no longer required to store several items, including identification of the testator and witnesses, in the electronic record of an electronic will.

The committee substitute does away with the concept of a "certified paper original," a defined term that was fairly pervasive in the underlying bill. Nonetheless, the committee substitute permits admission of "true and correct" paper copies of electronic wills to probate. Moreover, the committee substitute provides that the copy constitutes an original of the electronic will.

B. Amendments:

None.

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

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/25/2017	.	
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The Committee on Rules (Passidomo) recommended the following:

Senate Amendment

Delete lines 163 - 272
and insert:
provided in this act or the Florida Probate Rules, the execution of a living will under s. 765.302, and the acknowledgment of any of the foregoing:

(1) An individual is deemed to be in the presence of or appearing before another individual if the individuals are either:

(a) In the same physical location; or

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(b) In different physical locations, but can communicate with each other by means of live video conference, if the following requirements are met:

1. The testator or principal may not be in an end-stage condition as defined in s. 765.101 or a vulnerable adult as defined in s. 415.102. The contestant of the document has the burden of proving that the testator or principal was in an end-stage condition or was a vulnerable adult at the time of executing the document.

2. The signal transmission must be live and in real time.

3. The signal transmission must be secure from interception through lawful means by anyone other than the persons communicating.

4. The persons communicating must simultaneously see and speak to one another with reasonable clarity.

5. In the video conference, the persons communicating must establish the identity of the testator or principal by:

a. Personal knowledge, if the person asserting personal knowledge explains how the identity of the testator or principal has come to be known to, and the length of time for which it has been known by, such person; or

b. Presentation of any of the forms of identification of the testator or principal, as set forth in s. 117.05(5)(b)2.a.-i.

6. In the video conference, the persons communicating must demonstrate awareness of the events taking place, which may be achieved, without limitation, by stating their names and identifying any document they intend to sign.

7. At least one of the persons communicating must be


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either:

a. An attorney licensed to practice law in this state:

(I) Who electronically signs the document as a witness;

(II) Whose status as an attorney licensed to practice law in this state is indicated adjacent to his or her electronic signature; and

(III) Whose electronic signature is accompanied by his or her statement that, to the best of his or her knowledge, the execution of the document complied with the requirements of this section; or

b. A Florida notary public:

(I) Who electronically signs the document;

(II) Whose electronic signature is accompanied by a notary public seal that meets the requirements of s. 117.021(3); and

(III) Whose electronic signature and seal are accompanied by his or her certification that, to the best of his or her knowledge, the execution of the document complied with the requirements of this section.

If a document is required to be witnessed or acknowledged, the witness or notary fulfilling that requirement may be the same witness or notary who fulfills the requirement of this subparagraph. A person presented with a document containing the statement or certification required under this subparagraph may presume that the document was executed in compliance with this paragraph, unless the person has notice that such compliance is contested.

8. In the video conference, the testator or principal must provide verbal answers to all of the following questions:

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a. Are you over the age of 18?

b. Are you under the influence of any drugs or alcohol that impairs your ability to make decisions?

c. Are you of sound mind?

d. Did anyone assist you in accessing this video conference? If so, who?

e. Has anyone forced or influenced you to include anything in this document which you do not wish to include?

f. Are you signing this document voluntarily?

9. A time-stamped recording of the entire video conference must be identifiable with the document being signed and stored in the electronic record containing the document by a qualified custodian in the manner required pursuant to s. 732.527(1)(c) for the storage of electronic records containing electronic wills.

a. Without limitation, a recording is identifiable with a document if the recording and document share an identification number.

b. If the recording is not reasonably accessible by a person presented with the document, such person may treat the document as if it does not include the signature of any signatory who appeared by means of live video conference; however, an electronic will whose execution included the use of video conference under this section may be proved as provided in s. 733.201(4). Without limitation, a recording is reasonably accessible if it is accessible at no charge over the Internet pursuant to instructions set forth in the document.

(2) If a law requires a record to be in writing, an electronic record satisfies such provision.

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(3) Any requirement that a document be signed may be satisfied by an electronic signature.

(4) A document that is signed electronically is deemed to be executed in this state if all of the following requirements are met:

(a) The document states that the person creating the document intends to execute and understands that he or she is executing the document in, and pursuant to the laws of, this state.

(b) The person creating the document is, or the attesting witnesses or Florida notary public whose electronic signatures are obtained in the execution of the document are, physically located within this state at the time the document is executed.

(c) In the case of a self-proved electronic will, the electronic will designates a qualified custodian who is domiciled in and a resident of this state or incorporated or organized in this state.

Section 8. Section 732.526, Florida Statutes, is created to read:

732.526 Probate.—An electronic will, other than a holographic or nuncupative will, of a nonresident of

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/25/2017	.	
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The Committee on Rules (Passidomo) recommended the following:

Senate Amendment (with title amendment)

Delete lines 456 - 474
and insert:
Section 11. Subsection (11) of section 736.0103, Florida Statutes, is amended to read:
736.0103 Definitions.—Unless the context otherwise requires, in this code:
(11) "Interests of the beneficiaries" means the beneficial interests intended by the settlor as provided in the terms of a ~~the~~ trust.


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Section 12. Paragraph (c) of subsection (2) of section 736.0105, Florida Statutes, is amended to read:

736.0105 Default and mandatory rules.—

(2) The terms of a trust prevail over any provision of this code except:

(c) The requirement that a trust ~~and its terms be for the benefit of the trust's beneficiaries, and that the trust~~ have a purpose that is lawful, not contrary to public policy, and possible to achieve.

Section 13. Subsections (1) and (3) of section 736.0109, Florida Statutes, are amended to read:

736.0109 Methods and waiver of notice.—

(1) Notice to a person under this code or the sending of a document to a person under this code must be accomplished in a manner reasonably suitable under the circumstances and likely to result in receipt of the notice or document. Permissible methods of notice or for sending a document include first-class mail, personal delivery, delivery to the person's last known place of residence or place of business, ~~or~~ a properly directed facsimile or other electronic message, or posting to a secure electronic account or website in accordance with subsection (3).

(3) A document that is sent solely by posting to an electronic account or website is not deemed sent for purposes of this section unless the sender complies with this subsection. The sender has the burden of proving compliance with this subsection ~~In addition to the methods listed in subsection (1) for sending a document, a sender may post a document to a secure electronic account or website where the document can be accessed~~.



(a) ~~Before a document may be posted to an electronic account or website,~~ The recipient must sign a separate written authorization solely for the purpose of authorizing the sender to post documents on an electronic account or website before such posting. The written authorization must:

1. Specifically indicate whether a trust accounting, trust disclosure document, or limitation notice, as those terms are defined in s. 736.1008(4), will be posted in this manner, and generally enumerate the other types of documents that may be posted in this manner.

2. Contain specific instructions for accessing the electronic account or website, including the security procedures required to access the electronic account or website, such as a username and password.

3. Advise the recipient that a separate notice will be sent when a document is posted to the electronic account or website and the manner in which the separate notice will be sent.

4. Advise the recipient that the authorization to receive documents by electronic posting may be amended or revoked at any time and include specific instructions for revoking or amending the authorization, including the address designated for the purpose of receiving notice of the revocation or amendment.

5. Advise the recipient that posting a document on the electronic account or website may commence a limitations period as short as 6 months even if the recipient never actually accesses the electronic account, electronic website, or ~~the~~ document.

(b) Once the recipient signs the written authorization, the sender must provide a separate notice to the recipient when a



document is posted to the electronic account or website. As used in this subsection, the term "separate notice" means a notice sent to the recipient by means other than electronic posting, which identifies each document posted to the electronic account or website and provides instructions for accessing the ~~posted~~ document. The separate notice requirement is deemed satisfied if the recipient accesses the document on the electronic account or website.

(c) A document sent by electronic posting is deemed received by the recipient on the earlier of the date on which ~~that~~ the separate notice is received or the date on which ~~that~~ the recipient accesses the document on the electronic account or website.

(d) At least annually after a recipient signs a written authorization, a sender shall send a notice advising recipients who have authorized one or more documents to be posted to an electronic account or website that such posting may commence a limitations period as short as 6 months even if the recipient never accesses the electronic account or website or the document and that authority to receive documents by electronic posting may be amended or revoked at any time. This notice must be given by means other than electronic posting and may not be accompanied by any other written communication. Failure to provide such notice within 380 days after the last notice is deemed to automatically revoke the authorization to receive documents in the manner permitted under this subsection 380 days after the last notice is sent.

(e) The notice required in paragraph (d) may be in substantially the following form: "You have authorized the


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receipt of documents through posting to an electronic account or website on which ~~where~~ the documents can be accessed. This notice is being sent to advise you that a limitations period, which may be as short as 6 months, may be running as to matters disclosed in a trust accounting or other written report of a trustee posted to the electronic account or website even if you never actually access the electronic account or website or the documents. You may amend or revoke the authorization to receive documents by electronic posting at any time. If you have any questions, please consult your attorney."

(f) A sender may rely on the recipient's authorization until the recipient amends or revokes the authorization by sending a notice to the address designated for that purpose in the authorization or in the manner specified on the electronic account or website. The recipient, at any time, may amend or revoke an authorization to have documents posted on the electronic account or website.

(g) If a document is provided to a recipient solely through electronic posting pursuant to this subsection, the recipient must be able to access and print or download the document until the earlier of ~~remain accessible to the recipient on the electronic account or website for at least~~ 4 years after the date that the document is deemed received by the recipient or the date upon which the recipient's access to the electronic account or website is terminated for any reason.

1. If the recipient's access to the electronic account or website is terminated for any reason, such termination does not invalidate the notice or sending of any document previously posted on the electronic account or website in accordance with



this subsection, but may toll the applicable limitations period as provided in subparagraph 2.

2. If the recipient's access to the electronic account or website is terminated by the sender sooner than 4 years after the date on which the document was received by the recipient, any applicable limitations period set forth in s. 736.1008(1) or (2) which is still running is tolled for any information adequately disclosed in a document sent solely by electronic posting, from the date on which the recipient's access to the electronic account or website was terminated by the sender until 45 days after the date on which the sender provides one of the following to the recipient by means other than electronic posting:

a. Notice of such termination and notification to the recipient that he or she may request that any documents sent during the prior 4 years solely through electronic posting be provided to him or her by other means at no cost; or

b. Notice of such termination and notification to the recipient that his or her access to the electronic account or website has been restored.

Any applicable limitations period is further tolled from the date on which any request is made pursuant to sub-subparagraph 2.a. until 20 days after the date on which the requested documents are provided to the recipient by means other than electronic posting ~~The electronic account or website must allow the recipient to download or print the document~~. ~~This subsection does not affect or alter the duties of a trustee to keep clear, distinct, and accurate records pursuant to s. 736.0810 or affect~~



~~or alter the time periods for which the trustee must maintain those records.~~

(h) For purposes of this subsection, access to an electronic account or website is terminated by the sender when the sender unilaterally terminates the recipient's ability to access the electronic website or account or download or print any document posted on such website or account. Access is not terminated by the sender when access is terminated by an action of the recipient or by an action of the sender in response to the recipient's request to terminate access. The recipient's revocation of authorization pursuant to paragraph (f) is not considered a request to terminate access ~~To be effective, the posting of a document to an electronic account or website must be done in accordance with this subsection. The sender has the burden of establishing compliance with this subsection~~.

(i) This subsection does not affect or alter the duties of a trustee to keep clear, distinct, and accurate records pursuant to s. 736.0810 or affect or alter the time periods for which the trustee must maintain such records ~~preclude the sending of a document by other means~~.

(j) This subsection governs the posting of a document solely for the purpose of giving notice under this code or the sending of a document to a person under this code and does not prohibit or otherwise apply to the posting of a document to an electronic account or website for any other purpose or preclude the sending of a document by any other means.

Section 14. Subsection (3) of section 736.0110, Florida Statutes, is amended to read:

736.0110 Others treated as qualified beneficiaries.—



(3) The Attorney General may assert the rights of a qualified beneficiary with respect to a charitable trust having its principal place of administration in this state. The Attorney General has standing to assert such rights in any judicial proceedings.

Section 15. Paragraph (b) of subsection (2) of section 736.0403, Florida Statutes, is amended to read:

736.0403 Trusts created in other jurisdictions; formalities required for revocable trusts.—

(2) Notwithstanding subsection (1):

(b) The testamentary aspects of a revocable trust, executed by a settlor who is a domiciliary of this state at the time of execution, are invalid unless the trust instrument is executed by the settlor with the formalities required for the execution of a will under s. 732.502 or an electronic will under s. 732.523 which is self-proved; however, the qualified custodian of the trust instrument may not also be a trustee of the trust ~~in this state~~. For purposes of this subsection, the term "testamentary aspects" means those provisions of the trust instrument that dispose of the trust property on or after the death of the settlor other than to the settlor's estate.

Section 16. Section 736.0404, Florida Statutes, is amended to read:

736.0404 Trust purposes.—A trust may be created only to the extent the purposes of the trust are lawful, not contrary to public policy, and possible to achieve. ~~A trust and its terms must be for the benefit of its beneficiaries.~~

Section 17. Effective upon becoming a law, section 736.04117, Florida Statutes, is amended to read:


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736.04117 Trustee's power to invade principal in trust.—

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

(a) "Absolute power" means ~~Unless the trust instrument expressly provides otherwise, a trustee who has absolute power under the terms of a trust to invade the principal of the trust, referred to in this section as the "first trust," to make distributions to or for the benefit of one or more persons may instead exercise the power by appointing all or part of the principal of the trust subject to the power in favor of a trustee of another trust, referred to in this section as the "second trust," for the current benefit of one or more of such persons under the same trust instrument or under a different trust instrument; provided:~~

~~1. The beneficiaries of the second trust may include only beneficiaries of the first trust;~~

~~2. The second trust may not reduce any fixed income, annuity, or unitrust interest in the assets of the first trust; and~~

~~3. If any contribution to the first trust qualified for a marital or charitable deduction for federal income, gift, or estate tax purposes under the Internal Revenue Code of 1986, as amended, the second trust shall not contain any provision which, if included in the first trust, would have prevented the first trust from qualifying for such a deduction or would have reduced the amount of such deduction.~~

~~(b) For purposes of this subsection, an absolute power to invade principal shall include~~ a power to invade principal that is not limited to specific or ascertainable purposes, such as health, education, maintenance, and support, regardless of


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whether ~~or not~~ the term "absolute" is used. A power to invade principal for purposes such as best interests, welfare, comfort, or happiness constitutes ~~shall constitute~~ an absolute power not limited to specific or ascertainable purposes.

(b) "Authorized trustee" means a trustee, other than the settlor or a beneficiary, who has the power to invade the principal of a trust.

(c) "Beneficiary with a disability" means a beneficiary of the first trust who the authorized trustee believes may qualify for governmental benefits based on disability, regardless of whether the beneficiary currently receives those benefits or has been adjudicated incapacitated.

(d) "Current beneficiary" means a beneficiary who, on the date his or her qualification is determined, is a distributee or permissible distributee of trust income or principal. The term includes the holder of a presently exercisable general power of appointment but does not include a person who is a beneficiary only because he or she holds another power of appointment.

(e) "Governmental benefits" means financial aid or services from any state, federal, or other public agency.

(f) "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended.

(g) "Power of appointment" has the same meaning as provided in s. 731.201(30).

(h) "Presently exercisable general power of appointment" means a power of appointment exercisable by the powerholder at the relevant time. The term:

1. Includes a power of appointment that is exercisable only after the occurrence of a specified event or that is subject to

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a specified restriction, but only after the event has occurred or the restriction has been satisfied.

2. Does not include a power exercisable only upon the powerholder's death.

(i) "Substantially similar" means that there is no material change in a beneficiary's beneficial interests or in the power to make distributions and that the power to make a distribution under a second trust for the benefit of a beneficiary who is an individual is substantially similar to the power under the first trust to make a distribution directly to the beneficiary. A distribution is deemed to be for the benefit of a beneficiary if:

1. The distribution is applied for the benefit of a beneficiary;

2. The beneficiary is under a legal disability or the trustee reasonably believes the beneficiary is incapacitated, and the distribution is made as permitted under this code; or

3. The distribution is made as permitted under the terms of the first trust instrument and the second trust instrument for the benefit of the beneficiary.

(j) "Supplemental needs trust" means a trust that the authorized trustee believes would not be considered a resource for purposes of determining whether the beneficiary who has a disability is eligible for governmental benefits.

(k) "Vested interest" means a current unconditional right to receive a mandatory distribution of income, a specified dollar amount, or a percentage of value of a trust, or a current unconditional right to withdraw income, a specified dollar amount, or a percentage of value of a trust, which right is not

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subject to the occurrence of a specified event, the passage of a specified time, or the exercise of discretion.

1. The term includes a presently exercisable general power of appointment.

2. The term does not include a beneficiary's interest in a trust if the trustee has discretion to make a distribution of trust property to a person other than such beneficiary.

(2) DISTRIBUTION FROM FIRST TRUST TO SECOND TRUST WHEN AUTHORIZED TRUSTEE HAS ABSOLUTE POWER TO INVADE.—

(a) Unless a trust instrument expressly provides otherwise, an authorized trustee who has absolute power under the terms of the trust to invade its principal, referred to in this section as the "first trust," to make current distributions to or for the benefit of one or more beneficiaries may instead exercise such power by appointing all or part of the principal of the trust subject to such power in favor of a trustee of one or more other trusts, whether created under the same trust instrument as the first trust or a different trust instrument, including a trust instrument created for the purposes of exercising the power granted by this section, each referred to in this section as the "second trust," for the current benefit of one or more of such beneficiaries only if:

1. The beneficiaries of the second trust include only beneficiaries of the first trust; and

2. The second trust does not reduce any vested interest.

(b) In an exercise of absolute power, the second trust may:

1. Retain a power of appointment granted in the first trust;

2. Omit a power of appointment granted in the first trust,


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other than a presently exercisable general power of appointment;

3. Create or modify a power of appointment if the powerholder is a current beneficiary of the first trust;

4. Create or modify a power of appointment if the powerholder is a beneficiary of the first trust who is not a current beneficiary, but the exercise of the power of appointment may take effect only after the powerholder becomes, or would have become if then living, a current beneficiary of the first trust; and

5. Extend the term of the second trust beyond the term of the first trust.

(c) The class of permissible appointees in favor of which a created or modified power of appointment may be exercised may differ from the class identified in the first trust.

(3) DISTRIBUTION FROM FIRST TRUST TO SECOND TRUST WHEN AUTHORIZED TRUSTEE DOES NOT HAVE ABSOLUTE POWER TO INVADE.—Unless the trust instrument expressly provides otherwise, an authorized trustee who has a power, other than an absolute power, under the terms of a first trust to invade principal to make current distributions to or for the benefit of one or more beneficiaries may instead exercise such power by appointing all or part of the principal of the first trust subject to such power in favor of a trustee of one or more second trusts. If the authorized trustee exercises such power:

(a) The second trusts, in the aggregate, shall grant each beneficiary of the first trust beneficial interests in the second trusts which are substantially similar to the beneficial interests of the beneficiary in the first trust.

(b) If the first trust grants a power of appointment to a

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beneficiary of the first trust, the second trust shall grant such power of appointment in the second trust to such beneficiary, and the class of permissible appointees shall be the same as in the first trust.

(c) If the first trust does not grant a power of appointment to a beneficiary of the first trust, then the second trust may not grant a power of appointment in the second trust to such beneficiary.

(d) Notwithstanding paragraphs (a), (b), and (c), the term of the second trust may extend beyond the term of the first trust, and, for any period after the first trust would have otherwise terminated, in whole or in part, under the provisions of the first trust, the trust instrument of the second trust may, with respect to property subject to such extended term:

1. Include language providing the trustee with the absolute power to invade the principal of the second trust during such extended term; and

2. Create a power of appointment, if the powerholder is a current beneficiary of the first trust, or expand the class of permissible appointees in favor of which a power of appointment may be exercised.

(4) DISTRIBUTION FROM FIRST TRUST TO SUPPLEMENTAL NEEDS TRUST.—

(a) Notwithstanding subsections (2) and (3), unless the trust instrument expressly provides otherwise, an authorized trustee who has the power under the terms of a first trust to invade the principal of the first trust to make current distributions to or for the benefit of a beneficiary with a disability may instead exercise such power by appointing all or


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part of the principal of the first trust in favor of a trustee of a second trust that is a supplemental needs trust if:

1. The supplemental needs trust benefits the beneficiary with a disability;

2. The beneficiaries of the second trust include only beneficiaries of the first trust; and

3. The authorized trustee determines that the exercise of such power will further the purposes of the first trust.

(b) Except as affected by any change to the interests of the beneficiary with a disability, the second trusts, in the aggregate, shall grant each other beneficiary of the first trust beneficial interests in the second trusts which are substantially similar to such beneficiary's beneficial interests in the first trust.

(5) PROHIBITED DISTRIBUTIONS.—

(a) An authorized trustee may not distribute the principal of a trust under this section in a manner that would prevent a contribution to that trust from qualifying for, or that would reduce the exclusion, deduction, or other federal tax benefit that was originally claimed or could have been claimed for, that contribution, including:

1. The exclusions under s. 2503(b) or s. 2503(c) of the Internal Revenue Code;

2. A marital deduction under s. 2056, s. 2056A, or s. 2523 of the Internal Revenue Code;

3. A charitable deduction under s. 170(a), s. 642(c), s. 2055(a), or s. 2522(a) of the Internal Revenue Code;

4. Direct skip treatment under s. 2642(c) of the Internal Revenue Code; or



5. Any other tax benefit for income, gift, estate, or generation-skipping transfer tax purposes under the Internal Revenue Code.

(b) If S corporation stock is held in the first trust, an authorized trustee may not distribute all or part of that stock to a second trust that is not a permitted shareholder under s. 1361(c)(2) of the Internal Revenue Code. If the first trust holds stock in an S corporation and is, or but for provisions of paragraphs (a), (c), and (d) would be, a qualified subchapter S trust within the meaning of s. 1361(d) of the Internal Revenue Code, the second trust instrument may not include or omit a term that prevents it from qualifying as a qualified subchapter S trust.

(c) Except as provided in paragraphs (a), (b), and (d), an authorized trustee may distribute the principal of a first trust to a second trust regardless of whether the settlor is treated as the owner of either trust under ss. 671-679 of the Internal Revenue Code; however, if the settlor is not treated as the owner of the first trust, he or she may not be treated as the owner of the second trust unless he or she at all times has the power to cause the second trust to cease being treated as if it were owned by the settlor.

(d) If an interest in property which is subject to the minimum distribution rules of s. 401(a)(9) of the Internal Revenue Code is held in trust, an authorized trustee may not distribute such an interest to a second trust under subsection (2), subsection (3), or subsection (4) if the distribution would shorten the otherwise applicable maximum distribution period.

(6) EXERCISE BY WRITING.—The exercise of a power to invade

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principal under subsection (2), subsection (3), or subsection (4) must ~~The exercise of a power to invade principal under subsection (1) shall~~ be by a written ~~an~~ instrument ~~in writing,~~ signed and acknowledged by the authorized trustee~~,~~ and filed with the records of the first trust.

(7)~~(3)~~ RESTRICTIONS ON EXERCISE OF POWER.—The exercise of a power to invade principal under subsection (2), subsection (3), or subsection (4):

(a) Is ~~(1) shall be~~ considered the exercise of a power of appointment, excluding ~~other than~~ a power to appoint to the authorized trustee, the authorized trustee's creditors, the authorized trustee's estate, or the creditors of the authorized trustee's estate.

(b) Is~~, and Shall be~~ subject to the provisions of s. 689.225 covering the time at which the permissible period of the rule against perpetuities begins and the law that determines the permissible period of the rule against perpetuities of the first trust.

(c) May be to a second trust created or administered under the law of any jurisdiction.

(d) May not:

1. Increase the authorized trustee's compensation beyond the compensation specified in the first trust instrument; or

2. Relieve the authorized trustee from liability for breach of trust or provide for indemnification of the authorized trustee for any liability or claim to a greater extent than the first trust instrument; however, the exercise of the power may divide and reallocate fiduciary powers among fiduciaries and relieve a fiduciary from liability for an act or failure to act


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of another fiduciary as otherwise allowed under law or common law.

(8) NOTICE.—

(a) ~~(4)~~ The authorized trustee shall provide written notification of the manner in which he or she intends to exercise his or her power to invade principal to ~~notify~~ all ~~qualified beneficiaries~~ of the following parties ~~first trust, in writing,~~ at least 60 days before ~~prior to~~ the effective date of the authorized trustee's exercise of such power ~~the trustee's power to invade principal~~ pursuant to subsection (2), subsection (3), or subsection (4): ~~(1), of the manner in which the trustee intends to exercise the power.~~

1. All qualified beneficiaries of the first trust;

2. If paragraph (5)(c) applies, the settlor of the first trust;

3. All trustees of the first trust; and

4. Any person who has the power to remove or replace the authorized trustee of the first trust.

(b) The authorized ~~A copy of the proposed instrument exercising the power shall satisfy the~~ trustee's ~~notice~~ obligation to provide notice under this subsection is satisfied when he or she provides copies of the proposed instrument exercising the power, the trust instrument of the first trust, and the proposed trust instrument of the second trust.

(c) If all of those required to be notified ~~qualified beneficiaries~~ waive the notice period by signed written instrument delivered to the authorized trustee, the authorized trustee's power to invade principal shall be exercisable immediately.


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(d) The authorized trustee's notice under this subsection does ~~shall~~ not limit the right of any beneficiary to object to the exercise of the authorized trustee's power to invade principal except as otherwise provided in other applicable provisions of this code.

(9)~~(5)~~ INAPPLICABILITY OF SPENDTHRIFT CLAUSE OR OTHER PROHIBITION.—The exercise of the power to invade principal under subsection (2), subsection (3), or subsection (4) ~~(1)~~ is not prohibited by a spendthrift clause or by a provision in the trust instrument that prohibits amendment or revocation of the trust.

(10)~~(6)~~ NO DUTY TO EXERCISE.—Nothing in this section is intended to create or imply a duty to exercise a power to invade principal, and no inference of impropriety may ~~shall~~ be made as a result of an authorized trustee's failure to exercise ~~a trustee not exercising~~ the power to invade principal conferred under subsections (2), (3), and (4) ~~subsection (1)~~.

(11)~~(7)~~ NO ABRIDGEMENT OF COMMON LAW RIGHTS.—~~The provisions of~~ This section may ~~shall~~ not be construed to abridge the right of any trustee who has a power of invasion to appoint property in further trust that arises under the terms of the first trust or under any other section of this code or under another provision of law or under common law.

Section 18. Subsection (1) of section 736.0708, Florida Statutes, is amended to read:

736.0708 Compensation of trustee.—

(1) If the terms of a trust do not specify a ~~the~~ trustee's compensation, the ~~a~~ trustee, including each cotrustee, is entitled to compensation that is reasonable under the



circumstances. In the aggregate, the reasonable compensation for multiple trustees may be greater than for a single trustee.

Section 19. Subsection (3) of section 736.08135, Florida Statutes, is amended to read:

736.08135 Trust accountings.—

(3) Subsections (1) and (2) govern the form and content of ~~This section applies to~~ all trust accountings rendered for any accounting periods beginning on or after January 1, 2003, and all trust accountings rendered on or after July 1, 2017. This subsection does not affect the beginning period from which a trustee is required to render a trust accounting.

Section 20. Subsection (3) of section 736.1008, Florida Statutes, is amended to read:

736.1008 Limitations on proceedings against trustees.—

(3) When a trustee has not issued a final trust accounting or has not given written notice to the beneficiary of the availability of the trust records for examination and that claims with respect to matters not adequately disclosed may be barred, a claim against the trustee for breach of trust based on a matter not adequately disclosed in a trust disclosure document is barred as provided in chapter 95 and accrues when the beneficiary has actual knowledge of:

(a) The facts upon which the claim is based, if such actual knowledge is established by clear and convincing evidence; or

(b) The trustee’s repudiation of the trust or adverse possession of trust assets.

Paragraph (a) applies to claims based upon acts or omissions occurring on or after July 1, 2008. A beneficiary’s actual


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knowledge that he or she has not received a trust accounting does not cause a claim to accrue against the trustee for breach of trust based upon the failure to provide a trust accounting required by s. 736.0813 or former s. 737.303 and does not commence the running of any period of limitations or laches for such a claim, and paragraph (a) and chapter 95 do not bar any such claim.

Section 21. The changes to ss. 736.08135 and 736.1008, Florida Statutes, made by this act are intended to clarify existing law, are remedial in nature, and apply retroactively to all cases pending or commenced on or after July 1, 2017.

Section 22. Present subsections (2), (3), and (4) of section 736.1201, Florida Statutes, are redesignated as subsections (3), (4), and (5), respectively, present subsection (5) of that section is amended, and a new subsection (2) is added to that section, to read:

736.1201 Definitions.—As used in this part:

(2) "Delivery of notice" means delivery of a written notice required under this part using any commercial delivery service requiring a signed receipt or by any form of mail requiring a signed receipt.

~~(5) "State attorney" means the state attorney for the judicial circuit of the principal place of administration of the trust pursuant to s. 736.0108.~~

Section 23. Section 736.1205, Florida Statutes, is amended to read:

736.1205 Notice that this part does not apply.—In the case of a power to make distributions, if the trustee determines that the governing instrument contains provisions that are more



restrictive than s. 736.1204(2), or if the trust contains other powers, inconsistent with the provisions of s. 736.1204(3) that specifically direct acts by the trustee, the trustee shall notify the ~~state~~ Attorney General by delivery of notice when the trust becomes subject to this part. Section 736.1204 does not apply to any trust for which notice has been given pursuant to this section unless the trust is amended to comply with the terms of this part.

Section 24. Sections 1 through 10 and section 15 of this act apply to electronic wills executed on or after July 1, 2017.

Section 25. Subsection (2) of section 736.1206, Florida Statutes, is amended to read:

736.1206 Power to amend trust instrument.—

(2) In the case of a charitable trust that is not subject to ~~the provisions of~~ subsection (1), the trustee may amend the governing instrument to comply with ~~the provisions of~~ s. 736.1204(2) after delivery of notice to, and with the consent of, the ~~state~~ Attorney General.

Section 26. Section 736.1207, Florida Statutes, is amended to read:

736.1207 Power of court to permit deviation.—This part does not affect the power of a court to relieve a trustee from any restrictions on the powers and duties that are placed on the trustee by the governing instrument or applicable law for cause shown and on complaint of the trustee, the ~~state~~ Attorney General, or an affected beneficiary and notice to the affected parties.

Section 27. Paragraph (b) of subsection (4) of section 736.1208, Florida Statutes, is amended to read:

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736.1208 Release; property and persons affected; manner of effecting.—

(4) Delivery of a release shall be accomplished as follows:

(b) If the release is accomplished by reducing the class of permissible charitable organizations, by delivery of notice ~~a copy~~ of the release to the ~~state~~ Attorney General, including a copy of the release.

Section 28. Section 736.1209, Florida Statutes, is amended to read:

736.1209 Election to come under this part.—With the consent of that organization or organizations, a trustee of a trust for the benefit of a public charitable organization or organizations may come under s. 736.1208(5) by delivery of notice to ~~filing with~~ the ~~state~~ Attorney General of the ~~an~~ election, accompanied by the proof of required consent. Thereafter the trust shall be subject to s. 736.1208(5).

Section 29. Except as otherwise provided in this act and except for this section, which shall take effect upon becoming a law, 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 lines 2 - 66

and insert:

An act relating to wills and trusts; amending s. 731.201, F.S.; revising the definition of the term "will" to include electronic wills; amending s. 732.506, F.S.; excluding electronic wills from specified methods to revoke a will; creating s.



732.521, F.S.; providing a short title; creating s. 732.522, F.S.; defining terms; creating s. 732.523, F.S.; specifying requirements that must be satisfied in the execution of electronic wills; creating s. 732.524, F.S.; providing requirements for self-proof of electronic wills; creating s. 732.525, F.S.; specifying the circumstances under which a person is deemed to be in the presence of or appearing before another person; providing that an electronic record satisfies the requirement that a record be in writing; providing that an electronic signature satisfies the requirement that a document be signed; providing requirements for certain documents to be deemed executed in this state; creating s. 732.526, F.S.; authorizing an electronic will of a nonresident of this state which is properly executed in this or another state to be offered for and admitted to probate in this state; providing the venue for the probate of such electronic will; creating s. 732.527, F.S.; specifying requirements for service as a qualified custodian; requiring qualified custodians to provide access to or information concerning the electronic will, or the electronic record containing the electronic will, only to specified persons or as directed by a court; authorizing a qualified custodian to destroy the electronic record of an electronic will after a certain date; providing conditions under which a qualified custodian may cease serving as a qualified custodian; requiring a qualified custodian to cease



679 serving in such capacity upon the written request of
680 the testator; requiring that a successor qualified
681 custodian agree in writing to serve in that capacity
682 for an electronic will before succeeding to office;
683 specifying what constitutes an affidavit of a
684 qualified custodian; requiring a qualified custodian
685 to deliver certain documents upon request from the
686 testator; prohibiting a qualified custodian from
687 charging the testator a fee for such documents under
688 certain circumstances; providing that a qualified
689 custodian is liable for certain damages under certain
690 circumstances; prohibiting a qualified custodian from
691 terminating or suspending access to, or downloads of,
692 an electronic will by the testator; requiring a
693 qualified custodian to deposit an electronic will with
694 the court upon receiving information that the testator
695 is dead; prohibiting a qualified custodian from
696 charging a fee for certain actions taken upon the
697 death of the testator; requiring a qualified custodian
698 to keep certain information confidential; amending s.
699 733.201, F.S.; providing for the proof of electronic
700 wills; providing requirements for admitting an
701 electronic will that is not self-proved into probate;
702 providing that a paper copy of an electronic will
703 constitutes an "original" of the electronic will
704 subject to certain conditions; amending s. 736.0103,
705 F.S.; redefining the term "interests of the
706 beneficiaries"; amending s. 736.0105, F.S.; deleting a
707 requirement that a trust be for the benefit of the



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trust's beneficiaries; amending s. 736.0109, F.S.; revising provisions relating to notice or sending of electronic trust documents; providing requirements for such documents to be deemed sent; requiring a certain authorization to specify documents subject to electronic posting; revising requirements for a recipient to electronically access such documents; prohibiting the termination of a recipient's electronic access to such documents from invalidating certain notice or sending of electronic trust documents; tolling specified limitations periods under certain circumstances; providing requirements for electronic access to such documents to be deemed terminated by a sender; providing applicability; amending s. 736.0110, F.S.; providing that the Attorney General has standing to assert certain rights in certain proceedings; amending s. 736.0403, F.S.; providing that, for purposes of establishing the validity of the testamentary aspects of a revocable trust, the qualified custodian of the trust instrument may not also be a trustee of the trust; amending s. 736.0404, F.S.; deleting a restriction on the purpose for which a trust is created; amending s. 736.04117, F.S.; defining and redefining terms; authorizing an authorized trustee to appoint all or part of the principal of a trust to a second trust under certain circumstances; providing requirements for the second trust and its beneficiaries; providing that the second trust may retain, omit, or create specified powers;



737 authorizing the term of the second trust to extend
738 beyond the term of the first trust; providing
739 requirements for distributions to a second trust when
740 the authorized trustee does not have absolute power;
741 providing requirements for such second trust;
742 providing requirements for grants of power by the
743 second trust; authorizing a second trust created by an
744 authorized trustee without absolute power to grant
745 absolute power to the second trust's trustee;
746 authorizing an authorized trustee to appoint the
747 principal of a first trust to a supplemental needs
748 trust under certain circumstances; providing
749 requirements for such supplemental needs trust;
750 prohibiting an authorized trustee from distributing
751 the principal of a trust in a manner that would reduce
752 specified tax benefits; prohibiting the distribution
753 of S corporation stock from a first trust to a second
754 trust under certain circumstances; prohibiting a
755 settlor from being treated as the owner of a second
756 trust if he or she was not treated as the owner of the
757 first trust; prohibiting an authorized trustee from
758 distributing a trust's interest in property to a
759 second trust if it is subject to specified rules of
760 the Internal Revenue Code; prohibiting the exercise of
761 power to invade a trust's principal to increase an
762 authorized trustee's compensation or relieve him or
763 her from certain liability; specifying who an
764 authorized trustee must notify when he or she
765 exercises his or her power to invade the trust's



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principal; specifying the documents that the authorized trustee must provide with such notice; amending s. 736.0708, F.S.; providing that a cotrustee is entitled to reasonable compensation when the trust does not specify compensation; providing that reasonable compensation may be greater for multiple trustees than for a single trustee; amending s. 736.08135, F.S.; revising applicability; amending s. 736.1008, F.S.; clarifying that certain knowledge by a beneficiary does not cause a claim to accrue for breach of trust or commence the running of a period of limitations or laches; providing legislative intent; providing for retroactive application; amending s. 736.1201, F.S.; defining the term "delivery of notice"; conforming a provision to changes made by the act; amending s. 736.1205, F.S.; requiring an authorized trustee to provide certain notice to the Attorney General rather than the state attorney; providing applicability; amending ss. 736.1206, 736.1207, 736.1208, and 736.1209, F.S.; conforming provisions to changes made by the act; providing effective dates.

By the Committees on Banking and Insurance; and Judiciary; and Senator Passidomo

597-03982-17 2017206c2

A bill to be entitled

An act relating to electronic wills; amending s. 731.201, F.S.; revising the definition of the term "will" to include electronic wills; amending s. 732.506, F.S.; excluding electronic wills from specified methods to revoke a will; creating s. 732.521, F.S.; providing a short title; creating s. 732.522, F.S.; defining terms; creating s. 732.523, F.S.; specifying requirements that must be satisfied in the execution of electronic wills; creating s. 732.524, F.S.; providing requirements for self-proof of electronic wills; creating s. 732.525, F.S.; specifying the circumstances under which a person is deemed to be in the presence of or appearing before another person; providing that an electronic record satisfies the requirement that a record be in writing; providing that an electronic signature satisfies the requirement that a document be signed; providing requirements for certain documents to be deemed executed in this state; creating s. 732.526, F.S.; authorizing an electronic will of a nonresident of this state which is properly executed in this or another state to be offered for and admitted to probate in this state; providing the venue for the probate of such electronic will; creating s. 732.527, F.S.; specifying requirements for service as a qualified custodian; requiring qualified custodians to provide access to or information concerning the electronic will, or the electronic record containing

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the electronic will, only to specified persons or as directed by a court; authorizing a qualified custodian to destroy the electronic record of an electronic will after a certain date; providing conditions under which a qualified custodian may cease serving as a qualified custodian; requiring a qualified custodian to cease serving in such capacity upon the written request of the testator; requiring that a successor qualified custodian agree in writing to serve in that capacity for an electronic will before succeeding to office; specifying what constitutes an affidavit of a qualified custodian; requiring a qualified custodian to deliver certain documents upon request from the testator; prohibiting a qualified custodian from charging the testator a fee for such documents under certain circumstances; providing that a qualified custodian is liable for certain damages under certain circumstances; prohibiting a qualified custodian from terminating or suspending access to, or downloads of, an electronic will by the testator; requiring a qualified custodian to deposit an electronic will with the court upon receiving information that the testator is dead; prohibiting a qualified custodian from charging a fee for certain actions taken upon the death of the testator; requiring a qualified custodian to keep certain information confidential; amending s. 733.201, F.S.; providing for the proof of electronic wills; providing requirements for admitting an electronic will that is not self-proved into probate;

providing that a paper copy of an electronic will constitutes an "original" of the electronic will subject to certain conditions; amending s. 736.0403, F.S.; providing that, for purposes of establishing the validity of the testamentary aspects of a revocable trust, the qualified custodian of the trust instrument may not also be a trustee of the trust; providing applicability; providing an effective date.

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

Section 1. Subsection (40) of section 731.201, Florida Statutes, is amended to read:

731.201 General definitions.—Subject to additional definitions in subsequent chapters that are applicable to specific chapters or parts, and unless the context otherwise requires, in this code, in s. 409.9101, and in chapters 736, 738, 739, and 744, the term:

(40) "Will" means an instrument, including a codicil, executed by a person in the manner prescribed by this code, which disposes of the person's property on or after his or her death and includes an instrument which merely appoints a personal representative or revokes or revises another will. The term "will" includes an electronic will as defined in s. 732.522.

Section 2. Section 732.506, Florida Statutes, is amended to read:

732.506 Revocation by act.—A will or codicil, other than an electronic will, is revoked by the testator, or some other

person in the testator's presence and at the testator's direction, by burning, tearing, canceling, defacing, obliterating, or destroying it with the intent, and for the purpose, of revocation.

Section 3. Section 732.521, Florida Statutes, is created to read:

732.521 Short title.—Sections 732.521-732.527 may be cited as the "Florida Electronic Wills Act."

Section 4. Section 732.522, Florida Statutes, is created to read:

732.522 Definitions.—As used in ss. 732.521-732.527, the term:

(1) "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.

(2) "Electronic signature" means an electronic mark visibly manifested in a record as a signature and executed or adopted by a person with the intent to sign the record.

(3) "Electronic will" means a will, including a codicil, executed in accordance with s. 732.523 by a person in the manner prescribed by this act, which disposes of the person's property on or after his or her death and includes an instrument that appoints a personal representative or revokes or revises another will or electronic will.

(4) "Qualified custodian" means a person who meets the requirements of s. 732.527(1).

Section 5. Section 732.523, Florida Statutes, is created to read:

732.523 Electronic wills.—Notwithstanding s. 732.502:

(1) An electronic will must meet all of the following

requirements:

(a) Exist in an electronic record that is unique and identifiable.

(b) Be electronically signed by the testator in the presence of at least two attesting witnesses.

(c) Be electronically signed by the attesting witnesses in the presence of the testator and in the presence of each other.

(2) Except as otherwise provided in this act, all questions as to the force, effect, validity, and interpretation of an electronic will that complies with this section must be determined in the same manner as in the case of a will executed in accordance with s. 732.502.

Section 6. Section 732.524, Florida Statutes, is created to read:

732.524 Self-proof of electronic will.—An electronic will is self-proved if all of the following requirements are met:

(1) The electronic will is executed in conformity with this act.

(2) The acknowledgment of the electronic will by the testator and the affidavits of the witnesses are made in accordance with s. 732.503 and are part of the electronic record containing the electronic will, or are attached to, or are logically associated with, the electronic will.

(3)(a) The electronic will designates a qualified custodian;

(b) The electronic record that contains the electronic will is held in the custody of a qualified custodian at all times before being offered to the court for probate; and

(c) The qualified custodian who has custody of the

electronic will at the time of the testator's death:

1. Certifies under oath that, to the best knowledge of the qualified custodian, the electronic record that contains the electronic will was at all times before being offered to the court in the custody of a qualified custodian in compliance with s. 732.527 and that the electronic will has not been altered in any way since the date of its execution; and

2. If the execution of the electronic will included the use of video conference under s. 732.525(1)(b), certifies under oath that the audio and video recording required under s. 732.525(1)(b)9. is in the qualified custodian's custody in the electronic record that contains the electronic will and is available for inspection by the court.

Section 7. Section 732.525, Florida Statutes, is created to read:

732.525 Method and place of execution.—For purposes of this act, the execution and filing of a document with the court as provided in this act or the Florida Probate Rules, the execution of a durable power of attorney under s. 709.2105, and the execution of a living will under s. 765.302:

(1) An individual is deemed to be in the presence of or appearing before another individual if the individuals are either:

(a) In the same physical location; or

(b) In different physical locations, but can communicate with each other by means of live video conference, if the following requirements are met:

1. The testator or principal may not be in an end-stage condition as defined in s. 765.101 or a vulnerable adult as

defined in s. 415.102. The contestant of the document has the burden of proving that the testator or principal was in an end-stage condition or was a vulnerable adult at the time of executing the document.

2. The signal transmission must be live and in real time.

3. The signal transmission must be secure from interception through lawful means by anyone other than the persons communicating.

4. The persons communicating must simultaneously see and speak to one another with reasonable clarity.

5. In the video conference, the persons communicating must establish the identity of the testator or principal by:

a. Personal knowledge, if the person asserting personal knowledge explains how the identity of the testator or principal has come to be known to, and the length of time for which it has been known by, such person; or

b. Presentation of any of the forms of identification of the testator or principal, as set forth in s. 117.05(5)(b)2.a.-i.

6. In the video conference, the persons communicating must demonstrate awareness of the events taking place, which may be achieved, without limitation, by stating their names and identifying any document they intend to sign.

7. At least one of the persons communicating must be either:

a. An attorney licensed to practice law in this state:

(I) Who electronically signs the document as a witness;

(II) Whose status as an attorney licensed to practice law in this state is indicated adjacent to his or her electronic

signature; and

(III) Whose electronic signature is accompanied by his or her statement that, to the best of his or her knowledge, the execution of the document complied with the requirements of this section; or

b. A Florida notary public:

(I) Who electronically signs the document;

(II) Whose electronic signature is accompanied by a notary public seal that meets the requirements of s. 117.021(3); and

(III) Whose electronic signature and seal are accompanied by his or her certification that, to the best of his or her knowledge, the execution of the document complied with the requirements of this section.

If a document is required to be witnessed or acknowledged, the witness or notary fulfilling that requirement may be the same witness or notary who fulfills the requirement of this subparagraph.

8. In the video conference, the testator or principal must provide verbal answers to all of the following questions:

a. Are you over the age of 18?

b. Are you under the influence of any drugs or alcohol that impairs your ability to make decisions?

c. Are you of sound mind?

d. Did anyone assist you in accessing this video conference? If so, who?

e. Has anyone forced or influenced you to include anything in this document which you do not wish to include?

f. Are you signing this document voluntarily?

9. A time-stamped recording of the entire video conference must be identifiable with the document being signed and stored in the electronic record containing the document by a qualified custodian in the manner required pursuant to s. 732.527(1)(c) for the storage of electronic records containing electronic wills.

a. Without limitation, a recording is identifiable with a document if the recording and document share an identification number.

b. If the recording is not reasonably accessible by a person presented with the document, such person may treat the document as if it does not include the signature of any signatory who appeared by means of live video conference; however, an electronic will whose execution included the use of video conference under this section may be proved as provided in s. 733.201(4). Without limitation, a recording is reasonably accessible if it is accessible at no charge over the Internet pursuant to instructions set forth in the document.

(2) If a law requires a record to be in writing, an electronic record satisfies such provision.

(3) Any requirement that a document be signed may be satisfied by an electronic signature.

(4) A document that is signed electronically is deemed to be executed in this state if all of the following requirements are met:

(a) The document states that the person creating the document intends to execute and understands that he or she is executing the document in, and pursuant to the laws of, this state.

(b) The person creating the document is, or the attesting witnesses or Florida notary public whose electronic signatures are obtained in the execution of the document are, physically located within this state at the time the document is executed.

(c) In the case of a self-proved electronic will, the electronic will designates a qualified custodian who is domiciled in and a resident of this state or incorporated or organized in this state.

Section 8. Section 732.526, Florida Statutes, is created to read:

732.526 Probate.—An electronic will of a nonresident of this state which is executed or deemed executed in another state in accordance with the laws of that state or of this state may be offered for and admitted to original probate in this state and is subject to the jurisdiction of the courts of this state. The venue for the probate of electronic wills is as provided in s. 733.101(1) or, in the case of the electronic will of a nonresident, may be the county in which the qualified custodian or attorney for the petitioner or personal representative has his or her domicile or registered office.

Section 9. Section 732.527, Florida Statutes, is created to read:

732.527 Qualified custodians.—

(1) To serve as a qualified custodian of an electronic will, a person or entity must:

(a) Not be named as a fiduciary under the electronic will or an heir or devisee, as defined in s. 731.201, of the testator;

(b) Be domiciled in and a resident of this state or be

incorporated or organized in this state;

(c) In the course of maintaining custody of electronic wills, regularly employ, and store electronic records containing electronic wills in, a system that:

1. Protects electronic records from destruction, alteration, or unauthorized access; and

2. Detects any change to an electronic record; and

(d) Furnish for any court hearing involving an electronic will that is currently or was previously stored by the qualified custodian any information requested by the court pertaining to the qualified custodian's qualifications, policies, and practices related to the creation, sending, communication, receipt, maintenance, storage, and production of electronic wills.

(2) The qualified custodian of an electronic will shall provide access to or information concerning the electronic will, or the electronic record containing the electronic will, only:

(a) To the testator;

(b) To persons authorized by the testator in the electronic will or in written instructions signed by the testator in accordance with s. 732.502;

(c) After the death of the testator, to the testator's nominated personal representative; or

(d) At any time, as directed by a court of competent jurisdiction.

(3) The qualified custodian of the electronic record of an electronic will may elect to destroy such record, including any of the documentation required to be created and stored under paragraph (1)(d), at any time after the earlier of the fifth

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anniversary of the conclusion of the administration of the estate of the testator or 20 years after the death of the testator.

(4) A qualified custodian who at any time maintains custody of the electronic record of an electronic will may elect to cease serving in such capacity by:

(a) Delivering the electronic will or the electronic record containing the electronic will to the testator, if then living, or, after the death of the testator, by filing the will with the court in accordance with s. 732.901; and

(b) If the outgoing qualified custodian intends to designate a successor qualified custodian, by doing the following:

1. Providing written notice to the testator of the name, address, and qualifications of the proposed successor qualified custodian. The testator must provide written consent before the electronic record, including the electronic will, is delivered to a successor qualified custodian;

2. Delivering the electronic record containing the electronic will to the successor qualified custodian; and

3. Delivering to the successor qualified custodian an affidavit of the outgoing qualified custodian stating that:

a. The outgoing qualified custodian is eligible to act as a qualified custodian in this state;

b. The outgoing qualified custodian is the qualified custodian designated by the testator in the electronic will or appointed to act in such capacity under this paragraph;

c. The electronic will has at all times been in the custody of one or more qualified custodians in compliance with this

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section since the time the electronic record was created, and identifying such qualified custodians; and

d. To the best of the outgoing qualified custodian's knowledge, the electronic will has not been altered since the time it was created.

For purposes of making this affidavit, the outgoing qualified custodian may rely conclusively on any affidavits delivered by a predecessor qualified custodian in connection with its designation or appointment as qualified custodian; however, all such affidavits must be delivered to the successor qualified custodian.

(5) Upon the request of the testator which is made in a writing signed in accordance with s. 732.502, a qualified custodian who at any time maintains custody of the electronic record of the testator's electronic will must cease serving in such capacity and must deliver to a successor qualified custodian designated in writing by the testator the electronic record containing the electronic will and the affidavit required in subparagraph (4)(b)3.

(6) A qualified custodian may not succeed to office as a qualified custodian of an electronic will unless he or she agrees in writing to serve in such capacity.

(7) If a qualified custodian is an entity, an affidavit, or an appearance by the testator in the presence of a duly authorized officer or agent of such entity, acting in his or her own capacity as such, shall constitute an affidavit, or an appearance by the testator in the presence of the qualified custodian.

(8) A qualified custodian must provide a paper copy of an electronic will and the electronic record containing the electronic will to the testator immediately upon request. For the first such request in any 365-day period, the testator may not be charged a fee for being provided with these documents.

(9) The qualified custodian shall be liable for any damages caused by the negligent loss or destruction of the electronic record, including the electronic will, while it is in the possession of the qualified custodian. A qualified custodian may not limit liability for such damages.

(10) A qualified custodian may not terminate or suspend access to, or downloads of, the electronic will by the testator.

(11) Upon receiving information that the testator is dead, a qualified custodian must deposit the electronic will with the court in accordance with s. 732.901. A qualified custodian may not charge a fee for depositing the electronic will with the clerk, providing the affidavit is made in accordance with s. 732.503, or furnishing in writing any information requested by a court under paragraph (1)(d).

(12) Except as provided in this act, a qualified custodian must at all times keep information provided by the testator confidential and may not disclose such information to any third party.

Section 10. Section 733.201, Florida Statutes is amended to read:

733.201 Proof of wills.—

(1) Self-proved wills executed in accordance with this code may be admitted to probate without further proof.

(2) A will, other than an electronic will, may be admitted

to probate upon the oath of any attesting witness taken before any circuit judge, commissioner appointed by the court, or clerk.

(3) If it appears to the court that the attesting witnesses cannot be found or that they have become incapacitated after the execution of the will or their testimony cannot be obtained within a reasonable time, a will, other than an electronic will, may be admitted to probate upon the oath of the personal representative nominated by the will as provided in subsection (2), whether or not the nominated personal representative is interested in the estate, or upon the oath of any person having no interest in the estate under the will stating that the person believes the writing exhibited to be the true last will of the decedent.

(4) If an electronic will, including an electronic will whose execution included the use of a video conference under s. 732.525(1)(b), is not self-proved, an electronic will may be admitted to probate upon the oath of the two attesting witnesses for the electronic will taken before any circuit judge, any commissioner appointed by the court, or the clerk. If it appears to the court that the attesting witnesses cannot be found, that they have become incapacitated after the execution of the electronic will, or that their testimony cannot be obtained within a reasonable time, an electronic will may be admitted to probate upon the oath of two disinterested witnesses providing all of the following information:

(a) The date on which the electronic will was created, if the date is not indicated in the electronic will itself.

(b) When and how the electronic will was discovered, and by

whom.

(c) All of the people who had access to the electronic will.

(d) The method by which the electronic will was stored and the safeguards that were in place to prevent alterations to the electronic will.

(e) A statement as to whether the electronic will has been altered since its creation.

(f) A statement that the electronic will is a true, correct, and complete tangible manifestation of the testator's will.

(g) If the execution of an electronic will included the use of a video conference under s. 732.525(1)(b), a statement as to whether a recording of the video conference is available for inspection by the court or cannot be found after a diligent search.

(5) A paper copy of an electronic will which is a true and correct copy of the electronic will may be offered for and admitted to probate and shall constitute an "original" of the electronic will.

Section 11. Paragraph (b) of subsection (2) of section 736.0403, Florida Statutes, is amended to read:

736.0403 Trusts created in other jurisdictions; formalities required for revocable trusts.—

(2) Notwithstanding subsection (1):

(b) The testamentary aspects of a revocable trust, executed by a settlor who is a domiciliary of this state at the time of execution, are invalid unless the trust instrument is executed by the settlor with the formalities required for the execution

of a will under s. 732.502 or an electronic will under s. 732.523 which is self-proved; however, the qualified custodian of the trust instrument may not also be a trustee of the trust ~~in this state~~. For purposes of this subsection, the term "testamentary aspects" means those provisions of the trust instrument that dispose of the trust property on or after the death of the settlor other than to the settlor's estate.

Section 12. This act applies to electronic wills executed on or after July 1, 2017.

Section 13. This act shall take effect July 1, 2017.

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THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR KATHLEEN PASSIDOMO
28th District

COMMITTEES:
Ethics and Elections, *Chair*
Healthy Policy, *Vice Chair*
Appropriations Subcommittee on Health and Human Services
Appropriations Subcommittee on Transportation, Tourism, and Economic Development
Commerce and Tourism

SELECT COMMITTEE:
Joint Select Committee on Collective Bargaining

JOINT COMMITTEE:
Joint Legislative Auditing Committee

April 18, 2017

The Honorable Lizbeth Benacquisto, Chair
Senate Committee on Rules
Florida Senate
402 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chair Benacquisto:

Senate CS/CS/SB 206, Electronic Wills, has been referred to the Committee on Rules. I would appreciate the placing of this bill on the committee agenda at your earliest convenience.

Thank you for your consideration.

Sincerely,

Kathleen C. Passidomo

Cc: John Phelps, Staff Director
Cynthia Futch, Committee Assistant

REPLY TO:
☐ 3299 East Tamiami Trail, Suite 203, Naples, Florida 34112 (239) 417-6205
☐ 318 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5028

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

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

Duplicate

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/2017
Meeting Date

206
Bill Number (if applicable)

852238
Amendment Barcode (if applicable)

Topic Electronic Wills

Name Greg Black

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Speaking: ☑ For ☐ Against ☐ Information

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

Representing Attorneys' Title Fund Services

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

206

Meeting Date

Bill Number (if applicable)

Topic Electronic Wills Bill

Amendment Barcode (if applicable)

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Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against

(The Chair will read this information into the record.)

Representing Florida Bankers Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/17
Meeting Date

206
Bill Number (if applicable)

Topic Electronic Wills

Amendment Barcode (if applicable)

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

Representing AARP

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

25 APR 17
Meeting Date

206
Bill Number (if applicable)

Topic ELECTRONIC WILLS

Amendment Barcode (if applicable)

Name MICHAEL MCQUONE (MICK-CUE-ONE)

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Speaking: ☐ For ☐ Against ☒ Information

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

Representing FLORIDA CONFERENCE OF CATHOLIC BISHOPS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/17
Meeting Date

206
Bill Number (if applicable)

Topic Electronic Wills

Amendment Barcode (if applicable)

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Speaking: ☑ For ☐ Against ☐ Information

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

Representing Willing.com

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/17
Meeting Date

SB206
Bill Number (if applicable)

Topic Electronic Wills

Amendment Barcode (if applicable)

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Speaking: ☐ For ☒ Against ☐ Information

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

Representing Elder Law Section of Fla Bar / Academy of Fla. Elder Law Attorneys

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/17
Meeting Date

206
Bill Number (if applicable)

Topic Electronic Wills

Amendment Barcode (if applicable)

Name Sarah Buthers

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Speaking: ☐ For ☒ Against ☐ Information

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

Representing Real Property Probate + Trust Law - FL 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.

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S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/CS/CS/SB 588

INTRODUCER: Rules Committee; Criminal Justice Committee; Health Policy Committee; and Senator Passidomo

SUBJECT: Drug Overdoses

DATE: April 25, 2017 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van Winkle	Stovall	HP	**Fav/CS**
2.	Cellon	Hrdlicka	CJ	**Fav/CS**
3.	Rossitto-Van Winkle	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 588 requires hospitals with emergency departments to develop best practice policies that focus upon the prevention of unintentional drug overdoses. The bill sets forth suggestions that hospitals may include in the policy. The bill makes it clear that no new cause of action is created by requiring hospitals with emergency departments to develop a best practices policy to promote the prevention of unintentional overdoses.

The bill permits the voluntary reporting of a suspected or actual overdose of a controlled substance to the Department of Health (DOH) by basic and advanced life support service providers that treat and release, or transport, a person in response to an emergency call.

The bill defines overdose as:

- A condition, including extreme physical illness, decreased level of consciousness, respiratory depression, coma, or death resulting from the consumption or use of any controlled substance which requires medical attention, assistance, or treatment; or
- Clinical suspicion for drug overdose, such as respiratory depression, unconsciousness, or altered mental status which is not explained by another condition.

If a report is made, it must contain the date and time of the overdose, the approximate address of where the patient was picked up or where the overdose took place, whether an emergency opioid antagonist was administered, and whether the overdose was fatal or non-fatal. Additionally, a report must include the gender and approximate age of the patient and the suspected controlled substances involved only if permitted by the reporting mechanism. Reporters must use best efforts to make the report within 120 hours.

The DOH must make the data received available to law enforcement, public health, fire rescue, and EMS agencies in each county within 120 hours after receipt. Quarterly, the DOH must provide summarized reports to the Statewide Drug Policy Advisory Council, the Department of Children and Families (DCF), and the Florida Fusion Center, which may be used to maximize the utilization of funding programs for licensed basic and advanced life support service providers, and to disseminate available federal, state and, private funds for local substance abuse treatment services.

The bill makes a reporter exempt from civil or criminal liability for reporting, if the report is made in good faith. It also specifies that the failure to make a report is not grounds for licensure discipline.

The bill is effective October 1, 2017.

II. Present Situation:

Substance Abuse

Substance abuse refers to the harmful or hazardous use of psychoactive substances, including alcohol and illicit drugs.[1] Substance abuse disorders occur when the chronic use of alcohol or drugs causes significant impairment, such as health problems, disability, and failure to meet major responsibilities at work, school, or home.[2] Repeated drug use leads to changes in the brain's structure and function that can make a person more susceptible to developing a substance abuse disorder.[3] Brain imaging studies of persons with substance abuse disorders show physical changes in areas of the brain that are critical to judgment, decision making, learning and memory, and behavior control.[4]

According to the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, a diagnosis of substance abuse disorder is based on evidence of impaired control, social impairment, risky use, and pharmacological criteria.[5] The most common substance abuse

[1] World Health Organization, *Substance Abuse*, available at http://www.who.int/topics/substance_abuse/en/, (last visited April 7, 2017).
[2] Substance Abuse and Mental Health Services Administration, *Substance Use Disorders*, (last updated October 27, 2015) *available at* http://www.samhsa.gov/disorders/substance-use, (last visited April 7, 2017).
[3] National Institute on Drug Abuse, *Drugs, Brains, and Behavior: The Science of Addiction*, (last updated July 2014) *available at* https://www.drugabuse.gov/publications/drugs-brains-behavior-science-addiction/drug-abuse-addiction, (last visited April 7, 2017).
[4] Id.
[5] *Supra* note 2.

disorders in the United States are from the use of alcohol, tobacco, cannabis, stimulants, hallucinogens, and opioids.[6]

Opioid Abuse and Overdose

Opioids are commonly abused, with an estimated 15 million people worldwide suffering from opioid dependence.[7] Drug overdose is now the leading cause of injury-related death in the United States.[8] In 2015, Florida ranked fourth in the nation with 3,228 deaths from drug overdoses,[9] and the presence of at least one prescription drug in a person's body caused 2,530 of those deaths.[10] Statewide, in 2015, heroin caused 733 deaths, fentanyl caused 705, oxycodone caused 565, and hydrocodone caused 236; deaths caused by heroin and fentanyl increased more than 75 percent statewide when compared with 2014.[11]

Drug overdose deaths doubled in Florida from 1999 to 2012.[12] Over the same time period, drug overdose deaths occurred at a rate of 13.2 deaths per 100,000 persons.[13] The crackdown on "pill mills" dispensing prescription opioid drugs, such as oxycodone and hydrocodone, reduced the rate of death attributable to prescription drugs, but may have generated a shift to heroin use, contributing to the rise in heroin addiction.[14]

Emergency Response to Overdose

Opioid overdose can occur when an individual deliberately misuses a prescription opioid or an illicit drug such as heroin.[15] It can also occur when a patient takes an opioid as directed, but the prescriber miscalculated the opioid dose, an error was made by the dispensing pharmacist, or the patient misunderstood the directions for use.[16] Opioid overdose is life threatening and requires immediate emergency attention.[17]

To treat an opioid overdose, emergency personnel or a physician may administer an opioid antagonist such as Narcan® or Nalaxone. An opioid antagonist is a drug that blocks the effects of

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[6] *Supra* note 2.
[7] World Health Organization, *Information Sheet on Opioid Overdose*, (November 2014) *available at* http://www.who.int/substance_abuse/information-sheet/en/, (last visited April 7, 2107).
[8] Trust for America's Health, *The Facts Hurt: A State-by-State Injury Prevention Policy Report*, (June 2015) *available at* http://healthyamericans.org/reports/injuryprevention15/, (last visited April 7, 2017).
[9] Centers for Disease Control and Prevention, *Drug Overdose Death Data*, (December 16, 2016) *available at* https://www.cdc.gov/drugoverdose/data/statedeaths.html, (last visited April 7, 2017).
[10] Florida Department of Law Enforcement, *Drugs Identified in Deceased Persons by Florida Medical Examiners-2015 Annual Report*, (September 2016) *available at* https://www.fdle.state.fl.us/cms/MEC/Publications-and-Forms/Documents/Drugs-in-Deceased-Persons/2015-Annual-Drug-Report.aspx, (last visited April 7, 2017).
[11] Id. at p. iii.
[12] Florida Department of Health, *Special Emphasis Report: Drug Poisoning (Overdose) Deaths (1999-2012)*, *available at* http://www.floridahealth.gov/statistics-and-data/florida-injury-surveillance-system/_documents/CDC-Special-Emphasis-Drug-poisoning-overdose-1999-2012-B-Poston-FINAL.pdf, (last visited on April 7, 2017).
[13] Id.
[14] Christopher Ingraham, *Wonkblog: How an "abuse-deterrent" drug created the heroin epidemic*, Washington Post, (January 10, 2017) *available at* https://www.washingtonpost.com/news/wonk/wp/2017/01/10/how-an-abuse-deterrent-drug-created-the-heroin-epidemic/?utm_term=.5bee5bb67285, (last visited April 13, 2017).
[15] Substance Abuse and Mental Health Services Administration, *Opioid Overdose Prevention Toolkit*, (revised January 2016) *available at* http://store.samhsa.gov/shin/content//SMA16-4742/SMA16-4742.pdf, (last visited April 7, 2017).
[16] Id.
[17] Id.

exogenously administered opioids. Opioid antagonists are used in opioid overdoses to counteract life-threatening depression of the central nervous system and respiratory system, allowing an overdose victim to breathe normally.[18] This occurs because opioid antagonists create a stronger bond with opioid receptors than opioids. This forces the opioids from the opioid receptors and allows the transmission of signals for respiration to resume.[19]

From 2004 through 2009, emergency department visits nationally involving the nonmedical use of pharmaceuticals increased 98.4 percent, from 627,291 visits to 1,244,679 visits.[20] In 2009, almost one million emergency room visits nationally involved illicit drugs, either alone or in combination with other drugs.[21]

From 2008 to 2011, about half of all emergency department visits nationally for both unintentional and self-inflicted drug poisoning involved drugs in the categories of analgesics,[22] antipyretics,[23] and antirheumatics[24] or sedatives, hypnotics, tranquilizers, and other psychotropic agents.[25]

Opiates or related narcotics, including heroin and methadone, accounted for 14 percent of emergency department visits nationally for unintentional drug poisoning from 2008 to 2011.[26] In Florida, there were approximately 21,820 opioid-related emergency department visits in 2014.[27]

Access to Emergency Services and Care

The Agency for Health Care Administration (AHCA) regulates hospitals under ch. 395, F.S., and the general licensure provisions of part II of ch. 408, F.S. The AHCA must maintain a list of hospitals providing emergency services and care and the services that the hospital is capable of providing.[28]

Emergency services and care means medical screening, examination, and evaluation by a physician, or by authorized personnel under the supervision of a physician, to determine if an emergency medical condition exists and, if it does, the care, treatment, or surgery by a physician

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[18] Harm Reduction Coalition, *Understanding Naloxone*, *available at* http://harmreduction.org/issues/overdose-prevention/overview/overdose-basics/understanding-naloxone/, (last visited April 7, 2017).
[19] Harm Reduction Coalition, *Guide to Developing and Managing Overdose Prevention and Take-Home Naloxone Projects*, (2012), *available at* http://harmreduction.org/issues/overdose-prevention/tools-best-practices/manuals-best-practice/od-manual/, (last visited April 7, 2017).
[20] National Institute on Drug Abuse, *Drug-Related Hospital Emergency Room Visits*, (revised May 2011) *available at* https://www.drugabuse.gov/publications/drugfacts/drug-related-hospital-emergency-room-visits, (last visited April 7, 2017).
[21] Id.
[22] Analgesics are drugs that produce insensibility to pain.
[23] Antipyretics are drugs that reduce fever.
[24] Antirheumatics are drugs that alleviate or prevent inflammation or pain in muscles, joints, or fibrous tissue.
[25] Albert, M. et al., *Emergency Department Visits for Drug Poisoning: United States, 2008–2011*, NCHS Data Brief No. 196, April 2015, *available at* https://www.cdc.gov/nchs/data/databriefs/db196.htm, (last visited April 7, 2017).
[26] Id.
[27] Calculated by committee staff from data that Florida had 109.1 opioid-related emergency department visits in 2014 per 100,000 population. *See* Weiss, A.J., et al.,*Opioid-Related Inpatient Stays and Emergency Department Visits by State, 2009-2014*, HCUP Statistical Brief No. 219, (revised January 2017) p. 8, *available at* https://www.hcup-us.ahrq.gov/reports/statbriefs/sb219-Opioid-Hospital-Stays-ED-Visits-by-State.pdf, (last visited April 7, 2017).
[28] Section 395.1041(2), F.S.

necessary to relieve or eliminate the emergency medical condition, within the service capability of the facility.[29]

Section 395.1041, F.S., requires all hospitals offering emergency services to provide care to every person presenting to the hospital requesting emergency care regardless of the person's race, ethnicity, religion, national origin, citizenship, age, sex, preexisting medical condition, physical or mental handicap, insurance status, economic status, or ability to pay for medical services. A hospital is prohibited from refusing to render emergency services unless a determination is made after screening, examining, and evaluating the patient that he or she is not suffering from an emergency or the hospital does not have the capability or capacity to render emergency services. A hospital must transfer persons requiring care beyond the hospital's capability or capacity to another facility that can provide the needed services. The AHCA may deny, revoke, or suspend the license of a hospital or impose an administrative fine up to $10,000 for violating s. 395.1041, F.S., or any rules adopted thereunder.[30]

Substance Abuse Prevention – Screening, Brief Intervention, and Referral to Treatment

Screening, Brief Intervention, and Referral to Treatment (SBIRT) is "an evidence-based practice used to identify, reduce, and prevent problematic use, abuse, and dependence on alcohol and illicit drugs."[31] SBIRT is "an early intervention approach that targets those with nondependent substance use to provide effective strategies for intervention prior to the need for more extensive or specialized treatment."[32]

SBIRT consists of three major components:

- Screening – a healthcare professional assesses a patient for risky substance use behaviors using standardized screening tools. Screening can occur in any healthcare setting.
- Brief Intervention – a healthcare professional engages a patient showing risky substance use behaviors in a short conversation, providing feedback and advice.
- Referral to Treatment – a healthcare professional provides a referral to brief therapy or additional treatment to patients who screen in need of additional services.[33]

Privacy Rights of Individuals Receiving Substance Abuse Treatment

Florida Protections

Section 397.501, F.S., establishes statutory rights for individuals receiving substance abuse services, including the right to dignity, non-discriminatory services, quality services, confidentiality, counsel, and habeas corpus. In particular it prohibits service providers from disclosing records containing the identity, diagnosis, prognosis, and services provided to any

[29] Section 395.002(9), F.S.
[30] Section 395.1041(5), F.S.
[31] Substance Abuse and Mental Health Services Administration, SAMHSA-HRSA Center for Integrated Health Solutions, *SBIRT: Screening, Brief Intervention, and Referral to Treatment*, *available at* http://www.integration.samhsa.gov/clinical-practice/sbirt, (last visited April 17, 2017).
[32] Department of Health and Human Services, Centers for Medicare and Medicaid Services, *Factsheet: Substance (Other Than Tobacco) Abuse Structured Assessment and Brief Intervention (SBIRT) Services*, ICN 904084, (October 2011) *available at* http://www.integration.samhsa.gov/sbirt/SBIRT_Factsheet_ICN904084.pdf, (last visited April 17, 2017).
[33] *Supra* note 31.

individual without written consent of the individual, with certain exceptions.[34] Service providers who violate these rights are liable for damages, unless they act in good faith, reasonably, and without negligence.

Federal Protections of Personal Health Information

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) protects personal health information. The U.S. Department of Health and Human Services adopted the privacy rules to address the use and disclosure of an individual's personal health information and create standards for information security.[35] Only certain entities, "covered entities," are subject to HIPAA's provisions. Covered entities are obligated to meet HIPAA's requirements to ensure privacy and confidentiality of personal health information. These "covered entities" include:[36]

- Health plans;
- Health care providers;
- Health care clearinghouses; and
- Business associates of any of the above.

Additionally, federal law restricts the disclosure of alcohol and drug patient records maintained by federally assisted alcohol and drug abuse programs, which identify a patient as an alcohol or drug abuser.[37] Disclosure of patient-identifying information is permitted in certain cases and patients may consent in writing to the disclosure of such information.[38]

Statewide Drug Policy Advisory Council

The Legislature created the Office of Drug Control and the Drug Policy Advisory Council in the Executive Office of the Governor in 1999.[39] In 2011, the Legislature replaced it with the Statewide Drug Policy Advisory Council (the council) under the DOH.[40] The council, among other things, submits annual reports to the Governor, the President of the Senate, and the Speaker of the House of Representatives with recommendations concerning developing and implementing a state drug control strategy.[41]

The council's 2016 report concluded that a key problem in combating drug overdoses in Florida is that there is "[n]o sustainable process to compile massive amounts of data and information,

[34] Permitted disclosures include disclosure to: health service providers in cases of medical emergency if the information is necessary to provide services to the individual; the DCF for the purposes of scientific research; comply with state-mandated child abuse and neglect reporting; comply with a valid court order; report crimes that occur on program premises or against staff; federal, state, or local governments for audit purposes; or third party payors providing financial assistance or reimbursement. s. 397.501(7), F.S.
[35] U.S. Department of Health and Human Services, *The HIPPA Privacy Rule, available at* http://www.hhs.gov/ocr/privacy/hipaa/administrative/privacyrule/, (last visited on April 7, 2017).
[36] U.S. Department of Health and Human Services, *Covered Entities and Business Associates, available at* http://www.hhs.gov/ocr/privacy/hipaa/understanding/coveredentities/, (last visited on April 7, 2017).
[37] 42 CFR Part 2 (2017).
[38] Permitted disclosures include disclosure: to comply with state-mandated child abuse and neglect reporting; to report the cause of death; to comply with a valid court order; in cases of medical emergency; for the purposes of scientific research; to report crimes that occur on program premises or against staff; to entities having administrative control; to qualified service organizations; and to outside auditors, evaluators, central registries, and researchers.
[39] Former s. 397.332, F.S., created by s. 3, ch. 99-187, Laws of Fla.
[40] Section 397.333, F.S., created by s. 8, ch. 2011-51, Laws of Fla.
[41] Section 397.333(3), F.S.

perform analysis and develop an evidence-based call to action."[42] To improve data collection and surveillance, the council recommended that the DOH collaborate with other agencies, organizations, and institutions to create a comprehensive statewide strategy addressing fentanyl and heroin overdoses in the state.[43]

DOH Data Systems

Florida Injury Surveillance Data System

The DOH's Injury Surveillance Data System is a passive data reporting mechanism that utilizes data resources from other agencies and systems, including:

- Vital records (death certificates);
- Hospital discharge data;
- Emergency department discharge data;
- Motor vehicle crash records;
- Behavioral Risk Factor Surveillance System;
- Youth Risk Behavior Surveillance System;
- Child Death Review;
- Uniform Crime Reporting System; and
- Emergency medical services.[44]

The Injury Surveillance Data System is used to monitor the frequency of fatal and non-fatal injuries; determine the risk factors for these injuries; evaluate the completeness, timeliness, and quality of data sources; provide information to Florida's injury prevention community for program planning and evaluation; and provide a foundation for injury prevention strategies.[45] One of the injury mechanisms it receives information on is poisoning, which includes drug overdoses;[46] however, the system is not currently set up to actively receive data regarding overdoses.[47]

Emergency Medical Services Tracking and Reporting System (EMSTARS)

The DOH maintains[48] the Emergency Medical Services Tracking and Reporting System (EMSTARS) to collect data on pre-hospital emergency care from EMS providers. This system

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[42] Florida Department of Health, *Statewide Drug Policy Advisory Council 2016 Annual Report*, (December 1, 2016) p. 4, *available at* http://www.floridahealth.gov/provider-and-partner-resources/dpac/DPAC-Annual-Report-2016-FINAL.pdf, (last visited April 7, 2017).
[43] Id. at p. 14.
[44] Florida Department of Health, *Florida Injury Surveillance Data System*, *available at* http://www.floridahealth.gov/statistics-and-data/florida-injury-surveillance-system/index.html, (last visited April 7, 2017).
[45] Id.
[46] Florida Department of Health, *External Cause of Injury Intent and Mechanism Classifications and Descriptions* (September 8, 2008), *available at* http://www.floridahealth.gov/statistics-and-data/florida-injury-surveillance-system/_documents/icd-code-explanations.pdf, (last visited April 7, 2017).
[47] Florida Department of Health, *2017 Agency Legislative Bill Analysis: HB 249* (similar to SB 588), (January 17, 2017) p. 6.
[48] "In 2004, the [DOH] signed a memorandum of understanding to participate in a national project that would standardize data collection for EMS agencies nationwide. The National Emergency Medical Services Information System (NEMSIS) is the national repository used to aggregate and analyze prehospital data from all participating states." Florida's Prehospital EMS Tracking and Reporting System, *About EMSTARS*, *available at* http://www.floridaemstars.com/about.htm, (last visited April 13, 2017).

allows for the collection and analysis of incident level data from EMS agencies for benchmarking and quality improvement initiatives.[49] Participation in EMSTARS, and the transmission of electronic incident level data from EMS providers[50] to the DOH, is voluntary.[51] However, the complete provision of incident level data, and full participation in EMSTARS, fulfills EMS provider prehospital reporting requirements.[52] The data collected by EMSTARS includes:

- All NHTSA "national" data elements for demographic data and EMS event data;
- Other selected elements identified by participants and other stakeholders;
- Demographic elements for the provider agency, its personnel, and patients;
- Incident and unit times;
- Situation and scene information;
- Patient care information including vital signs, injury assessment, trauma score, and intervention and procedural information; and
- Outcome and disposition information.[53]

Additionally, EMSTARS collects minimal data elements for overdoses if EMS administers an emergency opioid antagonist.[54] There are currently two versions of EMSTARS in use by EMS providers permitted by Rule 64J-1.014, F.A.C., versions 1.4.1 and 3.0. The more recent version allows EMS providers to capture the additional information about the patient, including his or her gender, as well as alcohol and drug use indicators.[55]

The electronic patient care records submitted by licensed EMS agencies to EMSTARS are confidential and exempt pursuant to s. 401.30(4), F.S.

Washington/ Baltimore High Intensity Drug Trafficking Overdose Detection Mapping Application Program (HIDTA)

The Washington/ Baltimore High Intensity Drug Trafficking Area (HIDTA) is a federal grant program administered by the White House Office of National Drug Control Policy, that provides resources to assist federal, state, local, and tribal agencies coordinate activities addressing drug trafficking.[56] HIDTA created an app, known as the Overdose Detection Mapping Application Program, which allows EMS agencies to report overdose incidents, which will then be transmitted to the app in real time with an electronic map showing the location, date, time, and

[49] Florida Department of Health, *The Basic Facts: Prehospital EMS Tracking and Reporting System*, p. 1, *available at* http://www.floridaemstars.com/docs/EMSTARSFactSheet_102314.pdf, (last visited April 7, 2017).
[50] There are 147 participating EMS agencies. Florida Department of Health, *Florida EMS Agencies Participating in EMSTARS*, *available at* http://www.floridaemstars.com/docs/partagencies.pdf, (last visited April 7, 2017).
[51] *Supra* note 43 at p. 2.
[52] Id. *See* Rule 64J-1.014(1), F.A.C.
[53] Id. at p. 3.
[54] *Supra* note 41.
[55] *See* Florida's Prehospital EMS Tracking and Reporting System, *Quick Links: FL Data Dictionary v.3.0* and *FL Data Dictionary v.1.4*, *available at* http://www.floridaemstars.com/index.htm, (last visited April 7, 2017).
[56] Washington/Baltimore High Intensity Drug Trafficking Area, *available at* http://www.hidta.org/, (last visited April 7, 2017).

incident type.[57] It does not allow EMS agencies to report on the patient's age or gender or the suspected controlled substance involved in the overdose.

Emergency Medical Technicians and Paramedics

An emergency medical technician (EMT) is a person who is certified by the DOH to perform basic life support.[58] A paramedic is a person who is certified by the DOH to perform basic and advanced life support.[59] EMTs and paramedics are regulated by the DOH, under part III of ch. 401, F.S. EMTs and paramedics care for sick or injured patients in an emergency medical setting and often work closely with police and firefighters during an emergency situation.[60] Some of the typical duties of an EMT or paramedic are:

- Responding to 911 calls for emergency medical assistance;
- Assessing a patient's condition and determining a course of treatment;
- Helping transfer patients to the emergency department of a healthcare facility and reporting observations and treatment to the emergency department staff; and
- Creating a patient care report, documenting the medical care given to the patient.[61]

Currently, there are 35,315 certified EMTs and 29,731 certified paramedics in Florida.[62]

Current Overdose Prevention Statutes

Section 893.21, F.S., was created in 2012 to provide that a person experiencing a drug-related overdose, or a person lending aid by seeking medical help, may not be charged, prosecuted, or penalized for possession of a controlled substance if the evidence for the charge is obtained as a result of the need for medical attention.

In 2015, s. 381.887, F.S., was created to encourage health care practitioners to prescribe and dispense emergency opioid antagonists to patients or caregivers. Section 381.887(4), F.S., gives emergency responders, including law enforcement officers, paramedics, and emergency technicians, the authority to possess, store, and administer opioid antagonists.

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[57] *See* Emily Daniels, *Berkeley County signs off on an overdose app agreement*, The Journal, (December 16, 2016) *available at* http://www.journal-news.net/news/local-news/2016/12/berkeley-county-signs-off-on-overdose-app-agreement/, (last visited April 13, 2017).

[58] Sections 401.23(11), F.S.; s. 401.23(7), F.S., defines "basic life support" as the assessment or treatment through the use of techniques described in the Emergency Medical Technician-Basic National Standard Curriculum or the National EMS Education Standards of the U.S. Department of Transportation.

[59] Section 401.23(17), F.S.; s. 401.23(1), F.S., defines "advanced life support" as the assessment or treatment by a qualified person through the use of techniques such as endotracheal intubation, the administration of drugs or intravenous fluids, telemetry, cardiac monitoring, cardiac defibrillation, and other techniques described in the Emergency Medical Technician-Paramedic National Standard Curriculum or the National EMS Education Standards of the U.S. Department of Transportation.

[60] U.S. Department of Labor, Bureau of Labor Statistics, *EMTs and Paramedics: What EMTs and Paramedics Do*, Occupational Outlook Handbook, *available at* http://www.bls.gov/ooh/Healthcare/EMTs-and-paramedics.htm#tab-2, (last visited April 7, 2017).

[61] Id.

[62] Florida Department of Health, Division of Medical Quality Assurance, *Annual Report and Long-Range Plan: Fiscal Year 2015-2016 – Table 1, available at* http://mqawebteam.com/annualreports/1516/#12, (last visited April 7, 2017).

III. Effect of Proposed Changes:

Legislative Findings, Intent, and Goals (Section 1)

The bill makes the following legislative findings:

- Substance abuse and drug overdose are major health problems that affect the lives of many people and multiple service systems, leading to profoundly disturbing consequences;
- These overdoses are a crisis and stress financial, health care, and public safety resources; and
- A central database that could quickly help address this problem does not currently exist.

The bill sets out the intent of the Legislature to:

- Require the collaboration of local, regional, and state agencies; service systems; and program offices to address the needs of the public;
- Establish a comprehensive system addressing the problems associated with drug overdoses;
- Reduce duplicative requirements across local, county, state, and health care agencies;
- Maximize the efficiency of financial, public education, health professional, and public safety resources so that these resources may be concentrated on areas and groups in need; and
- Maximize the use of funding programs for the dissemination of available federal, state, and private funds through contractual agreements with community based organizations or units of state or local government that deliver local substance abuse services.

The goals of the Legislature for the bill are identified as:

- Discouraging substance abuse and overdoses by quickly identifying the type of drug involved, the age of the individual involved, and the areas where drug overdoses pose a potential risk to the public, schools, workplaces, and communities; and
- Providing a central data point so that data can be shared between the health care community and municipal, county, and state agencies to quickly identify needs and provide short and long term solutions while protecting and respecting the rights of individuals.

Hospital Best Practices to Promote Prevention of Drug Overdoses (Section 2)

The bill amends s. 395.1041, F.S., to require a hospital with an emergency department to develop a best practices policy related to unintentional drug overdoses. The goal of the policy is to connect patients that experience unintentional drug overdoses with substance abuse treatment services.

The bill allows a hospital to determine what should be included in its best practices policy. However, the bill expressly states that the policy may include, but is not limited to, the following:

- A process for obtaining patient consent to disclose to the patient's next of kin and the primary care physician or practitioner who prescribed a controlled substance to the patient that the patient overdosed, her or his location, and the nature of the substance or controlled substance involved in the overdose.
- A process for providing information to the patient or the patient's next of kin regarding licensed substance abuse treatment providers and voluntary and involuntary commitment procedures for mental health or substance abuse treatment.

- Controlled substance prescribing guidelines for emergency department health care practitioners.
- The use of licensed or certified behavioral health professionals or peer specialists in emergency departments to encourage the patient to voluntarily seek substance abuse treatment.
- The use of Screening, Brief Intervention, and Referral to Treatment protocols in the emergency department.

Hospitals that fail to develop a best practices policy to reduce readmissions for unintentional drug overdoses are subject to discipline by AHCA.[63]

Overdose Reporting (Section 3)

The bill creates s. 401.253, F.S., which permits EMTs and paramedics, who provide basic and advanced live support services on an emergency call, to report to the DOH a suspected or actual controlled substances overdose. The bill defines "overdose" as:

- A condition which includes, but is not limited to, extreme physical illness, decreased level of consciousness, respiratory depression, coma, or death from the consumption or use of a controlled substance that requires medical attention, assistance, or treatment; or
- Clinical suspicion of a drug overdose such as respiratory depression, unconsciousness, or an altered mental state which is not explained by another condition.

An EMT or paramedic who treats and releases an individual, or treats and transports an individual to a medical facility, in response to an emergency call for a suspected or actual overdose of a controlled substance, may voluntarily report. If the EMT or paramedic reports, he or she must use best efforts to do so within 120 hours. The report must contain:

- The date and time of the overdose;
- The address of where the patient was picked up or where the overdose took place;
- Whether an emergency opioid antagonist was administered; and
- Whether the overdose was fatal or non-fatal.

Additionally, the report must include the approximate age and gender of the patient and the suspected controlled substances involved in the overdose only if permitted by the reporting mechanism.

The bill requires reporters to use EMSTARS, the Washington/Baltimore High Intensity Drug Trafficking Overdose Detection Mapping Application Program, or other program identified by the DOH in rule.

Anyone who files a report in good faith is not subject to civil or criminal liability for making the report. The bill also specifies that the failure to make a report is not grounds for licensure discipline. The bill makes it clear that no new cause of action is created by requiring hospitals with emergency departments to develop a best practices policy to promote the prevention of unintentional overdoses.

[63] Section 395.1041(5), F.S.

Use of Report

The bill encourages reporting to the DOH within 120 hours. Within 120 hours of receiving the data, the DOH must make it available to law enforcement, public health, fire rescue, and EMS agencies in each county.

Additionally, the DOH must report quarterly to the Statewide Drug Policy Advisory Council, the DCF, and the Florida Fusion Center,[64] summarizing the data received. The council, the DCF, and the DOH may use the reports to maximize the utilization of funding programs for basic and advanced life support service providers, and to disseminate available federal, state and, private funds for local substance abuse treatment services. The quarterly report must also be available to law enforcement, public health, fire rescue, and EMS agencies in each county.

The bill is effective October 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Any costs to the DOH to implement the provisions of this bill are indeterminate at this time.

[64] The Fusion Center, housed within the Florida Department of Law Enforcement, is a collaborative effort of state and federal agencies working with local partners to share resources, expertise, and/or information to better identify, detect, prevent, apprehend and respond to criminal and terrorist activity utilizing an all crimes/all hazards approach. Florida Department of Law Enforcement, *The Florida Fusion Center*, *available at* http://www.fdle.state.fl.us/cms/FFC/FUSION-Center-Home.aspx, (last visited April 7, 2017).

VI. Technical Deficiencies:

None.

VII. Related Issues:

The information collected by the DOH, and being made available to law enforcement, public health, fire rescue and emergency medical services agencies in each county may require a separate bill for a public records exception to protect the information from being obtained by other third parties.

The bill requires the DOH to adopt by rule the programs to which overdose reports must be made.

VIII. Statutes Affected:

This bill amends section 395.1041 of the Florida Statutes.

This bill creates section 401.253 of the Florida Statutes.

This bill creates an undesignated section of Florida law.

IX. Additional Information:

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

CS/CS/CS by Rules on April 25, 2017:

- Makes it clear that no new cause of action is created by amending s. 395.1041, F.S., requiring hospitals with emergency departments to develop a best practices policy to promote the prevention of unintentional overdoses.

CS/CS by Criminal Justice on April 17, 2017:
The CS:

- Requires, in s. 395.1041, F.S., that hospitals with an emergency department develop a best practices policy, which may include the use of Screening, Brief Intervention, and Referral to Treatment protocols in the emergency department, to promote the prevention of drug overdoses.
- Reorganizes the term "overdose" as used in s. 401.253, F.S.

CS by Health Policy on March 27, 2017:
The CS:

- Deletes mandatory reporting requirements for certain health care professionals, institutions, and their employees;
- Limits reporting to basic and advanced life support services who respond to an emergency call for a suspected or actual overdose;
- Makes reporting voluntary, and encourages reporting within 120 hours;
- Specifies the data elements to be reported;

- Deletes criminal penalties for failure to report;
- Provides that the failure to report is not grounds for licensure discipline;
- Reassigns the responsibility for receiving the reported data to the DOH rather than the county's chief law enforcement officer;
- Authorizes the DOH to identify the reporting system in rule; and
- Requires the DOH to disseminate raw data received within 120 hours to specified entities and a summary report quarterly.

B. Amendments:

None.

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

452464

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/25/2017	.	
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The Committee on Rules (Passidomo) recommended the following:

Senate Amendment (with title amendment)

Between lines 100 and 101
insert:

This paragraph may not be construed as creating a cause of action for any party.

================ T I T L E A M E N D M E N T ================
And the title is amended as follows:
Delete line 9

452464

and insert:

specialists, and protocols; providing construction;

creating s. 401.253, F.S.;

By the Committees on Criminal Justice; and Health Policy; and Senator Passidomo

591-03918-17 2017588c2

A bill to be entitled

An act relating to drug overdoses; providing legislative findings and intent; amending s. 395.1041, F.S.; requiring a hospital with an emergency department to develop a best practices policy to promote the prevention of unintentional drug overdoses; authorizing the policy to include certain processes, guidelines, uses of professionals or specialists, and protocols; creating s. 401.253, F.S.; authorizing certain entities to report controlled substance overdoses to the Department of Health; defining the term "overdose"; providing requirements for such reports; providing immunity for persons who make reports in good faith; providing that a failure to report is not a basis for licensure discipline; requiring the department to produce a quarterly report and share the data with specified entities; providing for use of such data; providing an effective date.

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

Section 1. (1) The Legislature finds that substance abuse and drug overdose are major health problems that affect the lives of many people and multiple service systems and that lead to such profoundly disturbing consequences as permanent injury or death. Heroin, opiates, illegal drugs, and accidental overdoses are a crisis and stress the financial, health care, and public safety resources because there are no central databases that can quickly help address this problem. Quick data

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

591-03918-17 2017588c2

collection will allow all agencies to focus on specific age groups, areas, criminal behavior, and needed public education and prevention with the maximum utilization of resources. Further, it is the intent of the Legislature to require the collaboration of local, regional, and state agencies, service systems, and program offices to address the needs of the public; to establish a comprehensive system addressing the problems associated with drug overdoses; and to reduce duplicative requirements across local, county, state, and health care agencies.

(2) It is the goal of the Legislature in this act to:

(a) Discourage substance abuse and accidental or intentional overdoses by quickly identifying the type of drug involved, whether prescription or illegal, the age of the individual involved, and the areas where drug overdoses pose a potential risk to the public, schools, workplaces, and communities.

(b) Provide a central data point so that data can be shared between the health care community and municipal, county, and state agencies to quickly identify needs and provide short- and long-term solutions while protecting and respecting the rights of individuals.

(3) It is the intent of the Legislature in this act to maximize:

(a) The efficiency of financial, public education, health professional, and public safety resources so that these resources may be concentrated on areas and groups in need.

(b) The utilization of funding programs for the dissemination of available federal, state, and private funds

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

through contractual agreements with licensed basic life support service providers, advanced life support service providers, community-based organizations, or units of state or local government that deliver local substance abuse services in accordance with the intent of this act and s. 397.321(4), Florida Statutes.

Section 2. Subsection (6) of section 395.1041, Florida Statutes, is amended to read:

395.1041 Access to emergency services and care.—

(6) RIGHTS OF PERSONS BEING TREATED.—

(a) A hospital providing emergency services and care to a person who is being involuntarily examined under the provisions of s. 394.463 shall adhere to the rights of patients specified in part I of chapter 394 and the involuntary examination procedures provided in s. 394.463, regardless of whether the hospital, or any part thereof, is designated as a receiving or treatment facility under part I of chapter 394 and regardless of whether the person is admitted to the hospital.

(b) Each hospital with an emergency department shall develop a best practices policy to promote the prevention of unintentional drug overdoses. The policy may include, but is not limited to:

1. A process to obtain the patient's consent to notify the patient's next of kin, and each physician or health care practitioner who prescribed a controlled substance to the patient, regarding the patient's overdose, her or his location, and the nature of the substance or controlled substance involved in the overdose.

2. A process for providing the patient or the patient's

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next of kin with information about licensed substance abuse treatment services, voluntary admission procedures under part IV of chapter 397, involuntary admission procedures under part V of chapter 397, and involuntary commitment procedures under chapter 394.

3. Guidelines for emergency department health care practitioners authorized to prescribe controlled substances to reduce the risk of opioid use, misuse, and addiction.

4. The use of licensed or certified behavioral health professionals or peer specialists in the emergency department to encourage the patient to seek substance abuse treatment.

5. The use of Screening, Brief Intervention, and Referral to Treatment protocols in the emergency department.

Section 3. Section 401.253, Florida Statutes, is created to read:

401.253 Reporting of controlled substance overdoses.—

(1)(a) A basic life support service or advanced life support service that treats and releases, or transports to a medical facility, a person in response to an emergency call for a suspected or actual overdose of a controlled substance may report such incidents to the department. Such reports must be made using the Emergency Medical Services Tracking and Reporting System, or other appropriate method with secure access, including, but not limited to, the Washington/Baltimore High Intensity Drug Trafficking Area's Overdose Detection Mapping Application Program or other program identified by the department in rule. If a basic life support service or advanced life support service reports such incidents, it shall use best efforts to make the report to the department within 120 hours.

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(b) The data collected by the department shall be made available within 120 hours to law enforcement, public health, fire rescue, and emergency medical service agencies in each county.

(c) For purposes of this section, the term "overdose" means:

1. A condition, including, but not limited to, extreme physical illness, decreased level of consciousness, respiratory depression, coma, or death resulting from the consumption or use of any controlled substance which requires medical attention, assistance, or treatment; or

2. Clinical suspicion of drug overdose, such as respiratory depression, unconsciousness, or altered mental status, without other conditions to explain the clinical condition.

(2)(a) A report of an overdose of a controlled substance under this section must include:

1. The date and time of overdose.

2. The approximate address of where the person was picked up or where the overdose took place.

3. Whether an emergency opioid antagonist, as defined in s. 381.887, was administered.

4. Whether the overdose was fatal or nonfatal.

(b) A report of an overdose of a controlled substance under this section must also include, if the reporting mechanism permits:

1. The gender and approximate age of the person receiving attention or treatment.

2. The suspected controlled substance involved in the overdose.

(3) A basic life support service or advanced life support service that reports information to or from the department pursuant to this section in good faith is not subject to civil or criminal liability for making the report.

(4) Failure to report an overdose under this section is not grounds for disciplinary action or penalties pursuant to s. 401.411(1)(a).

(5) The department shall produce a quarterly report to the Statewide Drug Policy Advisory Council, the Department of Children and Families, and the Florida Fusion Center summarizing the raw data received pursuant to this section. Such reports shall also be made immediately available to the county-level agencies described in paragraph (1)(b). The Statewide Drug Policy Advisory Council, the Department of Children and Families, and the department may use these reports to maximize the utilization of funding programs for licensed basic life support service providers or advanced life support service providers, and for the dissemination of available federal, state, and private funds for local substance abuse services in accordance with s. 397.321(4).

Section 4. 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: April 17, 2017

I respectfully request that **Senate Bill #588**, relating to Drug Overdoses, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Kathleen Passidomo
Florida Senate, District 28

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

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

25 Apr 17
Meeting Date

508
Bill Number (if applicable)

Topic Drug Overdoses

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title Pres & CEO

Address 204 S. Monroe
Street

Phone

Tall FL 32301
City *State* *Zip*

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Fla. Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/17
Meeting Date

588
Bill Number (if applicable)

Topic DRUG OVERDOSES

Amendment Barcode (if applicable)

Name LISA HURLEY

Job Title

Address 311 E. PARK AVE
Street
TALLAHASSEE FL 32301
City *State* *Zip*

Phone 89.224.5081

Email lhurley@smithbryan and myers.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing FLORIDA ASSOC. OF COUNTIES

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-25-17
Meeting Date

588
Bill Number (if applicable)

Topic Drug Overdoses

Amendment Barcode (if applicable)

Name Jill Gran

Job Title Policy Director

Address 2868 Mahan Dr
Street

Tallahassee FL 32308
City *State* *Zip*

Phone 8508782154

Email jill@myfbha.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL Behavioral Health Assoc

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	SB 1622
INTRODUCER:	Senator Passidomo
SUBJECT:	School Bus Safety
DATE:	April 24, 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Appel	Hrdlicka	CJ	**Favorable**
2.	Jones	Miller	TR	**Favorable**
3.	Appel	Phelps	RC	**Favorable**

I. Summary:

SB 1622 creates the "Cameron Mayhew Act" to require a driver who illegally passes a stopped school bus resulting in death or serious bodily injury of another person to:

- Serve 120 community service hours in a trauma center or hospital.
- Participate in a victim's impact panel or attend a Department of Highway Safety and Motor Vehicles (DHSMV) approved driver improvement course that relates to the rights of vulnerable road users relative to vehicles on the roadway.

The bill also imposes:

- A $1,500 fine;
- A 1-year driver license suspension; and
- Two additional points, for a total of 6 points added to a person's driver license.

The fiscal impact of this bill is indeterminate at this time. See Section V. Fiscal Impact Statement.

II. Present Situation:

Traffic Accidents Causing Death or Injury of Another

A driver who commits any traffic infraction that results in a crash that causes death or serious bodily injury of another person must attend a mandatory hearing at a specified time and location.[1] "Serious bodily injury" is "an injury to any person, including the driver, which consists of a physical condition that creates a substantial risk of death, serious personal disfigurement, or protracted loss or impairment of the function of any bodily member or organ."[2]

[1] Section 319.19, F.S.
[2] Section 316.1933, F.S.

Anyone who causes death of another person in the commission of a noncriminal traffic infraction or a violation of ch. 316, F.S.,[3] or s. 1006.66, F.S.,[4] may be required by the court to serve 120 community service hours in a trauma center or hospital that regularly receives victims of vehicle accidents. The community service hours must be done under the supervision of a registered nurse, an emergency room physician, or an emergency medical technician pursuant to a voluntary community service program operated by the trauma center or hospital.[5] This requirement for community service is in addition to any other civil, criminal, or administrative penalty imposed.

Additionally, a driver who is involved in a crash that causes death or a bodily injury that requires transportation to a medical facility will be required by the DHSMV to complete a driver improvement course. If the course is not completed within 90 days of receiving a notice of the requirement to attend, the driver's license will be canceled until the improvement course is successfully completed.[6]

A driver who is convicted of violating any traffic law that results in a crash causing death or serious bodily injury of another person may have his or her driver license suspended by the DHSMV.[7] A court may also order the suspension of a driver license "when the court feels that the seriousness of the offense and the circumstances surrounding the conviction warrant the suspension of the licensee's driving privilege."[8]

School Buses

School buses are required to stop as far to the right of the street as possible and display warning lights and stop signals before discharging or loading passengers, and, when possible, to not stop where visibility is obscured for a distance of 200 feet either way from the bus.[9]

Other drivers are required to bring their vehicles to a full stop when approaching a stopped school bus displaying a stop signal, until the signal has been withdrawn.[10] It is unlawful to pass a school bus on the side that children enter and exit while the school bus displays a stop signal.[11]

A person cited for failing to stop for a school bus displaying the stop signal can pay the civil penalty of the citation, or can request a hearing to contest the citation.[12] However, a person cited

[3] Chapter 316, F.S., is the Florida Uniform Traffic Control Law.
[4] Section 1006.66, F.S., relates to the regulation of traffic at universities.
[5] Section 316.027(4), F.S.
[6] Section 322.0261(2), F.S.
[7] Section 322.27(1)(b), F.S.
[8] Section 322.27(2), F.S.
[9] Section 316.172(3), F.S.
[10] Section 316.172(1)(a), F.S.
[11] Section 316.172(1)(b), F.S. A driver is not required to stop if the vehicle is traveling in the opposite direction of a stopped school bus "upon a divided highway with an unpaved space of at least 5 feet, a raised median, or a physical barrier." *See* s. 316.172(2), F.S.
[12] Section 318.14, F.S.

for passing a stopped school bus on the side children enter or exit must attend a mandatory hearing at a specified time and location.[13]

If a driver is found to have failed to fully stop for or illegally passed a stopped school bus, both of which are noncriminal traffic infractions, the driver must pay a minimum civil penalty and may be subject to driver license suspension if it is a subsequent offense:[14]

- The minimum civil penalty for failing to stop for a school bus displaying the stop signal is $100. In addition, for a second or subsequent offense within a period of 5 years, the DHSMV shall suspend the driver license of the person for not less than 90 days and not more than 6 months. Subsequent service charges raises the total fine for this violation up to $263, which is distributed to various funds.[15]
- The minimum civil penalty for passing a school bus on the side that children enter and exit when the school bus displays a stop signal is $200. In addition, for a second or subsequent offense within a period of 5 years, the DHSMV shall suspend the driver license of the person for not less than 180 days and not more than 1 year. Subsequent service charges raises the total fine for this violation up to $363, which is distributed to various funds.[16]

Included in the total fines is $65 that is remitted to the Department of Revenue for deposit into the Emergency Medical Services Trust Fund of the Department of Health to be distributed as provided in s. 395.4036, F.S., to trauma centers.[17]

In addition to the above, a driver who illegally passes a stopped school bus will receive four points on his or her driver license.[18] Section 322.27(3), F.S., establishes a point system for evaluation of convictions of violations of motor vehicle laws or ordinances that is used to determine if a person continues to be qualified to operate a motor vehicle. The point system assigns value relative to the convictions of the various violations on a graduated scale. The DHSMV is authorized to suspend the license of a licensee who accumulates:

- 12 points within a 12-month period for not more than 30 days;
- 18 points within an 18-month period for not more than three months; and
- 24 points within a 36-month period for not more than one year.

If the driver is convicted of or plead nolo contendere to illegally passing a stopped school bus, the DHSMV will require him or her to complete a driver improvement course. If the course is not completed within 90 days of receiving a notice of the requirement to attend, the driver's license will be canceled until the improvement course is successfully completed.[19]

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[13] See ss. 316.172(1)(b) and 318.19(3), F.S.
[14] Sections 318.18(5) and 322.27(1)(f), F.S.
[15] Florida Court Clerks and Comptrollers, *Distribution Schedule of Court-Related Filing Fees, Service Charges, Costs, and Fines, including a Fee Schedule for Recording*, effective July 1, 2016, available at: http://c.ymcdn.com/sites/www.flclerks.com/resource/resmgr/PublicationsAndDocuments/2016_Distribution_Schedule_w.pdf (last visited March 24, 2017).
[16] *Id*.
[17] *See* s. 395.4036(1)(b), F.S.
[18] *See* s. 322.27(1)(f) and (3)(d)4., F.S.
[19] Section 322.0261(4)(c), F.S.

Data and Statistics on Illegal Passes of School Buses

According to DHSMV data, in 2016, 2,418 traffic citations were issued for failing to stop for a school bus or passing a stopped school bus. Is it unknown how many citations were issued for passing a school bus on the side children enter and exit.[20]

The Department of Education created a survey for bus operators to complete regarding the illegal passing of their school buses. The newest survey from Academic Year 2015-2016 results show that 9,623 illegal passes were made on a single day with 8,007 school bus operator's reporting. Of these illegal passes, 329 were made on the right side of the bus where students generally enter/exit the vehicle.[21]

The National Highway Traffic Safety Administration indicates that 119 fatalities of school age pedestrians occurred within 2003-2012. Of these 119 fatalities, 65 percent were struck by a school bus, 5 percent by vehicles acting as school buses, and 30 percent from other motorists. Roughly 60 fatalities nationally occurred over the course of 10 years due to non-school bus vehicles. This makes the average fatalities from school pedestrians struck by other motorists 6 per year.[22]

III. Effect of Proposed Changes:

The bill creates the "Cameron Mayhew Act." Cameron Mayhew was a 16 year old boy from Fort Myers who was hit by a motor vehicle illegally passing a stopped school bus on June 1, 2016.[23]

The bill amends s. 316.027(4), F.S., (Section 2), to provide additional penalties to current civil, criminal, or administrative penalties imposed on a driver who illegally passes a school bus. If the driver's actions cause or result in serious bodily injury to or death of another person, the driver *shall* be required by the court to:

- Serve 120 community service hours in a trauma center or hospital that regularly receives victims of vehicle accidents, under the supervision of a registered nurse, an emergency room physician, or an emergency medical technician pursuant to the voluntary community service program operated by the trauma center or hospital.[24]

[20] Email from the DHSMV (March 24, 2017) (on file with the Senate Criminal Justice Committee). Data from March 3, 2017. In 2015, 2,136 traffic citations were issued for failure to stop for a school bus, and 44 citations were issued for passing a school bus on the side children enter and exit. *Florida Senate Bill Analysis CS/SB 1570* (2016).
[21] See Florida Department of Education, *School Transportation, Illegal Passing of School Buses – Survey Results for 2016*, available at: http://www.fldoe.org/schools/safe-healthy-schools/transportation/ (last visited March 27, 2017). There were 167 vehicles that illegally passed buses for which the side passed was unknown.
[22] National Highway Traffic Safety Administration, *Traffic Safety Facts, 2003-2012 Data, School-Transportation-Related Crashes*, DOT HS 811 890, revised June 2014, available at: https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/811890 (Last visited March 24, 2017).
[23] USA Today, Melissa Montoya, *Cameron Mayhew, struck and killed at bus stop, gets bill in Legislature*, March 9, 2017, available at: http://www.usatoday.com/story/news/local/2017/03/09/cameron-mayhew-struck-bus-stop-gets-bill-fla-legislature/98965886/ (Last visited March 24, 2017).
[24] Under s. 316.027(4), F.S., the court *may* require such community service for a driver who causes the death of another.

- Participate in a victim's impact panel session in a judicial circuit if such a panel exists, or if such a panel does not exist, attend a driver improvement course approved by the DHSMV relating to the rights of vulnerable road users relative to vehicles on the roadway.[25]

This bill creates s. 318.18(5)(d), F.S., (Section 3), to impose a $1,500 fine and suspension of the driver's license for no less than one year when the driver illegally passed a school bus that results in death or serious bodily injury of another person. The driver may enter a payment plan with the clerk of the court.[26]

The bill amends s. 322.27(3), F.S., related to the point system on driver licenses. The bill adds two additional points, for a total of six points, for illegally passing a stopped school bus resulting in death or serious bodily injury of another person. The points for illegally passing a school bus that does not result in death or serious bodily injury of another remain at four points.

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:

Any individual who illegally passes a school bus and causes death or serious bodily harm of another person will be required to pay an increased fine of $1,500.

C. Government Sector Impact:

The DHSMV has not yet provided any estimate of a fiscal impact, if any, on the department to implement the provisions of the bill.

[25] As discussed above, s. 322.0261, F.S., requires *the DHSMV to require* a driver to take and complete the course.
[26] This is pursuant to s. 28.246, F.S.

Any fiscal impact for revenue from fees under the provisions of this bill will likely be minimal, given the data discussed above in the Present Situation on the frequency of these types of crashes.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill is currently effective July 1, 2017. An effective date of October 1, 2017, would allow the DHSMV additional time to develop, test, and implement programing to implement the bill.

Current law requires a driver who is involved in a crash that causes death or a bodily injury that requires transportation to a medical facility or who illegally passes a school bus to complete a driver improvement course. The bill requires a court to require a driver who illegally passes a school bus and causes death or serious bodily injury of another person to:

- Participate in a victim's impact panel session, or
- If the judicial circuit does not have such a panel, complete a driver improvement course.

It appears that reading the provisions of the bill with current law, all such drivers will be required to complete a driver improvement course, no matter if the judicial circuit has a victim's impact panel.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 316.027, 318.18, and 322.27.

IX. Additional Information:

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

None.

B. Amendments:

None.

By Senator Passidomo

28-01021A-17 20171622__

A bill to be entitled

An act relating to school bus safety; providing a short title; amending s. 316.027, F.S.; providing mandatory noncriminal penalties for certain violations resulting in serious bodily injury to or death of another person; amending s. 318.18, F.S.; requiring a fine and driver license suspension for such a violation; amending s. 322.27, F.S.; requiring imposition of points against a driver license for such a violation; providing an effective date.

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

Section 1. This act may be cited as the "Cameron Mayhew Act."

Section 2. Subsection (4) of section 316.027, Florida Statutes, is amended to read:

316.027 Crash involving death or personal injuries.—

(4)(a) In addition to any other civil, criminal, or administrative penalty imposed, a person whose commission of a noncriminal traffic infraction or a violation of this chapter or s. 1006.66 causes or results in the death of another person may be required by the court to serve 120 community service hours in a trauma center or hospital that regularly receives victims of vehicle accidents, under the supervision of a registered nurse, an emergency room physician, or an emergency medical technician pursuant to a voluntary community service program operated by the trauma center or hospital.

(b) Notwithstanding paragraph (a), in addition to any other

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28-01021A-17 20171622__

civil, criminal, or administrative penalty imposed, a person whose commission of a violation of s. 316.172(1)(a) or (b) causes or results in serious bodily injury to or death of another person shall be required by the court to:

1. Serve 120 community service hours in a trauma center or hospital that regularly receives victims of vehicle accidents, under the supervision of a registered nurse, an emergency room physician, or an emergency medical technician pursuant to a voluntary community service program operated by the trauma center or hospital.

2. Participate in a victim's impact panel session in a judicial circuit if such a panel exists, or if such a panel does not exist, attend a department-approved driver improvement course relating to the rights of vulnerable road users relative to vehicles on the roadway as provided in s. 322.0261(2).

Section 3. Paragraph (d) is added to subsection (5) of section 318.18, Florida Statutes, to read:

318.18 Amount of penalties.—The penalties required for a noncriminal disposition pursuant to s. 318.14 or a criminal offense listed in s. 318.17 are as follows:

(5)

(d) Notwithstanding any other provision of law to the contrary, $1,500 for a violation of s. 316.172(1)(a) or (b) that causes or results in serious bodily injury to or death of another. The person may enter into a payment plan with the clerk of court pursuant to s. 28.246. In addition to this penalty, the department shall suspend the driver license of the person for not less than 1 year.

Section 4. Paragraph (d) of subsection (3) of section

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

322.27, Florida Statutes, is amended to read:

322.27 Authority of department to suspend or revoke driver license or identification card.—

(3) There is established a point system for evaluation of convictions of violations of motor vehicle laws or ordinances, and violations of applicable provisions of s. 403.413(6)(b) when such violations involve the use of motor vehicles, for the determination of the continuing qualification of any person to operate a motor vehicle. The department is authorized to suspend the license of any person upon showing of its records or other good and sufficient evidence that the licensee has been convicted of violation of motor vehicle laws or ordinances, or applicable provisions of s. 403.413(6)(b), amounting to 12 or more points as determined by the point system. The suspension shall be for a period of not more than 1 year.

(d) The point system shall have as its basic element a graduated scale of points assigning relative values to convictions of the following violations:

1. Reckless driving, willful and wanton—4 points.

2. Leaving the scene of a crash resulting in property damage of more than $50—6 points.

3. Unlawful speed, or unlawful use of a wireless communications device, resulting in a crash—6 points.

4. Passing a stopped school bus:

a. Not causing or resulting in serious bodily injury to or death of another—4 points.

b. Causing or resulting in serious bodily injury to or death of another—6 points.

5. Unlawful speed:

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

a. Not in excess of 15 miles per hour of lawful or posted speed—3 points.

b. In excess of 15 miles per hour of lawful or posted speed—4 points.

6. A violation of a traffic control signal device as provided in s. 316.074(1) or s. 316.075(1)(c)1.—4 points. However, no points shall be imposed for a violation of s. 316.074(1) or s. 316.075(1)(c)1. when a driver has failed to stop at a traffic signal and when enforced by a traffic infraction enforcement officer. In addition, a violation of s. 316.074(1) or s. 316.075(1)(c)1. when a driver has failed to stop at a traffic signal and when enforced by a traffic infraction enforcement officer may not be used for purposes of setting motor vehicle insurance rates.

7. All other moving violations (including parking on a highway outside the limits of a municipality)—3 points. However, no points shall be imposed for a violation of s. 316.0741 or s. 316.2065(11); and points shall be imposed for a violation of s. 316.1001 only when imposed by the court after a hearing pursuant to s. 318.14(5).

8. Any moving violation covered in this paragraph, excluding unlawful speed and unlawful use of a wireless communications device, resulting in a crash—4 points.

9. Any conviction under s. 403.413(6)(b)—3 points.

10. Any conviction under s. 316.0775(2)—4 points.

11. A moving violation covered in this paragraph which is committed in conjunction with the unlawful use of a wireless communications device within a school safety zone—2 points, in addition to the points assigned for the moving violation.

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

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

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

The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: April 19, 2017

I respectfully request that **Senate Bill #1622**, relating to School Bus Safety, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Kathleen Passidomo
Florida Senate, District 28

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
302 Senate Office Building

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

DATE	COMM	ACTION
3/29/17	SM	Unfavorable
3/30/17	JU	**Favorable**
4/18/17	CA	**Favorable**
4/25/17	RC	**Favorable**

March 29, 2017

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

Re: **SB 314** – Senator Gary M. Farmer, Jr.
HB 6545 – Representative Jake Raburn
Relief of Jerry Cunningham by Broward County

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNOPPOSED CLAIM FOR $550,000, IN LOCAL FUNDS, AGAINST BROWARD COUNTY FOR AN INCIDENT INVOLVING ONE OF ITS BUSES AND THE CLAIMANT, JERRY CUNNINGHAM. THE UNDERLYING SETTLEMENT IS FOR $850,000, OF WHICH THE COUNTY HAS PAID $300,000, AS PERMITTED BY LAW.

FINDINGS OF FACT:

On the morning of May 10, 2013, the Claimant and his mother walked to a Broward County Transit bus stop. The Claimant, who was 14 years old at the time, was on his way to school. On that morning, he grasped a moving Broward County Transit bus and attempted to run alongside it. Upon losing his grip and his footing, the Claimant fell to the pavement, incurring severe injuries.

Transit Bus Surveillance Video

The Claimant's counsel presented video from the bus. This video begins several minutes before the accident and continues for several minutes after the accident. The video featured an indication of the bus's speed at each moment of the footage. And it was shot from eight different camera angles simultaneously. For example, one camera was above the head of the driver, Reinaldo Soto, pointed toward the door.

Another camera was on the outside of the side of the bus opposite the driver's side, perhaps on the rear half of the bus, pointed toward the front. This video sufficiently supports the following findings of fact.

On the morning of the incident, the bus approached a stop where two women were waiting for the bus, but the Claimant was not waiting at the bus stop with them. As the bus came to a stop, one or more passengers alerted Mr. Soto that there were "runners coming." The two women safely and uneventfully entered the bus upon its arrival at the bus stop. Upon entering, the women remained at the front of the bus, as least far forward as Mr. Soto. While the women remained there, and just after the doors had begun to close, the Claimant came to the exterior of the front doors of the bus.

At the same time, the bus was just starting to ease away from the stop at 2 miles per hour. Within 3 seconds of the Claimant arriving at the front doors, and within 4 seconds of the bus beginning to ease away from the stop, the doors appear to have fully closed, and the bus had reached 6-10 miles per hour. And as for the operation or mechanics of the doors, they came together from opposite sides, meeting in the middle of the doorway, as they appear designed to do.

As the bus left the stop, the Claimant walked, then jogged, and then ran alongside the bus, with his right arm reaching across his body and his right hand making constant contact with the bus. With his left hand, the Claimant tapped on the door.

Then, with the doors closed, the bus increased its speed. It traveled at 16-19 miles per hour for several seconds, with the Claimant still running alongside of it, perhaps aided by the power of the bus.[1] At one point, and before the fall that caused his injuries, the Claimant momentarily lost his footing, yet was able to keep from falling by hanging onto the bus.

After the bus traveled several more seconds at speeds between 16 and 19 miles per hour, the Claimant fell to the pavement, thus sustaining his injuries. The video does not

[1] At the hearing, Claimant's counsel stated that it was unreasonable to think that the Claimant could run 18 or 19 miles per hour. The Special Master does not necessarily disagree that the Claimant could not reach those speeds on his own. But the evidence showed that the Claimant's speed may have been aided by the bus as he held onto it.

include any images showing that the Claimant's arm, wrist, or hand were trapped between the doors of the bus.[2, 3]

Within 5 seconds after the Claimant fell, and as passengers screamed, Mr. Soto stopped the bus.

Injuries

As a result of the accident, the Claimant incurred multiple injuries. He suffered a traumatic brain injury, skull fractures, facial fractures, rib fractures, a right clavicle fracture, a right scapular fracture, a right pulmonary contusion, and a left medial malleolus fracture.

The Claimant's Hand, Arm, or Wrist Was Not Trapped

An essential factual component of the Claimant's claim is that his hand, arm, or wrist was trapped in the bus's door. However, the preponderance of the evidence shows that the Claimant's hand, arm, or wrist was not caught in the door of the bus. Rather, the Claimant placed his hand on or in between the doors of the moving bus, and then attempted to run alongside it until he lost both his grip and his footing. At that point, he hit the ground and sustained his injuries. The following evidence was weighed in making these findings of fact.

Detective Michael Kelliher

Detective Michael Kelliher of the Traffic Homicide Unit of the Broward County Sheriff's Office investigated the accident. Det. Kelliher determined that the door of the bus could not have trapped the Claimant's arm, wrist, or hand. Instead, Det. Kelliher believed that the Claimant grabbed the door and held on as he attempted to run alongside the bus.

Det. Kelliher conducted several controlled exercises with the bus involved in the accident. One exercise involved a Detective DeJesus, who was approximately the size that the Claimant was at the time. Det. DeJesus placed his forearm

[2] The Claimant's attorney presented an audio recording of an interview by his investigator of the passenger sitting closest to the door, Brian Clark. During this recording, the *interviewer* states: "But at that point Jerry had [inaudible] reached for the bus and was already caught with his hand, hand [sic] in the door." Mr. Clark then said, "Yes." The interviewer quickly moved on. The witness's statement has little probative value for several reasons. First, the statement was not given under oath or subject to cross-examination. Secondly, the witness's "yes" answer was in response to a compound, leading question. Finally, the witness never explained what he saw that led him to conclude that the Claimant's hand was caught.

[3] The Claimant stated he has no memory of the incident.

through the open front doorway, and the doors were closed. Upon closing the doors, the 4-inch rubber safety guards (or "flaps") on the doors formed around Det. DeJesus's arm, which was in "no way constrained" by the doors. And he could remove his arm "with minimal effort."

A similar exercise was conducted with a Detective Michael Wiley, who was bigger than the Claimant was at the time of the accident. Detective Wiley was able to remove his arm "without resistance from the doors."

Assistant State Attorney Alexander Fischer

The Broward County Sherriff's Office referred the case to the State Attorney's Office in Broward County for possible prosecution. Assistant State Attorney Alex Fischer conducted a legal and factual investigation under the supervision of Assistant State Attorney Peter Holden. Mr. Fischer and Assistant State Attorney David Weigel examined a bus of the same year, make, and model as the bus involved in the Claimant's accident.

Both Mr. Fischer and Mr. Weigel "freely slid" their "entire arms through the closed door of the bus." Moreover, they discovered that the rubber flaps on the two front doors closed in such a way that the more forward door's flap was on the outside of the other flap. This created a "path" through which one may pull something, such as an arm, toward the back of the bus from the outside.

Mr. Fischer concluded that the Claimant's arm or hand was not trapped or stuck. Instead, the Claimant, perhaps with his hand in the rubber flap area of the door, was voluntarily trying to keep up with the bus.

With regard to the testing by the Sherriff's Office and the State Attorney, the Claimant's attorney attempted to discredit those tests for not being performed on a moving bus. The reports describing the testing do not state whether the tests involved a moving or a stationary bus. However, even if the tests were performed only on stationary buses, it would not undermine the conclusions of these reports. Given the construction and the operation of the doors as described above, the bus's moving away from the Claimant would have made it easier, not harder, for him to remove his hand from the doors.

Transit Bus Surveillance Video

The surveillance video appears to show the Claimant voluntarily running alongside the bus. If his arm was caught in the bus's doors, one would have expected the video of the incident to show the Claimant make a jerking motion or a tugging motion in an attempt to part with the bus. But the Claimant made no such motion.

Nonetheless, argument was presented to support the contrary conclusion—namely, that the Claimant's arm was trapped in the door of the bus, and thus the Claimant was forced to attempt to run alongside the bus until he could no longer. At one point in the video, just moments before his ultimate fall, the Claimant loses his footing yet appears to keep his hand(s) on the bus and does not fall to the ground. According to the Claimant's counsel, this proves that the Claimant's arm was caught in the doors. However, this conclusion is not required.

The fact that the Claimant momentarily lost his footing and yet did not fall to the ground could be explained by him continuing to hold onto the bus's door. Moreover, if it was the Claimant's trapped arm that prevented him from falling when he momentarily lost his footing, then it is unclear how his arm suddenly became un-trapped moments later, allowing him to fall to the ground. The Claimant's attorney did not explain how the Claimant's arm could suddenly become free. A better explanation of the moment when the Claimant lost his footing is that his arm was not trapped and that he chose to hang onto the door. As such, the Claimant kept his grip during his first loss of footing but was unable to hold on when he took his ultimate fall. Alternatively, perhaps he purposefully let go of the bus, hoping he could safely part with the bus before it reached even greater speeds.

The time elapsed from when the bus left the bus stop until the Claimant fell was approximately 9 seconds.

Parties' Stipulation

The parties stipulated in this matter that the Claimant's arm was "apparently caught in the door." However, the stipulation was not supported by the evidence presented to the Special Master. And under the Senate Rules, the Special Master is not bound by the stipulation. In contrast to the stipulation, the evidence shows that the Claimant grabbed onto the bus and

could have removed his arm or hand from it with minimal force.

CONCLUSIONS OF LAW:

The claim bill hearing was a *de novo* proceeding to determine, based on the evidence presented to the Special Master, whether Broward County is liable for the Claimant's injuries, and if so, whether the amount of the claim is reasonable.

The Claimant asserted that the bus driver, Mr. Soto, as an agent for Broward County, negligently operated the bus, causing the Claimant to incur economic and non-economic damages.

A negligence claim has four essential elements. The Claimant must prove that the Respondent owed him or her a certain *duty* of care, that the Respondent *breached* this duty, and that the breach *caused* the Claimant to incur *damages*. Thus, the four elements of negligence are often referred to in short as (1) duty, (2) breach, (3) causation, and (4) damages.

Here, the Claimant did not prove causation. That is, the Claimant did not prove that the Respondent's alleged breach of its alleged duty caused the Claimant's injuries. Instead, the preponderance of the evidence showed that the Claimant caused his own injuries. Therefore, the Claimant failed to prove his claim.

Analysis

After briefly mentioning the Claimant's allegations as to duty and breach, the analysis will move into a discussion of causation. The Special Master's ultimate conclusion rests on the determination that the Claimant did not prove that the Respondent was the legal cause of the Claimant's accident and injuries; so, the causation element is discussed in relative depth. The issue of monetary damages is not discussed because the lack of causation makes the issue of damages moot.

Duty: The Claimant's counsel asserted three theories of duty. One of these theories was that the Respondent owed the Claimant whatever duty is owed under ordinary negligence. The Claimant's counsel also argued that the Respondent owed a heightened duty of care as a "common carrier." Third, the Claimant asserted that several rules in the Florida Administrative Code constituted duties of care. So, the

argument went, where these rules required the County to do something, the County was required to do so or face possible liability. This last theory is often referred to as "negligence *per se*." Upon questioning by the Special Master, counsel for the Claimant finally disclosed that the trial court had found, as a matter of law, that the Claimant's negligence *per se* claim was invalid.

Breach: The Claimant asserted that Mr. Soto breached his duties to the Claimant by (1) easing away from the bus stop before fully closing the doors on the bus, (2) failing to check the rearview mirrors (in which he allegedly would have seen the Claimant), (3) leaving the bus stop with passengers at the front of the bus (ahead of the "standee line"), and (4) not stopping the bus when passenger's alerted him that someone was outside the bus. As such, to prove the causation element of negligence, the Claimant needed to prove that one or more of these actions/inactions caused his injuries.

Causation: The type of causation required to sustain a negligence claim is referred to as "proximate" causation, which has two necessary elements. In short, these elements are referred to as cause-in-fact and foreseeability. Specifically, the Claimant must show (1) that the Respondent's breach in fact caused his injuries, and (2) that the accident that resulted from the Respondent's breach was a reasonably foreseeable result of the Respondent's conduct. *Coker v. Wal-Mart Stores, Inc.*, 642 So. 2d 774 (Fla. 1st DCA 1994).

The second element—foreseeability—is itself comprised of three standards set forth in case law, each of which must be met for a claimant to prove his or her case. Accordingly, causation is outlined in terms of its elements as follows:

1. Cause-in-fact.
2. Foreseeability.
    a. Natural and Probable Consequences Standard.
    b. Scope of Danger Standard.
    c. Remote Consequences Standard.

In sum, if a claimant fails to prove any of the above elements or standards, his or her claim fails. As explained below, the Claimant failed to prove (at least) the foreseeability element of causation, because he failed to prove that his claim met (at least) the first two standards of foreseeability.

The "natural and probable consequences standard" has been explained by the Florida Supreme Court as follows:

> "Natural and probable" consequences are those which a person by prudent human foresight can be expected to anticipate as *likely* to result from an act, *because they happen so frequently from commission of such act that in the field of human experience they may be expected to happen again*. "Possible" consequences [on the other hand] are those which happen to so infrequently from the commission of a particular act, that in the field of human experience, they are not expected as likely to happen again from the commission of the same act.

Cone v. Inter County Tel. and Tel. Co., 40 So. 2d 148, 149 (Fla. 1949) (Emphasis added). However, "it is immaterial that the [Respondent] could not foresee the *precise* manner in which the injury occurred or its *exact* extent." *McCain v. Florida Power Corp*., 593 So .2d 500 (1992) (emphasis in the original).

Here, the Claimant's accident was not a natural and probable consequence of Mr. Soto's alleged negligence. A person, "by prudent human foresight," would not think it *likely* that Mr. Soto's alleged breaches of his alleged duty would result in a young man, grabbing the door of the moving bus and holding onto it while the bus picked up considerable speed.

The second foreseeability standard is the scope of danger standard. Under this standard, it is not necessary that a respondent foresee the exact course of events that led to an accident, but "it must be shown that the … general-type accident was a reasonably foreseeable consequence of the [respondent's] negligence." *Tieder v. Little*, 502 So. 2d 923, 926 (Fla. 3d DCA 1987).

Here, the general-type accident that occurred was clearly not a reasonably foreseeable consequence of any of the Respondent's allegedly wrongful conduct. Rather, it was a totally unforeseeable type of accident.

The third standard that comprises the foreseeability component of proximate causation is the remote consequences standard. However, because the Claimant's

case failed to meet the first two standards, whether the Claimant met this standard is irrelevant.
In sum, the Claimant failed to meet the foreseeability element of causation. Therefore, the Claimant failed to prove the causation element of negligence, an essential element of his negligence claim.

ATTORNEY'S FEES: Section 768.28(8), F.S., limits the Claimant's attorney's fees to 25 percent of the Claimant's total recovery by way of any judgment or settlement. The Claimant's attorney and lobbyist submitted separate affidavits stating that, in the aggregate, the Claimant's attorney and lobbyist would receive no more than 25 percent of the amount awarded by this bill. Further, the affidavits stated that the Claimant, Jerry Cunningham, would receive 75 percent of any amount awarded under this bill.

RECOMMENDATIONS: Based on the foregoing, I recommend that Senate Bill 314 (2017) be reported UNFAVORABLY.

Respectfully submitted,

Adam Stallard
Senate Special Master

cc: Secretary of the Senate

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is 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 328
INTRODUCER:	Health Policy Committee and Senators Grimsley and Perry
SUBJECT:	Regulation of Nursing
DATE:	April 24, 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van Winkle	Stovall	HP	**Fav/CS**
2.	Bouck	Graf	ED	**Favorable**
3.	Rossitto-Van Winkle	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 328 removes an obsolete pathway for certification as an advanced registered nurse practitioner and modifies provisions pertaining to the approval of nursing education programs.

The bill authorizes the Board of Nursing (BON) to conduct an on-site evaluation of applicants for nursing education programs, and modifies the program approval process as follows:

- Applies the minimum graduate passage rate standard to all first-time test takers;
- Removes the requirement that a graduate who does not take the licensure examination within 6 months of graduation must complete an examination preparatory course;
- Clarifies when programs in probationary status must be terminated;
- Requires an accredited and non-accredited program to disclose its probationary status and the implication of the probationary status to students;
- Prohibits a terminated or closed program from seeking approval for a certain time;
- Requires the termination of a program that fails to meet accreditation requirements;
- Closes a loophole for terminated programs to reapply for program approval within 3 years using an institutional name change or creating a new institution with the same ownership;
- Authorizes the BON to adopt rules relating to nursing curriculum, including rules relating to the use and limitations of simulation technology; and
- Removes the responsibility of the Office of Program Policy Analysis and Government Accountability from preparing certain reports and performing certain tasks, and places responsibility for those tasks and reports on Florida Center for Nursing.

The bill takes effect July 1, 2017, except as expressly provided otherwise.

II. Present Situation:

Part I of ch. 464, F.S., the Nurse Practice Act, governs the licensure and regulation of nurses in Florida. Nurses are licensed by the Department of Health (DOH)[1] and are regulated by the Board of Nursing (BON).[2] Currently a nurse desiring to practice nursing in the state of Florida must obtain a Florida license by examination or endorsement.

Applicants for licensure by examination as a registered nurse (RN) or licensed practical nurse (LPN), among other requirements, must:

- Graduate from an approved program or its equivalent, as determined by the BON;[3]
- Submit an application to the DOH;
- Pay a fee;
- Submit information for a criminal background check;[4] and
- Pass the National Council Licensure Examination (NCLEX).[5]

Licensure by endorsement requirements include submitting an application and fee, passing a criminal background screening, and:

- Holding a valid license to practice professional or practical nursing in another state or territory of the United States that when issued the licensure requirements met or exceeded those in Florida at that time;
- Meeting the requirements for licensure in Florida and having successfully completed an examination in another state that is substantially equivalent to the examination in Florida; or
- Having actively practiced nursing in another state or jurisdiction, or territory of the United States for two of the preceding 3 years without having his or her license acted against by the licensing authority of any jurisdiction.[6]

In 2016, the Legislature created s. 464.0095, F.S., the Nurse Licensure Compact (NLC), which adopts the revised NLC in its entirety into state law. It is effective on December 31, 2018, or upon enactment of the revised NLC into law by 26 states, whichever occurs first. When effective, this legislation will allow licensed practical and professional nurses to practice in all member states by maintaining a single license in the nurse's primary state of residence. To date, 14 states, including Florida, have adopted the revised NLC.[7]

[1] Section 464.008, F.S.
[2] The BON is comprised of 13 members appointed by the Governor and confirmed by the Senate who serve 4-year terms. All members must be residents of the state. Seven members must be registered nurses who are representative of the diverse areas of practice within the nursing profession. Three members must be licensed practical nurses and three members must be laypersons. At least one member of the board must be 60 years of age or older. *See* Section 464.004, F.S.
[3] Section 464.008(1)(c), F.S.
[4] Section 464.008(1), F.S.
[5] Section 464.008(2), F.S.
[6] Section 464.009, F.S.
[7] The National Council of State Boards of Nursing administers the NLC. They refer to it as the enhanced NLC. *See* https://www.nursecompact.com/ (last visited on March 24, 2017).

Advanced Registered Nurse Certification

Any nurse desiring to obtain Florida certification as an advanced registered nurse practitioner must submit to the DOH proof that he or she holds a current Florida professional nursing license as a RN and meets at least one of the following additional requirements:

- Satisfactory completion of a formal post-basic educational program of at least one academic year, the primary purpose of which is to prepare nurses for advanced or specialized practice;
- Certification by an appropriate specialty board such as a registered nurse anesthetist, psychiatric nurse, or nurse midwife; or
- Graduation from a nursing education program leading to a master's degree in a nursing clinical specialty area with preparation in specialized practitioner skills.[8]

According to the DOH, all recent applicants across the country are graduates of programs for the preparation of nurse practitioners, or are graduates of master's degree programs in a clinical nursing specialty, who meet specific educational requirements for certification. Accordingly, the first pathway to certification is now obsolete.[9]

Nursing Education Program Approval and Accreditation

Florida law requires an institution desiring to offer a prelicensure nursing education program to submit an application to the DOH and pay a program review fee for each campus or instructional site. In addition to identifying information about the program, the application must indicate the name of the accrediting agency if the institution is accredited.

The application must document compliance with the following program standards: faculty qualifications; clinical training and clinical simulation requirements, including a requirement that no more than 50 percent of the program's clinical training consist of clinical simulation; faculty-to-student supervision ratios; and curriculum and instruction requirements.[10] Currently the DOH is not authorized to conduct an on-site evaluation to document the applicant's compliance with the required program standards.

Once the DOH determines an application is complete, it forwards the application to the BON, which has 90 days to approve the application or to provide the applicant with notice of its intent to deny and the reasons for the denial. An applicant may request a hearing under ch. 120, F.S., on a notice of intent to deny.[11]

Nursing programs currently offered in Florida include: public school districts, community colleges, state universities, private institutions licensed by the Commission for Independent Education (CIE), private institutions that are members of the Independent Colleges and

[8] Section 464.012(1), F.S.
[9] Department of Health, *Senate Bill 328 Analysis* (January 11, 2017) p. 2, (on file with the Senate Committee on Health Policy).
[10] Section 464.019(1), F.S.
[11] Section 464.019(2), F.S. If the BON does not act on a program application within the 90-day review period, the program application is deemed approved. *Id.*

Universities of Florida, and Pensacola Christian College, which is statutorily authorized to offer a bachelor of science in nursing degree by s. 1005.06(1)(e), F.S.[12]

Chapter 464, F.S., recognizes and distinguishes between nursing education programs that are approved by the BON and programs that are approved and accredited.[13]

An "accredited program" is accredited by a specialized nursing accrediting agency that is nationally recognized by the United States Secretary of Education to accredit nursing education programs.[14] The specialized nursing accrediting agencies currently recognized by the United States Department of Education include: the Commission on Collegiate Nursing Education and the Accreditation Commission for Education in Nursing.[15]

A BON approved nursing education program[16] is required to submit an annual report to the BON which includes an affidavit certifying compliance with the program standards, and documentation for the previous academic year that sets forth data related to the number of students who applied, were accepted, enrolled, and graduated; retention rates; and accreditation status.[17]

The BON posts the following information on its website:

- A list of all accredited programs and graduation rates for the most recent 2 years;
- A list of all approved programs that are not accredited;
- All documentation submitted in a program's application;
- A summary of the program's compliance with program standards;
- A program's accreditation status, probationary status, graduate passage rates for the most recent 2 years, and retention rates.[18]

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[12] Office of Program Policy Analysis and Government Accountability, *Florida's Nursing Education Programs Continued to Expand in 2013, While Licensure Exams Passage Rates of New Programs Declined*, Report No. 14-03, 2 (Jan. 2014), *available at* http://floridasnursing.gov/forms/oppaga-report-2014.pdf. (last visited March 24, 2017). OPPAGA notes that "[n]ursing education programs in Florida that hold specialized nursing accreditation by the National League for Nursing Accrediting Commission (NLNAC) or by the Collegiate Commission on Nursing Education (CCNE) are not regulated by the Florida Board of Nursing." *Id.* Section 1005.06(1)(e), F.S., exempts schools from the CIE's licensure requirements if the institution had been so exempted in 2001 under s. 246.085(1)(b), F.S. (2001), and maintains the following qualifying criteria: the institution is incorporated in this state; the institution's credits or degrees are accepted for credit by at least three colleges that are fully accredited by an agency recognized by the U.S. Department of Education; the institution was exempt under that category prior to July 1, 1982, and the institution does not enroll any students who receive state or federal financial aid. Two institutions in Florida, Pensacola Christian College and Landmark Baptist College, are subject to this exemption. Landmark Baptist College does not offer a nursing program.

[13] The program application and approval process, the annual report requirement, the data submission requirements and the pass rate requirements are not applicable to accredited programs.

[14] Section 464.003(1), F.S.

[15] United States Department of Education, *Accreditation in the United States: Specialized Accrediting Agencies*, https://www2.ed.gov/admins/finaid/accred/accreditation_pg7.html (last visited March 24, 2017).

[16] Section 464.003(4), F.S., defines an "approved program" as "a program for the pre-licensure education of professional or practical nurses that is conducted in the state at an educational institution and that is approved under s. 464.019, F.S. The term includes such a program placed on probationary status."

[17] Section 464.019(3), F.S

[18] Section 464.019(4), F.S.

Approved programs must have a graduate passage rate not lower than ten percent below the national average for two consecutive years. Programs are placed on probation for low performance with NCLEX scores for two consecutive years and are subject to termination. The program director is required to present a plan for remediation to the BON that includes specific benchmarks to identify progress toward a graduate passage rate goal. The program must remain on probationary status until it achieves a graduate passage rate that equals or exceeds the required passage rate for any one calendar year. If the program does not achieve the required passage rate in any one calendar year after a program has been placed on probationary status, the BON is authorized to terminate the program or may extend the probation for one additional year.[19] Fifteen schools are currently on probation. Of these, five are LPN and 10 are RN programs. Of the RN programs, nine are associate degree programs.[20]

An approved program which has been placed on probation must disclose its probationary status in writing to the program's students and applicants.[21]

If an accredited program ceases to be accredited, the educational institution conducting the program must provide written notice to that effect to the BON, the program's students and applicants, and each entity providing clinical training sites or experiences. It may then apply to be an approved program.[22]

An approved program graduate who does not take the licensure examination within 6 months after graduation must enroll in, and successfully complete, a licensure examination preparatory course pursuant to s. 464.008, F.S.

To improve program quality, the 2014 Legislature revised Florida law to require nursing education programs that prepare students for the practice of professional nursing (RNs) to become accredited within 5 years of certain triggering dates. A program approved before July 1, 2014, is required to become accredited by July 1, 2019. If a program was approved but had not enrolled students before July 1, 2014, then the program must become accredited within 5 years of enrolling the first students. A program approved after June 30, 2014, has 5 years after enrolling the program's first students to become accredited.[23]

The BON does not have rulemaking authority for the approval of nursing education programs, except as to the format for submitting applications and the format for the required annual report.[24]

The Florida Center for Nursing (FCN) and the Office of Program Policy Analysis and Government Accountability (OPPAGA) are tasked with studying the nursing education approval process, and submitting reports to the Governor, the President of the Senate, and Speaker of the House of Representatives, annually through January 30, 2020. The report is to be based on data

[19] Section. 464.019(5)(a)3., F.S.
[20] *Supra,* note 22.
[21] Section 464.019(5)(c), F.S.
[22] Section 464.019(9)(b), F.S.
[23] Section 464.019(11), F.S. Pensacola Christian College is exempt from this certification requirement due to its status under s. 1005.06(1)(e), F.S.
[24] Section 464.019(8), F.S.

received from programs from the previous academic year to determine whether the program approval process is increasing the availability of nursing education programs and producing quality nurses.[25] If the FNC does not receive funding for any legislative fiscal year, the education policy arm of OPPAGA must perform the duties assigned to the FCN.[26] The FCN did not receive funding in the fiscal year 2016-2017 from the Florida Legislature, and must rely on grants, donations, and savings to complete the tasks and reports on the nursing workforce and improving the Florida nursing environment in Florida.[27]

The 2015 data indicates that approximately 42 percent of nursing programs had licensure examination passage rates that were ten percent or more below the national average. This a 36 percent increase over 2014. Most of the nursing programs below the required passage rate were created since 2009 and are unaccredited.[28] As of December 2016, 93 of the 350 nursing education programs in Florida were accredited by the BON.[29]

III. Effect of Proposed Changes:

Sections 1 and 2 amend s. 464.012, F.S., to delete an obsolete pathway that permitted a registered nurse to be certified as an advanced registered nurse practitioner if he or she completed a formal postbasic education program of at least one academic year. This is no longer sufficient for current graduate education and certification standards. This pathway is also deleted from chapter laws which passed last year, but which do not go into effect until the Nurse Licensure Compact goes into effect on December 31, 2018, or when 26 states have adopted the compact.

Section 3 amends s. 464.019, F.S., to revise provisions relating to nursing education programs, including:

- Authorizing the Board of Nursing (BON) to conduct on site-evaluations of nursing education program applicants, if necessary, to confirm compliance with the requirements s. 464.019(1), F.S.
- Requiring approved programs to demonstrate a licensure exam passage rate of no more than 10 percent below the average pass rate for all United States educated, first time exam takers of the National Council Licensure Examination (NCLEX). Currently the measure is calculated for first-time test takers who take the exam within 6 months after graduation from the program.
- Repealing the requirement that a graduate who does not take the licensure examination within six months after graduation must complete an examination preparatory course.

[25] Section 464.019(10), F.S.
[26] Id.
[27] Florida Center for Nursing, *About Us*, available at https://www.flcenterfornursing.org/Donations/HowyourdonationshelptheFCN.aspx, (last visited March 24, 2017).
[28] Office of Program Policy Analysis and Government Accountability, *Approximately 42% of Nursing Programs Had Licensure Passage Rates Below the Required Legislative Standard in 2015*, Report No. 16-05, (July. 2016), *available at* http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1605rpt.pdf (last visited March 24, 2017).
[29] Office of Program Policy Analysis and Government Accountability, *Review of Florida's Nursing Education Programs, 2016*, Report No. 17-03 (Jan. 2017), *available at* http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1703rpt.pdf, (last visited March 24, 2017).

- Clarifying that the BON shall terminate a program, whether accredited or non-accredited, which has been placed on probationary status for failing to achieve the examination passage rate if it is not granted a 1-year extension or fails to achieve the required passage rate.
- Imposing the sanction of program termination if a program fails to submit the annual report within 6 months after it is due or if a program director for an approved program fails to appear before the board to explain the reason for failing to submit the annual report timely.
- Requiring an accredited or non-accredited program which has been placed on probationary status to disclose in its notification of that status an explanation of the implications on the students and applicants.
- Providing for termination of a nursing education program that fails to become accredited within the required timeframes.
- Prohibiting a program that is terminated or closed from seeking subsequent program approval under its original name, a new program or institutional name, or a new institution with the same ownership, for a minimum of 3 years after the date of termination or closing.
- Providing additional rulemaking authority for the BON to adopt rules related to nursing curriculum, including rules relating to the uses and limitations of simulation technology.
- Extending certain accountability provisions, that previously only applied to approved programs, to accredited programs. This includes the standard that the passage rate for first-time test takers may not be more than 10 percentage points lower than the average passage rate for graduates of comparable degree programs on the NCLEX; and the implications if the passage rate is below that standard. The second provision relates to the contents of the notification to various parties when a nursing education program has been placed on probationary status. The third provision authorizes excluding the test scores of students who transfer more than 12 credits from a terminated program to an approved or accredited program when calculating the passage rate of the receiving program.

This section of the bill also removes the Office of Program Policy Analysis and Government Accountability as a partner with the Florida Center for Nursing (FCN) to study and annually report to the Governor, President of the Senate and the Speaker of the House of Representatives on the previous year's availability of nursing education programs and the production of quality nurses through January 2020. In addition to existing report requirements, the FCN is to complete an assessment of the status of each program's progress in the accreditation process.

Section 4 provides an effective date of July 1, 2017, except as expressly provided otherwise.

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 Florida Center for Nursing may require governmental funding to perform the implementation study tasks.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 464.012, 464.019 and Chapters 2016-139, 2016-224, and 2016-231, Laws of Florida.

IX. Additional Information:

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

CS by Health Policy on March 14, 2017:
The CS:

- Removes from the bill language changing the approving entity for advanced registered nurse practitioner continuing education on the safe and effective prescription of controlled substances to the Board of Nursing (BON);
- Removes the requirement that nursing education programs placed on probation disclose to students and applicants the specific implications of the school's probationary status on an applicant's employment and educational opportunities; but retains the programs requirement to disclose the implications of the probation on the students and applicants;

- Closes a loophole for terminated programs to reapply for program approval within 3 years using an institutional name change or creating a new institution with the same ownership;
- Removes BON rulemaking authority for program implementation, termination and closure, and the procedure to seek subsequent approval; and
- Provides for removing the test scores of students transferring more than 12 hours from a closed program when calculating passage rates.

B. Amendments:

None.

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

By the Committee on Health Policy; and Senators Grimsley and Perry

588-02417-17 2017328c1

A bill to be entitled

An act relating to the regulation of nursing; amending s. 464.012, F.S.; removing an obsolete qualification no longer sufficient to satisfy certain nursing certification requirements; amending s. 464.019, F.S.; authorizing the Board of Nursing to conduct certain on-site evaluations; removing a limiting criterion from the requirement to measure graduate passage rates; removing a requirement that certain nursing program graduates complete a specific preparatory course; clarifying circumstances when programs in probationary status must be terminated; providing that accredited and nonaccredited nursing education programs must disclose probationary status; requiring notification of probationary status to include certain information; prohibiting a terminated or closed program from seeking program approval for a certain time; providing that a name change or the creation of a new educational institution does not reduce the waiting period for reapplication; authorizing the board to adopt certain rules; removing requirements that the Office of Program Policy Analysis and Government Accountability perform certain tasks; requiring the Florida Center for Nursing to make an annual assessment of compliance by nursing programs with certain accreditation requirements; requiring the center to include its assessment in a report to the Governor and the Legislature; requiring the termination of a program under certain circumstances;

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588-02417-17 2017328c1

providing effective dates.

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

Section 1. Subsection (1) of section 464.012, Florida Statutes, is amended to read:

464.012 Certification of advanced registered nurse practitioners; fees; controlled substance prescribing.—

(1) Any nurse desiring to be certified as an advanced registered nurse practitioner shall apply to the department and submit proof that he or she holds a current license to practice professional nursing and that he or she meets one or more of the following requirements as determined by the board:

~~(a) Satisfactory completion of a formal postbasic educational program of at least one academic year, the primary purpose of which is to prepare nurses for advanced or specialized practice.~~

(a) ~~(b)~~ Certification by an appropriate specialty board. Such certification shall be required for initial state certification and any recertification as a registered nurse anesthetist, psychiatric nurse, or nurse midwife. The board may by rule provide for provisional state certification of graduate nurse anesthetists, psychiatric nurses, and nurse midwives for a period of time determined to be appropriate for preparing for and passing the national certification examination.

(b) ~~(c)~~ Graduation from a program leading to a master's degree in a nursing clinical specialty area with preparation in specialized practitioner skills. For applicants graduating on or after October 1, 1998, graduation from a master's degree program

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shall be required for initial certification as a nurse practitioner under paragraph (4)(c). For applicants graduating on or after October 1, 2001, graduation from a master's degree program shall be required for initial certification as a registered nurse anesthetist under paragraph (4)(a).

Section 2. Effective December 31, 2018, or upon enactment of the Nurse Licensure Compact into law by 26 states, whichever occurs first, subsection (1) of section 464.012, Florida Statutes, as amended by section 8 of chapter 2016-139, section 12 of chapter 2016-224, and section 7 of chapter 2016-231, Laws of Florida, is amended to read:

464.012 Certification of advanced registered nurse practitioners; fees; controlled substance prescribing.—

(1) Any nurse desiring to be certified as an advanced registered nurse practitioner shall apply to the department and submit proof that he or she holds a current license to practice professional nursing or holds an active multistate license to practice professional nursing pursuant to s. 464.0095 and that he or she meets one or more of the following requirements as determined by the board:

~~(a) Satisfactory completion of a formal postbasic educational program of at least one academic year, the primary purpose of which is to prepare nurses for advanced or specialized practice.~~

(a) ~~(b)~~ Certification by an appropriate specialty board. Such certification shall be required for initial state certification and any recertification as a registered nurse anesthetist, psychiatric nurse, or nurse midwife. The board may by rule provide for provisional state certification of graduate

nurse anesthetists, psychiatric nurses, and nurse midwives for a period of time determined to be appropriate for preparing for and passing the national certification examination.

(b) ~~(c)~~ Graduation from a program leading to a master's degree in a nursing clinical specialty area with preparation in specialized practitioner skills. For applicants graduating on or after October 1, 1998, graduation from a master's degree program shall be required for initial certification as a nurse practitioner under paragraph (4)(c). For applicants graduating on or after October 1, 2001, graduation from a master's degree program shall be required for initial certification as a registered nurse anesthetist under paragraph (4)(a).

Section 3. Paragraph (b) of subsection (2), subsection (5), subsection (8), paragraph (a) of subsection (9), and subsection (10) of section 464.019, Florida Statutes, are amended, paragraph (d) is added to subsection (7) of that section, and paragraph (e) is added to subsection (11) of that section, to read:

464.019 Approval of nursing education programs.—

(2) PROGRAM APPROVAL.—

(b) Following the department's receipt of a complete program application, the board may conduct an on-site evaluation if necessary to document the applicant's compliance with subsection (1). Within 90 days after the department's receipt of a complete program application, the board shall:

1. Approve the application if it documents compliance with subsection (1); or

2. Provide the educational institution with a notice of intent to deny the application if it does not document

compliance with subsection (1). The notice must specify written reasons for the board's denial of the application. The board may not deny a program application because of an educational institution's failure to correct an error or omission that the department failed to provide notice of to the institution within the 30-day notice period under paragraph (a). The educational institution may request a hearing on the notice of intent to deny the program application pursuant to chapter 120.

(5) ACCOUNTABILITY.—

(a)1. An approved program must achieve a graduate passage rate for first-time test takers which ~~who take the licensure examination within 6 months after graduation from the program that~~ is not more than 10 percentage points lower than the average passage rate during the same calendar year for graduates of comparable degree programs who are United States educated, first-time test takers on the National Council of State Boards of Nursing Licensing Examination, as calculated by the contract testing service of the National Council of State Boards of Nursing. ~~An approved program shall require a graduate from the program who does not take the licensure examination within 6 months after graduation to enroll in and successfully complete a licensure examination preparatory course pursuant to s. 464.008.~~ For purposes of this subparagraph, an approved program is comparable to all degree programs of the same program type from among the following program types:

a. Professional nursing education programs that terminate in a bachelor's degree.

b. Professional nursing education programs that terminate in an associate degree.

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c. Professional nursing education programs that terminate in a diploma.

d. Practical nursing education programs.

2. Beginning with graduate passage rates for calendar year 2010, if an approved program's graduate passage rates do not equal or exceed the required passage rates for 2 consecutive calendar years, the board shall place the program on probationary status pursuant to chapter 120 and the program director shall appear before the board to present a plan for remediation, which shall include specific benchmarks to identify progress toward a graduate passage rate goal. The program must remain on probationary status until it achieves a graduate passage rate that equals or exceeds the required passage rate for any 1 calendar year. The board shall deny a program application for a new prelicensure nursing education program submitted by an educational institution if the institution has an existing program that is already on probationary status.

3. Upon the program's achievement of a graduate passage rate that equals or exceeds the required passage rate, the board, at its next regularly scheduled meeting following release of the program's graduate passage rate by the National Council of State Boards of Nursing, shall remove the program's probationary status. If the program, during the 2 calendar years following its placement on probationary status, does not achieve the required passage rate for any 1 calendar year, the board ~~shall terminate the program pursuant to chapter 120. However,~~ ~~the board~~ may extend the program's probationary status for 1 additional year, provided ~~if~~ the program has demonstrated ~~demonstrates~~ adequate progress toward the graduate passage rate

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goal by meeting a majority of the benchmarks established in the remediation plan. If the program is not granted the 1-year extension or fails to achieve the required passage rate by the end of such extension, the board shall terminate the program pursuant to chapter 120.

(b) If an approved program fails to submit the annual report required in subsection (3), the board shall notify the program director and president or chief executive officer of the educational institution in writing within 15 days after the due date of the annual report. The program director shall appear before the board at the board's next regularly scheduled meeting to explain the reason for the delay. The board shall terminate the program pursuant to chapter 120 if the program director fails to appear before the board, as required under this paragraph, or if the program ~~it~~ does not submit the annual report within 6 months after the due date.

(c) A nursing education ~~An approved~~ program, whether accredited or nonaccredited, which has been placed on probationary status shall disclose its probationary status in writing to the program's students and applicants. The notification must include an explanation of the implications of the program's probationary status on the students or applicants.

(d) If students from a program that is terminated pursuant to this subsection transfer to an approved or an accredited program under the direction of the Commission for Independent Education, the board shall recalculate the passage rates of the programs receiving the transferring students, excluding the test scores of those students transferring more than 12 credits.

(7) PROGRAM CLOSURE.—

(d) A program that is terminated or closed under this section may not seek program approval under its original name or a new program name for a minimum of 3 years after the date of termination or closing. An institutional name change or the creation of a new educational institution with the same ownership does not reduce the waiting period for reapplication.

(8) RULEMAKING.—The board does not have rulemaking authority to administer this section, except that the board shall adopt rules that prescribe the format for submitting program applications under subsection (1) and annual reports under subsection (3), and to administer the documentation of the accreditation of nursing education programs under subsection (11). The board may adopt rules relating to the nursing curriculum, including rules relating to the uses and limitations of simulation technology. The board may not impose any condition or requirement on an educational institution submitting a program application, an approved program, or an accredited program, except as expressly provided in this section.

(9) APPLICABILITY TO ACCREDITED PROGRAMS.—

(a) Subsections (1)-(3), paragraph (4)(b), and paragraph (5)(b) ~~subsection (5)~~ do not apply to an accredited program.

(10) IMPLEMENTATION STUDY.—The Florida Center for Nursing ~~and the education policy area of the Office of Program Policy Analysis and Government Accountability~~ shall study the administration of this section and submit reports to the Governor, the President of the Senate, and the Speaker of the House of Representatives annually by January 30, through January 30, 2020. The annual reports shall address the previous academic year; provide data on the measures specified in paragraphs (a)

and (b), as such data becomes available; and include an evaluation of such data for purposes of determining whether this section is increasing the availability of nursing education programs and the production of quality nurses. The department and each approved program or accredited program shall comply with requests for data from the Florida Center for Nursing ~~and the education policy area of the Office of Program Policy Analysis and Government Accountability~~.

(a) The Florida Center for Nursing ~~education policy area of the Office of Program Policy Analysis and Government Accountability~~ shall evaluate program-specific data for each approved program and accredited program conducted in the state, including, but not limited to:

1. The number of programs and student slots available.

2. The number of student applications submitted, the number of qualified applicants, and the number of students accepted.

3. The number of program graduates.

4. Program retention rates of students tracked from program entry to graduation.

5. Graduate passage rates on the National Council of State Boards of Nursing Licensing Examination.

6. The number of graduates who become employed as practical or professional nurses in the state.

(b) The Florida Center for Nursing shall evaluate the board's implementation of the:

1. Program application approval process, including, but not limited to, the number of program applications submitted under subsection (1); the number of program applications approved and denied by the board under subsection (2); the number of denials

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of program applications reviewed under chapter 120; and a description of the outcomes of those reviews.

2. Accountability processes, including, but not limited to, the number of programs on probationary status, the number of approved programs for which the program director is required to appear before the board under subsection (5), the number of approved programs terminated by the board, the number of terminations reviewed under chapter 120, and a description of the outcomes of those reviews.

(c) The Florida Center for Nursing shall complete an annual assessment of compliance by programs with the accreditation requirements of subsection (11), include in the assessment a determination of the accreditation process status for each program, and submit the assessment as part of the reports required ~~For any state fiscal year in which The Florida Center for Nursing does not receive legislative appropriations, the education policy area of the Office of Program Policy Analysis and Government Accountability shall perform the duties assigned~~ by this subsection ~~to the Florida Center for Nursing~~.

(11) ACCREDITATION REQUIRED.—

(e) A nursing education program that fails to meet the accreditation requirements shall be terminated and is ineligible for reapproval under its original name or a new program name for a minimum of 3 years after the date of termination. An institutional name change or the creation of a new educational institution with the same ownership does not reduce the waiting period for reapplication.

Section 4. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2017.

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The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: April 4, 2017

I respectfully request that **Senate Bill #328**, relating to Regulation of Nursing, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Denise Grimsley
Florida Senate, District 26

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

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

Apr 25
Meeting Date

328
Bill Number (if applicable)

Topic Nursing

Amendment Barcode (if applicable)

Name Sandra Mortham

Job Title

Address 6675 Weeping Willow Way
Street

Phone 251-2283

Tallahassee FL
City *State* *Zip*

Email SmorthamEaol.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL Assn of Post Secondary Schools + Colleges

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-25-17
Meeting Date

328
Bill Number (if applicable)

Topic Nursing Education

Amendment Barcode (if applicable)

Name Martha DeCastro

Job Title VP for Nursing / Clinical Care Policy

Address 306 E. College Ave
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Tallahassee FL 32301
City *State* *Zip*

Email martha@fha.org

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Florida Hospital Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/17
Meeting Date

328
Bill Number (if applicable)

Topic Nursing Regulation

Amendment Barcode (if applicable)

Name Alisa LaPolt (ah LEE sa)

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Address PO BOX 1349
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Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Nurses Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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 474
INTRODUCER:	Children, Families, and Elder Affairs; Health Policy Committee and Senator Grimsley
SUBJECT:	Hospice Care
DATE:	April 24, 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Stovall	HP	**Fav/CS**
2.	Hendon	Hendon	CF	**Fav/CS**
3.	Looke	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE – Substantial Changes

I. Summary:

CS/CS/SB 474 amends and creates a section of the Florida Statutes related to the provision of hospice care. The bill:

- Requires the Department of Elder Affairs (DOEA) and the Agency for Health Care Administration (AHCA) to adopt federal guidelines and survey data for hospice outcome measures by December 31, 2019, and to develop a system for reporting hospice outcomes to consumers;
- Creates new requirements for hospices that assist in the disposal of prescribed controlled substances after a patient's death; and
- Expands the ways a person may obtain a hospice patient's medical records.

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

II. Present Situation:

Hospice Care

Hospice care is a continuum of care for the terminally ill[1] patient and his or her family members.[2] Hospice care is provided by a team which includes physicians, nurses, medical social workers, spiritual/pastoral counselors, home health aides, therapists, bereavement counselors, and specially trained volunteers.[3] Currently there are 45 licensed hospice providers in Florida.[4] Hospices can be for-profit or non-profit and provide four levels of care:

- **Routine care** provides the patient with hospice services at home or in a home-like setting. The patient's family provides the primary care with the assistance of the hospice team.
- **Continuous care** provides the patient with skilled nursing services in his or her home during a crisis.
- **Inpatient care** is provided in a healthcare facility for symptoms of a crisis that cannot be managed in the patient's home. Inpatient care is provided on a temporary basis as determined by the patient's physician and the hospice team.
- **Respite care** is provided in a healthcare facility and is primarily to provide the patient's family members and caretakers with a period of relief.[5]

Disposal of Prescription Medication by a Hospice

While there is no statutory provision related to hospice care that addresses the disposal of prescribed controlled substances in a hospice patient's home, Rule 58A-2.005(3)(a)7 of the Florida Administrative Code, requires hospices to have policies and procedures in place for disposal of Schedule II Controlled Substances upon the patient's death. Similarly, federal Medicare standards require hospices to dispose of controlled drugs in accordance with state and federal law.[6]

Hospice Outcome Measures

Current Florida Requirements

Rule 58A-2.005(4) of the Florida Administrative Code, requires hospice providers to annually report outcome measures to the DOEA including:

- Facility demographic information;
- The effectiveness of the hospice's pain management program;[7]
- Patient and family satisfaction including:
  - Whether or not the patient received the right amount of medicine for pain; and

[1] "Terminally ill" means that the patient has a medical prognosis that his or her life expectancy is 1 year or less if the illness runs its normal course. s. 400.601, F.S.
[2] Fla. Admin. Code R. 59C-1.0355.
[3] Florida Hospice and Palliative Care Association, *About Hospice* http://www.floridahospices.org/hospice-palliative-care/about-hospice/ (last visited April 12, 2017).
[4] Agency for Health Care Administration, *Senate Bill 474 Analysis* (January 27, 2017) (on file with the Senate Committee on Health Policy).
[5] Supra note 3
[6] Supra note 4. See 21 CFR s. 1317, for the federal regulations controlling the disposal of controlled substances.
[7] Section 400.60501, F.S., requires 50 percent of patients who report severe pain at the time of admission to a hospice must report a reduction in pain to a level of five or less (on a ten point scale) by the end of the fourth day of hospice care.

  - Would the patient recommend hospice services to others; and
- Aggregate patient data including:
  - Age;
  - Race;
  - Payor source;
  - Total number of patient days by location; and
  - The number of discharges by disposition.[8]

Federal Requirements

As a condition of participation for Medicare and Medicaid certification, 42 C.F.R. 418.54(e), requires that, as a part of a comprehensive assessment of each patient, the hospice must collect data elements that allow for measurement of outcomes for each patient. The hospice is required to document and measure the data elements in the same way for each patient and the data must take into consideration all aspects of care related to hospice and palliation. Additionally, the data must be documented in a systematic and retrievable way for each patient and must be used in individual patient care planning, in coordination of services, and must be used for each hospice's quality assessment and performance improvement program.[9]

Hospice Patient Records

Currently, s. 400.611, F.S., restricts a hospice from releasing a patient's record, or any portion thereof, unless:

- The patient or legal guardian has given express written informed consent;
- A court of competent jurisdiction has ordered the record released; or
- A state or federal agency, acting under its statutory authority, requires the submission of aggregate statistical data.

Legal Guardians, Health Care Surrogacies, and Health Care Proxies.

A legal guardian is a person who is designated by a court pursuant to ch. 744, F.S., to act on the behalf of a ward's person or property. In most cases, in order to have a guardian appointed, a court must determine that the ward is incapacitated. Chapter 744, F.S., defines an incapacitated person as a person who has been judicially determined to lack the capacity to manage at least some of the property or to meet at least some of the essential health and safety requirements of the person.

Section 765.101, F.S., defines a health care surrogate as any competent adult expressly designated by a principal to make health care decisions and to receive health information. The principal may stipulate whether the authority of the surrogate to make health care decisions or to receive health information can be exercised immediately without a determination of incapacity or only upon the principal's incapacity as provided in s. 765.204, F.S. In the case of a patient who is

[8] DOEA Form H-002, *Hospice Demographic and Outcome Measures Report* (August 2008) *available at* http://elderaffairs.state.fl.us/english/hospice/DOEAformH002.xls (last visited on April 12, 2017).
[9] The details of the quality assessment and performance improvement program requirements are in 42 C.F.R. 418.58.

incapacitated and has not designated a health care surrogate, the authority to make health care decisions for a patient rests in the patient's proxy.

Section 765.101, F.S., defines a proxy as a competent adult who has not been expressly designated to make health care decisions for a particular incapacitated individual, but who, nevertheless, is authorized pursuant to s. 765.401, F.S., to make health care decisions for such individual and s. 765.401, F.S., lists in descending order of priority persons who may be considered the patient's proxy.[10]

III. Effect of Proposed Changes:

Section 1 amends s. 400.60501, F.S., to require the DOEA and the AHCA adopt outcome measures for quality and effectiveness of hospice care by December 31, 2019. The bill requires that the DOEA and the AHCA adopt national hospice outcome measures and survey data in 42 C.F.R. part 418 and develop a system for publicly reporting these measures identified as useful consumer information. The bill also eliminates a quality standard pertaining to reducing a patient's severe pain by the end of the fourth day after admission.

Section 2 creates s. 400.6096, F.S., to establish requirements for a hospice that chooses to assist with the disposal of prescribed controlled substances after the death of a patient in his or her home. The bill requires a hospice that assists in the disposal of prescribed controlled substances in a patient's home to establish clearly defined policies, procedures, and systems for acceptable disposal methods. Disposal procedures must be carried out in the home and hospice staff and volunteers are not permitted to remove controlled substances from the patient's home. The bill permits hospice physicians, nurses, and social workers to assist family members with the disposal of controlled substances in the patient's home after a patient's death pursuant to regulations in 21 C.F.R. s. 1317 (related to the disposal of controlled substances) and pursuant to the hospice's written policy, procedure, or system for disposal methods.

Section 3 amends s. 400.611, F.S., to expand the ways a person may be authorized to receive a hospice patient's record of care both before and after the patient's death. The bill:

- Increases the length of time a hospice must keep a patient's record from 5 to 6 years after termination of hospice services;
- Restricts a hospice from releasing a patient's interdisciplinary record of care unless the person requesting the record provides:
  - A patient authorization executed by the patient;
  - For incapacitated patients, a patient authorization executed before the patient's death by the patient's legal guardian, health care surrogate, health care proxy, or agent under power of attorney;
  - A court order appointing the person as the administrator, curator, executor, or personal representative of the patient's estate with authority to obtain the patient's medical records;

[10] Proxies may include, in descending order of priority: a judicially appointed guardian, the patient's spouse, an adult child of the patient, the patient's parent, an adult sibling of the patient (or majority of adult siblings if he or she has more than one), an adult relative of the patient who is close to the patient, a close friend of the patient, and a clinical social worker who meets specified criteria.

- If a judicial appointment has not been made, a last will that is self-proved pursuant to s. 732.503, F.S., and designates the person to act as the patient's personal representative; or
- An order by a court of competent jurisdiction mandating the release of the records.[11]

The bill defines the term "patient authorization" as an unrevoked written statement by the patient or an oral statement by the patient, or, in the case of incapacitated patients, the patient's legal guardian, health care surrogate, agent under power of attorney, or health care proxy that gives the patient's permission to release the record.

The effective date of the bill is July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

CS/SB 474 may have a positive fiscal impact on persons who would be authorized under the bill to receive a hospice patient's records without the need to obtain a court order.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The bill amends s. 400.611, F.S., to allow a hospice to release a patient's record of care to a person if the person has a "patient authorization" executed after the patient becomes incapacitated but before the patient's death by the patient's acting legal guardian, health care

[11] Currently a hospice may only provide records pursuant to the patient's consent, the patient's legal guardian's consent, or a court order.

surrogate, health care proxy, or agent under power of attorney. However, the definition provided in the bill for "patient authorization" only allows the patient him or herself to provide a written authorization and requires that a "patient authorization" from a patient's representative (as listed above) be provided as an oral statement that is reduced to writing in the patient's record of care. The bill should be clarified to allow a patient's representative to provide a written authorization as well as an oral authorization for the release of the patient's record of care.

VII. Related Issues:

The bill amends s. 400.611, F.S., to allow a hospice patient's record of care to be released to a person providing a last will that is self-proved under s. 732.503, F.S., and which designates the person to act as the patient's personal representative. Although the language implies that such person should only receive the patient's record of care after the patient's death by stating that the provision is effective if there is no court order appointing the person as the administrator, curator, executor, or personal representative of the patient's estate, as written, the language may technically allow the person to receive the patient's record prior to the patient's death.

VIII. Statutes Affected:

This bill substantially amends sections 400.60501 and 400.611 of the Florida Statutes.

This bill creates section 400.6096 of the Florida Statutes.

IX. Additional Information:

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

CS/CS by Children, Families, and Elder Affairs on April 17, 2017:
The CS amends CS/SB 474 to:

- Requires DOEA to adopt federal outcome measures and survey data for hospice services;
- References chapter 765 in using the terms "health care surrogate" and "health care proxy" when authorizing the release of hospice patient records.

CS by Health Policy on March 27, 2017:
The CS amends SB 474 to:

- Remove all portions of the bill related to a hospice providing palliative care to seriously ill persons;
- Amend s. 400.611, F.S., to expand the ways a person may be authorized to receive a hospice patient's record of care while the patient is still alive and after the patient's death;
- Require that hospice staff adhere to 21 C.F.R. s. 1317, when assisting with the disposal of controlled substances; and
- Make other technical and clarifying changes.

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 Children, Families, and Elder Affairs; and Health Policy; and Senator Grimsley

586-03958-17 2017474c2

A bill to be entitled

An act relating to hospice care; amending s. 400.60501, F.S.; requiring the Department of Elderly Affairs, in conjunction with the Agency for Health Care Administration, to adopt national hospice outcome measures and survey data by a specified date and to make such measures available to the public; creating s. 400.6096, F.S.; authorizing certain hospice personnel to assist in the disposal of certain prescribed controlled substances; requiring a hospice that chooses to assist in the disposal of certain prescribed controlled substances to establish policies, procedures, and systems for the disposal; authorizing a hospice physician, nurse, or social worker to assist in the disposals of certain prescribed controlled substances; providing requirements for such disposals; amending s. 400.611, F.S.; requiring a hospice to maintain an up-to-date interdisciplinary record of care; revising the patient records retention period; providing for the confidentiality of the interdisciplinary record of patient care; specifying to whom and under what conditions a hospice may release a patient's interdisciplinary record of care; defining a term; requiring a hospice to release patient statistical data to certain agencies; specifying that information from patient records is confidential and exempt from certain provisions; providing an effective date.

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

586-03958-17 2017474c2

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

Section 1. Section 400.60501, Florida Statutes, is amended to read:

400.60501 Outcome measures; adoption of federal quality measures; public reporting ~~national initiatives~~; annual report.—

(1) No later than December 31, 2019 ~~2007~~, the department ~~of Elderly Affairs~~, in conjunction with the agency ~~for Health Care Administration~~, shall adopt the national hospice ~~develop~~ outcome measures and survey data in 42 C.F.R. part 418 to determine the quality and effectiveness of hospice care for hospices licensed in the state. ~~At a minimum, these outcome measures shall include a requirement that 50 percent of patients who report severe pain on a 0-to-10 scale must report a reduction to 5 or less by the end of the 4th day of care on the hospice program.~~

(2) ~~For hospices licensed in the state,~~ The department ~~of Elderly Affairs~~, in conjunction with the agency ~~for Health Care Administration~~, shall:

(a) Make available to the public the national hospice outcome measures and survey data in a format that is comprehensible by a layperson and that allows a consumer to compare such measures of one or more hospices ~~Consider and adopt national initiatives, such as those developed by the national hospice and Palliative Care Organization, to set benchmarks for measuring the quality of hospice care provided in the state~~.

(b) Develop an annual report that analyzes and evaluates the information collected under this act and any other data collection or reporting provisions of law.

Section 2. Section 400.6096, Florida Statutes, is created

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

to read:

400.6096 Disposal of prescribed controlled substances following the death of a patient in the home.—

(1) A hospice physician, nurse, or social worker is authorized to assist in the disposal of a controlled substance prescribed to a patient at the time of the patient's death pursuant to the disposal regulations in 21 C.F.R. s. 1317.

(2) A hospice that assists in the disposal of a prescribed controlled substance found in the patient's home at the time of the patient's death must establish a written policy, procedure, or system for acceptable disposal methods.

(3) A hospice physician, nurse, or social worker, upon the patient's death and with the permission of a family member or a caregiver of the patient, may assist in the disposal of an unused controlled substance prescribed to the patient, pursuant to the written policy, procedure, or system established under subsection (2).

(4) The prescribed controlled substance disposal procedure must be carried out in the patient's home. Hospice staff and volunteers are not authorized to remove a prescribed controlled substance from the patient's home.

Section 3. Section 400.611, Florida Statutes, is amended to read:

400.611 Interdisciplinary records of care; confidentiality; release of records.—

(1) A hospice shall maintain an up-to-date, interdisciplinary record of care being given and patient and family status ~~shall be kept~~. Records shall contain pertinent past and current medical, nursing, social, and other therapeutic

information and such other information that is necessary for the safe and adequate care of the patient. Notations regarding all aspects of care for the patient and family shall be made in the record. When services are terminated, the record shall show the date and reason for termination.

(2) Patient records shall be retained for a period of 6 ~~5~~ years after termination of hospice services, unless otherwise provided by law. In the case of a patient who is a minor, the 6-year ~~5-year~~ period shall begin on the date the patient reaches or would have reached the age of majority.

(3) The interdisciplinary record of patient ~~records of~~ care and billing records are confidential.

(4) A hospice may not release a patient's interdisciplinary record or any portion thereof, unless the person requesting the information provides to the hospice:

(a) A patient authorization executed by the patient; ~~or legal guardian has given express written informed consent;~~

(b) In the case of an incapacitated patient, a patient authorization executed prior to the patient's death by the patient's then acting legal guardian, health care surrogate as defined in s. 765.101(21), health care proxy as defined in s. 765.101(19), or agent under power of attorney;

(c) A court order appointing the person as the administrator, curator, executor, or personal representative of the patient's estate with authority to obtain the patient's medical records;

(d) If a judicial appointment has not been made pursuant to paragraph (c), a last will that is self-proved under s. 732.503 and designates the person to act as the patient's personal

representative; or

(e) An order by a court of competent jurisdiction to release the interdisciplinary record to the person ~~has so ordered; or~~

~~(c) A state or federal agency, acting under its statutory authority, requires submission of aggregate statistical data. Any information obtained from patient records by a state agency pursuant to its statutory authority is confidential and exempt from the provisions of s. 119.07(1)~~.

(5) For purposes of this section, the term "patient authorization" means an unrevoked written statement by the patient, or an oral statement made by the patient which has been reduced to writing in the patient's interdisciplinary record of care, or, in the case of an incapacitated patient, by the patient's then acting legal guardian, health care surrogate, agent under a power of attorney, or health care proxy giving the patient's permission to release the interdisciplinary record to a person requesting the record.

(6) A hospice must release requested aggregate patient statistical data to a state or federal agency acting under its statutory authority. Any information obtained from patient records by a state agency pursuant to its statutory authority is confidential and exempt from s. 119.07(1).

Section 4. This act shall take effect July 1, 2017.

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

The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: April 19, 2017

I respectfully request that **474**, relating to Hospice Care, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Denise Grimsley

Senator Denise Grimsley
Florida Senate, District 26

cc: John B. Phelps, Staff Director
Cynthia Futch, Committee Administrative Assistant

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4.25.2017
Meeting Date

474
Bill Number (if applicable)

Topic Hospice

Amendment Barcode (if applicable)

Name Paul Ledford

Job Title President + CEO

Address 2000 Apalachee Parkway Ste 200
Street

Phone 850.878-2632

Tallahassee FL 32301
City *State* *Zip*

Email paul@floridahospices.org

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Florida Hospice and Palliative Care Assn.

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

25 APR 17
Meeting Date

474
Bill Number (if applicable)

Topic Hospice Care

Amendment Barcode (if applicable)

Name Michael McQuone (mick-cue-one)

Job Title Associate Director for Health

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Street

Tallahassee FL 32301
City *State* *Zip*

Phone (850) 284-9130

Email mmcquone@flacbs.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Conference of Catholic Bishops

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons 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/CS/SB 466
INTRODUCER:	Rules Committee; Commerce and Tourism Committee; Transportation Committee; and Senator Hutson and others
SUBJECT:	Motor Vehicle Warranty Repairs and Recall Repairs
DATE:	April 25, 2017 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Jones	Miller	TR	**Fav/CS**
2.	Harmsen	McKay	CM	**Fav/CS**
3.	Jones	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 466 prohibits a licensed motor vehicle manufacturer, distributor, or importer (licensee), except as otherwise authorized by law, from denying a motor vehicle dealer's claim, reducing the dealer's compensation, or processing a chargeback to a dealer who performs covered warranty or recall repairs on a used motor vehicle under specific circumstances. Motorcycle manufacturers, distributors, or importers are not covered by this bill.

The bill also requires a licensee who has a franchise agreement with a motor vehicle dealer to compensate the dealer for a used motor vehicle that:

- Was originally manufactured, imported, or distributed by the licensee;
- Is subject to a recall notice, including those issued prior to July 1, 2017;
- Is held in the dealer's inventory at the time the recall notice was issued, or taken into the dealer's inventory after the recall notice;
- Cannot be repaired due to unavailability of a remedy within 30 days of the recall; and
- Is not subject to written statement from the licensee indicating that the vehicle may be sold or delivered to a retail customer before completion of the recall repair.

The bill requires such compensation to be the greater of:

- At least 1.5 percent of the motor vehicle's value for each month, or portion of a month, that the dealer does not receive a remedy for the vehicle; or

- Payment under a national program applicable to motor vehicle dealers holding a franchise agreement with the licensee for the dealer's costs associated with holding the used vehicle.

II. Present Situation:

Florida has substantially regulated motor vehicle manufacturers and motor vehicle dealers since before 1950.[1] Initially, the Florida Legislature implemented only consumer protections aimed at preventing consumer abuse by dealers.[2] In 1970, the Legislature passed more comprehensive legislation, embodied in ch. 320, F.S.,[3] which regulates the contractual relationship between manufacturers and dealers,[4] requires the licensing of manufacturers, and regulates numerous aspects of the contracts between manufacturers and dealers. This legislation applies only to those dealers and manufacturers who engage in the business of buying, selling, or dealing in motor vehicles, which includes any motor vehicle, but excludes recreational vehicles, mopeds, motorcycles powered by a motor with a displacement of 50 cubic centimeters or less, or mobile homes.[5]

Florida Automobile Dealers Act

The "Florida Automobile Dealers Act"[6] (act), primarily regulates the contractual business relationship between dealers and licensees. A manufacturer, factory branch, distributor, or importer (licensee) must be licensed under s. 320.61(1), F.S., to engage in business in Florida. The act specifies, in part:

- The conditions and situations under which the Department of Highway Safety and Motor Vehicles (DHSMV) may deny, suspend, or revoke a regulated license;
- The process, timing, and notice requirements for licensees who wish to discontinue, cancel, modify, or otherwise replace a franchise agreement with a dealer, and the conditions under which the DHSMV may deny such a request;
- The procedures a licensee must follow to add a dealership in an area already served by a franchised dealer, the protest process, and the DHSMV's role in these circumstances;
- The damages that can be assessed against a licensee who is in violation of Florida Statutes; and
- The DHSMV's authority to adopt rules to implement these sections of law.

Section 320.64, F.S., currently lists 40 criteria that may cause the DHSMV to deny, suspend, or revoke a licensee's license. A motor vehicle dealer who can demonstrate that he or she will be adversely affected by an applicant's or licensee's violation of, or failure to comply with, any of these provisions, is entitled to pursue an injunction against the licensee, and to be awarded treble

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[1] Chapter 9157, Laws of Fla. (1923); Chapter 20236, Laws of Fla. (1941).
[2] Walter E. Forehand and John W. Forehand, *Motor Vehicle Dealer and Motor Vehicle Manufacturers: Florida Reacts to Pressures in the Marketplace*, 29 Fla. St. Univ. Law Rev. 1058, 1064 (2002), http://ir.law.fsu.edu/cgi/viewcontent.cgi?article=1632&context=lr (last visited Mar. 23, 2017).
[3] *See* ch. 70-424, Laws of Fla.
[4] *See* s. 320.60(11), F.S.
[5] Section 320.27(b)-(c), F.S.
[6] Sections 320.60-320.70, F.S.; *See also*, Walter E. Forehand, *supra* note 2 at 1065.

damages and attorney's fees.[7] If the party bringing the action can show a violation under the law, the burden shifts to the licensee to prove otherwise.[8]

Applicability

Section 320.6992, F.S., provides that the act shall apply to all presently existing or future systems of distribution of motor vehicles in Florida, except to the extent that such application would impair valid contractual agreements in violation of the State Constitution or Federal Constitution. Generally, all agreements that are renewed, amended, or entered into subsequent to October 1, 1988, are governed by the act, including amendments to the act, unless specifically provided otherwise.

In 2009, the DHSMV held in an administrative proceeding that amendments to the act do not apply to dealers whose franchise agreements were signed prior to the effective date of various amendments to the act.[9] The DHSMV has indicated that it will apply the *Motorsports* holding to every amendment to the act. This may result in different protections accruing to dealers, depending on when they signed their franchise agreements.

Motor Vehicle Warranties

A motor vehicle warranty is any written warranty, or affirmation of fact or promise issued or made by the motor vehicle manufacturer in connection with the sale of a motor vehicle to a consumer. This promise must relate to the nature of the material or workmanship and affirm or promise that such material or workmanship is free of defects or will meet a specified level of performance.[10]

Chapter 681, F.S., the "Motor Vehicle Warranty Enforcement Act," provides a regulatory framework for motor vehicle sales warranties.

Motor Vehicle Warranty Repairs

A licensee is required to timely compensate a motor vehicle dealer who performs work to maintain or repair a licensee's product under a warranty.[11] For this purpose, "timely" means within 30 days of receipt of the claim, and "compensate" includes payment for all labor (employee time spent for diagnosis and repair) and parts (replacement parts and accessories) included in the work.[12]

[7] *See* ss. 320.64, 320.694, and 320.697, F.S.
[8] Section 320.697, F.S.
[9] *See Motorsports of Delray, LLC v. Yamaha Motor Corp., U.S.A.*, Case No. 09-002129 (Fla. DOAH Dec. 9, 2009). The DHSMV found that a 2006 amendment to the Florida Automobile Dealers Act does not apply to a dealer terminated in 2008 because the dealer's franchise agreement was entered into prior to the effective date of the amendment. This Final Order was initially appealed but was later voluntarily dismissed. *See also*, *In re Am. Suzuki Motor Corp*., 494 B.R. 466, 480 (Bankr. C.D. Cal. 2013).
[10] Section 681.102(22), F.S.
[11] Section 320.696(1), F.S.
[12] *Id.*

Motor Vehicle Recalls

If a licensee finds that a motor vehicle or its equipment contains a defect related to motor vehicle safety, or does not comply with applicable federal motor vehicle safety standards, the manufacturer may either decide to issue a recall notice, or may be required by the National Highway Traffic Safety Administration (NHTSA) to issue a recall notice.[13] If a manufacturer determines that there is a safety-related defect in its vehicle or its equipment, or that the vehicle or its equipment is noncompliant with motor vehicle safety standards, it must submit a report to the NHTSA within 5 working days. However, a manufacturer may petition for exemption from recall notification and remedy requirements if the defect or noncompliance is inconsequential to motor vehicle safety.[14] If it is determined the defect or noncompliance does pose a risk to safety, the manufacturer must:

- Notify owners, purchasers, and dealers of the vehicle or equipment; and
- Remedy the defect or noncompliance (either by repairing or replacing it, offering a refund, or repurchasing the vehicle.)[15]

The recall notice must be issued no later than 60 days from the date the manufacturer filed its report with the NHTSA.[16] Recall notifications sent to motor vehicle dealers and distributors must contain a clear statement identifying the notification as a safety recall notice, and include:

- An identification of the motor vehicles or equipment included in the recall;
- A description of the defect or noncompliance;
- A brief evaluation of the risk to motor vehicle safety related to the defect or noncompliance;
- A complete description on the recall remedy;
- The estimated date on which the remedy will be available; and
- An advisory stating that it is a Federal violation for a dealer to sell or lease a new motor vehicle or any new or used item of motor vehicle equipment covered by the notification until the defect or noncompliance is remedied.[17]

A 2015 NHTSA annual report of recalls by year shows a steady increase in the number of recalls issued from 1995 to 2015.[18] In 2015, the NHTSA issued 973 recalls, affecting over 87.5 million vehicles or equipment.[19] Of note is the Takata airbag recall, which has resulted in a NHTSA recall of 46 million airbag inflators in 29 million cars in the United States since 2014.[20] The NHTSA expects to recall an additional 35-40 million airbags between May 2016 and December 2019.[21]

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[13] 49 C.F.R. ss. 577.5 and 577.6
[14] 49 C.F.R. s. 573.6
[15] NHTSA's Safercar.gov website, *Vehicle Recalls: Frequently Asked Questions*, https://vinrcl.safercar.gov/vin/faq.jsp (last visited Mar. 23, 2017).
[16] 49 C.F.R. s. 577.7
[17] 49 C.F.R. s. 577.13
[18] NHTSA's Safercar.gov website, *2015 Annual Recalls Report*, https://www.safercar.gov/staticfiles/safercar/pdf/2015-annual-recalls-report.pdf (last visited Mar. 23, 2017).
[19] *Id.*
[20] Kelsey Mays, Cars.com, *Is Your Car Part of the Takata Airbag Recall?* (Feb. 3, 2017), https://www.cars.com/articles/is-your-car-part-of-the-takata-airbag-recall-1420680509675/ (last visited Mar. 23, 2017).
[21] NHTSA, *Takata Air Bags: Timeline of NHTSA Actions* (Jan. 19, 2017), https://www.nhtsa.gov/recall-spotlight/takata-air-bags (last visited Mar. 23, 2017)

Recalls on New Vehicles

Federal law prohibits the sale of new motor vehicles determined to have a safety defect or noncompliance with motor vehicle safety standards,[22] and requires a manufacturer, after selling the motor vehicle or equipment to the dealer and before it is sold by the dealer, to immediately:

- Repurchase the vehicle or equipment from the motor vehicle dealer at the same price paid, plus transportation charges and at least one percent a month of the price paid prorated from the date of notice to the date of repurchase; or
- Give the dealer, at the manufacturer's expense, the part or equipment needed to remedy the defect or noncompliance, plus cost of installation and one percent a month of the price paid prorated from the date of notice to the date the defect or noncompliance is remedied.[23]

Recalls on Used Vehicles

Federal law, generally, does not prohibit the resale of used vehicles subject to a safety recall. However, manufacturers may choose to direct their dealers to stop selling such vehicles. Additionally, manufacturers may require such vehicles to be held in the dealer's inventory without a remedy to the dealer.

In 2016, Virginia and Maryland passed laws to require licensees to compensate their franchise dealers if the dealer is instructed or coerced by the licensee not to sell used vehicles within its inventory that have a recall with no remedy available. Specifically, Maryland law requires a licensee that issues a stop sale directive without an available remedy for the recall on a used vehicle held in its franchise dealer's inventory, to compensate the dealer by:

- Providing payment to the dealer at a rate of at least one percent per month or portion of a month of the value of the vehicle; or
- Compensating the dealer under a national program that is applicable to all dealers holding a franchise from the licensee for the dealer's costs associated with the stop sale directive.[24]

Virginia law prohibits a licensee from coercing any dealer, whether by agreement program, incentive provision, or threat of loss of incentive payments or benefits. It further prohibits a licensee from requiring a dealer to refrain from selling any used motor vehicle subject to a recall, stop sale directive, technical service bulletin,[25] or other licensee notification unless the licensee has an available remedy. If no remedy for the recall is available, and the licensee prohibits the dealer from selling the vehicle, the licensee must then compensate the dealer at at least one percent of the cost of the used vehicle per month, or for any part of a month that the vehicle cannot be sold. The required compensation includes repairs and re-conditioning expenses incurred by the dealer.[26]

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[22] Commonly referred to as "stop sale" notices.
[23] 49 U.S.C. s. 30116
[24] Maryland General Assembly, *House Bill 525 – Enrolled*, (Enacted May 28, 2016), available at: http://mgaleg.maryland.gov/2016RS/bills/hb/hb0525E.pdf (last visited Mar. 23, 2017).
[25] Technical service bulletins, not to be confused with recalls, are notices issued to dealers from manufacturers for nonsafety-related defects. These bulletins usually include recommended procedures for repairing vehicles if certain issues arise.
[26] Virginia Acts of Assembly – 2016 Session, *Chapter 534* (Mar. 29, 2016), available at: https://lis.virginia.gov/cgi-bin/legp604.exe?161+ful+CHAP0534+pdf (last visited Mar. 23, 2017).

III. Effect of Proposed Changes:

Section 1 amends s. 320.64, F.S, to prohibit a licensee, notwithstanding the terms of any franchise agreement, and except as authorized by law upon detection of fraudulent payments, from denying a dealer's claim, reducing the dealer's compensation, or processing a chargeback to a dealer for performing covered warranty or recall repairs on a used motor vehicle[27] due to:

- A dealer's discovery of a need for such repairs during the course of a separate repair requested by the consumer; or
- Notification by the dealer to the consumer of the need for such repairs after issuance of an outstanding recall for a safety-related defect.

Section 2 creates s. 320.6407, F.S., relating to recall notices under franchise agreements. The bill requires that a licensee that has a franchise agreement with a motor vehicle dealer must compensate the dealer for a used vehicle that:

- Was originally manufactured, imported, or distributed by the licensee;
- Is subject to a recall notice, including one issued prior to July 1, 2017;
- Is held in the dealer's inventory at the time the recall notice was issued, or taken into the dealer's inventory after the recall notice due to a trade-in or lease return;
- Cannot be repaired due to unavailability of a remedy for the vehicle within 30 days after issuance of the recall notice; and
- For which the licensee has not issued a written statement to the dealer indicating the vehicle may be sold or delivered to a retail customer before completion of the recall repair.

The bill clarifies that the purpose of such written statement is to provide notice to the motor vehicle dealer that the vehicle may be sold or delivered based solely on the specific recall notice and is not intended to address any other aspect of the vehicle.

Payment shall be calculated from the 31st day after the recall was issued, the 31st day after the vehicle was acquired, *or* July 1, 2017, *whichever is latest*, and such compensation must be the greater of:

- Payment of at least 1.5 percent of the motor vehicle value (as determined by the average Black Book value for that vehicle's model year and condition) for each month or portion of a month that the dealer does not receive a remedy for the vehicle, calculated from the later of either the date the recall was issued or when the vehicle was acquired by the dealer; or
- Payment under a national program applicable to motor vehicle dealers holding a franchise agreement with the licensee for the dealer's costs associated with holding the used vehicle.

This section also clarifies that motorcycle manufacturers, distributors, or importers are exempt from the provisions of s. 320.6407, F.S.

Section 3 reenacts s. 320.6992, F.S., providing that amendments made to the act shall apply to all presently existing or future systems of distribution of motor vehicles in Florida, except to the extent that such application would impair valid contractual agreements in violation of the State Constitution or Federal Constitution.

[27] A "used motor vehicle" is any motor vehicle for which the title has been transferred at least once, by a manufacturer, distributor, importer, or dealer to an ultimate purchaser. *See* s. 320.60(13), F.S.

Section 4 provides an effective date of July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The fiscal impact to the private sector is indeterminate. To the extent that agreements between dealers and licensees change, the parties could be impacted positively or negatively. Dealers with vehicles in their inventory impacted by a recall that cannot be repaired or sold will likely experience a positive fiscal impact.

C. Government Sector Impact:

The fiscal impact to state government sector is indeterminate, but appears insignificant. The DHSMV may experience an increase in the number of administrative hearings as a result of the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The United States Constitution and the Florida Constitution prohibit the state from passing any law impairing the obligation of contracts.[28] "[T]he first inquiry must be whether the state law has, in fact, operated as a substantial impairment of a contractual relationship. The severity of the impairment measures the height of the hurdle the state legislation must clear."[29] If a law does

[28] U.S. Const. Article I, s. 10; Art. I, s. 10, Fla. Const.

[29] *Pomponio v. Claridge of Pompano Condominium, Inc.*, 378 So. 2d 774, 779 (Fla. 1979) (quoting *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 244-45 (1978)). *See also, General Motors Corp. v. Romein*, 503 U.S. 181 (1992).

impair contracts, the courts will assess whether the law is deemed reasonable and necessary to serve an important public purpose.[30] The factors that a court will consider when balancing the impairment of contracts with the public purpose include whether the law:

- Was enacted to deal with a broad, generalized economic or social problem;
- Operates in an area that was already subject to state regulation at the time the parties undertook their contractual obligations, or whether it invades an area never before subject to regulation; and
- Results in a temporary alteration of the contractual relationships of those within its scope, or whether it permanently and immediately changes those contractual relationships, irrevocably and retroactively.[31]

Some state laws regulating contracts between automobile manufacturers and dealers have been found to violate the constitution, while other laws have been upheld as constitutional.[32]

VIII. Statutes Affected:

This bill substantially amends section 320.64 of the Florida Statutes.

This bill creates section 320.6407 of the Florida Statutes.

This bill reenacts section 320.6992 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 25, 2017:

The CS:

- Requires that the recalled vehicle be in the dealer's inventory at the time the recall notice is issued or is taken into the dealer's inventory after the recall *only* as a result of a retail consumer trade-in or a lease return;
- Clarifies that the purpose of the written statement issued from the licensee to the motor vehicle dealer, indicating the vehicle may be sold or delivered to a customer prior to repair of the recall, is based solely on the specific safety recall and does not address any other aspect of the vehicle unrelated to the safety recall;
- Lowers the compensation rate that a licensee must pay the dealer, from 1.75 percent per month to 1.5 percent; and

[30] *Park Benziger & Co. v. Southern Wine & Spirits, Inc.*, 391 So. 2d 681, 683 (Fla. 1980); *Yellow Cab Co. of Dade County v. Dade County*, 412 So. 2d 395, 397 (Fla. 3d DCA 1982) (citing *United States Trust Co. v. New Jersey*, 431 U.S. 1 (1977)).
[31] *See supra*, note 28; *see also, Vesta Fire Ins. Corp. v. State of Fla.*, 141 F. 3d 1427, 1433 (11th Cir. 1998).
[32] *See Alliance of Auto. Mfrs., Inc. v. Currey*, 984 F. Supp. 2d 32 (D. Conn. 2013) (upholding state law that revised statutory method for calculating reasonable compensation for vehicle warranty work and prohibited manufacturers from recovering any additional cost of the new method from the dealers); *Arapahoe Motors, Inc. v. Gen. Motors Corp.*, No. CIV. A. 99 N 1985, 2001 WL 36400171, at 13 (D. Colo. Mar. 28, 2001) (the retroactive application of state law would be unconstitutional as it would create a new obligation or impose a new duty upon General Motors).

- Provides that the payment shall be calculated from the 31st day after the recall was issued, the 31st day after the vehicle was acquired, *or July 1, 2017, whichever is latest*.

CS/CS by Commerce and Tourism on March 27, 2017:

- Clarifies that the requirements on motor vehicle manufacturers, and remedies to motor vehicle dealers, apply to motor vehicle recalls that were issued prior to July 1, 2017;
- Reduces the amount required to be paid to the motor vehicle dealer from 2 to 1.75 percent;
- Exempts motorcycle manufacturers, distributors, and importers from the bill; and
- Changes the effective date from "on becoming law" to July 1, 2017.

CS by Transportation on March 14, 2017:

The CS extends the length of time that the licensee must make a recall remedy available to a dealer to avoid compensating that dealer for the used vehicle, from 15 to 30 days, and reduces the amount required to be paid to the dealer, from 2.43 percent to 2 percent.

The CS also adds that such compensation is not required for used vehicles for which the licensee has issued a written statement to the dealer indicating the used vehicle may be sold or delivered to a retail customer prior to completion of the recall repair.

B. Amendments:

None.

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

975552

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
04/25/2017	.	
	.	
	.	
	.	

The Committee on Rules (Hutson) recommended the following:

Senate Amendment (with title amendment)

Delete lines 74 - 122
and insert:
(a) That is of the same make and model manufactured, imported, or distributed by the licensee;
(b) That is subject to a safety recall notice issued by the licensee or an authorized governmental agency, including a safety recall notice issued before July 1, 2017, regardless of whether the vehicle is identified by its vehicle identification number;

975552

(c) That is held by the motor vehicle dealer in the dealer's inventory at the time the recall notice is issued or that is taken by the motor vehicle dealer into the dealer's inventory after the recall notice as a result of a retail consumer trade-in or a lease return to the dealer inventory in accordance with an applicable lease contract;

(d) That cannot be repaired due to the unavailability, within 30 days after issuance of the recall notice, of a remedy or parts necessary for the motor vehicle dealer to make the recall repair; and

(e) For which the licensee has not issued a written statement to the motor vehicle dealer indicating that the used motor vehicle may be sold or delivered to a retail customer before completion of the recall repair. The purpose of such written statement is to provide notice to the motor vehicle dealer that the vehicle may be sold or delivered based solely on the specific safety recall notice and is not intended to address any other aspect of the vehicle unrelated to the safety recall notice.

(2) The licensee shall pay the required compensation within 30 days after the motor vehicle dealer's application for payment. Applications for payment must be submitted monthly, as necessary, through the licensee's existing warranty application system or another system or process established by the licensee which is not unduly burdensome or which does not require information unnecessary for the payment.

(3) Compensation under this section must be the greater of:

(a) Payment at a rate of at least 1.5 percent per month of the motor vehicle value, as determined by the average Black Book

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value of the corresponding model year vehicle of average condition, of each eligible used motor vehicle in the motor vehicle dealer's inventory for each month that the dealer does not receive a remedy and parts to complete the required recall repair. Such payment must be prorated for any period less than 1 month based on the number of days during the month each eligible used motor vehicle is in the motor vehicle dealer's inventory. Payment shall be calculated from the date the recall was issued, the date the vehicle was acquired, or July 1, 2017, whichever is latest.

(b) Payment under a national program applicable to all motor vehicle dealers holding a franchise agreement with the licensee for the motor vehicle dealer's costs associated with holding the eligible used motor vehicles.

(4) For purposes of this section, a licensee does not include a motorcycle manufacturer, distributor, or importer.

Section 3. For the purpose of incorporating section 320.6407, Florida Statutes, as created by this act, in references thereto, section 320.6992, Florida Statutes, is reenacted to read:

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

And the title is amended as follows:

Delete lines 13 - 28

and insert:

applicability; specifying the purpose of a certain written statement; requiring the manufacturer, factory branch, distributor, or importer to pay the compensation within a specified timeframe after the

975552

motor vehicle dealer's application for payment; requiring such applications to be submitted monthly, as necessary, through the manufacturer's, factory branch's, distributor's, or importer's warranty application system or certain other system or process; providing for calculation of the amount of compensation; providing applicability; reenacting s. 320.6992, F.S., relating to applicability of specified provisions to systems of distribution of motor vehicles in this state, to incorporate s. 320.6407, F.S., as created by the act, in references thereto; providing an effective date.

471244

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/25/2017	.	
	.	
	.	
	.	

The Committee on Rules (Hutson) recommended the following:

Senate Substitute for Amendment (975552) (with title amendment)

Delete lines 74 - 122
and insert:
(a) That is of the same make and model manufactured, imported, or distributed by the licensee;
(b) That is subject to a recall notice issued by the licensee or an authorized governmental agency, including a recall notice issued before July 1, 2017, regardless of whether the vehicle is identified by its vehicle identification number;


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(c) That is held by the motor vehicle dealer in the dealer's inventory at the time the recall notice is issued or that is taken by the motor vehicle dealer into the dealer's inventory after the recall notice as a result of a retail consumer trade-in or a lease return to the dealer inventory in accordance with an applicable lease contract;

(d) That cannot be repaired due to the unavailability, within 30 days after issuance of the recall notice, of a remedy or parts necessary for the motor vehicle dealer to make the recall repair; and

(e) For which the licensee has not issued a written statement to the motor vehicle dealer indicating that the used motor vehicle may be sold or delivered to a retail customer before completion of the recall repair. The purpose of such written statement is to provide notice to the motor vehicle dealer that the vehicle may be sold or delivered based solely on the specific recall notice and is not intended to address any other aspect of the vehicle unrelated to the recall notice.

(2) The licensee shall pay the required compensation within 30 days after the motor vehicle dealer's application for payment. Applications for payment must be submitted monthly, as necessary, through the licensee's existing warranty application system or another system or process established by the licensee which is not unduly burdensome or which does not require information unnecessary for the payment.

(3) Compensation under this section must be the greater of:

(a) Payment at a rate of at least 1.5 percent per month of the motor vehicle value, as determined by the average Black Book value of the corresponding model year vehicle of average


471244

condition, of each eligible used motor vehicle in the motor vehicle dealer's inventory for each month that the dealer does not receive a remedy and parts to complete the required recall repair. Such payment must be prorated for any period less than 1 month based on the number of days during the month each eligible used motor vehicle is in the motor vehicle dealer's inventory. Payment shall be calculated from the 31st day after the recall was issued, the 31st day after the vehicle was acquired, or July 1, 2017, whichever is latest.

(b) Payment under a national program applicable to all motor vehicle dealers holding a franchise agreement with the licensee for the motor vehicle dealer's costs associated with holding the eligible used motor vehicles.

(4) For purposes of this section, a licensee does not include a motorcycle manufacturer, distributor, or importer.

Section 3. For the purpose of incorporating section 320.6407, Florida Statutes, as created by this act, in references thereto, section 320.6992, Florida Statutes, is reenacted to read:

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

And the title is amended as follows:

Delete lines 13 - 28

and insert:

applicability; specifying the purpose of a certain written statement; requiring the manufacturer, factory branch, distributor, or importer to pay the compensation within a specified timeframe after the motor vehicle dealer's application for payment;


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requiring such applications to be submitted monthly, as necessary, through the manufacturer's, factory branch's, distributor's, or importer's warranty application system or certain other system or process; providing for calculation of the amount of compensation; providing applicability; reenacting s. 320.6992, F.S., relating to applicability of specified provisions to systems of distribution of motor vehicles in this state, to incorporate s. 320.6407, F.S., as created by the act, in references thereto; providing an effective date.

By the Committees on Commerce and Tourism; and Transportation; and Senators Hutson, Gainer, and Broxson

577-02916-17 2017466c2

A bill to be entitled

An act relating to motor vehicle warranty repairs and recall repairs; amending s. 320.64, F.S.; prohibiting a manufacturer, factory branch, distributor, or importer from denying a claim of a motor vehicle dealer, reducing compensation to a motor vehicle dealer, or processing a chargeback to a motor vehicle dealer because of specified circumstances; creating s. 320.6407, F.S.; requiring a manufacturer, factory branch, distributor, or importer to compensate a motor vehicle dealer for a used motor vehicle under specified circumstances; providing retroactive applicability; requiring the manufacturer, factory branch, distributor, or importer to pay the compensation within a specified timeframe after the motor vehicle dealer's application for payment; requiring such applications to be submitted monthly, as necessary, through the manufacturer's, factory branch's, distributor's, or importer's warranty application system or certain other system or process; providing for calculation of the amount of compensation; providing applicability; reenacting s. 320.6992, F.S., relating to applicability of specified provisions to systems of distribution of motor vehicles in this state, to incorporate the amendment made to s. 320.64, F.S., and to incorporate s. 320.6407, F.S., as created by the act, in references thereto; providing an effective date.

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

577-02916-17 2017466c2

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

Section 1. Subsection (41) is added to section 320.64, Florida Statutes, to read:

320.64 Denial, suspension, or revocation of license; grounds.—A license of a licensee under s. 320.61 may be denied, suspended, or revoked within the entire state or at any specific location or locations within the state at which the applicant or licensee engages or proposes to engage in business, upon proof that the section was violated with sufficient frequency to establish a pattern of wrongdoing, and a licensee or applicant shall be liable for claims and remedies provided in ss. 320.695 and 320.697 for any violation of any of the following provisions. A licensee is prohibited from committing the following acts:

(41) Notwithstanding the terms of any franchise agreement, and except as authorized under subsection (25), a licensee may not deny a claim of a motor vehicle dealer, reduce the amount of compensation to a motor vehicle dealer, or process a chargeback to a motor vehicle dealer for performing covered warranty repairs or required recall repairs on a used motor vehicle due to either of the following circumstances:

(a) Discovery by the motor vehicle dealer of the need for warranty or recall repairs during the course of a separate repair requested by the consumer.

(b) Notification by the motor vehicle dealer to the consumer of the need for recall repairs after the licensee or an authorized governmental agency issues a notice of an outstanding recall for a safety-related defect.

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

A motor vehicle dealer who can demonstrate that a violation of, or failure to comply with, any of the preceding provisions by an applicant or licensee will or can adversely and pecuniarily affect the complaining dealer, shall be entitled to pursue all of the remedies, procedures, and rights of recovery available under ss. 320.695 and 320.697.

Section 2. Section 320.6407, Florida Statutes, is created to read:

320.6407 Recall notices under franchise agreements; compensation.—

(1) As provided in subsection (3), a licensee that has entered into a franchise agreement with a motor vehicle dealer must compensate the motor vehicle dealer for a used motor vehicle:

(a) That was originally manufactured, imported, or distributed by the licensee;

(b) That is subject to a recall notice issued by the licensee or an authorized governmental agency, including recalls issued prior to July 1, 2017, regardless of whether the vehicle is identified by its vehicle identification number;

(c) That is held by the motor vehicle dealer in the dealer's inventory at the time the recall notice is issued or that is taken by the motor vehicle dealer into the dealer's inventory after the recall notice as a result of a trade-in, lease return, or otherwise;

(d) That cannot be repaired due to the unavailability, within 30 days after issuance of the recall notice, of remedy or parts necessary for the motor vehicle dealer to make the recall

repair; and

(e) For which the licensee has not issued a written statement to the motor vehicle dealer indicating that the used motor vehicle may be sold or delivered to a retail customer before completion of the recall repair.

(2) The licensee shall pay the required compensation within 30 days after the motor vehicle dealer's application for payment. Applications for compensation payments must be submitted monthly, as necessary, through the licensee's existing warranty application system or another system or process established by the licensee which is not unduly burdensome or which does not require information unnecessary for the payment.

(3) Compensation under this section must be the greater of:

(a) Payment at a rate of at least 1.75 percent per month of the motor vehicle value, as determined by the average Black Book value of the corresponding model year vehicle of average condition, of each eligible used motor vehicle in the motor vehicle dealer's inventory for each month that the dealer does not receive a remedy or parts to complete the required repair. Such payment must be prorated for any period less than a month based on the number of days during the month each eligible used motor vehicle is in the motor vehicle dealer's inventory. Payments shall be calculated from the date the recall was issued or the vehicle was acquired, whichever is later.

(b) Payment under a national program applicable to all motor vehicle dealers holding a franchise agreement with the licensee for the motor vehicle dealer's costs associated with holding the eligible used motor vehicles.

(4) For purposes of this section, a licensee does not

include a motorcycle manufacturer, distributor, or importer.

Section 3. For the purpose of incorporating the amendment made by this act to section 320.64, Florida Statutes, and section 320.6407, Florida Statutes, as created by this act, in references thereto, section 320.6992, Florida Statutes, is reenacted to read:

320.6992 Application.—Sections 320.60-320.70, including amendments to ss. 320.60-320.70, apply to all presently existing or hereafter established systems of distribution of motor vehicles in this state, except to the extent that such application would impair valid contractual agreements in violation of the State Constitution or Federal Constitution. Sections 320.60-320.70 do not apply to any judicial or administrative proceeding pending as of October 1, 1988. All agreements renewed, amended, or entered into subsequent to October 1, 1988, shall be governed by ss. 320.60-320.70, including any amendments to ss. 320.60-320.70 which have been or may be from time to time adopted, unless the amendment specifically provides otherwise, and except to the extent that such application would impair valid contractual agreements in violation of the State Constitution or Federal Constitution.

Section 4. This act shall take effect July 1, 2017.

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

The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: April 6, 2017

I respectfully request that **Senate Bill #466**, relating to Motor Vehicle Warranty Repairs and Recall, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Travis Hutson
Florida Senate, District 7

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/17
Meeting Date

CS/CS/SB 466
Bill Number (if applicable)

Topic Automobile Recall

Amendment Barcode (if applicable)

Name Ron Book

Job Title

Address 104 W. Jefferson
Street

Tallahassee FL 32301
City *State* *Zip*

Phone 850 224-3427

Email RonB@RBookPA.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing AutoNation

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons 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 492
INTRODUCER:	Governmental Oversight and Accountability Committee; Children, Families, and Elder Affairs Committee and Senator Young
SUBJECT:	Public Records/Victim of Alleged Sexual Harassment/Identifying Information
DATE:	April 24, 2017 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hendon	Hendon	CF	**Fav/CS**
2.	Kim	Ferrin	GO	**Fav/CS**
3.	Hendon	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 492 creates an exemption from the public records law for identifying information of an alleged victim of sexual harassment.

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 of each chamber for passage because it creates a public records exemption.

The bill is not expected to have a fiscal impact on the state and will become effective upon becoming law.

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

[1] FLA. CONST., art. I, s. 24(a).

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

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[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.*
[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).

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.

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[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?
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?

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]

Sexual Harassment

It is unlawful to harass a person (an applicant or employee) because of that person's sex. Harassment can include "sexual harassment" or unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature.[24]

Harassment does not have to be of a sexual nature, however, it can include offensive remarks about a person's sex. For example, it is illegal to harass a woman by making offensive comments about women in general.[25] Both victim and the harasser can be either a woman or a man, and the victim and harasser can be the same sex.

Although Title VII of the Civil Rights Act of 1964 does not "prohibit simple teasing, offhand comments, or isolated incidents that are not very serious, harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work environment or when it results in an adverse employment decision (such as the victim being fired or demoted)."[26] The harasser can be the victim's supervisor, a supervisor in another area, a co-worker, or someone who is not an employee of the employer, such as a client or customer.

Florida law states that sexual harassment is a form of discrimination.[27] The Department of Management Services, the state's personnel agency, has adopted rules on sexual harassment applicable to all executive agencies. Rule 60L-40.001, F.A.C., provides that,

> Sexual harassment means unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature from any person directed towards or in the presence of an employee or applicant when:
> (a) Submission to such conduct is either explicitly or implicitly a term or condition of an individual's employment;
> (b) Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
> (c) Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

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[22] FLA. CONST. art. I, s. 24(c).
[23] Section 119.15(7), F.S.
[24] U.S. Equal Employment Opportunity Commission website https://www.eeoc.gov/laws/types/sexual_harassment.cfm. (Last visited March 15, 2017.)
[25] *Id.*
[26] U.S. Equal Employment Opportunity Commission https://www1.eeoc.gov//laws/types/sexual_harassment.cfm?renderforprint=1 (Last visited March 30, 2017.)
[27] Section 110.1221, F.S.

Public Records Exemptions Related to Discrimination and Employee Misconduct

Records related to discrimination on the basis of sex, race, color, religion, national origin, age, handicap, or marital status, which are held by any government agency are exempt from public disclosure until:

- A finding is made relating to probable cause;
- The investigation of the complaint becomes inactive; or
- The complaint or other record becomes part of the official record of any hearing or court proceeding.[28]

These records may be released to a state or federal agency in furtherance of that agency's duties.[29] If an alleged victim chooses not to file a complaint, and requests that the records of the complaint remain confidential, all records relating to the allegation are considered confidential and exempt.[30]

Complaints of misconduct filed with an agency against an employee is confidential and exempt from public disclosure until one of the following events occurs:

- The investigation ceases to be active; or
- The agency has concluded its investigation and provides written notice to the employee who is the subject of the complaint.[31]

The written notice will inform the employee whether the agency will or will not proceed with disciplinary action and file charges.[32]

Universities have an additional public records exemption. Personnel records at a university limit access to sexual harassment "records which identify the complainant, a witness, or information which could reasonably lead to the identification of the complainant or a witness are limited-access."[33]

III. Effect of Proposed Changes:

The bill amends s. 119.071, F.S., to provide that personal identifying information of the alleged victim in an allegation of sexual harassment is confidential and exempt from public record requirements indefinitely. The government agency who holds the identity of the alleged victim can only reveal the personal identifying information to another governmental entities in the furtherance of their duties.

The bill provides a public necessity statement as required by the State Constitution, specifying that it is a public necessity to protect personal identifying information of alleged victims because disclosure of the information could place them at risk of further harassment and retaliation. In

[28] Section 119.071(2)(g)1., F.S.
[29] Section 119.017(2)(g)1.b., F.S.
[30] Section 119.017(2)(g)2., F.S.
[31] Section 119.071(2)(k)1., F.S.
[32] Section 119.071(2)(k)1., F.S.
[33] Section 1012.91(2), F.S.

addition, the potential for disclosure of identifying information could discourage alleged victims from reporting instances of alleged harassment.

The bill provides for repeal of the exemption on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

This bill becomes effective upon becoming 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 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 contained in state agency investigations of sexual harassment indefinitely. This bill appears to be no broader than necessary to accomplish the public necessity for this public records exemption.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill does not provide any means of releasing the identity of the alleged victim of the sexual harassment to anyone other than another governmental entity. This may be problematic because, it could be interpreted in a manner that prohibits the subject of the alleged sexual harassment to confront their accuser and defend him or herself.

This public records exemption will have broad application to all state and local government entities, as well as private companies that act on behalf of an agency.[34] Each of these entities may have different human resources policies for investigating and disciplining employees. While the bill clearly exempts outside access to identifying information, it is unclear what effect this public records exemption will have on the investigatory and disciplinary policies in these entities.

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/CS by Governmental Oversight and Accountability on April 3, 2017:
The CS/CS provides that another governmental entity may have access to the identifying information of the alleged sexual harassment victim.

CS by Children, Families, and Elder Affairs on March 21, 2017:
The committee substitute removes examples of personal identifying information that would be exempt from the public records law.

B. Amendments:

None.

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

[34] See footnote 20.

By the Committees on Governmental Oversight and Accountability; and Children, Families, and Elder Affairs; and Senator Young

585-03361-17 2017492c2

A bill to be entitled

An act relating to public records; amending s. 119.071, F.S.; providing an exemption from public records requirements for personal identifying information of the alleged victim in an allegation of sexual harassment; authorizing the disclosure of such information under certain circumstances; 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 (m) is added to subsection (2) of section 119.071, Florida Statutes, to read:

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

(2) AGENCY INVESTIGATIONS.—

(m) Personal identifying information of the alleged victim in an allegation of sexual harassment is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Such information may be disclosed to another governmental entity in the furtherance of its official duties and responsibilities. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that personal identifying information of the alleged victim in an allegation of sexual harassment be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The disclosure of such information could harm alleged victims by placing them at risk of further harassment and retaliation. Additionally, the potential for disclosure of such information could create a disincentive for victims to report instances of harassment. The Legislature finds that the potential harm that may result from the release of such information outweighs any public benefit that may be derived from the disclosure of such information.

Section 3. This act shall take effect upon becoming a law.

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR DANA YOUNG
18th District

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

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

April 4, 2017

Senator Lizbeth Benacquisto, Chair
Committee on Rules
402 Senate Office Building
404 S. Monroe Street
Tallahassee, Florida 32399-1100

Dear Chair Benacquisto,

My Senate Bill 492, Public Records/ Victim of Alleged Sexual Harassment/ Identifying Information has been referred to your committee for a hearing. I respectfully request that this bill be placed on the next available agenda.

If I may provide any additional information, please do not hesitate to contact me.

Sincerely,

Dana Young
State Senator – 18th District

cc: John Phelps, Staff Director – Committee on Rules

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

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

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is 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 832
INTRODUCER:	Rules Committee; Criminal Justice Committee; and Senator Young
SUBJECT:	Unmanned Devices
DATE:	April 26, 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Hrdlicka	CJ	**Fav/CS**
2.	Price	Miller	TR	**Favorable**
3.	Wiehle	Caldwell	CU	**Favorable**
4.	Cellon	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 832 establishes a regulatory framework for personal delivery devices (PDDs), creating definitions and approved operating parameters in ch. 316, F.S., the Florida Uniform Traffic Control Law.

The bill amends s. 316.008, F.S, to authorize PDD operation in the absence of a local prohibition and authorizes local governmental entities to regulate operation of PDDs within county or municipal jurisdictions under certain conditions.

PDDs are treated like pedestrians by the bill and are specifically excluded from the definition of motor vehicles and the attendant registration and insurance requirements in ch. 320, F.S. The bill also amends ss. 324.021(1) and 324.022(2)(a), F.S., to provide that PDDs are not motor vehicles for purposes of the Motor Vehicle Financial Responsibility Law.

The bill requires a person who owns and operates a PDD to maintain an insurance policy, on behalf of himself or herself and his or her agents, that provides general liability coverage of at least $100,000 for damages arising from PDD operation.

The bill also creates the "Unmanned Aircraft Systems Act." It preempts local governments from regulating the operation of unmanned aircraft systems, but does allow them to enact or enforce

local ordinances relating to illegal acts arising from the use of unmanned aircraft systems if the ordinances are not specifically related to the use of a drone for commission of the illegal acts.

The bill protects critical infrastructure facilities, as defined in the bill, by prohibiting any person from knowingly or willfully:

- Operating a drone over a critical infrastructure facility, unless the drone is in transit for commercial purposes and is in compliance with Federal Aviation Administration regulations;
- Allowing a drone to make contact with a critical infrastructure facility, including any person or object on the premises of or within the facility; or
- Allowing a drone to come within a distance of a critical infrastructure facility that is close enough to interfere with the operations of or cause a disturbance to the facility.

The bill creates exemptions to this prohibition. A first violation of the prohibition is a second degree misdemeanor and a second or subsequent violation is a first degree misdemeanor.

Section 330.411, F.S., is created by the bill to prohibit a person to possess or use a weaponized drone.

The bill also amends s. 934.50, F.S., to authorize the use of a drone by a communications service provider or a contractor for a communications service provider for routing, siting, installation, maintenance, or inspection of facilities used to provide communications services.

The bill takes effect July 1, 2017.

II. Present Situation:

Personal Delivery Devices

Personal delivery devices (PDDs) are low mass, low speed devices traveling on sidewalks using mapping, navigation, and obstacle avoidance technology. These devices are equipped with cameras and sensors and are monitored by a remote operator. PDDs are designed to be a low cost, low-emissions method of delivery.[1] PDDs are being tested in various communities in the United States and Europe. Currently, Florida law does not contain any provisions regarding the operation of PDDs.

Chapter 316, F.S., is the Florida Uniform Traffic Control Law,[2] the purpose of which is to make uniform traffic laws apply throughout the state and its counties and uniform traffic ordinances apply in all municipalities.[3] Section 316.008, F.S., provides the powers of local authorities relating to traffic regulation. Specifically, s. 316.008(7), F.S., authorizes a county or municipality to enact ordinances to permit, control, or regulate the operation of vehicles, golf carts, mopeds, motorized scooters, and electric personal assistive mobility devices on sidewalks or sidewalk areas when such use is permissible under federal law. The ordinance must restrict such vehicles or devices to a maximum speed of 15 miles per hour in such areas.

[1] *See* Starship Technologies website available at https://www.starship.xyz/for-businesses/ (last visited April 25, 2017.)
[2] Section 316.001, F.S.
[3] Section 316.002, F.S.

Chapter 320, F.S., relates to motor vehicle licenses. It provides motor vehicle registration requirements and requires certain documents for motor vehicle registration, including proof of certain automobile insurance.[4] For purposes of ch. 320, F.S., the term "motor vehicle" means an automobile, motorcycle, truck, trailer, semitrailer, truck tractor and semitrailer combination, or any other vehicle operated on Florida roads, used to transport persons or property, and propelled by power other than muscular power. It does not include traction engines, road rollers, special mobile equipment,[5] vehicles that run only upon a track, bicycles, swamp buggies, or mopeds.[6]

Chapter 324, F.S., which is the Financial Responsibility Law of 1955,[7] addresses motor vehicle financial responsibility. Its purposes are to recognize the existing privilege to own or operate a motor vehicle on the public streets and highways of Florida when such vehicles are used with due consideration for others and their property, and to promote safety and provide financial security requirements for such owners or operators whose responsibility it is to recompense others for injury to a person or property caused by the operation of a motor vehicle. The operator of a motor vehicle involved in a crash or convicted of certain traffic offenses must respond for such damages and show proof of financial ability to respond for damages in future accidents as a requisite to his or her future exercise of such privileges.[8]

For purposes of ch. 324, F.S., the term "motor vehicle" means every self-propelled vehicle that is designed and required to be licensed for use upon a highway, including trailers and semitrailers designed for use with such vehicles, except traction engines, road rollers, farm tractors, power shovels, and well drillers, and every vehicle that is propelled by electric power obtained from overhead wires but not operated upon rails. It does not include a bicycle or moped. In addition, the term does not include any motor vehicle defined in s. 627.732(3), F.S., when the owner of such vehicle has complied with the requirements of ss. 627.730 - 627.7405, F.S., (Florida Motor Vehicle No Fault Law), unless the provisions of s. 324.051, F.S., apply, and in such case, the applicable proof of insurance provisions of s. 320.02, F.S., apply.[9]

Section 324.022(2)(a), F.S., also defines the term "motor vehicle" as it relates to financial responsibility for property damage. It provides that a motor vehicle is any self-propelled vehicle that has four or more wheels and that is of a type designed and required to be licensed for use on Florida highways, and any trailer or semitrailer designed for use with such vehicle. It does not include a mobile home; a motor vehicle that is used in mass transit and designed to transport more than five passengers, exclusive of the operator of the motor vehicle, and that is owned by a municipality, transit authority, or political subdivision of the state; a school bus; or a vehicle providing for-hire transportation that is subject to the provisions of s. 324.031, F.S.

[4] Section 320.02, F.S.
[5] Section 316.003(71), F.S., defines the term "special mobile equipment" to mean any vehicle not designed or used primarily for the transportation of persons or property and only incidentally operated or moved over a highway, including, but not limited to, ditchdigging apparatus, well-boring apparatus, and road construction and maintenance machinery, such as asphalt spreaders, bituminous mixers, bucket loaders, tractors other than truck tractors, ditchers, leveling graders, finishing machines, motor graders, road rollers, scarifiers, earthmoving carryalls and scrapers, power shovels and draglines, and self-propelled cranes and earthmoving equipment. It does not include house trailers, dump trucks, truck-mounted transit mixers, cranes or shovels, or other vehicles designed for the transportation of persons or property to which machinery has been attached.
[6] Section 320.01(1)(a), F.S.
[7] Section 324.251, F.S.
[8] Section 324.011, F.S.
[9] Section 324.021(1), F.S.

Drones

Drones typically range in size from wingspans of 6 inches to 246 feet and can weigh from approximately 4 ounces to over 25,600 pounds.[10] They may be controlled manually or through an autopilot which uses a data link to connect the drone's pilot to the drone.[11] Other terms for "drones" are Unmanned Aerial Systems (UAS) and Unmanned Aerial Vehicles (UAV).

Examples of non-military uses for drones include earthquake damage assessment at Japan's Fukushima power plant, volcano activity assessment of Mount St. Helens in Washington for the U.S. Geological Survey, and surveying wildfires in Texas.[12] The University of Florida's Unmanned Aerial Systems Research Group has developed an 11-pound drone having a 9-foot wingspan called "Nova 2.1" which it says can be used to safely and accurately gather data that will be helpful to wildlife biologists and many others.[13]

The drone industry is motivated to move into more civilian markets.[14] It also appears that civilian markets are ready to adopt the drone industry. According to the Consumer Electronics Association, drone shipments will increase from 250,000 units in 2014 to nearly a million in 2018.[15]

Congress authorized the FAA to regulate the areas of airspace use, management and efficiency, air traffic control, safety, navigational facilities, and aircraft noise at its source.[16] In February of 2012, Congress passed the FAA Modernization and Reform Act of 2012, which required the FAA to safely open the nation's airspace to drones by September 2015.[17] The FAA authorized the testing of UAS at six sites around the country as part of its efforts to safely open airspaces.[18] Many companies and individuals have applied for approval by the FAA to operate UAS in national airspace. These included airworthiness certificates to film for motion pictures, precision agriculture, and real estate, and to inspect distribution towers, wiring, and infrastructure. Over 5,000 such grants of operation had been approved before the end of 2016, including to

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[10] 14 CFR Part 91, Docket No. FAA-2006-25714, 72 FR 6689, Department of Transportation, Federal Aviation Administration, *Unmanned Aircraft Operations in the National Airspace System*, February 13, 2007.
[11] *Id*.
[12] James Chiles, *Drones for Hire,* Air & Space Smithsonian, January 2013, http://www.airspacemag.com/flight-today/drones-for-hire-125909361/?all, (last visited March 17, 2017).
[13] James Dean, *Florida Hopes to Fill Its Skies with Unmanned Aircraft,* Florida Today, June 23, 2012, http://usatoday30.usatoday.com/news/nation/story/2012-06-23/increased-drone-use-privacy-concerns/55783066/1, (last visited March 17, 2017). Mickie Anderson, *UF Team's Work Pays Off With Unmanned-flight System that Captures Valuable Data*, Phys Org, October 20, 2010, http://phys.org/news/2010-10-uf-team-unmanned-flight-captures-valuable.html. (last visited March 17, 2017).
[14] James Chiles, *Drones for Hire,* Air & Space Smithsonian, January 2013, http://www.airspacemag.com/flight-today/drones-for-hire-125909361/?all, (last visited March 17, 2017).
[15] Larry Downes, *What's Wrong with the FAA's New Drone Rules*, Harvard Business News, March 2, 2015.
[16] 49 U.S.C. ss. 40103, 44502, and 44701-44735.
[17] Public Law 112-95, February 14, 2012, The FAA Modernization and Reform Act of 2012; Richard Thompson, *Drones in Domestic Surveillance Operations: Fourth Amendment Implications and Legislative Responses*, Congressional Research Service, April 3, 2013, available at www.fas.org/sgp/crs/natsec/R42701.pdf (last visited March 17, 2017).
[18] Federal Aviation Administration, *Fact Sheet – FAA UAS Test Site Program*, December 30, 2013, available at https://www.faa.gov/news/fact_sheets/news_story.cfm?newsId=15575 (last visited March 17, 2017).

companies such as Amazon Logistics, Inc., and Alphabet, Inc. (Google).[19] Amazon is working on a package delivery system called "Prime Air."[20] Alphabet's Project Wing has been testing delivery of food and other perishables.[21]

In June of 2016, the FAA adopted rules for the operation of small UAS.[22] Small UAS[23] must be operated in accordance with the following limitations:

- Cannot be flown faster than a groundspeed of 87 knots (100 miles per hour);
- Cannot be flown higher than 400 feet above ground level, unless flown within a 400-foot radius of a structure and does not fly higher than 400 feet above the structure's immediate uppermost limit;
- Minimum visibility, as observed from the location of the control station, may not be less than 3 statute miles; and
- Minimum distance from clouds may be no less than 500 feet below a cloud and no less than 2000 feet horizontally from the cloud.[24]

The sole current Florida Statute on drones, s. 934.50, F.S., relates primarily to use by law enforcement.[25] The statute defines a drone as a powered, aerial vehicle that: does not carry a human operator; uses aerodynamic forces to provide vehicle lift; can fly autonomously or be piloted remotely; can be expendable or recoverable; and can carry a lethal or nonlethal payload. The statute prohibits a person using a drone to record an image of either privately owned real property or a person lawfully on such property with the intent to thereby obtain information about the property or person, in violation of such person's reasonable expectation of privacy, and without his or her written consent. The statute exempts from this prohibition the following uses of drones:

- Use by a person or an entity engaged in a business or profession licensed by the state only to perform reasonable tasks within the scope of practice or activities permitted under such person's or entity's license;
- Use by a property appraiser solely for the purpose of assessing property for ad valorem taxation;

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[19] Federal Aviation Administration, *It's (a) Grand! FAA Passes 1,000 UAS Section 333 Exemptions*, August 4, 2015, available at https://www.faa.gov/news/updates/?newsId=83395 (last visited March 17, 2017); *Section 333*, as of September 28, 2016, available at https://www.faa.gov/uas/beyond_the_basics/section_333/ (last visited March 17, 2017); *Amazon Gets Experimental Airworthiness Certificate*, March 19, 2015, available at https://www.faa.gov/news/updates/?newsId=82225 (last visited March 17, 2017). Additionally, realtors and real estate-related drone operators in Texas, California, and Pennsylvania have been issued testing certificates by the FAA. Matt Carter, *FAA approves more real estate drone flights, but there's a catch*, March 9, 2015, available at http://www.inman.com/2015/03/09/faa-approves-more-real-estate-drone-flights (last visited March 17, 2017).

[20] Matt McFarland, *Amazon's delivery drones may drop packages via parachute*, CNN Tech, February 14, 2017, available at http://money.cnn.com/2017/02/14/technology/amazon-drone-patent, (last visited March 17, 2017).

[21] Mark Bergen, *Alphabet Taps Breaks on Drone Project, Nixes Starbucks Partnership*, Bloomberg Technology, November 8, 2016, available at https://www.bloomberg.com/news/articles/2016-11-08/alphabet-taps-brakes-on-drone-project-nixing-starbucks-partnership (last visited March 17, 2017).

[22] Title 14 CFR Part 107, Small Unmanned Aircraft Systems.

[23] *Id*., Drones weighing less than 55 pounds.

[24] U.S. Department of Transportation, Federal Aviation Administration, Advisory Circular No. 107-2, June 21, 2016, pages 5-8 and 5-9.

[25] Section 934.50, F.S.

- Use to capture images by or for an electric, water, or natural gas utility: for operations, maintenance, and inspection of utility facilities including facilities used in the generation, transmission, or distribution of electricity, gas, or water, for the purpose of maintaining utility system reliability and integrity; for assessing vegetation growth for the purpose of maintaining clearances on utility rights-of-way; for utility routing, siting, and permitting for the purpose of constructing utility facilities or providing utility service; or for conducting environmental monitoring, as provided by federal, state, or local law, rule, or permit;
- Use for aerial mapping if the person or entity using a drone for this purpose is operating in compliance with Federal Aviation Administration regulations;
- Use to deliver cargo, if the person or entity using a drone for this purpose is operating in compliance with Federal Aviation Administration regulations; and
- Use to capture images necessary for the safe operation or navigation of a drone that is being used for a purpose allowed under federal or Florida law.[26]

III. Effect of Proposed Changes:

Personal Delivery Devices

For purposes of the Florida Uniform Traffic Control Law, the bill defines the term "personal delivery devices" and "personal delivery device operator." (Section 1, amending s. 316.003, F.S.). A personal delivery device is an electronically powered device that:

- Is operated on sidewalks and crosswalks and intended primarily to transport property;
- Weighs less than 80 pounds, excluding cargo;
- Has a maximum speed of 10 miles per hour; and
- Is equipped with technology to allow for operation of the device with or without the active control or monitoring of a natural person.

The bill provides that a PDD is not considered to be a vehicle unless expressly defined by law as such.

A personal delivery device operator is an entity or its agent[27] that exercises direct physical control or monitoring of the navigation system and operation of a PDD. A PDD operator is not an entity or person who requests the services of a PDD for the purpose of transporting property or an entity or person who only arranges for and dispatches the requested services of a PDD.

The bill creates s. 316.008(7)(b), F.S., (Section 2), to provide that a PDD may be operated on sidewalks and crosswalks within a county or municipality when such use is permissible under federal law. This does not restrict a county or municipality from otherwise adopting regulations for the safe operation of PDDs. It prohibits the use of PDDs on the Florida Shared-Use Nonmotorized Trail Network (SunTrail)[28] or components of the Florida Greenways and Trails System.[29]

[26] Section 934.50(4)(d), (e), (f), and (h), F.S.
[27] The term "agent" means a person charged by the entity with the responsibility for navigating and operating the personal delivery device.
[28] SunTrail is created in s. 339.81, F.S.
[29] The Florida Greenways and Trails System is created in ch. 260, F.S.

The bill creates s. 316.2071, F.S., (Section 3), relating to PDDs. It provides that, notwithstanding any other law, a PDD may operate on sidewalks and crosswalks subject to s. 316.008(7)(b), F.S., (created in Section 2). PDDs operating on sidewalks and crosswalks have all the rights and duties applicable to a pedestrian under the same circumstances, except that PDDs must not unreasonably interfere with pedestrians or traffic and must yield the right-of-way to pedestrians on sidewalks and crosswalks.

The bill requires PDDs to obey all official traffic and pedestrian control signals and devices; include a plate or marker identifying the name and contact information of the PDD operator and a unique identifying number; and be equipped with a braking system that, when active or engaged, enables the PDD to come to a controlled stop. A PDD may not operate on a public highway, except to the extent necessary to cross a crosswalk; operate on a sidewalk or crosswalk unless the PDD operator is actively controlling or monitoring the navigation and operation of the PDD; or transport hazardous materials.[30]

The bill requires a person who owns and operates a PDD to maintain an insurance policy, on behalf of himself or herself and his or her agents, that provides general liability coverage of at least $100,000 for damages arising from the combined operations of PDDs under the entity's or agent's control.

The bill amends s. 320.01(1)(a), F.S., (Section 4), to provide that PDDs are not motor vehicles for purposes of motor vehicle licensing. It also creates s. 320.02(19), F.S., (Section 5), to provide that PDDs are not required to satisfy the motor vehicle registration and insurance requirements of s. 320.02, F.S. The bill amends ss. 324.021(1) and 324.022(2)(a), F.S., (Sections 5 and 6), to provide that PDDs are not motor vehicles for purposes of the Motor Vehicle Financial Responsibility Law.

The bill also makes conforming changes to ss. 316.2128, 316.545, 316.613, and 655.960, F.S., (Sections 11-14).

Drones

Regulation

The bill creates the "Unmanned Aircraft Systems Act." It preempts regulation of the operation of unmanned aircraft systems[31] to the state except as provided in federal regulations, authorizations, or exemptions.

The bill does allow a local government to enact or enforce local ordinances relating to nuisances, voyeurism, harassment, reckless endangerment, property damage, or other illegal acts arising

[30] Section 316.003(28), F.S., defines "hazardous material" as any substance or material which has been determined by the secretary of the United States Department of Transportation to be capable of imposing an unreasonable risk to health, safety, and property. This term includes hazardous waste as defined in s. 403.703(13), F.S.

[31] "Unmanned aircraft system" means a drone and its associated elements, including communication links and the components used to control the drone which are required for the pilot in command to operate the drone safely and efficiently. "Drone" has the same meaning as s. 934.50(2), F.S., which is, a powered, aerial vehicle that: does not carry a human operator; uses aerodynamic forces to provide vehicle lift; can fly autonomously or be piloted remotely; can be expendable or recoverable; and can carry a lethal or nonlethal payload.

from the use of unmanned aircraft systems if such laws or ordinances are not specifically related to the use of an unmanned aircraft system for those illegal acts.

It prohibits a political subdivision from enacting or enforcing an ordinance or resolution relating to the design, manufacture, testing, maintenance, licensing, registration, certification, or operation of an unmanned aircraft system, including airspace, altitude, flight paths, equipment or technology requirements; the purpose of operations; and pilot, operator, or observer qualifications, training, and certification.

The bill requires any person or governmental entity seeking to restrict or limit the operation of drones in close proximity to infrastructure or facilities that the person or governmental entity owns or operates to apply to the Federal Aviation Administration for such designation pursuant to section 2209 of the FAA Extension, Safety, and Security Act of 2016. [32]

Protection

The bill protects critical infrastructure facilities[33] by prohibiting any person from knowingly or willfully:

- Operating a drone over a critical infrastructure facility;
- Allowing a drone to make contact with a critical infrastructure facility, including any person or object on the premises of or within the facility; or
- Allowing a drone to come within a distance of a critical infrastructure facility that is close enough to interfere with the operations of or cause a disturbance to the facility.

A first violation of this prohibition is a second degree misdemeanor and a second or subsequent is a first degree misdemeanor.

[32] Public Law 114-190, Section 2209(b)(1)(C) (Applications for Designation); 49 USC 40101 (UAS Safety, Sec. 2209). This section provides for designation of "fixed site facilities." Only the following can be so designated: critical infrastructure, such as energy production, transmission, and distribution facilities and equipment; oil refineries and chemical facilities; amusement parks; and other locations that warrant such restrictions. In determining whether to grant an application for designation, the FAA administrator may consider aviation safety, protection of persons and property on the ground, national security, or homeland security. In an affirmative designation, the FAA will outline the boundaries for UAS operation near the fixed site facility and such other limitations that the FAA administrator determines may be appropriate.

[33] "Critical infrastructure facility" means any of the following, *if* completely enclosed by a fence or other physical barrier that is obviously designed to exclude intruders, *or if* clearly marked with a sign or signs which indicate that entry is forbidden and which are posted on the property in a manner reasonably likely to come to the attention of intruders:

- An electrical power generation or transmission facility, substation, switching station, or electrical control center.
- A chemical or rubber manufacturing or storage facility.
- A mining facility.
- A natural gas or compressed gas compressor station, storage facility, or natural gas or compressed gas pipeline.
- A liquid natural gas or propane gas terminal or storage facility with a capacity of 4,000 gallons or more.
- Any portion of an aboveground oil or gas pipeline.
- A wireless communications facility, including tower, antennae, support structures, and all associated ground-based equipment.

The prohibition does not apply to prohibited actions which are committed by:

- A federal, state, or other governmental entity, or a person under contract or otherwise acting under the direction of a federal, state, or other governmental entity;
- A law enforcement agency that is in compliance with s. 934.50, F.S., or a person under contract with or otherwise acting under the direction of such law enforcement agency; or
- An owner, operator, or occupant of the critical infrastructure facility, or a person who has prior written consent of such owner, operator, or occupant.

Additionally, the prohibition against operating a drone over a critical infrastructure facility does not apply to a drone operating in transit for commercial purposes in compliance with Federal Aviation Administration regulations, authorizations, or exemptions.

The part of the bill addressing protection of critical infrastructure facilities sunsets 60 days after the FAA's process for seeking a designation as a fixed site facility becomes effective.[34]

Construction

The bill is to be construed in accordance with standards imposed by federal statutes, regulations, and Federal Aviation Administration guidance on unmanned aircraft systems.

Prohibitions

The bill creates s. 330.411, F.S., (Section 9), prohibiting a person to use or possess a drone with an attached weapon, firearm, explosive, destructive device, or ammunition.

The bill also amends s. 934.50, F.S., (Section 10), to authorize the use of a drone by a communications service provider or a contractor for a communications service provider for routing, siting, installation, maintenance, or inspection of facilities used to provide communications services.

Effective Date

The bill takes effect July 1, 2017 (Section 15).

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

[34] Id. at footnote 32.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill protects listed critical infrastructure facility but only if the infrastructure is either: completely enclosed by a fence or other physical barrier obviously designed to exclude intruders; or clearly marked with a sign which indicates that entry is forbidden and which is posted on the property in a manner reasonably likely to come to the attention of intruders. This provision raises two problems. First, the signage requirements to meet a standard of "reasonably likely to come to the attention of intruders" are far more difficult to determine and to comply with for drone operators than for ground level intruders. The fact that some drones will not be equipped with cameras or other imaging devices compounds the problem. Second, some types of facilities, such as an electrical transmission line, may be difficult or impossible to fence or adequately post.

Local governments that have adopted local ordinances regulating the use of drones that conflict with the provisions of the bill will need to repeal or amend their ordinances. Examples of local ordinances include:

- Defuniak Springs adopted an ordinance that requires commercial users of drones to register with the Defuniak Springs Police Department and to notify the Department at least 4 hours prior to each commercial use, with second degree misdemeanor penalties for a violation.[35]
- The Town of Palm Beach requires a permit, permit fee, $1 million of liability insurance, and approval of the Director of Public Safety to operate a drone.[36]

VIII. Statutes Affected:

The bill substantially amends the following sections of the Florida Statutes: 316.003, 316.008, 316.2128, 316.545, 316.613, 320.01, 320.02, 324.021, 324.022, 655.960, and 934.50.

The bill creates the following sections of the Florida Statutes: 316.2071, 330.41, and 330.411.

[35] Section 22-52, Defuniak Springs, Florida City Code (Ord. No. 866, May 23, 2016).
[36] Chapter 14, Article II, Section 14-35, Town of Palm Beach, Florida Code (Ord. No. 08-2016, June 14, 2016).

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 25, 2017:
The CS:

- Adds provisions related to the definition, status, and operation of personal delivery devices in Sections 1-7 of the bill, and makes conforming changes in Sections 11-14;
- Amends Section 8 to include a chemical or rubber manufacturing or storage facility, mining facility, compressed gas compressor station, compressed gas pipeline, and bulk propane gas storage facility to the list of critical infrastructure facilities;
- Amends Section 8 to create a sunset provision related to the protection of critical infrastructure and the effective date of the FAA designation process for such infrastructure; and
- Creates s. 330.411, F.S., in Section 9 prohibiting the possession or use of weaponized drones.

CS by Criminal Justice on March 21, 2017:
The CS:

- Deleted the definition of "person" used in the bill;
- Eliminated the provision wherein the state would preempt authority from local governments over unmanned aircraft systems (UAS) ownership;
- Recognized the federal government's authority to regulate the "airspace" by including a reference to federal regulations, authorizations, or exemptions;
- Added an exception to the bill to allow for drones operating in transit for commercial purposes in compliance with federal requirements to operate a drone over a "critical infrastructure facility," as defined in the bill; and
- Made technical changes.

B. Amendments:

None.

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

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/25/2017	.	
	.	
	.	
	.	

The Committee on Rules (Brandes) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Present subsections (51) through (97) of section 316.003, Florida Statutes, are renumbered as subsections (53) through (99), respectively, present subsections (40), (55), and (95) are amended, and new subsections (51) and (52) are added to that section, to read:

316.003 Definitions.—The following words and phrases, when used in this chapter, shall have the meanings respectively

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ascribed to them in this section, except where the context otherwise requires:

(40) MOTOR VEHICLE.—Except when used in s. 316.1001, a self-propelled vehicle not operated upon rails or guideway, but not including any bicycle, motorized scooter, electric personal assistive mobility device, personal delivery device, swamp buggy, or moped. For purposes of s. 316.1001, "motor vehicle" has the same meaning as provided in s. 320.01(1)(a).

(51) PERSONAL DELIVERY DEVICE.—An electrically powered device that:

(a) Is operated on sidewalks and crosswalks and intended primarily for transporting property;

(b) Weighs less than 80 pounds, excluding cargo;

(c) Has a maximum speed of 10 miles per hour; and

(d) Is equipped with technology to allow for operation of the device with or without the active control or monitoring of a natural person.

A personal delivery device is not considered a vehicle unless expressly defined by law as a vehicle.

(52) PERSONAL DELIVERY DEVICE OPERATOR.—An entity or its agent that exercises direct physical control over or monitoring of the navigation system and operation of a personal delivery device. For the purposes of this subsection, the term "agent" means a person charged by the entity with the responsibility of navigating and operating the personal delivery device. The term "personal delivery device operator" does not include an entity or person who requests the services of a personal delivery device for the purpose of transporting property or an entity or



person who only arranges for and dispatches the requested services of a personal delivery device.

(57)~~(55)~~ PRIVATE ROAD OR DRIVEWAY.—Except as otherwise provided in paragraph (79)(b) ~~(77)(b)~~, any privately owned way or place used for vehicular travel by the owner and those having express or implied permission from the owner, but not by other persons.

(97)~~(95)~~ VEHICLE.—Every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except personal delivery devices and devices used exclusively upon stationary rails or tracks.

Section 2. Subsection (7) of section 316.008, Florida Statutes, is amended to read:

316.008 Powers of local authorities.—

(7)(a) A county or municipality may enact an ordinance to permit, control, or regulate the operation of vehicles, golf carts, mopeds, motorized scooters, and electric personal assistive mobility devices on sidewalks or sidewalk areas when such use is permissible under federal law. The ordinance must restrict such vehicles or devices to a maximum speed of 15 miles per hour in such areas.

(b)1. Except as provided in subparagraph 2., a personal delivery device may be operated on sidewalks and crosswalks within a county or municipality when such use is permissible under federal law. This paragraph does not restrict a county or municipality from otherwise adopting regulations for the safe operation of personal delivery devices.

2. A personal delivery device may not be operated on the Florida Shared-Use Nonmotorized Trail Network created under s.

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339.81 or components of the Florida Greenways and Trails System created under chapter 260.

Section 3. Section 316.2071, Florida Statutes, is created to read:

316.2071 Personal delivery devices.—

(1) Notwithstanding any provision of law to the contrary, a personal delivery device may operate on sidewalks and crosswalks, subject to s. 316.008(7)(b). A personal delivery device operating on a sidewalk or crosswalk has all the rights and duties applicable to a pedestrian under the same circumstances, except that the personal delivery device must not unreasonably interfere with pedestrians or traffic and must yield the right-of-way to pedestrians on the sidewalk or crosswalk.

(2) A personal delivery device must:

(a) Obey all official traffic and pedestrian control signals and devices.

(b) Include a plate or marker that has a unique identifying device number and identifies the name and contact information of the personal delivery device operator.

(c) Be equipped with a braking system that, when active or engaged, enables the personal delivery device to come to a controlled stop.

(3) A personal delivery device may not:

(a) Operate on a public highway except to the extent necessary to cross a crosswalk.

(b) Operate on a sidewalk or crosswalk unless the personal delivery device operator is actively controlling or monitoring the navigation and operation of the personal delivery device.



(c) Transport hazardous materials as defined in s. 316.003.

(4) A person who owns and operates a personal delivery device in this state must maintain an insurance policy, on behalf of himself or herself and his or her agents, which provides general liability coverage of at least $100,000 for damages arising from the combined operations of personal delivery devices under the entity's or agent's control.

Section 4. Paragraph (a) of subsection (1) of section 320.01, Florida Statutes, is amended to read:

320.01 Definitions, general.—As used in the Florida Statutes, except as otherwise provided, the term:

(1) "Motor vehicle" means:

(a) An automobile, motorcycle, truck, trailer, semitrailer, truck tractor and semitrailer combination, or any other vehicle operated on the roads of this state, used to transport persons or property, and propelled by power other than muscular power, but the term does not include traction engines, road rollers, personal delivery devices as defined in s. 316.003, special mobile equipment as defined in s. 316.003, vehicles that run only upon a track, bicycles, swamp buggies, or mopeds.

Section 5. Subsection (19) is added to section 320.02, Florida Statutes, to read:

320.02 Registration required; application for registration; forms.—

(19) A personal delivery device as defined in s. 316.003 is not required to satisfy the registration and insurance requirements of this section.

Section 6. Subsection (1) of section 324.021, Florida Statutes, is amended to read:

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324.021 Definitions; minimum insurance required.—The following words and phrases when used in this chapter shall, for the purpose of this chapter, have the meanings respectively ascribed to them in this section, except in those instances where the context clearly indicates a different meaning:

(1) MOTOR VEHICLE.—Every self-propelled vehicle that ~~which~~ is designed and required to be licensed for use upon a highway, including trailers and semitrailers designed for use with such vehicles, except traction engines, road rollers, farm tractors, power shovels, and well drillers, and every vehicle that ~~which~~ is propelled by electric power obtained from overhead wires but not operated upon rails, but not including any personal delivery device as defined in s. 316.003, bicycle, or moped. However, the term "motor vehicle" does ~~shall~~ not include a ~~any~~ motor vehicle as defined in s. 627.732(3) when the owner of such vehicle has complied with the requirements of ss. 627.730-627.7405, inclusive, unless the provisions of s. 324.051 apply; and, in such case, the applicable proof of insurance provisions of s. 320.02 apply.

Section 7. Paragraph (a) of subsection (2) of section 324.022, Florida Statutes, is amended to read:

324.022 Financial responsibility for property damage.—

(2) As used in this section, the term:

(a) "Motor vehicle" means any self-propelled vehicle that has four or more wheels and that is of a type designed and required to be licensed for use on the highways of this state, and any trailer or semitrailer designed for use with such vehicle. The term does not include:

1. A mobile home.

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2. A motor vehicle that is used in mass transit and designed to transport more than five passengers, exclusive of the operator of the motor vehicle, and that is owned by a municipality, transit authority, or political subdivision of the state.

3. A school bus as defined in s. 1006.25.

4. A vehicle providing for-hire transportation that is subject to the provisions of s. 324.031. A taxicab shall maintain security as required under s. 324.032(1).

5. A personal delivery device as defined in s. 316.003.

Section 8. Section 330.41, Florida Statutes, is created to read:

330.41 Unmanned Aircraft Systems Act.—

(1) SHORT TITLE.—This act may be cited as the "Unmanned Aircraft Systems Act."

(2) DEFINITIONS.—As used in this act, the term:

(a) "Critical infrastructure facility" means any of the following, if completely enclosed by a fence or other physical barrier that is obviously designed to exclude intruders, or if clearly marked with a sign or signs which indicate that entry is forbidden and which are posted on the property in a manner reasonably likely to come to the attention of intruders:

1. An electrical power generation or transmission facility, substation, switching station, or electrical control center.

2. A chemical or rubber manufacturing or storage facility.

3. A mining facility.

4. A natural gas or compressed gas compressor station, storage facility, or natural gas or compressed gas pipeline.

5. A liquid natural gas or propane gas terminal or storage



facility with a capacity of 4,000 gallons or more.

6. Any portion of an aboveground oil or gas pipeline.

7. A wireless communications facility, including the tower, antennae, support structures, and all associated ground-based equipment.

(b) "Drone" has the same meaning as s. 934.50(2).

(c) "Unmanned aircraft system" means a drone and its associated elements, including communication links and the components used to control the drone which are required for the pilot in command to operate the drone safely and efficiently.

(3) REGULATION.—

(a) The authority to regulate the operation of unmanned aircraft systems is vested in the state except as provided in federal regulations, authorizations, or exemptions.

(b) Except as otherwise expressly provided, a political subdivision may not enact or enforce an ordinance or resolution relating to the design, manufacture, testing, maintenance, licensing, registration, certification, or operation of an unmanned aircraft system, including airspace, altitude, flight paths, equipment or technology requirements; the purpose of operations; and pilot, operator, or observer qualifications, training, and certification.

(c) This subsection does not limit the authority of a local government to enact or enforce local ordinances relating to nuisances, voyeurism, harassment, reckless endangerment, property damage, or other illegal acts arising from the use of unmanned aircraft systems if such laws or ordinances are not specifically related to the use of an unmanned aircraft system for those illegal acts.


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(d) A person or governmental entity seeking to restrict or limit the operation of drones in close proximity to infrastructure or facilities that the person or governmental entity owns or operates must apply to the Federal Aviation Administration for such designation pursuant to section 2209 of the FAA Extension, Safety, and Security Act of 2016.

(4) PROTECTION OF CRITICAL INFRASTRUCTURE FACILITIES.—

(a) A person may not knowingly or willfully:

1. Operate a drone over a critical infrastructure facility;

2. Allow a drone to make contact with a critical infrastructure facility, including any person or object on the premises of or within the facility; or

3. Allow a drone to come within a distance of a critical infrastructure facility that is close enough to interfere with the operations of or cause a disturbance to the facility.

(b) A person who violates paragraph (a) commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. A person who commits a second or subsequent violation commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(c) This subsection does not apply to actions identified in paragraph (a) which are committed by:

1. A federal, state, or other governmental entity, or a person under contract or otherwise acting under the direction of a federal, state, or other governmental entity.

2. A law enforcement agency that is in compliance with s. 934.50, or a person under contract with or otherwise acting under the direction of such law enforcement agency.

3. An owner, operator, or occupant of the critical



infrastructure facility, or a person who has prior written consent of such owner, operator, or occupant.

(d) Subparagraph (a)1. does not apply to a drone operating in transit for commercial purposes in compliance with Federal Aviation Administration regulations, authorizations, or exemptions.

(e) This subsection shall sunset 60 days after the date that a process pursuant to Section 2209 of the FAA Extension, Safety and Security Act of 2016 becomes effective.

(5) CONSTRUCTION.—This section shall be construed in accordance with standards imposed by federal statutes, regulations, and Federal Aviation Administration guidance on unmanned aircraft systems.

Section 9. Section 330.411, Florida Statutes, is created to read:

330.411 Prohibited possession or operation of unmanned aircraft; penalties.—A person may not possess or operate an unmanned aircraft or unmanned aircraft system as defined in s. 330.41 with an attached weapon, firearm, explosive, destructive device, or ammunition as defined in s. 790.001.

Section 10. Paragraph (j) is added to subsection (4) of section 934.50, Florida Statutes, to read:

934.50 Searches and seizure using a drone.—

(4) EXCEPTIONS.—This section does not prohibit the use of a drone:

(j) By a communications service provider or a contractor for a communications service provider for routing, siting, installation, maintenance, or inspection of facilities used to provide communications services.

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Section 11. Subsection (1) of section 316.2128, Florida Statutes, is amended to read:

316.2128 Operation of motorized scooters and miniature motorcycles; requirements for sales.—

(1) A person who engages in the business of, serves in the capacity of, or acts as a commercial seller of motorized scooters or miniature motorcycles in this state must prominently display at his or her place of business a notice that such vehicles are not legal to operate on public roads, may not be registered as motor vehicles, and may not be operated on sidewalks unless authorized by an ordinance enacted pursuant to s. 316.008(7)(a) ~~316.008(7)~~ or s. 316.212(8). The required notice must also appear in all forms of advertising offering motorized scooters or miniature motorcycles for sale. The notice and a copy of this section must also be provided to a consumer prior to the consumer's purchasing or becoming obligated to purchase a motorized scooter or a miniature motorcycle.

Section 12. Paragraph (b) of subsection (2) of section 316.545, Florida Statutes, is amended to read:

316.545 Weight and load unlawful; special fuel and motor fuel tax enforcement; inspection; penalty; review.—

(2)

(b) The officer or inspector shall inspect the license plate or registration certificate of the commercial vehicle to determine whether its gross weight is in compliance with the declared gross vehicle weight. If its gross weight exceeds the declared weight, the penalty shall be 5 cents per pound on the difference between such weights. In those cases when the commercial vehicle is being operated over the highways of the


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state with an expired registration or with no registration from this or any other jurisdiction or is not registered under the applicable provisions of chapter 320, the penalty herein shall apply on the basis of 5 cents per pound on that scaled weight which exceeds 35,000 pounds on laden truck tractor-semitrailer combinations or tandem trailer truck combinations, 10,000 pounds on laden straight trucks or straight truck-trailer combinations, or 10,000 pounds on any unladen commercial motor vehicle. A driver of a commercial motor vehicle entering the state at a designated port-of-entry location, as defined in s. 316.003 ~~316.003(54)~~, or operating on designated routes to a port-of-entry location, who obtains a temporary registration permit shall be assessed a penalty limited to the difference between its gross weight and the declared gross vehicle weight at 5 cents per pound. If the license plate or registration has not been expired for more than 90 days, the penalty imposed under this paragraph may not exceed $1,000. In the case of special mobile equipment, which qualifies for the license tax provided for in s. 320.08(5)(b), being operated on the highways of the state with an expired registration or otherwise not properly registered under the applicable provisions of chapter 320, a penalty of $75 shall apply in addition to any other penalty which may apply in accordance with this chapter. A vehicle found in violation of this section may be detained until the owner or operator produces evidence that the vehicle has been properly registered. Any costs incurred by the retention of the vehicle shall be the sole responsibility of the owner. A person who has been assessed a penalty pursuant to this paragraph for failure to have a valid vehicle registration certificate pursuant to the

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provisions of chapter 320 is not subject to the delinquent fee authorized in s. 320.07 if such person obtains a valid registration certificate within 10 working days after such penalty was assessed.

Section 13. Paragraph (a) of subsection (2) of section 316.613, Florida Statutes, is amended to read:

316.613 Child restraint requirements.—

(2) As used in this section, the term "motor vehicle" means a motor vehicle as defined in s. 316.003 that is operated on the roadways, streets, and highways of the state. The term does not include:

(a) A school bus as defined in s. 316.003 ~~316.003(68)~~.

Section 14. Subsection (1) of section 655.960, Florida Statutes, is amended to read:

655.960 Definitions; ss. 655.960-655.965.—As used in this section and ss. 655.961-655.965, unless the context otherwise requires:

(1) "Access area" means any paved walkway or sidewalk which is within 50 feet of any automated teller machine. The term does not include any street or highway open to the use of the public, as defined in s. 316.003(79)(a) or (b) ~~316.003(77)(a) or (b)~~, including any adjacent sidewalk, as defined in s. 316.003.

Section 15. 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

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An act relating to unmanned devices; amending s. 316.003, F.S.; revising and providing definitions; amending s. 316.008, F.S.; authorizing operation of personal delivery devices within a county or municipality under certain circumstances; providing construction; providing exceptions; creating s. 316.2071, F.S.; providing requirements for the operation of personal delivery devices; requiring specified insurance coverage; amending s. 320.01, F.S.; redefining the term "motor vehicle"; amending s. 320.02, F.S.; exempting personal delivery devices from certain registration and insurance requirements; amending ss. 324.021, and 324.022, F.S.; redefining the term "motor vehicle"; creating s. 330.41, F.S.; providing a short title; defining terms; providing that, except as provided in federal regulations, authorizations, or exemptions, the authority to regulate the operation of unmanned aircraft systems is vested in the state; prohibiting a political subdivision from enacting or enforcing certain ordinances or resolutions relating to unmanned aircraft systems; providing that the authority of local government to enact or enforce local ordinances relating to nuisances, voyeurism, harassment, reckless endangerment, property damage, or other illegal acts arising from the use of unmanned aircraft systems is not limited, subject to certain requirements; requiring persons seeking to restrict or limit the operation of drones in close proximity to certain



infrastructure or facilities to apply to the Federal Aviation Administration; prohibiting a person from knowingly and willfully operating a drone over or allowing a drone to make contact with or come within a certain distance of certain critical infrastructure facilities; providing that such a violation is a misdemeanor punishable under specified provisions of ch. 775; providing an exemption from specified prohibited acts; providing for future sunset of a certain requirement; providing construction; creating s. 330.411, F.S.; prohibiting a person from possessing or operating an unmanned aircraft or unmanned aircraft system with certain attached weapons or devices; amending s. 934.50, F.S.; providing that the use of a drone by a communications service provider or contractor is not prohibited under certain provisions of ch. 934; amending ss. 316.2128, 316.545, 316.613, and 655.960, F.S.; conforming cross-references; providing an effective date.

By the Committee on Criminal Justice; and Senator Young

591-02666-17 2017832c1

A bill to be entitled

An act relating to drones; creating s. 330.41, F.S.; providing a short title; defining terms; providing that, except as provided in federal regulations, authorizations, or exemptions, the authority to regulate the operation of unmanned aircraft systems is vested in the state; prohibiting a political subdivision from enacting or enforcing certain ordinances or resolutions relating to unmanned aircraft systems; providing that the authority of local government to enact or enforce local ordinances relating to nuisances, voyeurism, harassment, reckless endangerment, property damage, or other illegal acts arising from the use of unmanned aircraft systems is not limited, subject to certain requirements; requiring persons seeking to restrict or limit the operation of drones in close proximity to certain infrastructure or facilities to apply to the Federal Aviation Administration; prohibiting a person from knowingly and willfully operating a drone over or allowing a drone to make contact with or come within a certain distance of certain critical infrastructure facilities; providing that such a violation is a misdemeanor punishable under specified provisions of ch. 775; providing an exemption from specified prohibited acts; providing construction; amending s. 934.50, F.S.; providing that the use of a drone by a communications service provider or contractor is not prohibited under certain provisions of ch. 934;

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

591-02666-17 2017832c1

providing an effective date.

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

Section 1. Section 330.41, Florida Statutes, is created to read:

330.41 Unmanned Aircraft Systems Act.—

(1) SHORT TITLE.—This act may be cited as the "Unmanned Aircraft Systems Act."

(2) DEFINITIONS.—As used in this act, the term:

(a) "Critical infrastructure facility" means any of the following, if completely enclosed by a fence or other physical barrier that is obviously designed to exclude intruders, or if clearly marked with a sign or signs which indicate that entry is forbidden and which are posted on the property in a manner reasonably likely to come to the attention of intruders:

1. An electrical power generation or transmission facility, substation, switching station, or electrical control center.

2. A natural gas compressor station, storage facility, or natural gas pipeline.

3. A liquid natural gas terminal or storage facility.

4. Any portion of an aboveground oil or gas pipeline.

5. A wireless communications facility, including tower, antennae, support structures, and all associated ground-based equipment.

(b) "Drone" has the same meaning as s. 934.50(2).

(c) "Unmanned aircraft system" means a drone and its associated elements, including communication links and the components used to control the drone which are required for the

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

pilot in command to operate the drone safely and efficiently.

(3) REGULATION.—

(a) The authority to regulate the operation of unmanned aircraft systems is vested in the state except as provided in federal regulations, authorizations, or exemptions.

(b) Except as otherwise expressly provided, a political subdivision may not enact or enforce an ordinance or resolution relating to the design, manufacture, testing, maintenance, licensing, registration, certification, or operation of an unmanned aircraft system, including airspace, altitude, flight paths, equipment or technology requirements; the purpose of operations; and pilot, operator, or observer qualifications, training, and certification.

(c) This subsection does not limit the authority of a local government to enact or enforce local ordinances relating to nuisances, voyeurism, harassment, reckless endangerment, property damage, or other illegal acts arising from the use of unmanned aircraft systems if such laws or ordinances are not specifically related to the use of an unmanned aircraft system for those illegal acts.

(d) A person or governmental entity seeking to restrict or limit the operation of drones in close proximity to infrastructure or facilities that the person or governmental entity owns or operates must apply to the Federal Aviation Administration for such designation pursuant to section 2209 of the FAA Extension, Safety, and Security Act of 2016.

(4) PROTECTION OF CRITICAL INFRASTRUCTURE FACILITIES.—

(a) A person may not knowingly or willfully:

1. Operate a drone over a critical infrastructure facility;

2. Allow a drone to make contact with a critical infrastructure facility, including any person or object on the premises of or within the facility; or

3. Allow a drone to come within a distance of a critical infrastructure facility that is close enough to interfere with the operations of or cause a disturbance to the facility.

(b) A person who violates paragraph (a) commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. A person who commits a second or subsequent violation commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(c) This subsection does not apply to actions identified in paragraph (a) which are committed by:

1. A federal, state, or other governmental entity, or a person under contract or otherwise acting under the direction of a federal, state, or other governmental entity.

2. A law enforcement agency that is in compliance with s. 934.50, or a person under contract with or otherwise acting under the direction of such law enforcement agency.

3. An owner, operator, or occupant of the critical infrastructure facility, or a person who has prior written consent of such owner, operator, or occupant.

(d) Subparagraph (a)1. does not apply to a drone operating in transit for commercial purposes in compliance with Federal Aviation Administration regulations, authorizations, or exemptions.

(5) CONSTRUCTION.-This section shall be construed in accordance with standards imposed by federal statutes, regulations, and Federal Aviation Administration guidance on

unmanned aircraft systems.

Section 2. Paragraph (j) is added to subsection (4) of section 934.50, Florida Statutes, to read:

934.50 Searches and seizure using a drone.—

(4) EXCEPTIONS.—This section does not prohibit the use of a drone:

(j) By a communications service provider or a contractor for a communications service provider for routing, siting, installation, maintenance, or inspection of facilities used to provide communications services.

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/17
Meeting Date

SB 832
Bill Number (if applicable)

868984
Amendment Barcode (if applicable)

Topic Relating to Drones

Name Carol Bracy

Job Title Consultant

Address 403 East Park Avenue
Street

Tallahassee FL 32301
City *State* *Zip*

Phone 850-577-0444

Email carol@ballardfl.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Amazon

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/2017
Meeting Date

SB 832
Bill Number (if applicable)

868984
Amendment Barcode (if applicable)

Topic Related to Drones

Name Justin Sayfie

Job Title Consultant

Address 403 E. Park Ave.
Street

Tallahassee FL 32301
City *State* *Zip*

Phone 954-523-2427

Email justin@ballardfl.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Google

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/17
Meeting Date

832
Bill Number (if applicable)

Topic Unmanned Aircraft

Amendment Barcode (if applicable)

Name DAVID DANIEL

Job Title

Address 311 EAST PARK AVENUE
Street

Phone 224-5091

Tallahassee FL 32301
City *State* *Zip*

Email

Speaking: ☑ For ☐ Against ☐ Information

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

Representing UAS Association of Florida

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

4/25/17
Meeting Date

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

832
Bill Number (if applicable)

Topic Drones

Amendment Barcode (if applicable)

Name Andy Gonzalez

Job Title Public Policy Representative

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Street

Phone 850-224-1400

Tallahassee FL 32301
City *State* *Zip*

Email andyg@floridarealtors.org

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Florida Realtors

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/17
Meeting Date

CS/SB 832
Bill Number (if applicable)

Topic CS/SB 832

Amendment Barcode (if applicable)

Name TODD Sumner

Job Title

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Phone 850-591-6119

Tallahassee FL 32312
City *State* *Zip*

Email Todd@sumnerlawoffices.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing UAVSIC

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

Rules 4-6

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/17
Meeting Date

832
Bill Number (if applicable)

Topic Drones

Amendment Barcode (if applicable)

Name Brewster Bevis

Job Title Senior Vice President

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Street

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Tallahassee FL 32301
City *State* *Zip*

Email bbevis@aif.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Associated Industries of Florida

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

25 Apr 17
Meeting Date

SB 832
Bill Number (if applicable)

Topic Drones

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title Pres & CEO

Address 204 S. Monroe
Street

Phone

Tall FL 32301
City *State* *Zip*

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Fla. Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/17
Meeting Date

832
Bill Number (if applicable)

Topic DRONES

Amendment Barcode (if applicable)

Name LANCE PIERCE

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TALLAHASSEE FL 32301
City *State* *Zip*

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FLORIDA FARM BUREAU

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4.26.17
Meeting Date

SB 832
Bill Number (if applicable)

Topic DRONES

Amendment Barcode (if applicable)

Name MEGAN SIRIANE-SAMPLES

Job Title LEGISLATIVE ADVOCATE

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Street

Phone

TALLAHASSEE FL 32302
City *State* *Zip*

Email

Speaking: ☐ For ☒ Against ☐ Information

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

Representing FLORIDA LEAGUE OF CITIES

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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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 1348
INTRODUCER:	Regulated Industries Committee and Senator Young
SUBJECT:	Public Accountancy
DATE:	April 24, 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	McSwain	RI	**Fav/CS**
2.	Little	McKay	CM	**Favorable**
3.	Oxamendi	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1348 extends the privilege of "practice mobility" to a public accountancy firm or certified public accountancy firm (CPA firm) that does not have an office in Florida or a Florida license to allow the firm to practice public accountancy in the state without a license, notice, or payment of any fee. Current law provides the privilege of practice mobility to out-of-state certified public accountants (CPAs), but not to CPA *firms*. To qualify for practice mobility, a firm must comply with the practice mobility requirements in current law, be enrolled in a peer review program, perform services through a Florida-licensed CPA, and lawfully perform services in a state where a CPA with practice mobility privileges has his or her principal place of business.

The bill:

- Updates the professional standards for CPAs to reference the current edition of the Uniform Accountancy Act, which is a model act designed to advance the goal of uniformity in accountancy practice.
- Revises the definition of "client" to provide that the term means a person who agrees with an accountant or accountant's employer to receive professional service; and
- Authorizes the Florida Board of Accounting (board) in the Department of Business and Professional Regulation (DBPR) to discipline a licensed CPA who has been disciplined by the Public Company Accounting Oversight Board, which is a is a private-sector nonprofit corporation established by Congress in the Sarbanes-Oxley Act of 2002 to oversee the audits of public companies.

The bill has no fiscal impact on state government.

The effective date of the bill is July 1, 2017.

II. Present Situation:

The board is responsible for regulating and licensing more than 34,000 active and inactive CPAs and more than 5,400 accounting firms in Florida.[1] The Division of Certified Public Accounting provides administrative support to the nine-member board, which consists of seven CPAs and two laypersons.[2]

A certified public accountant is a person who holds a license to practice public accounting in this state under ch. 473, F.S., or an individual who is practicing public accounting in this state pursuant to the practice privilege granted in s. 473.3141, F.S.[3]

The practice of public accounting includes offering to the public the performance of services involving audits, reviews, compilations, tax preparation, management advisory or consulting services, or preparation of financial statements.[4] To engage in the practice of public accounting, as defined in s. 473.302(8)(a), F.S., an individual or firm must be licensed pursuant to ss. 473.308 or 473.3101, F.S., and business entities must meet the requirements of s. 473.309, F.S.

Definitions

The terms "practice of," "practicing public accountancy," or "public accounting" mean:

> (a) Offering to perform or performing for the public one or more types of services involving <u>the expression of an opinion on financial statements, the attestation as an expert in accountancy to the reliability or fairness of presentation of financial information</u>, the utilization of any form of opinion or financial statements that provide a level of assurance, the utilization of any form of disclaimer of opinion which conveys an assurance of reliability as to matters not specifically disclaimed, or the expression of an opinion on the reliability of an assertion by one party for the use by a third party;
> (b) Offering to perform or performing for the public one or more types of services involving the use of accounting skills, or one or more types of tax, management advisory, or consulting services, by any person who is a certified public accountant who holds an active license, issued pursuant to this chapter, or who is authorized to practice public accounting pursuant to the practice privileges granted in s. 473.3141, including the performance

[1] Florida Department of Business and Professional Regulation, Fiscal Year 2013-2014 Annual Report, page 14, available at http://www.myfloridalicense.com/dbpr/os/documents/ProfessionsAnnualReportFY2015-2016_Final.pdf (last visited March 30, 2017).
[2] Section 473.303, F.S.
[3] *See* s. 473.302(4), F.S. Section 473.3141, F.S., permits a person who does not have an office in Florida to practice public accountancy in this state without obtaining a license under ch. 473, F.S., notifying or registering with the board, or paying a fee if the person meets the required criteria.
[4] Section 473.302(8), F.S.

> of such services by a certified public accountant in the employ of a person or firm; or
> (c) Offering to perform or performing for the public one or more types of service involving the preparation of financial statements not included within paragraph (a), by a certified public accountant who holds an active license, issued pursuant to this chapter, or who is authorized to practice public accounting pursuant to the practice privileges granted in s. 473.3141; by a firm of certified public accountants; or by a firm in which a certified public accountant has an ownership interest, including the performance of such services in the employ of another person. The board shall adopt rules establishing standards of practice for such reports and financial statements; provided, however, that nothing in this paragraph shall be construed to permit the board to adopt rules that have the result of prohibiting Florida certified public accountants employed by unlicensed firms from preparing financial statements as authorized by this paragraph.

A "client" is defined in s. 473.316, F.S., as any person, public officer, corporation, association, or other organization or entity, either public or private (person), who consults an accountant with the purpose of obtaining accounting services.

Uniform Accountancy Act

The Uniform Accountancy Act (UAA) is defined in s. 473.302(9), F.S., as "the Uniform Accountancy Act, Fourth Edition, dated December of 2007 and published by the American Institute of Certified Public Accountants and the National Association of State Boards of Accountancy." The UAA is a model act designed to advance the goal of uniformity in accountancy laws, protect the public interest, facilitate consumer choice, and support the efficient operation of the capital markets.[5] The current edition of the UAA is the Seventh Edition.[6]

Practice Mobility

Section 473.3141, F.S., provides the privilege of practice mobility to permit a CPA who is licensed in another state, but not licensed in Florida, to perform limited accounting services in Florida without obtaining a Florida license, notifying or registering with the board, or paying a fee. According to the Florida Institute of Certified Public Accountants, 49 states, the District of Columbia, and the U.S. Virgin Islands have adopted practice mobility statutes.

An out-of-state CPA who practices in Florida under practice mobility, as a condition for the privilege, consents to personal and subject matter jurisdiction and the disciplinary authority of the board. The CPA must comply with ch. 473, F.S., and the applicable board rules, and

[5] *See* American Institute of CPAs, *What is the Uniform Accountancy Act?*, at: http://www.aicpa.org/ADVOCACY/STATE/STATECONTACTINFO/UAA/Pages/default.aspx (last visited March 30, 2017).
[6] *Id.*

have a current, valid CPA license in another state that has adopted standards substantially equivalent to s. 5 of the Uniform Accountancy Act.[7]

The types of accounting services that an out-of-state CPA may provide are limited to the services described in s. 473.302(8)(b) and (c), F.S. If the CPA provides the opinion and attestation services described in s. 473.302(8)(a), F.S., the CPA must obtain a Florida license. An individual who provides accountancy services described in s. 473.302(8)(a), F.S., also must obtain a firm license as required by s. 473.3101, F.S.[8]

Practice mobility is limited to individuals; the privilege does not extend to firms.

Firm License Requirement

A CPA firm is a legal entity that is engaged in the practice of public accounting.[9] A firm must hold a Florida license if it:

- Has an office in this state which performs the accounting services in s. 473.302(8)(a), F.S. (i.e., opinion and attestation services);
- Has an office in this state which uses the title "CPA," "CPA firm," or any other title, designation, words, letters, abbreviations, or device tending to indicate that it is a CPA firm; or
- Does not have an office in this state but performs the services described in s. 473.3141(4), F.S.,[10] for a client having its home office in this state.[11]

Each sole proprietor, partnership, corporation, or limited liability company[12] must apply for licensure with the board. An application for a firm license must be made upon the affidavit of a sole proprietor, general partner, shareholder, or member of the firm who is a CPA.

Peer and Quality Review

A CPA firm engages in peer reviews to protect the quality and effectiveness of the accounting, auditing, and attestation services provided by public accounting firms.[13] Licensed public accounting firms that provide accounting services in s. 473.302(8)(a), F.S., must enroll in a peer review program.[14] A peer review is the study, appraisal, or review by one or more independent certified public accountants of one or more aspects of a licensee's professional work.[15]

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[7] Section 473.3141(3), F.S.
[8] Section 473.3141(4), F.S.
[9] Section 473.302(5), F.S.
[10] Section 473.3141(4), F.S., permits a person who does not have a Florida license or an office in this state to practice as a CPA in Florida and perform the services identified in s. 473.302(8)(a), F.S., through a Florida-licensed firm.
[11] Section 473.3101(1)(a), F.S.
[12] Section 473.309, F.S., sets forth practice requirements for such business entities engaged in the practice of public accounting under s. 473.302(8)(a).
[13] PRP Section 1000 AICPA Standards for Performance and Reporting on Peer Reviews (March 2013) page 5, available at: http://www.aicpa.org/Research/Standards/PeerReview/DownloadableDocuments/PeerReviewStandards.pdf (last visited March 30, 2017).
[14] Section 473.3125(4), F.S.
[15] Section 473.3125(1)(b), F.S.

The board has adopted the American Institute of Certified Public Accountants minimum standards for administering, performing, and reporting on peer reviews,[16] and has established a peer review oversight committee to oversee and monitor implementation of the peer review requirement.[17]

A quality review is a study, appraisal, or review of one or more aspects of the professional work of an accountant in the practice of public accountancy which is conducted by a professional organization for the purpose of evaluating quality assurance required by professional standards, including a quality assurance review.[18] The quality review is conducted by a "review committee" composed of any person or persons who are not owners or employees of the accountant or firm that is the subject of a quality review and who carry out, administer, or oversee a quality review.[19]

Public Company Accounting Oversight Board

The Public Company Accounting Oversight Board (PCAOB) is a private-sector nonprofit corporation established by Congress in the Sarbanes-Oxley Act of 2002 to oversee the audits of public companies in order to protect investors and the public interest.[20] The PCAOB has the authority to investigate and discipline registered public accounting firms and persons associated with those firms for noncompliance with the Sarbanes-Oxley Act of 2002, the rules of the PCAOB and the Securities and Exchange Commission, and other laws, rules, and professional standards governing the audits of public companies, brokers, and dealers.[21]

The board does not have the authority to discipline a CPA based solely on any disciplinary action taken by the PCAOB.

III. Effect of Proposed Changes:

Uniform Accountancy Act

The bill updates the definition of the Uniform Accountancy Act in s. 473.302(9), F.S., to reference the current Seventh Edition, dated May 2014.

Practice Mobility

The bill amends s. 473.3101(1)(c), F.S., to allow a firm or public accountancy firm to qualify for practice mobility and practice in this state without a license if it does not have an office in this state, but complies with the practice mobility requirements in s. 473.3141, F.S. To qualify for practice mobility, the firm must also:

- Comply with the practice requirements for business entities pursuant to s. 473.309, F.S.;
- Be enrolled in a peer review program pursuant to s. 473.3125(4), F.S.;

[16] Section 473.3125(2), F.S., and Fla. Admin. Code Rule 61H1-39.002 (2016).
[17] Section 473.3125(3), F.S., and Fla. Admin. Code Rule 61H1-39.004 (2016).
[18] Section 473.316(1)(d), F.S.
[19] *Id.*
[20] 15 U.S.C. s. 7211 (2010).
[21] 15 U.S.C. 7202 and 15 U.S.C. s. 7211(c) (2010).

- Perform services through a CPA licensed under s. 473.308, F.S.; and
- Lawfully perform services in a state where an individual with practice privileges under s. 473.3141, F.S., has his or her principal place of business.

Definition of "Client"

The bill amends s. 473.316(1)(b), F.S., to revise the definition of "client" to provide that the term means a person who agrees with an accountant or accountant's employer to receive professional services, rather than a person "who consults an accountant with the purpose of obtaining accounting services."

Disciplinary Proceedings

The bill amends s. 473.323(1)(j), F.S., to authorize the board to discipline a licensee who has been disciplined by the PCAOB.

Effective Date

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

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: 473.302, 473.3101, 473.316, and 473.323.

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 21, 2017:
The committee substitute amends s. 473.3101(1)(c), F.S., to replace the requirement that a firm must comply with s. 473.308, F.S., with a requirement that a firm must comply with s. 473.3141, F.S., in order to exercise the practice mobility privilege.

B. Amendments:

None.

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

By the Committee on Regulated Industries; and Senator Young

580-02660-17 20171348c1

A bill to be entitled

An act relating to public accountancy; amending s. 473.302, F.S.; revising a definition; amending s. 473.3101, F.S.; providing an exemption to the requirement for licensure of certain firms without an office in the state; amending s. 473.316, F.S.; revising a definition; amending s. 473.323, F.S.; providing that suspension or revocation of the right to practice before the Public Company Accounting Oversight Board is grounds for the imposition of penalties as provided by law; providing an effective date.

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

Section 1. Subsection (9) of section 473.302, Florida Statutes, is amended to read:

473.302 Definitions.—As used in this chapter, the term:

(9) "Uniform Accountancy Act" means the Uniform Accountancy Act, Seventh ~~Fourth~~ Edition, dated May 2014 ~~December 2007~~ and published by the American Institute of Certified Public Accountants and the National Association of State Boards of Accountancy.

However, these terms shall not include services provided by the American Institute of Certified Public Accountants or the Florida Institute of Certified Public Accountants, or any full service association of certified public accounting firms whose plans of administration have been approved by the board, to

580-02660-17 20171348c1

their members or services performed by these entities in reviewing the services provided to the public by members of these entities.

Section 2. Paragraph (c) of subsection (1) of section 473.3101, Florida Statutes, is amended to read:

473.3101 Licensure of firms or public accounting firms.—

(1) The following must hold a license issued under this section:

(c)1. Any firm that does not have an office in this state but performs the services described in s. 473.3141(4) for a client having its home office in this state, unless it:

a. Complies with the requirements described in s. 473.309.

b. Is enrolled in a peer review program pursuant to s. 473.3125(4).

c. Performs services through an individual with practice privileges under s. 473.3141.

d. Lawfully performs services in a state where an individual with practice privileges granted under s. 473.3141 has his or her principal place of business.

2. The board shall define by rule what constitutes an office.

Section 3. Paragraph (b) of subsection (1) of section 473.316, Florida Statutes, is amended to read:

473.316 Communications between the accountant and client privileged.—

(1) For purposes of this section:

(b) A "client" is any person, public officer, corporation, association, or other organization or entity, either public or private, who agrees with an accountant or accountant's employer

to receive professional services ~~who consults an accountant with the purpose of obtaining accounting services~~.

Section 4. Paragraph (j) of subsection (1) of section 473.323, Florida Statutes, is amended to read:

473.323 Disciplinary proceedings.—

(1) The following acts constitute grounds for which the disciplinary actions in subsection (3) may be taken:

(j) Suspension or revocation of the right to practice before any state or federal agency or the Public Company Accounting Oversight Board.

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/2017
Meeting Date

1348
Bill Number (if applicable)

Topic Public Accountancy

Amendment Barcode (if applicable)

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Institute of CPAs

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	SB 720
INTRODUCER:	Senator Mayfield
SUBJECT:	Central Florida Expressway Authority
DATE:	April 24, 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Miller	TR	**Favorable**
2.	Carlton	Ulrich	EE	**Favorable**
3.	Price	Phelps	RC	**Favorable**

I. Summary:

SB 720 adds Brevard County to the Central Florida Expressway Authority (CFX) by:

- Increasing the number of governing body members from nine to ten;
- Adding the Brevard County Commission chair to the list of chairs authorized to appoint a member to the CFX;
- Adding Brevard County to the list of counties the citizens of which may be appointed by the Governor to serve on the authority;
- Adding the geographical boundary of Brevard County to the area served by the CFX;
- Increasing the number of members constituting a quorum from five to six; and
- Adding Brevard County to the list of counties outside the jurisdictional boundaries of which the CFX may undertake the specified activities with the consent of the county within whose jurisdiction the activities occur, to conform to changes made by the act.

The bill has no apparent fiscal impact on state or local governments.

The bill takes effect July 1, 2017.

II. Present Situation:

Central Florida Expressway Authority

The Legislature created the Orlando-Orange County Expressway Authority in 1963 for the purpose of construction and operation of an expressway road system in Central Florida.[1] The OOCEA was granted the power to construct, operate, and maintain roads, bridges, avenues of access, thoroughfares, and boulevards in Orange County, as well as in any consenting county within whose jurisdiction the activities occurred.

[1] Chapter 63-573, L.O.F.

In 2014, the Legislature re-named the OOCEA as the Central Florida Expressway Authority (CFX) and transferred governance and control, legal rights and powers, responsibilities, terms, and obligations of the former OOCEA to the CFX, an agency of the state. The area served by the CFX was expanded to include Seminole, Lake, and Osceola Counties, in addition to Orange County.[2] The CFX has the right to acquire, hold, construct, improve, maintain, operate, own, and lease the CFX system.[3]

With the consent of the county within whose jurisdiction the activities occur, the CFX also has the power to construct, operate, and maintain roads, bridges, avenues of access, transportation facilities, thoroughfares, and boulevards outside the jurisdictional boundaries of Orange, Seminole, Lake, and Osceola Counties, together with the right to construct, repair, replace, operate, install, and maintain electronic toll payment systems thereon.[4]

Currently, the CFX governing body consists of the following nine members:

- The chairs of the Seminole, Lake, and Osceola County Commissions appoint one member each from the respective counties, who must be a commission member or chair or the county mayor;
- The Mayor of Orange County appoints one member from the Orange County Commission;
- The Governor appoints three members, each of whom must be a citizen of either Orange, Seminole, Lake, or Osceola County and is subject to Senate confirmation;
- The eighth member must be the Orange County Mayor; and
- The ninth member must be City of Orlando Mayor.[5]

The executive director of the Florida Turnpike Enterprise serves as a non-voting advisor. Members hold office until a successor has been appointed and qualified.[6] Each member appointed by the Governor serves for 4 years, and each county-appointed member serves for 2 years.

East Central Florida Corridor Task Force

In 2013, the Governor by Executive Order[7] created the East Central Florida Corridor Task Force, which developed recommendations on future transportation corridor planning in portions of Brevard, Orange, and Osceola counties. In its final report, the Task Force included in its recommendations:

[2] Chapter 2014-171, L.O.F.
[3] Section 348.754(1), F.S. According to the CFX, the system serves a region with more than 2.3 million residents and an estimated 60 million annual visitors and includes 109 centerline miles, 741 lane miles (including ramps, 59 interchanges, 285 bridges, and 14 mainline toll plazas. No taxes support the CFX's operations; tolls support the entire system. The system includes State Roads 408, 414, 417, 429, 451, and 528. *See* the CFX website available at: https://www.cfxway.com/agency-information/agency-overview/about-cfx/. (Last visited March 6, 2017.)
[4] Section 348.754(2)(n), F.S.
[5] Section 348.753(3), F.S.
[6] *Id.*
[7] *See* Executive Order 13-319 available at: http://ecfcorridortaskforce.org/doc/meeting_1/EO%2013-319.pdf. (Last visited March 6, 2017.)

- Identifying future investment needs to maximize the use of and add capacity to existing east-west corridors between Orange, Osceola, and Brevard Counties;
- Conducting one or more evaluation studies of potential new east-west corridors between Orange, Osceola, and Brevard Counties; and
- Improving north-south connectivity in eastern Orange and Osceola Counties, which could connect to improved or new east-west corridors linking Orange and Osceola Counties to Brevard County.[8]

Supporting Resolutions

On February 7, 2017, the Brevard County Board of County Commissioners approved a resolution supporting HB 299, which is identical to SB 720.[9] The Space Coast Transportation Planning Organization likewise passed a resolution supporting the inclusion of Brevard County as a member of the CFX on February 9, 2017.[10] The CFX Governing Board approved its supporting resolution on March 9, 2017.[11]

III. Effect of Proposed Changes:

The bill incorporates Brevard County into the CFX as follows:

Section 1 of the bill amends s. 348.753(3), F.S., increasing the number of members on the CFX governing board from nine to ten members. The chair of the Brevard County Commission is directed to appoint one member from Brevard County, who must also be a commission member or chair or the county mayor. The Governor's three citizen appointees must now be residents of either Orange County, Seminole County, Lake County, *or* Brevard County.

This section of the bill also amends s. 348.753(4), F.S., increasing from five to six the number of members constituting a quorum and the number of votes required for any action taken by the CFX governing body.

Section 2 of the bill amends s. 348.754(1)(a) and (2)(n), F.S., respectively:
- Adding the geographical boundary of Brevard County to the area served by the CFX; and
- Adding Brevard County to the list of counties outside the jurisdictional boundaries of which the CFX may undertake the specified activities with the consent of the county within whose jurisdiction the activities occur to conform to changes made by the act.

Section 3 of the bill provides the bill take effect on July 1, 2017.

[8] *See* the Task Force Final Report available at: http://ecfcorridortaskforce.org/doc/ECFCTF_FinalReport_signed.pdf. (Last visited March 6, 2017.)
[9] Copy on file in the Senate Transportation Committee.
[10] Copy on file in the Senate Transportation Committee.
[11] Copy on file in the Senate Transportation Committee.

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 amends the following sections of the Florida Statutes: 348.753 and 348.754.

IX. Additional Information:

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

None.

B. Amendments:

None.

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

By Senator Mayfield

17-00346-17 2017720__

A bill to be entitled

An act related to the Central Florida Expressway Authority; amending s. 348.753, F.S.; increasing the number of members making up the governing body of the Central Florida Expressway Authority; adding the chair of the board of the county commission of Brevard County to the list of chairs authorized to appoint a member to the authority; adding Brevard County to the list of counties the citizens of which may be appointed by the Governor to serve on the authority; requiring six members of the authority to constitute a quorum; requiring the vote of six members for any action taken by the authority; amending s. 348.754, F.S.; adding the geographical boundary of Brevard County to the area served by the authority; conforming a provision to changes made by the act; providing an effective date.

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

Section 1. Subsection (3) and paragraph (a) of subsection (4) of section 348.753, Florida Statutes, are amended to read:

348.753 Central Florida Expressway Authority.—

(3) The governing body of the authority shall consist of 10 ~~nine~~ members. The chairs of the boards of the county commissions of Seminole, Lake, Brevard, and Osceola Counties shall each appoint one member from his or her respective county, who must be a commission member or chair or the county mayor. The Mayor of Orange County shall appoint a member from the Orange County Commission. Subject to confirmation by the Senate during the next regular session of the Legislature, the Governor shall appoint three citizen members, each of whom must be a resident

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

17-00346-17 2017720__

of either Orange County, Seminole County, Lake County, Brevard County, or Osceola County. Refusal or failure of the Senate to confirm an appointment shall create a vacancy. The Mayor of Orange County and the Mayor of the City of Orlando shall also serve as members. The executive director of the Florida Turnpike Enterprise shall serve as a nonvoting advisor to the governing body of the authority. Each member appointed by the Governor shall serve for 4 years, with his or her term ending on December 31 of his or her last year of service. Each county-appointed member shall serve for 2 years. Each appointed member shall hold office until his or her successor has been appointed and has qualified. A vacancy occurring during a term must be filled only for the balance of the unexpired term. Each appointed member of the authority must be a person of outstanding reputation for integrity, responsibility, and business ability, but, except as provided in this subsection, a person who is an officer or employee of a municipality or county may not be an appointed member of the authority. Any member of the authority is eligible for reappointment.

(4)(a) The authority shall elect one of its members as the chair of the authority, one of its members as vice chair, and one of its members as treasurer. The chair, vice chair, and treasurer shall hold such offices at the will of the authority. Six ~~Five~~ members of the authority constitute a quorum, and the vote of six ~~five~~ members is required for any action taken by the authority. A vacancy in the authority does not impair the right of a quorum of the authority to exercise all of the rights and perform all of the duties of the authority.

Section 2. Paragraph (a) of subsection (1) and paragraph

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

(n) of subsection (2) of section 348.754, Florida Statutes, are amended to read:

348.754 Purposes and powers.—

(1)(a) The authority created and established under this part is granted and has the right to acquire, hold, construct, improve, maintain, operate, own, and lease in the capacity of lessor the Central Florida Expressway System, hereinafter referred to as "system." Except as otherwise specifically provided by law, including paragraph (2)(n), the area served by the authority shall be within the geographical boundaries of Orange, Seminole, Lake, Brevard, and Osceola Counties.

(2) The authority may exercise all powers necessary, appurtenant, convenient, or incidental to the implementation of the stated purposes, including, but not limited to, the following rights and powers:

(n) With the consent of the county within whose jurisdiction the following activities occur, the authority shall have the right to construct, operate, and maintain roads, bridges, avenues of access, transportation facilities, thoroughfares, and boulevards outside the jurisdictional boundaries of Orange, Seminole, Lake, Brevard, and Osceola Counties, together with the right to construct, repair, replace, operate, install, and maintain electronic toll payment systems thereon.

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

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Education, *Vice Chair*
Appropriations Subcommittee on the Environment and Natural Resources
Appropriations Subcommittee on General Government
Banking and Insurance
Judiciary

JOINT COMMITTEE:
Joint Legislative Auditing Committee, *Alternating Chair*

SENATOR DEBBIE MAYFIELD
17th District

March 29, 2017

Chair Lizbeth Benacquisto
Rules
400 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Re: SB 720

Dear Chair Benacquisto,

I am respectfully requesting Senate Bill 720, a bill relating to the Central Florida Expressway Authority, be placed on the agenda for your committee on Rules.

I appreciate your consideration of this bill and I look forward to working with you and the Rules committee. If there are any questions or concerns, please do not hesitate to call my office at 850-487-5017.

Thank you,

Senator Debbie Mayfield
District 17

Cc: John B. Phelps, Cynthia Futch, Dane Bennett, Matthew Hunter, Lily Tysinger

REPLY TO:
☐ 900 E. Strawbridge Avenue, Melbourne, Florida 32901 (321) 409-2025
☐ 1801 27th Street, Vero Beach, Florida 32960 (772) 226-1970
☐ 324 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5017

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

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is 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 726
INTRODUCER:	Rules Committee; Ethics and Elections Committee; and Senator Powell and others
SUBJECT:	Vote-by-mail Ballots
DATE:	April 25, 2017 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fox	Ulrich	EE	**Fav/CS**
2.	Fox	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 726 is a single-subject, election administration bill that specifically authorizes electors to drop-off vote-by-mail ballots at early voting sites in their county of residence during the site's hours of operation. Arguably, the law does not currently allow for this return method; instead, a vote-by-mail voter may only return a ballot to his or her county Supervisor of Election's office, unless the voter wants to wait in line at an early voting site or Election Day polling place and vote in person.

The bill takes effect on July 1, 2017.

II. Present Situation:

An elector must return his or her vote-by-mail ballot to the supervisor's office.[1] An elector possessing a vote-by-mail ballot who seeks to vote at an early voting site or polling place must have an elections worker spoil the ballot and may cast a regular or provisional ballot.[2] Poll

[1] Secretary of State, *Directive 2013-01— Return of Absentee Ballots* (Nov. 25, 2013) [hereinafter, SOS, *Directive 2013-01*]. The Secretary of State's Directive was controversial; Deb Clark, Pinellas County Supervisor of Elections, openly defied the Directive by maintaining remote ballot drop-off sites throughout her county for an upcoming federal special election. Steve Bosquet, Tampa Bay Times, *Detzner's Directive on Absentee Ballots Sets-Off Spirited Debate*, available at http://www.tampabay.com/blogs/the-buzz-florida-politics/detzners-directive-on-absentee-ballots-sets-off-heated-debate/2154326 (last accessed Mar. 7, 2017). It is unclear how many Supervisors of Elections are currently complying with the Secretary's mandate.

[2] *Id.*; ss. 101.68 and 101.69, F.S.

workers may utilize alternate procedures if the voter does not have the vote-by-mail ballot in his or her possession.[3] All of these procedures, however, require a voter to wait in line at the early voting site or polling place to cast a ballot.

III. Effect of Proposed Changes:

CS/CS/SB 726 provides that an elector may vote by personally delivering his or her completed vote-by-mail ballot to an early voting site in the elector's county of residence during the site's hours of operation. Further, it directs the Division to adopt uniform rules for the receipt of ballots.

The bill takes effect on July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

[3] Section 101.69, F.S.

VIII. Statutes Affected:

This bill substantially amends section 101.69 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 25, 2017:
The committee substitute removes the local choice "opt-in" provision for county Supervisors of Elections, mandating the ballot drop-off program in *all* counties.

CS by Ethics and Elections on April 4, 2017:
The committee substitute differs from the original bill in that it: gives each county Supervisor of Elections the right to "opt-in" to the drop-off program; clarifies that vote-by-mail ballots may only be dropped off at early voting sites in the voter's county of residence during the site's hours of operation; and, moves the language to the proper section of the Election Code.

B. Amendments:

None.

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

844694

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/25/2017	.	
	.	
	.	
	.	

The Committee on Rules (Powell) recommended the following:

Senate Amendment (with title amendment)

Delete lines 47 - 52

and insert:

(2)(a) If the elector chooses not to vote in person as provided in subsection (1), the elector may vote by personally delivering his or her completed vote-by-mail ballot to an early voting site in the elector's county of residence during the early voting site's hours of operation.

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

844694

And the title is amended as follows:

Delete lines 3 - 4

and insert:

101.69, F.S.; authorizing an elector to vote by personally

By the Committee on Ethics and Elections; and Senators Powell and Campbell

582-03407-17 2017726c1

A bill to be entitled

An act relating to vote-by-mail ballots; amending s. 101.69, F.S.; providing supervisors of elections the option to allow an elector to vote by personally delivering his or her completed vote-by-mail ballot to an early voting site in the elector's county of residence during the site's hours of operation; requiring the Division of Elections to adopt rules; providing an effective date.

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

Section 1. Section 101.69, Florida Statutes, is amended to read:

101.69 Voting in person; return of vote-by-mail ballot.—

(1) The provisions of this code shall not be construed to prohibit any elector from voting in person at the elector's precinct on the day of an election or at an early voting site, notwithstanding that the elector has requested a vote-by-mail ballot for that election. An elector who has returned a voted vote-by-mail ballot to the supervisor, however, is deemed to have cast his or her ballot and is not entitled to vote another ballot or to have a provisional ballot counted by the county canvassing board. An elector who has received a vote-by-mail ballot and has not returned the voted ballot to the supervisor, but desires to vote in person, shall return the ballot, whether voted or not, to the election board in the elector's precinct or to an early voting site. The returned ballot shall be marked "canceled" by the board and placed with other canceled ballots.

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582-03407-17 2017726c1

However, if the elector does not return the ballot and the election official:

(a) ~~(1)~~ Confirms that the supervisor has received the elector's vote-by-mail ballot, the elector shall not be allowed to vote in person. If the elector maintains that he or she has not returned the vote-by-mail ballot or remains eligible to vote, the elector shall be provided a provisional ballot as provided in s. 101.048.

(b) ~~(2)~~ Confirms that the supervisor has not received the elector's vote-by-mail ballot, the elector shall be allowed to vote in person as provided in this code. The elector's vote-by-mail ballot, if subsequently received, shall not be counted and shall remain in the mailing envelope, and the envelope shall be marked "Rejected as Illegal."

(c) ~~(3)~~ Cannot determine whether the supervisor has received the elector's vote-by-mail ballot, the elector may vote a provisional ballot as provided in s. 101.048.

(2)(a) If the supervisor in the elector's county of residence provides written notice to the division no later than the 30th day before an election, the elector may also vote by personally delivering his or her completed vote-by-mail ballot to an early voting site in the county during the early voting site's hours of operation.

(b) The division shall adopt uniform rules for the receipt of the ballots.

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25
Meeting Date

720
Bill Number (if applicable)

Topic Voting

Amendment Barcode (if applicable)

Name Kelly Quintero

Job Title Legislative Advocate

Address 540 Beverly CT
Street

Phone 772 704 1792

Tallahassee
City *State* *Zip*

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing League of Women Voters of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	SB 762
INTRODUCER:	Senator Baxley
SUBJECT:	Child Protection
DATE:	April 24, 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Crosier	Hendon	CF	**Favorable**
2.	Parks	Cibula	JU	**Favorable**
3.	Crosier	Phelps	RC	**Favorable**

I. Summary:

SB 762 affects child custody disputes where a parent resides in a recovery residence because of a drug or alcohol addiction. The bill provides that in such cases, a court-ordered time-sharing plan may not require a minor child to visit a parent between the hours of 9 p.m. and 7 a.m. if that parent lives in a recovery residence. The bill further provides as a condition of certification by the Department of Children and Families that a recovery residence may not allow a child to visit a resident parent during those hours.

The bill has an effective date of July 1, 2017, and does appear to have a fiscal impact.

II. Present Situation:

Parenting and Time-sharing Plans

The public policy of Florida is that each minor child should have frequent and continuing contact with both parents.[1] A court must order shared parental responsibility for a minor child unless the court finds that shared responsibility would be detrimental to the child.[2] In determining time-sharing with each parent, a court must consider the best interests of the child based on a list of factors.[3] These factors include:

- The demonstrated capacity and disposition of each parent to facilitate and encourage a close and continuing parent-child relationship, to honor the time-sharing schedule, and to be reasonable when changes are required;
- The anticipated division of parental responsibilities after the litigation, including the extent to which parental responsibilities will be delegated to third parties;

[1] Section 61.13(2)(c)1, F.S.
[2] Section 61.13(2)(c)2, F.S.
[3] Section 61.13(3), F.S.

- The demonstrated capacity and disposition of each parent to determine, consider, and act upon the needs of the child as opposed to the needs or desires of the parent;
- The length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity;
- The geographic viability of the parenting plan;
- The moral fitness of the parents;
- The mental and physical health of the parents;
- The home, school, and community record of the child;
- The reasonable preference of the child, if the court deems the child to be of sufficient intelligence, understanding, and experience to express a preference;
- The demonstrated knowledge, capacity, and disposition of each parent to be informed of the circumstances of the minor child;
- The demonstrated capacity and disposition of each parent to provide a consistent routine for the child;
- The demonstrated capacity of each parent to communicate with and keep the other parent informed of issues and activities regarding the minor child; and
- The demonstrated capacity and disposition of each parent to maintain an environment for the child which is free from substance abuse.

A final factor allows the court to take into account any other factor that is relevant to the determination of a specific parenting plan, including the time-sharing schedule.[4]

Recovery Residences

In section 397.311(36), F.S., a recovery residence is defined as "a residential dwelling unit, or other form of group housing, that is offered or advertised through any means . . . by any person or entity as a residence that provides a peer-supported, alcohol-free, and drug-free living environment."[5] Recovery residences may elect to participate in a voluntary certification program administered through the Department of Children and Families (DCF).[6] Requirements for certification of a recovery residence include:

- Submission of documents, including a policy and procedure manual, rules for residents, intake procedures, refund policy, a code of ethics, proof of insurance, and proof of background screening;[7]
- Active management by a certified recovery residence administrator;[8]
- Submission of all owners, directors, and chief financial officers to a level 2 (nationwide) background screening;[9] and
- An onsite inspection of the recovery residence.[10]

[4] Section 61.13(3)(t), F.S.
[5] Recovery residences are commonly known as "halfway houses," but the rehabilitation industry has attempted to move away from that name due to a perceived stigma with it. *See* Beth Sanders, *Recovery Residence vs. Halfway House: What You Need to Know*, REHABS.COM, http://www.rehabs.com/pro-talk-articles/halfway-house-vs-recovery-residence-what-you-need-to-know/ (Aug. 5, 2014).
[6] Section 397.487, F.S.
[7] Section 397.487(3), F.S.
[8] Section 397.487(4), F.S.
[9] Section 397.487(6), F.S.
[10] Section 397.487(5), F.S.

The certification of a recovery residence may be suspended or revoked if the residence is not in compliance with any of the requirements for certification above.[11] A person may not advertise a recovery residence as a "certified recovery residence" unless the recovery residence has been issued a certificate of compliance by the Department of Children and Families.[12]

III. Effect of Proposed Changes:

The bill amends s. 61.13, F.S., to provide that a court-ordered time-sharing plan may not require a minor child to visit a parent residing in a recovery residence between 9 p.m. and 7 a.m.

The bill also amends s. 397.487, F.S., to provide that as a requirement of certification, a recovery residence may not allow minor children to visit or remain between 9 p.m. and 7 a.m. A certified recovery residence may allow minor children to visit a parent during the other hours of the day. Together, the statutory changes made by the bill prohibit a parent who resides in a recovery residence from exercising overnight visitation with a child while the parent resides at the recovery residence.

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:

As most recovery residences are private, the bill will most affect them. The bill should reduce overhead costs for recovery residences, as the operators will have to perform less childproofing in the evenings. Operators will also have to hire less supervision for the residences and will no longer have to worry about subsidizing the care of children (for example, purchasing an extra bed so a child can stay overnight).

[11] Section 397.487(8)(a), F.S.
[12] Section 397.487(9), F.S.

On the other hand, the bill also stands to possibly increase childcare costs for parents who do not live in recovery residences. These parents will no longer be able to count on dropping their kids off with the other parent for visitation and will have to provide more support for the child themselves during evening hours. These costs can possibly be offset by court orders requiring more child support from the parents who are in recovery residences and cannot host a child overnight. However, parents in recovery often have difficulty finding gainful employment, so a full recouping of costs is not guaranteed.

C. Government Sector Impact:

The bill may slightly lower costs for the Department of Children and Families, which will have less to inspect now that recovery residences no longer have to prepare to host children in evening hours.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 61.13 and 397.487 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

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

By Senator Baxley

12-00884-17 2017762__

A bill to be entitled

An act relating to child protection; amending s. 61.13, F.S.; prohibiting a time-sharing plan from requiring visitation at a recovery residence between specified hours; amending s. 397.487, F.S.; authorizing a certified recovery residence to allow a minor child to visit a recovery residence, excluding visits during specified hours; providing an effective date.

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

Section 1. Subsection (9) is added to section 61.13, Florida Statutes, to read:

61.13 Support of children; parenting and time-sharing; powers of court.—

(9) A time-sharing plan may not require that a minor child visit a parent who is a resident of a recovery residence, as defined by s. 397.311, between the hours of 9 p.m. and 7 a.m.

Section 2. Subsection (10) is added to section 397.487, Florida Statutes, to read:

397.487 Voluntary certification of recovery residences.—

(10) A certified recovery residence may allow a minor child to visit a parent who is a resident of the recovery residence, provided that the minor child may not visit or remain in the recovery residence between the hours of 9 p.m. and 7 a.m.

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

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

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

SENATOR DENNIS BAXLEY
12th District

April 4, 2017

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

Dear Chairwoman Benacquisto,

I respectfully request you place Senate Bill 762 Child Protection on your next available agenda.

This bill authorizes a minor child to visit a recovery residence, excluding visits during the hours of 9 p.m. to 7 a.m. The focus is on the well being and safety of the child.

I appreciate your favorable consideration.

Onward & Upward,

Dennis Baxley

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is 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 830
INTRODUCER:	Banking and Insurance Committee; Regulated Industries Committee; and Senator Baxley
SUBJECT:	Mortgage Brokering
DATE:	April 24, 2017 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	McSwain	RI	**Fav/CS**
2.	Johnson	Knudson	BI	**Fav/CS**
3.	Oxamendi	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 830 exempts a securities dealer, investment advisor, or associated person registered under ch. 517, F.S., from regulation as a loan originator or mortgage broker under ch. 494, F.S., if the person in the normal course of conducting securities business with corporate or individual clients:

- Solicits or offers to solicit a mortgage loan from a securities client, or refers a securities client to a an entity exempt from regulation under parts I or II of ch. 494, F.S., pursuant to s. 494.00115, F.S., a licensed mortgage broker, a licensed mortgage lender, or a registered loan originator; and
- Does not accept or offer to accept a mortgage loan application, negotiate or offer to negotiate the terms or conditions of a new or existing mortgage loan on behalf of a borrower or lender, or negotiate or offer to negotiate the sale of an existing mortgage loan to a noninstitutional investor for compensation or gain.

Any referral or solicitation made pursuant to this exemption must comply with the provisions of ch. 517, F.S., the federal Real Estate Settlement Procedures Act, and any applicable federal law or general law of this state.

The bill may have an insignificant, negative fiscal impact to state government. *See* Section V, Fiscal Impact Statement.
The bill provides an effective date of July 1, 2017.

II. Present Situation:

State Regulation of Non-Depository Mortgage Business

The Office of Financial Regulation (OFR) regulates state-chartered banks, credit unions, other financial institutions, as well as finance companies, and the securities industry.[1] The OFR's Division of Consumer Finance licenses and regulates various aspects of the non-depository financial services industries, including individuals and businesses engaged in the mortgage business.

Under ch. 494, F.S., the OFR licenses and regulates the following individuals and businesses:

- **Loan originator**, who, directly or indirectly, solicits or offers to solicit a mortgage loan, accepts or offers to accept an application for a mortgage loan, negotiates or offers to negotiate the terms or conditions of a new or existing mortgage loan on behalf of a borrower or lender, or negotiates or offers to negotiate the sale of an existing mortgage loan to a noninstitutional investor for compensation or gain. The term includes an individual who is required to be licensed as a loan originator under the S.A.F.E. Mortgage Licensing Act of 2008.[2] The term does not include an employee of a mortgage broker or mortgage lender whose duties are limited to physically handling a completed application form or transmitting a completed application form to a lender on behalf of a prospective borrower. [3]
- **Mortgage broker**, who conducts loan originator activities through one or more licensed loan originators employed by the mortgage broker or as independent contractors to the mortgage broker.[4]
- **Mortgage lender**, who makes a mortgage loan or services a mortgage loan for others, or, for compensation or gain, directly or indirectly, sells or offers to sell a mortgage loan to a noninstitutional investor. [5] A mortgage lender may act as a mortgage broker.[6]

Under ch. 494, F.S., these licensees are subject to:

- Requirements for the maintenance of books and records relating to the licensee's compliance with the chapter, with regard to expenses paid by the licensee on behalf of the borrower, and relating to its advertisements.[7]
- The OFR's investigation and examination authority.[8]
- The OFR's enforcement authority such as injunctions, cease and desist orders, suspension or revocation of licensure, and administrative fines.[9]

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[1] Section 20.121(3)(a)2.and (d), F.S. The OFR is under the Financial Services Commission (commission). The commission is a separate budget entity under the Department of Financial Services (DFS), and is not subject to the control or supervision by the DFS. The commission, comprised of the Governor and Cabinet, appoints the OFR Commissioner.

[2] The Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (S.A.F.E. Act) (12 U.S.C. s. 5101-5116), enacted on July 30, 2008, establishes minimum standards for the licensing and registration of state-licensed mortgage loan originators, and mandates a nationwide licensing and registration system for residential mortgage loan originators.

[3] Section 494.001(17), F.S.

[4] Section 494.001(22), F.S.

[5] Section 494.001(23), F.S.

[6] Section 494.0073, F.S.

[7] Sections 494.0016 and 494.00165(2), F.S.

[8] Section 494.0012, F.S.

[9] Sections 494.0013, 494.0014, and 494.00255, F.S.

In order to obtain a license as a mortgage loan originator, an individual must:[10]

- Complete a 20-hour prelicensing class;[11]
- Pass a written test (cost: $110);[12]
- Submit an application form;
- Submit a nonrefundable application fee of $215;
- Submit fingerprints, the cost of which is borne by the applicant; and
- Authorize access to his or her credit report, the cost of which is borne by the applicant.

In order to obtain a license as a mortgage broker, a person must:[13]

- Submit an application form, which must designate a qualified principal loan originator;
- Submit a nonrefundable application fee of $525;
- Submit fingerprints for each of the applicant's control persons,[14] the cost of which is borne by the person subject to the background check; and
- Authorize access to the credit reports of each of the applicant's control persons, the cost of which is borne by the applicant.

In order to obtain licensure as a mortgage lender, a person must:[15]

- Submit an application form, which must designate a qualified principal loan originator;
- Submit a nonrefundable application fee of $600;
- Submit fingerprints for each of the applicant's control persons, the cost of which is borne by the person subject to the background check;
- Submit a copy of the applicant's financial audit report for the most recent fiscal year, which must document that the applicant has a net worth of at least $63,000 if the applicant is not seeking a servicing endorsement, or at least $250,000 if the applicant is seeking a servicing endorsement; and
- Authorize access to the credit reports of each of the applicant's control persons, the cost of which is borne by the applicant.

A mortgage loan originator, broker, and lender license must be annually renewed by December 31.[16] In order to renew:

- A mortgage loan originator license, an individual must submit a renewal form and a nonrefundable renewal fee of $170; provide documentation of completion of at least 8 hours

[10] Section 494.00312, F.S.
[11] The cost of prelicensing courses may vary by course provider, but one such course provider charges $349 for the required 20-hour course. See MortgageEducation.com, Mortgage Loan Originator Courses, https://www.mortgage-education.com/StatePage.aspx?StateCode=FL (last visited Mar. 25, 2017).
[12] Nationwide Multistate Licensing System & Registry, Uniform State Test (UST) Implementation Information, http://mortgage.nationwidelicensingsystem.org/profreq/testing/Pages/UniformStateTest.aspx (last visited Mar. 25, 2017).
[13] Section 494.00321, F.S.
[14] "Control persons" is defined in s. 494.001(6), F.S., to mean, in part, "an individual, partnership, corporation, trust, or other organization that possesses the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise."
[15] Section 494.00611, F.S.
[16] Sections 494.00312(7), 494.00321(7), and 494.00611, F.S.

of continuing education courses;[17] and authorize access to his or her credit report, the cost of which is borne by the licensee.[18]

- A mortgage broker license, a person must submit a renewal form and a nonrefundable renewal fee of $475; submit fingerprints for any new control persons who have not been screened; and authorize access to the credit reports of each of the mortgage broker's control persons, the cost of which is borne by the licensee.[19]
- A mortgage lender license, a person must submit a renewal form and a nonrefundable renewal fee of $575; submit fingerprints for any new control persons who have not been screened; submit proof that the mortgage lender continues to meet the applicable net worth requirement; and authorize access to the credit reports of each of the mortgage lender's control persons, the cost of which is borne by the licensee.[20]

The following persons are exempt from mortgage broker and mortgage lender regulation under ch. 494, F.S.:[21]

- Any person operating exclusively as a registered loan originator[22] in accordance with the S.A.F.E. Act.
- A depository institution; certain regulated subsidiaries that are owned and controlled by a depository institution; or institutions regulated by the Farm Credit Administration.
- The Federal National Mortgage Association; the Federal Home Loan Mortgage Corporation; any agency of the Federal Government; any state, county, or municipal government; or any quasi-governmental agency that acts in such capacity under the specific authority of the laws of any state or the United States.
- An attorney licensed in this state who negotiates the terms of a mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client.
- A person involved solely in the extension of credit relating to the purchase of a timeshare plan.
- A person who performs only real estate brokerage activities and is licensed or registered in this state under part I of ch. 475, F.S., unless the person is compensated by a lender, a mortgage broker, or other loan originator or by an agent of such lender, mortgage broker, or other loan originator.

The following persons are exempt from the mortgage lender licensing requirements of ch. 494, F.S.:[23]

- A person acting in a fiduciary capacity conferred by the authority of a court.

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[17] The cost of continuing education courses may vary by course provider, but one such course provider charges $129 for the required 8-hour course. See MortgageEducation.com, Mortgage Loan Originator Courses, https://www.mortgage-education.com/StatePage.aspx?StateCode=FL (last visited Mar. 30, 2017).
[18] Section 494.00313, F.S.
[19] Section 494.00322, F.S.
[20] Section 494.00612, F.S.
[21] Section 494.00115(1), F.S.
[22] A "registered loan originator" is "a loan originator who is employed by a depository institution, by a subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency, or by an institution regulated by the Farm Credit Administration, and who is registered with and maintains a unique identifier through the [Nationwide Mortgage Licensing System and Registry]." A registered loan originator must comply with federal registration requirements rather than the loan originator licensing requirements under ch. 494, F.S.
[23] Section 494.00115(2), F.S.

- A person who, as a seller of his or her own real property, receives one or more mortgages in a purchase money transaction.
- A person who acts solely under contract and as an agent for federal, state, or municipal agencies for the purpose of servicing mortgage loans.
- A person who makes only nonresidential mortgage loans and sells loans only to institutional investors.
- An individual making or acquiring a mortgage loan using his or her own funds for his or her own investment, and who does not hold himself or herself out to the public as being in the mortgage lending business.
- An individual selling a mortgage that was made or purchased with that individual's funds for his or her own investment, and who does not hold himself or herself out to the public as being in the mortgage lending business.

Federal Real Estate Settlement Procedures Act of 1974

The Real Estate Settlement Procedures Act[24] (the Act) became effective on June 20, 1975.[25] The Act requires lenders, mortgage brokers, or servicers of home loans to provide borrowers with pertinent and timely disclosures regarding the nature and costs of the real estate settlement process. In addition, the Act also prohibits specific practices, such as kickbacks,[26] and places limitations upon compensation and fees.[27]

Federal Securities Regulation

The federal Securities Exchange Act of 1934 ('34 Act) requires registration of securities market participants like broker-dealers and exchanges.[28] Generally, any person acting as "broker" or "dealer" as defined in the '34 Act must be registered with the Securities and Exchange Commission (SEC) and join a self-regulatory organization (SRO), like the Financial Industry Regulatory Authority (FINRA) or a national securities exchange.

The '34 Act broadly defines "broker" as "any person engaged in the business of effecting transactions in securities for the account of others," which the SEC has interpreted to include involvement in any of the key aspects of a securities transaction, including solicitation, negotiation, and execution.[29] A "dealer" is "any person engaged in the business of buying and selling securities . . . for such person's own account through a broker or otherwise."[30]

State Securities Regulation

In addition to federal securities laws, "Blue Sky Laws" are state laws designed to protect investors against fraudulent sales practices and activities by requiring companies making

[24] 12 U.S.C. ss. 2601 et seq.
[25]. 12 CFR Part 1024 (Regulation X) implements RESPA.
[26] 12 CFR s. 1024.14.
[27] *Id*.
[28] *Supra*, note 21.
[29] 15 U.S.C. ss. 78c(4) and 78o. U.S. Securities and Exchange Commission, Guide to Broker-Dealer Registration, https://www.sec.gov/reportspubs/investor-publications/divisionsmarketregbdguidehtm.html (last visited March 30, 2017).
[30] 15 U.S.C. s. 78c(5).

offerings of securities to register their offerings before they can be sold in that state and by requiring licensure for brokerage firms, their brokers, and investment adviser representatives.[31]

In Florida, OFR's Division of Securities oversees the Securities and Investor Protection Act, ch. 517, F.S. (act), which regulates the offer and sale of securities in, to, or from Florida by firms, branch offices, and individuals affiliated with these firms. The act requires the following individuals or businesses to be registered with the OFR under s. 517.12, F.S., in order for such persons to sell or offer to sell any securities in or from offices in this state, or to sell securities to persons in this state from offices outside this state:[32]

- **Dealers**, which include:[33]
  - Any person, other than an associated person registered under ch. 517, F.S., who engages, either for all or part of her or his time, directly or indirectly, as broker or principal in the business of offering, buying, selling, or otherwise dealing or trading in securities issued by another person.
  - Any issuer who through persons directly compensated or controlled by the issuer engages, either for all or part of her or his time, directly or indirectly, in the business of offering or selling securities which are issued or are proposed to be issued by the issuer.
- **Investment advisors**, which include:[34]
  - Any person who receives compensation, directly or indirectly, and engages for all or part of her or his time, directly or indirectly, or through publications or writings, in the business of advising others as to the value of securities or as to the advisability of investments in, purchasing of, or selling of securities, except a dealer whose performance of these services is solely incidental to the conduct of her or his business as a dealer and who receives no special compensation for such services.
  - But does not include a "federal covered advisor."[35]
- **Associated persons**, with respect to a *dealer or investment adviser*, include:[36]
  - Any partner, officer, director, or branch manager of a dealer or investment adviser or any person occupying a similar status or performing similar functions;
  - Any natural person directly or indirectly controlling or controlled by such dealer or investment adviser, other than an employee whose function is only clerical or ministerial; or
  - Any natural person, other than a dealer, employed, appointed, or authorized by a dealer, investment adviser, or issuer to sell securities in any manner or act as an investment adviser as defined in this section.
- **Associated persons**, with respect to a *federal covered adviser*, includes any person who is an investment adviser representative and who has a place of business in this state.

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[31] U.S. Securities and Exchange Commission, Blue Sky Laws, http://www.sec.gov/answers/bluesky.htm (last visited March 30, 2017).
[32] Section 517.12(1), F.S.
[33] Section 517.021(6)(a), F.S.
34 Section 517.021(14)(a), F.S.
[35] Section 517.021(9) and (14)(b)9., F.S. A federal covered advisor must be registered under federal law and must provide a notice-filing to the OFR pursuant to ss. 517.021 and 517.1201, F.S.
[36] Section 517.021(2)(a), F.S.

Wells Fargo Declaratory Statement

In May 2016, Wells Fargo Advisors, LLC (Wells Fargo), filed a petition for a declaratory statement[37] with the OFR to determine whether it would be in compliance with ch. 494, F.S., if it were to start compensating its financial advisors for certain mortgage loan originator activities that it argued were purely incidental to the otherwise authorized securities and investment activities for Wells Fargo and its financial advisors.[38]

Wells Fargo is a full-service broker-dealer firm subject to supervision by the SEC and the OFR.[39] Wells Fargo is indirectly owned by Wells Fargo & Co., a bank holding company that also owns certain national banks.[40] Therefore, Wells Fargo is affiliated with such banks through common ownership.[41]

Despite the fact that Wells Fargo holds a mortgage broker license and many of its financial advisors hold a license as a mortgage loan originator, Wells Fargo and its financial advisors do not:

- Solicit the general public for mortgage loans;
- Solicit lenders on behalf of borrowers;
- Take, complete, accept, or assist in preparing applications for any mortgage loans;
- Negotiate the interest rate, terms or conditions for new or existing mortgage loans; or
- Offer any mortgage loans to borrowers. [42]

If Wells Fargo's securities clients raise issues about other financial matters, such as a business need or a residential mortgage, the financial advisors may inform securities clients that the affiliated banks make mortgage loans and may provide bank-approved material.[43] If a securities client contacts an affiliated bank regarding a mortgage loan and ultimately obtains mortgage financing, Wells Fargo provides "additional compensation" to the financial advisor who interacted with the particular client.[44] Neither Wells Fargo nor the financial advisor, however, receive a fee of any kind from either the securities client obtaining the mortgage loan, or the affiliated bank making the mortgage loan.[45] Wells Fargo and the financial advisor do not have any additional involvement with the affiliated banks' mortgage loan origination process.[46]

The determinative issues in the Declaratory Statement and Final Order issued by the OFR (OFR Declaratory Statement) were: 1) the prohibition against a mortgage broker paying a commission

[37] Pursuant to s. 120.565(1), F.S., "any substantially affected person may seek a declaratory statement regarding an agency's opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the petitioner's particular set of circumstances."
[38] *In Re Petition for Declaratory Statement, Wells Fargo Advisors, LLC*, Case No. 66425, p. 1 & 4-6 (Fla. OFR Aug. 15, 2016).
[39] *Id.* at 2.
[40] *Id.* at 3.
[41] *Id.*
[42] *Id.* at 3 & 5.
[43] *Id.* at 3-4.
[44] *Id*. at 4.
[45] *Id.*
[46] *Id.*

to any person not licensed or exempt from licensure under ch. 494, F.S.;[47] 2) permitting "additional compensation" related to the mortgage loans to be paid to the financial adviser; and 3) the referral aspect of the above set of facts.[48]

The OFR Declaratory Statement concluded that both the compensation and the referral require Wells Fargo to be licensed as either a mortgage broker or mortgage lender and require that its financial advisors be licensed as mortgage loan originators.[49]

III. Effect of Proposed Changes:

The bill amends s. 494.00115, F.S., to exempt a securities dealer, investment advisor, or associated person registered under ch. 517, F.S., from regulation as a loan originator or mortgage broker under ch. 494, F.S., if the person in the normal course of conducting securities business with corporate or individual clients:

- Solicits or offers to solicit a mortgage loan from a securities client, or refers a securities client to an entity exempt from regulation under parts I or II of ch. 494, F.S., pursuant to s. 494.00115, F.S.,[50] a licensed mortgage broker, a licensed mortgage lender, or a registered loan originator; and
- Does not accept or offer to accept an application for a mortgage loan, negotiate or offer to negotiate the terms or conditions of a new or existing mortgage loan on behalf of a borrower or lender, or negotiate or offer to negotiate the sale of an existing mortgage loan to a noninstitutional investor for compensation or gain.

The bill provides that any referral or solicitation made pursuant to this exemption must comply with ch. 517, F.S., the federal Real Estate Settlement Procedures Act, and any other applicable federal law or general law of this state.

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.

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[47] Section 494.0038(2), F.S.

[48] Declaratory Statement and Final Order, *In Re: Petition for Declaratory Statement, Wells Fargo Advisors, LLC*, Case No. 66425 (Fla. OFR Aug. 15, 2016), at pages 7-8.

[49] *Id.* at 8 - 9.

[50] Section 494.00115(1)(b), F.S., provides an exemption from regulation as a mortgage broker or loan originator under parts I and II of ch. 494, F.S., for a "depository institution; subsidiaries that are owned and controlled by a depository institution and regulated by the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the National Credit Union Administration, or the Federal Deposit Insurance Corporation; or institutions regulated by the Farm Credit Administration." The Federal Deposit Insurance Act defines a "depository institution" as a bank or saving association. *See* 12 U.S.C. 1813(c).

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may decrease licensing costs for securities dealers, investment advisors, or associated persons exempted from the license requirements under ch. 494, F.S.

C. Government Sector Impact:

The OFR states that the licensure exemption for securities dealers, investment advisors, or associated persons may result in an insignificant loss in revenues.[51]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 494.00115 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 Banking and Insurance on April 17, 2017:
The CS requires that any referral or solicitation made pursuant to this exemption must comply with the provisions of ch. 517, F.S., the federal Real Estate Settlement Procedures Act, 12 U.S.C. ss. 2601 et seq.; and any applicable federal law or general law of this state.

CS by Regulated Industries on April 4, 2017:
The committee substitute exempts securities dealers, investment advisors, and associated persons from regulation as a loan originator or mortgage broker if they solicit or offer to solicit, during the normal course of conducting securities business with a corporate or

[51] *See 2017 Agency Legislative Bill Analysis issued by the OFR for SB 830*, dated February 15, 2017 (on file with Senate Committee on Regulated Industries) at pages 3-4.

individual client, a mortgage loan from a securities client, or refer a securities client to an entity exempt from regulation under parts I or II of chapter 494, F.S., pursuant to s. 494.00115, F.S., a licensed mortgage broker, a licensed mortgage lender, or a registered loan originator.

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 Banking and Insurance; and Regulated Industries; and Senator Baxley

597-03981-17 2017830c2

A bill to be entitled

An act relating to mortgage brokering; amending s. 494.00115, F.S.; providing an exemption from regulation under parts I and II of ch. 494, F.S., for certain securities dealers, investment advisers, and associated persons; providing requirements for certain solicitations and referrals; providing an effective date.

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

Section 1. Subsections (2) and (3) of section 494.00115, Florida Statutes, are renumbered as subsections (3) and (4), respectively, and a new subsection (2) is added to that section, to read:

494.00115 Exemptions.—

(2)(a) A securities dealer, an investment adviser, or an associated person registered under s. 517.12 is exempt from regulation under this part and part II of this chapter if such person, in the normal course of conducting securities business with a corporate or an individual client:

1. Solicits or offers to solicit a mortgage loan from a securities client or refers a securities client to an entity exempt under paragraph (1)(b), a licensed mortgage broker, a licensed mortgage lender, or a registered loan originator; and

2. Does not accept or offer to accept an application for a mortgage loan, negotiate or offer to negotiate the terms or conditions of a new or existing mortgage loan on behalf of a borrower or lender, or negotiate or offer to negotiate the sale of an existing mortgage loan to a noninstitutional investor for compensation or gain.

(b) Any solicitation or referral made pursuant to this subsection must comply with chapter 517; the federal Real Estate Settlement Procedures Act, 12 U.S.C. ss. 2601 et seq.; and any applicable federal law or general law of this state.

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

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

Florida Senate - 2017 CS for CS for SB 830

597-03981-17 2017830c2

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)

Meeting Date

830
Bill Number (if applicable)

Topic Mortgage Broker Bill

Amendment Barcode (if applicable)

Name Anthony DiMarco

Job Title EVP of Govt. Affairs

Address 1001 Thomasville Rd
Street

Tallahassee FL 32303
City State Zip

Phone 224-2265

Email adimarco@flbankers.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Bankers Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	SB 914
INTRODUCER:	Senator Baxley
SUBJECT:	Public Meetings
DATE:	April 24, 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Carlton	Ulrich	EE	**Favorable**
2.	Cochran	Yeatman	CA	**Favorable**
3.	Carlton	Phelps	RC	**Favorable**

I. Summary:

SB 914 revises Florida's Government in the Sunshine Law, or Sunshine Law, by codifying judicial interpretation and application of s. 286.011, F.S. Specifically, the bill provides from jurisprudence definitions for the terms: de facto meeting, discussion, meeting, official act, and public business. The bill also provides guidelines for boards to conduct permissible fact-finding exercises or excursions.

Finally, the bill provides in statute that notice is not required when two or more members of a board are gathered if no official acts are taken and no public business is discussed.

II. Present Situation:

Open Meetings Laws

The Florida Constitution provides that the public has a right to access governmental meetings.[1] Each collegial body must provide notice of its meetings to the public and permit the public to attend any meeting at which official acts are taken or at which public business is transacted or discussed.[2] This applies to the meetings of any collegial body of the executive branch of state government, counties, municipalities, school districts or special districts.[3]

[1] FLA. CONST., art. I, s. 24(b).
[2] *Id.*
[3] Fla. CONST., art. I, s. 24(b). Meetings of the Legislature are governed by Article III, section 4(e) of the Florida Constitution, which states: "The rules of procedure of each house shall further provide that all prearranged gatherings, between more than two members of the legislature, or between the governor, the president of the senate, or the speaker of the house of representatives, the purpose of which is to agree upon formal legislative action that will be taken at a subsequent time, or at which formal legislative action is taken, regarding pending legislation or amendments, shall be reasonably open to the public."

The Florida Statutes also provide that governmental meetings must be open to the public. Section 286.011, F.S., which is also known as the Government in the Sunshine Law,[4] or the Sunshine Law,[5] requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken be open to the public.[6] The board or commission must provide the public reasonable notice of such meetings.[7] A failure to abide by open meetings requirements will invalidate any resolution, rule or formal action adopted at a meeting.[8] The minutes of a board or commission meeting also must be made available to the public.[9] A public officer or member of a governmental entity who violates the Sunshine Law is subject to civil and criminal penalties.[10]

The Legislature may create an exemption to open meetings requirements by passing a general law by a two-thirds vote of each house.[11] An exemption must explicitly lay out the public necessity justifying the exemption, and the exemption must be no broader than necessary to accomplish the stated purpose of the exemption.[12]

Who is Subject to the Sunshine Law?

Article I, Section 24(b) of the Florida Constitution, in pertinent part, provides that meetings of the following bodies must be open and noticed to the public:

> [A]ny collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed.

Furthermore, s. 286.011, F.S., provides, in relevant part, that all meetings of the following entities must be open to the public:[13]

> [A]ny board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, … including meetings with or attended by any person elected to such board or commission, but who has not yet taken office, at which official acts are to be taken are declared to be public meetings.

The Sunshine Law applies to "[m]embers-elect of boards, commissions, agencies, etc." as soon as they are elected, even if they have not yet been sworn into office.[14] Any assemblage of members-elect or elected members of a collegial body who "discuss matters on which

[4] *Times Pub. Co. v. Williams*, 222 So. 2d 470, 472 (Fla. 2d DCA 1969).
[5] *Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693, 695 (Fla. 1969).
[6] Section 286.011(1)-(2), F.S.
[7] *Id.*
[8] *Id.*
[9] Section 286.011(2), F.S.
[10] Section 286.011(3), F.S.
[11] FLA. CONST., art. I, s. 24(c).
[12] *Id.*
[13] Not all meetings must be noticed to the public according to s. 286.011(1), F.S.; only board or commission meetings must be reasonably noticed.
[14] *Hough v. Stembridge*, 278 So. 2d 288, 289 (Fla. 3d DCA 1973).

foreseeable action may be taken by that board or commission" constitutes a meeting subject to the Sunshine Law.[15]

The Sunshine Law has broad application, even to entities that are not normally considered a government body. Case law provides that a university is subject to the Sunshine Law, even if it is not usually considered a state agency.[16] Therefore, since a university is subject to the Sunshine Law, any committee it delegates its powers to must also hold its meetings publicly.[17]

Florida courts have held that the intent behind the Sunshine Law is to provide public access to the entire decision-making process, because it is the how and why public officials decided to act which interests the public, not merely the final decision.[18] Accordingly, if a government collegial body delegates its decision-making powers to another group, then those meetings must be public, even if the group is formed of private citizens.[19]

What is a Meeting that Should be Held in the Sunshine?

The Legislature has not defined the term "meeting" within the context of the Sunshine Law. However, the courts have. In *Sarasota Citizens for Responsible Gov't v. City of Sarasota* the Florida Supreme Court stated:

> [M]eetings within the meaning of the Sunshine Law include any gathering, formal or informal, of two or more members of the same board or commission where the members deal with some matter on which foreseeable action will be taken by the Board.[20]

The Court has also interpreted the intent of the Sunshine Law in relation to the types of assemblages that constitute a meeting:

> The obvious intent was to cover any gathering of the members where the members deal with some matter on which foreseeable action will be taken by the board.[21]

A meeting, within the meaning of the Sunshine Law, can occur even if the members of a collegial body do not speak to each other about a topic where foreseeable action may take place. Courts have ruled that the ***opportunity*** to make a decision was sufficient to make a gathering of school officials a public meeting.[22] In one case, school board members, two school board candidates, a superintendent and his deputy, and members of the press, toured new school bus routes on a school bus. The school board members sat several rows away from each other as a precaution and none of the members discussed preferences, expressed opinions or voted on the bus trip.[23] Despite taking those precautions, the court opined that the school board "had ultimate decision-making authority," gathered in a confined space, and had "the opportunity at that time

[15] *Hough v. Stembridge*, 278 So. 2d 288, 289 (Fla. 3d DCA 1973).
[16] *Wood v. Marston*, 442 So. 2d 934 (Fla. 1983).
[17] *Id.*
[18] *Times Publishing Company v. Williams*, 222 So. 2d 470, 473 (Fla. 2d DCA 1969).
[19] *Palm Beach v. Gradison*, 296 So. 2d 473 (Fla. 1974).
[20] *Sarasota Citizens for Responsible Gov't v. City of Sarasota*, 48 So. 3d 755 (Fla. 2010).
[21] *Bd. of Pub. Instruction v. Doran*, 224 So. 2d 693 (Fla. 1969).
[22] *Finch v. Seminole County Sch. Bd.*, 995 So. 2d 1068 (Fla. 5th DCA 2008).
[23] *Id.*

to make decisions outside of the public scrutiny." Therefore, the court held that the bus ride was a meeting that violated the Sunshine Law.[24]

A sunshine meeting may also occur even if the members of a board do not assemble or share information through an intermediary. In this case, a superintendent met individual school board members in succession to discuss redistricting, but denied acting as a "go-between" or sharing the opinions of one board member with another one.[25] Although board members did not exchange information or otherwise congregate, the court in finding a violation of the Sunshine Law, held:

> The scheduling of six sessions of secret discussions, repetitive in content, in rapid-fire seriatim and of such obvious official portent, resulted in de facto meetings by two or more members of the board at which official action was taken.[26]

Any meeting when public officials meet to avoid being seen or heard by the public violates the Sunshine Law, regardless of whether that meeting is formal or informal.[27] The judiciary has advised, "[i]f a public official is unable to know whether by convening two or more officials he is violating the law, he should leave the meeting forthwith."[28]

Not all meetings of government officials are subject to the Sunshine Law, and the presence of two government officials alone is not sufficient to require a public meeting.[29] In addition to the exemptions listed in statute, staff meetings and certain fact-finding meetings are exceptions to the Sunshine Law and there is no requirement that these meetings be open and noticed to the public.[30]

Officials may also meet alone with their staff or employees for fact-finding purposes in order to execute their duties without violating the Sunshine Law.[31] In addition, case law states that as long as they do not have decision making authority, fact-finding committees are not subject to the Sunshine Law.[32] The Florida Supreme Court ruled that "[w]hen a committee has been established for and conducts only information gathering and reporting, the activities of that committee are not subject to § 286.011, Fla. Stat."[33]

What Happens if a Meeting Violates the Sunshine Law?

Section 286.011(1), F.S., provides that the penalty for violating the Sunshine Law is to undo any business conducted in a meeting that should have been public. Specifically, it states, "no

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[24] *Id.*
[25] *Blackford v. Sch. Bd.*, 375 So. 2d 578, 580 (Fla. 5th DCA 1979).
[26] *Id.*
[27] *Miami Beach v. Berns*, 245 So. 2d 38, 41 (Fla. 1971).
[28] *Id.*
[29] *City of Sunrise v. News and Sun-Sentinel Co.*, 542 So. 2d 1354, 1355 (Fla. 4th DCA 1989).
[30] Office of the Attorney General, *Government-In-The-Sunshine Manual Volume 38* at 3-5 (2016).
[31] *Sarasota Citizens for Responsible Gov't v. City of Sarasota*, 48 So. 3d 755 (Fla. 2010). See also *Bennett v. Warden*, 333 So. 2d 97 (Fla. Dist. Ct. App. 1976).
[32] *Sarasota Citizens for Responsible Gov't v. City of Sarasota*, 48 So. 3d 755 (Fla. 2010).
[33] *Id.* at 757.

resolution, rule, or formal action shall be considered binding except as taken or made at such meeting."

Courts have meted out a wide range of punishments to bodies who have violated the Sunshine Law, the most severe of which is to make a final action void. A violation of the Sunshine Law is "an irreparable public injury" and it does not matter if an entity did not intend to engage in such an act.[34] Additionally, courts may also order entities to stop meeting unless they meet in the open.[35]

However, it is worth noting that some courts have been more lenient and permitted entities to cure the violations. For example, a court may permit a body to cure Sunshine Law violations by requiring that information be made public and that all the subject matter be "reexamined and rediscussed" in an open meeting.[36]

III. Effect of Proposed Changes:

The bill creates s. 286.011(1)(a), F.S., codifying judicial interpretation and application of the terms: de facto meeting, discussion, meeting, official act, and public business. Those terms are defined as follows:

- "De facto meeting" means the use of board or commission staff or third parties, acting as intermediaries, to facilitate discussion of public business between board or commission members.
- "Discussion" means a conversation between or among board or commission members regardless of whether through oral, written, electronic or any other form of communication.
- "Meeting" means a gathering, whether formal or informal, of two or more members of the same board or commission, even if they have not yet taken office.
- "Official act" means the adoption of a resolution or rule or other formal action being taken by the board or commission.
- "Public business" means any matter before, or foreseeably expected to come before, the board or commission.

The bill also specifies that members of a board may participate in fact-finding exercises or excursion to research public business, and may participate in meetings with a member of the Legislature if:

- The board provides reasonable notice;
- A vote, official act, or an agreement regarding a future action does not occur;
- There is no discussion of public business that occurs; and
- There are appropriate records, minutes, audio recordings, or video recordings made and retained as a public record.

Finally, the bill provides that, if there is a gathering of two or more board members where no official acts are taken and no public business is discussed, then no public notice or access is required.

[34] *Palm Beach v. Gradison*, 296 So. 2d 473 (Fla. 1974).
[35] *Wood v. Marston*, 442 So. 2d 934 (Fla. 1983).
[36] *Blackford v. Sch. Bd.*, 375 So. 2d 578, 581 (Fla. 5th DCA 1979).

The bill is effective upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Article I, Section 24(c) of the Florida Constitution provides the manner in which exemptions to Florida's Sunshine Laws may be created and requires a two-thirds vote of each house of the Legislature in order for such exemptions to be enacted. Because this bill does not create any new exemptions or codify existing jurisprudentially-created exemptions, neither the substantive requirements nor the two-thirds vote in each house requirement apply to this bill.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Because the bill merely codifies jurisprudence, it is not anticipated that this bill will have a fiscal impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 286.011 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

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

By Senator Baxley

12-00162D-17 2017914__

A bill to be entitled

An act relating to public meetings; amending s. 286.011, F.S.; defining terms; specifying conditions under which members of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision may participate in fact-finding exercises or excursions; providing for construction; providing an effective date.

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

Section 1. Subsection (1) of section 286.011, Florida Statutes, is amended, present subsections (2) through (8) of that section are renumbered as subsections (3) through (9), respectively, and a new subsection (2) is added to that section, to read:

286.011 Public meetings and records; public inspection; criminal and civil penalties.—

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

1. "De facto meeting" means the use of board or commission staff or third parties, acting as intermediaries, to facilitate discussion of public business between board or commission members.

2. "Discussion" means a conversation between or among board or commission members regardless of whether through oral, written, electronic, or any other form of communication.

3. "Meeting" means a gathering, whether formal or informal, of two or more members of the same board or commission, even if

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12-00162D-17 2017914__

they have not yet taken office.

4. "Official act" means the adoption of a resolution or rule or other formal action being taken by the board or commission.

5. "Public business" means any matter before, or foreseeably expected to come before, the board or commission.

(b) Except as otherwise provided in the State Constitution, all meetings or de facto meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision at which official acts are to be taken or public business is to be transacted or discussed, are declared to be public meetings open to the public.~~, except as otherwise provided in the Constitution, including meetings with or attended by any person elected to such board or commission, but who has not yet taken office, at which official acts are to be taken are declared to be public meetings open to the public at all times, and~~

(c) Members of the same board or commission may participate in fact-finding exercises or excursions to research public business, and may participate in meetings with a member of the Legislature, if:

1. The board or commission provides reasonable notice;

2. A vote, an official act, or an agreement regarding an action at a future meeting does not occur;

3. A discussion of public business, as those terms are defined in paragraph (a), does not occur; and

4. Appropriate records, minutes, audio recordings, or video recordings are made and retained as a public record.

(d) A ~~no~~ resolution, rule, or formal action is not ~~shall be~~

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

considered binding unless ~~except as~~ taken or made at a public ~~such~~ meeting. The board or commission must provide reasonable notice of all such meetings.

(2) So long as no official acts are taken and any public business is not discussed, subsection (1) may not be construed to require public notice of, and access to, any gathering of two or more members of the same board or commission.

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25
Meeting Date

914
Bill Number (if applicable)

Topic Public Meetings

Amendment Barcode (if applicable)

Name David Cruz

Job Title Assistant General Counsel

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Tallahassee FL 32302
City *State* *Zip*

Phone 701-3676

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida League of Cities

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

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/CS/SB 840
INTRODUCER:	Rules Committee; Governmental Oversight and Accountability Committee; Health Policy Committee and Senator Clemens
SUBJECT:	Controlled Substance Prescribing
DATE:	April 26, 2017 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stovall	Stovall	HP	**Fav/CS**
2.	Peacock	Ferrin	GO	**Fav/CS**
3.	Stovall	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 840 requires allopathic and osteopathic physicians who have a Drug Enforcement Administration (DEA) registration to complete a 2-hour continuing medical education (CME) course provided by a statewide professional association by December 31, 2017. Failure to complete the course before December 31, 2017, constitutes grounds for disciplinary action. The course must address current standards regarding opiate prescribing and alternatives to these standards, and the risks of opioid addiction following even brief periods of treatment in the management of acute pain. Beginning January 1, 2020, this course will be required as part of the 40-hour CME requirement for biennial licensure renewal.

The bill requires dispensers to report the dispensing of a controlled substance to the Prescription Drug Monitoring Program database (PDMP) by the close of the next business day, rather than 7 days, after the controlled substance is dispensed. This expedited timeframe for reporting is effective January 1, 2018. Reporting must be through the electronic system approved by the DOH.

The bill clarifies an exemption from reporting for rehabilitative hospitals, assisted living facilities, or nursing homes dispensing a certain dosage of a controlled substance, as needed, to a patient as ordered by the patient's treating physician by requiring the dispensing to occur while the patient is present and receiving care.

An employee of the U.S. Department of Veterans Affairs, who is authorized to prescribe controlled substances, may access the PDMP for the purpose of reviewing his or her patient's controlled substance prescription history.

The effective date of the bill is July 1, 2017, except as otherwise expressly provided.

II. Present Situation:

The Prescription Drug Monitoring Program

Starting in the early 2000s, Florida began experiencing a marked increase in deaths resulting from prescription drug abuse. In 2010, the former Florida Office of Drug Control (FODC) identified prescription drug abuse as "the most threatening substance abuse issue in Florida."[1] According to the FODC, between 2003 and 2009, the number of deaths caused by at least one prescription drug increased by 102 percent (from 1,234 to 2,488).[2] The FODC remarked that these numbers translated into seven Floridians dying from prescription drug overdoses per day.[3]

Between 2009 and 2011, the Legislature enacted a series of reforms to combat prescription drug abuse. These reforms included strict regulation of pain management clinics; creating the PDMP; and stricter regulation on selling, distributing, and dispensing controlled substances.[4]

Chapter 2009-197, L.O.F., established the PDMP in s. 893.055, F.S. The PDMP uses a comprehensive electronic system/database to monitor the prescribing and dispensing of certain controlled substances.[5] The PDMP became operational on September 1, 2011, when it began receiving prescription data from pharmacies and dispensing practitioners.[6] Dispensers have reported over 198 million controlled substance prescriptions to the PDMP since its inception.[7] Health care practitioners began accessing the PDMP on October 17, 2011.[8] Law enforcement agencies began requesting data from the PDMP in support of active criminal investigations on November 14, 2011.[9]

Dispensers of controlled substances listed in Schedule II, Schedule III, or Schedule IV of s. 893.03, F.S., must report specified information to the PDMP database within seven days after dispensing, each time the controlled substance is dispensed. The information required to be reported includes:[10]

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[1] Executive Office of the Governor, *Florida Office of Drug Control 2010 Annual Report*, p. 8 (on file with the Senate Committee on Health Policy).
[2] *Id.*
[3] *Id.*
[4] *See* chs. 2009-197, 2010-211, and 2011-141, Laws of Fla.
[5] Section 893.055(2)(a), F.S.
[6] Florida Dep't of Health, *2012-2013 Prescription Drug Monitoring Program Annual Report* (December 1, 2013), p. 2, *available at* http://www.floridahealth.gov/reports-and-data/e-forcse/news-reports/_documents/2012-2013pdmp-annual-report.pdf (last visited on Mar. 29, 2017).
[7] Florida Dep't of Health, *2015-2016 Prescription Drug Monitoring Program Annual Report* (December 1, 2016), p. 4, *available at* http://www.floridahealth.gov/statistics-and-data/e-forcse/_documents/2016PDMPAnnualReport.pdf (last visited on Mar. 29, 2017).
[8] *Supra* note 6.
[9] *Supra* note 6.
[10] The specific information reported depends upon the whether the reporter is a pharmacy or practitioner.

- Name of the dispenser [pharmacy], Drug Enforcement Administration registration number, and address of the pharmacy;
- Name of the prescribing practitioner and his or her Drug Enforcement Administration registration number, National Provider Identification, or other applicable identifier, and the date of the prescription;
- Date the prescription is dispensed;
- Name, address, and date of birth of the person to whom the controlled substance is dispensed; and
- Name, national drug code, quantity, and strength of the controlled substance dispensed.[11]

Personal identifying information in the PDMP is confidential and exempt from the public records laws and State Constitution.[12] Specified persons or entities are authorized either direct or indirect[13] access to certain protected information in the PDMP.[14]

Current law exempts certain acts of dispensing or administering from PDMP reporting:
- A health care practitioner when administering a controlled substance directly to a patient if the amount of the controlled substance is adequate to treat the patient during that particular treatment session.
- A pharmacist or health care practitioner when administering a controlled substance to a patient or resident receiving care as a patient at a hospital, nursing home, ambulatory surgical center, hospice, or intermediate care facility for the developmentally disabled which is licensed in this state.
- A practitioner when administering or dispensing a controlled substance in the health care system of the Department of Corrections.
- A practitioner when administering a controlled substance in the emergency room of a licensed hospital.
- A health care practitioner when administering or dispensing a controlled substance to a person under the age of 16.
- A pharmacist or a dispensing practitioner when dispensing a one-time, 72-hour emergency resupply of a controlled substance to a patient.
- A rehabilitative hospital, assisted living facility, or nursing home dispensing a certain dosage of a controlled substance, as needed, to a patient as ordered by the patient's treating physician.[15]

A dispenser must submit the required dispensing information in a Department-approved, secure methodology and format. Such approved formats may include, but are not limited to, submission via the Internet, on a disc, or by use of regular mail.[16] Rule 64K-1.004, F.A.C., requires all

[11] *See* s. 893.055(3), F.S.
[12] Section 893.0551, F.S.
[13] Indirect access requires submitting a request to the PDMP program manager for specific information each time information is needed which may be released once the requester and request is verified as authentic and authorized. *See* ss. 893.055(7)(c) and 893.0551(3), F.S.
[14] *See* s. 893.0551, F.S.
[15] *See* s. 893.055(5), F.S.
[16] *See* s. 893.055(4), F.S.

dispensers to electronically report the dispensing information.[17] The DOH allows five electronic data delivery methods.[18]

On average, each month 6,546 dispensers report controlled substance dispensing information to the PDMP, and 96 percent of dispensers complied with the mandated 7-day timeframe for reporting. Of those dispensers, 66 percent reported the information within 24 hours.[19]

PDMP Reporting in Other States

Data reporting frequency varies from state to state. Oklahoma is the only state that requires its dispensers to report controlled substance dispensing data at the point of sale, real time. Thirty-five states require data to be uploaded within 1 day, three states require data to be uploaded within 3 days, 11 states require data to be uploaded within 7 days, and one state requires data to be uploaded within 14 days.[20]

Guidelines for Prescribing Opioids

Drug overdose deaths and opioid-involved deaths continue to increase in the United States. The majority of drug overdose deaths (more than six out of ten) involve an opioid. Since 1999, the number of overdose deaths involving opioids (including prescription opioids and heroin) quadrupled. From 2000 to 2015 more than half a million people died from drug overdoses. Ninety-one Americans die every day from an opioid overdose.[21]

In March 2016, the Centers for Disease Control and Prevention (CDC) issued Guidelines for Prescribing Opioids for Chronic Pain.[22] The guidelines is a series of recommendations that focus on the use of opioids in treating chronic pain (pain lasting longer than 3 months or past the time of normal tissue healing) outside of active cancer treatment, palliative care, and end-of-life care.[23] However, among the 12 recommendations is one relating to prescribing short durations for acute pain. This recommendation is summarized as follows:

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[17] The DOH may grant a dispenser a waiver of the electronic submission requirement for good cause. "Good cause" includes financial hardship and lack of an automated recordkeeping system. The dispenser must notify the DOH in writing by completing an electronic reporting waiver form provided by the DOH. The DOH will work with the dispenser to determine the format, method, and frequency of the alternative non-electronic submissions. *See* E-FORCSE Dispenser's Implementation Guide ASAP 4.2 (July 2015) DH8013-PDMP, p. 7, *available at* https://www.flrules.org/gateway/reference.asp?No=Ref-06459 and click on the DH8013-PDMP (01.15) 64K-1.004 (v2).pdf link, (last visited on Mar. 29, 2017).

[18] *Id.*, p. 21.

[19] *Supra* note 7, p.5.

[20] Department of Health, *Senate Bill 840 Analysis* (February 13, 2017) (on file with the Senate Committee on Health Policy).

[21] Centers for Disease Control and Prevention, *Opioid Overdose, Understanding the Epidemic* (updated December 16, 2016) *available at* https://www.cdc.gov/drugoverdose/epidemic/index.html (last visited April 4, 2017).

[22] Dowell D. Haegerich TM, Chou R. CDC Guideline for Prescribing Opioids for Chronic Pain – United States, 2016. MMWR Recomm Rep 2016;65(No. RR-1): 1-49. DOI: http://dx.doi.org/10.15585/mmwr.rr6501el *available at* https://www.cdc.gov/mmwr/volumes/65/rr/rr650el.htm (last visited April 4, 2017).

[23] Centers for Disease Control and Prevention, *Opioid Overdose, CDC Guidelines for Prescribing Opioids for Chronic Pain* (updated March 15, 2017) *available at* https://www.cdc.gov/drugoverdose/prescribing/guideline.html (last visited April 4, 2017).

> Long-term opioid use often begins with treatment of acute pain. When opioids are used for acute pain, clinicians should prescribe the lowest effective dose of immediate-release opioids and should prescribe no greater quantity than needed for the expected duration of pain severe enough to require opioids. Three days or less will often be sufficient; more than 7 days will rarely be needed.[24]

A number of states have enacted legislation or otherwise limited the initial duration of prescriptions for opioids for acute pain. On February 15, 2017, Governor Chris Christie of New Jersey signed legislation, reported as the strictest in the nation, limiting initial opioid prescriptions to a 5-day supply.[25] Over the past year, Connecticut, Delaware, Maine, Massachusetts, New York, Pennsylvania, Rhode Island, and Vermont, have enacted laws or adopted rules for imposing 7-day limits for initial opioid prescriptions, mostly for acute pain.[26] Bills to restrict opioid prescriptions are pending in Georgia, Hawaii, Indiana, Kentucky, Montana, Oregon, and Washington.[27]

Florida Practitioners Authorized to Prescribe Controlled Substances

Certain licensed health care providers and veterinarians are authorized to prescribe controlled substances. Section 893.02(23), F.S., defines "practitioner" as a physician licensed under chapter 458, a dentist licensed under chapter 466, a veterinarian licensed under chapter 474, an osteopathic physician licensed under chapter 459, an advanced registered nurse practitioner (ARNPs) certified under chapter 464, a naturopath licensed under chapter 462, a certified optometrist licensed under chapter 463, a psychiatric nurse as defined in s. 394.455, a podiatric physician licensed under chapter 461, or a physician assistant licensed under chapter 458 or chapter 459, provided such practitioner holds a valid federal controlled substance registry number.

Effective January 1, 2017, certain ARNPs and physician assistants were authorized to prescribe controlled substances.[28] As a part of this authorization, the ARNPs and physician assistants are required to complete a 3-hour continuing education course on the safe and effective prescribing of controlled substances as a part of biennial licensure renewal.[29]

III. Effect of Proposed Changes:

The bill requires allopathic and osteopathic physicians who have a Drug Enforcement Administration (DEA) registration to complete a 2-hour continuing medical education (CME)

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[24] Centers for Disease Control and Prevention, Opioid Overdose, Guidelines at a Glance, (updated February 9, 2017), *available at* https://www.cdc.gov/drugoverdose/ (last visited April 4, 2017).
[25] Christine Vestal, *New Jersey Enacts Nation's Strictest Opioid Prescribing Limit* (February 16, 2017), *available at* http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2017/02/16/new-jersey-enacts-nations-strictest-opioid-prescribing-limit (last visited April 4, 2017).
[26] Association of State and Territorial Health Officials, *A Look at State Legislation Limiting Opioid Prescriptions* (February 23, 2017), *available at* http://astho.org/StaatePublicHealth/A-Look-at-State-Legislation-Limiting-Opioid-Prescriptions/2-23-17/?terms=acute+pain (last visited April 4, 2017).
[27] *Id.*
[28] Chapter 2016-224, Laws of Fla.
[29] *See* ss. 458.347(4)(e)3. and 464.013(3)(b), F.S.w

course provided by a statewide professional association by December 31, 2017. The failure to complete the course by December 31, 2017, constitutes grounds for disciplinary action. The course must address current standards regarding opiate prescribing and alternatives to these standards, and the risks of opioid addiction following even brief periods of treatment in the management of acute pain. The course may be offered in a distance-learning format. Beginning January 1, 2020, this course will be required as part of the 40-hour CME requirement for biennial licensure renewal.

The bill imposes the disciplinary action against applicable physicians as grounds for disciplinary action under s. 456.072(1)(e), F.S., and the respective practice acts. Section 456.072(1)(e), F.S., provides grounds for discipline for failing to comply with the educational course requirement for human immunodeficiency virus and acquired immune deficiency syndrome, without specific reference to the opioid prescribing course. Sections 458.331 and 459.015, F.S., provide grounds for disciplinary action within the specific practice acts.

Effective January 1, 2018, dispensers of controlled substances that are required to report the dispensing of a controlled substance to the PDMP must report no later than the close of the next business day after the controlled substance is dispensed. The DOH may grant an extension to this timeframe for cause as determined by rule. The bill requires the submission via the Department-approved electronic system and eliminates other approved formats that may include being on a disc or submitting by regular mail.

The bill clarifies an exemption from reporting to the PDMP that was enacted during the 2016 Regular Session[30] for rehabilitative hospitals, assisted living facilities, or nursing homes dispensing a certain dosage of a controlled substance, as needed, to a patient as ordered by the patient's treating physician. The bill limits application of the exemption such that the controlled substance must be dispensed to a patient while the patient is present and receiving care in the facility. This ensures that the controlled substance is dispensed and administered[31] at the facility to conform with the other exemptions.

The bill also authorizes an employee of the U.S. Department of Veterans Affairs, who provides health care services pursuant to that employment and is authorized to prescribe controlled substances, to access the PDMP only for the purpose of reviewing his or her patient's controlled substance prescription history.

The effective date of the bill is July 1, 2017, except as otherwise expressly provided.

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.

[30] Chapter 2016-177, Laws of Fla.
[31] Dispense means to transfer possession and administer means to inject, inhale, or ingest. *See* s. 893.02, F.S.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Physicians licensed under ch. 458 or ch. 459, F.S., are subject to disciplinary action if they fail to complete the 2-hour CME course regarding opioid prescribing by December 31, 2017. Logistically, completing the course within this short timeframe may result in action against a practitioner's license.

Some dispensers may incur additional costs, such as software updates, to develop electronic reporting capabilities and being able to submit within the next business day reporting timeframe. The effective date of January 1, 2018, for meeting the submission timeframe may ease the transition.

C. Government Sector Impact:

The DOH indicates it will incur non-recurring costs for rulemaking, which can be absorbed within existing resources.[32]

VI. Technical Deficiencies:

None.

VII. Related Issues:

Physicians licensed under ch. 458 or ch. 459, F.S., are subject to disciplinary action if they fail to complete the 2-hour CME course regarding opioid prescribing by December 31, 2017. Logistically, learning of this requirement, having access to this new course which may not yet exist, and completing the course within this short timeframe may be difficult. It is unclear what form of disciplinary action may be imposed for a violation.

VIII. Statutes Affected:

This bill substantially amends section 893.055 of the Florida Statutes.

[32] *Supra* note 19.

The bill creates an undesignated section of Florida law.

IX. Additional Information:

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

CS/CS/CS by Rules on April 25, 2017:
The committee substitute removes the more general requirement for the boards within the DOH with jurisdiction over practitioners who are authorized to prescribe controlled substances to require certain continuing education requirements relating to risks when prescribing opioids for brief periods for acute pain. It substitutes a more specific CME requirement for physicians only.

CS/CS by Governmental Oversight and Accountability on April 17, 2017:
The committee substitute:

- Removes section pertaining to definition of "acute pain" and limitation for initial prescription of opioids for acute pain not to exceed 5 days;
- Removes section pertaining to a conforming cross reference within ch. 463, F.S., relating to optometrists; and
- Directs the DOH to include as part of a practitioner's continuing medical education requirements information on the risks of opioid addiction following even brief periods of treatment in the management of acute pain.

CS by Health Policy on April 3, 2017:
The committee substitute:

- Limits an initial prescription for controlled substances for "acute pain" (associated with surgery, trauma, or acute illness) to a 5-day supply.
- Revises reporting to the PDMP to: the close of the next business day and via the department-approved electronic system. The bill as filed provided for reporting within 24 hours and via the Internet.
- Authorizes a prescriber of controlled substances with the U.S. Department of Veterans Affairs access to the PDMP.
- Includes a conforming cross-reference within ch. 463, F.S., relating to optometrists.
- Changes the title of the bill from the Prescription Drug Monitoring Program.

B. Amendments:

None.

780884

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/25/2017	.	
	.	
	.	
	.	

The Committee on Rules (Clemens) recommended the following:

Senate Amendment (with title amendment)

Delete lines 25 - 32

and insert:

problem must be raised among Florida's practitioners. Before December 31, 2017, each physician licensed pursuant to chapter 458 or chapter 459, Florida Statutes, who is registered with the United States Drug Enforcement Agency to prescribe controlled substances pursuant to 21 U.S.C. s. 822 shall complete a 2-hour continuing education course offered by a statewide professional association of physicians in this state which is accredited to

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provide educational activities designated for the American Medical Association Physician's Recognition Award (AMA PRA) Category 1 Credit or the American Osteopathic Association (AOA) Category 1-A continuing medical education (CME) credit. The course must contain information on the current standards regarding opiate prescribing and alternatives to these standards, and information on the risks of opioid addiction following even brief periods of treatment in the management of acute pain. The course may be offered in a distance-learning format and must be included within the number of continuing medical education hours required by law. Failure to complete the course before December 31, 2017 constitutes grounds for disciplinary action under s. 456.072(1)(e), Florida Statutes, and chapter 458 or chapter 459, Florida Statutes, as applicable. Effective January 1, 2020, completion of this course is required as a condition of licensure renewal for every physician registered with the United States Drug Enforcement Administration to prescribe controlled substances.

================ 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:

providing legislative findings; requiring specified physicians who are registered with the United States Drug Enforcement Agency to prescribe controlled substances to complete a continuing education course before a certain date; specifying requirements for the continuing education course; authorizing the course to

780884

be offered in a distance-learning format; creating grounds for disciplinary actions for failure to meet the course requirements; providing that completion of the course is a condition of licensure renewal as of a certain date; amending s.

By the Committees on Governmental Oversight and Accountability; and Health Policy; and Senator Clemens

585-03973-17 2017840c2

A bill to be entitled

An act relating to controlled substance prescribing; providing legislative findings; directing the Department of Health to include information on the risks of opioid addiction as part of a practitioner's continuing medical education requirements; amending s. 893.055, F.S.; revising requirements for reporting the dispensing of controlled substances; limiting an exception to reporting requirements for certain facilities that dispense controlled substances; authorizing certain employees of the United States Department of Veterans Affairs access to certain information in the prescription drug monitoring program's database; specifying when a revised reporting requirement takes effect; providing effective dates.

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

Section 1. The Legislature finds that the road to drug addiction may begin as early as 3 days after the initiation of opioid treatment for acute pain. Because of the potentially devastating effects of such addiction, the Legislature also finds that awareness of this potentially life-threatening problem must be raised among Florida's practitioners. The applicable boards within the Department of Health with jurisdiction over practitioners, as defined in s. 893.02, Florida Statutes, who are authorized to prescribe controlled substances are directed to include as part of the practitioner's

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

585-03973-17 2017840c2

continuing medical education requirements information on the risks of opioid addiction following even brief periods of treatment in the management of acute pain.

Section 2. Subsection (4), paragraph (g) of subsection (5), and paragraphs (a) and (b) of subsection (7) of section 893.055, Florida Statutes, are amended to read:

893.055 Prescription drug monitoring program.—

(4) Each time a controlled substance is dispensed to an individual, the controlled substance shall be reported to the department through the system as soon thereafter as possible, but no later than the close of the next business day ~~not more than 7 days~~ after the day ~~date~~ the controlled substance is dispensed unless an extension is approved by the department for cause as determined by rule. A dispenser must meet the reporting requirements of this section by submitting via the department-approved electronic system ~~providing~~ the required information concerning each controlled substance that it dispensed ~~in a department-approved, secure methodology and format. Such approved formats may include, but are not limited to, submission via the Internet, on a disc, or by use of regular mail~~.

(5) When the following acts of dispensing or administering occur, the following are exempt from reporting under this section for that specific act of dispensing or administration:

(g) A rehabilitative hospital, assisted living facility, or nursing home dispensing a certain dosage of a controlled substance, as needed, to a patient while the patient is present and receiving care as ordered by the patient's treating physician.

(7)(a) A practitioner or pharmacist who dispenses a

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

controlled substance must submit the information required by this section in an electronic ~~or other~~ method in an ASAP format approved by rule of the department unless otherwise provided in this section. The cost to the dispenser in submitting the information required by this section may not be material or extraordinary. Costs not considered to be material or extraordinary include, but are not limited to, regular postage, electronic media, regular electronic mail, and facsimile charges.

(b) A pharmacy, prescriber, or dispenser, or the designee of a pharmacy, prescriber, or dispenser, shall have access to information in the prescription drug monitoring program's database which relates to a patient of that pharmacy, prescriber, or dispenser in a manner established by the department as needed for the purpose of reviewing the patient's controlled substance prescription history. An employee of the United States Department of Veterans Affairs who provides health care services pursuant to such employment and has the authority to prescribe controlled substances shall have access to the information in the program's database in a manner established by the department. Such access is limited to the information that relates to a patient of such employee and may be accessed only for the purpose of reviewing the patient's controlled substance prescription history. Other access to the program's database shall be limited to the program's manager and to the designated program and support staff, who may act only at the direction of the program manager or, in the absence of the program manager, as authorized. Access by the program manager or such designated staff is for prescription drug program management only or for

management of the program's database and its system in support of the requirements of this section and in furtherance of the prescription drug monitoring program. Confidential and exempt information in the database shall be released only as provided in paragraph (c) and s. 893.0551. The program manager, designated program and support staff who act at the direction of or in the absence of the program manager, and any individual who has similar access regarding the management of the database from the prescription drug monitoring program shall submit fingerprints to the department for background screening. The department shall follow the procedure established by the Department of Law Enforcement to request a statewide criminal history record check and to request that the Department of Law Enforcement forward the fingerprints to the Federal Bureau of Investigation for a national criminal history record check.

Section 3. The requirement in s. 893.055(4), Florida Statutes, as amended by this act, that the dispensing of a controlled substance be reported to the Department of Health no later than the next business day shall take effect January 1, 2018.

Section 4. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2017.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Community Affairs, *Vice Chair*
Appropriations Subcommittee on Criminal and Civil Justice
Appropriations Subcommittee on Higher Education
Communications, Energy, and Public Utilities
Criminal Justice

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

SENATOR JEFF CLEMENS
Democratic Whip
31st District

April 19, 2017

Senator Lizbeth Benacquisto, Chair
Senate Committee on Rules
402 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Chair Benacquisto:

I respectfully request that SB 840—Prescription Drug Monitoring Program be added to the agenda for the next Senate Committee on Rules meeting.

SB 840 will help combat Florida's ongoing opioid epidemic by modernizing the prescription drug monitoring program and shortening reporting time to better identify drug abuse. The bill would shorten the reporting time to the close of the next business day and require reporting to be handled exclusively via the electronic system.

Please feel free to contact me with any questions. Thank you for your consideration.

Sincerely,

Senator Jeff Clemens
Florida Senate District 31

REPLY TO:
☐ 508 Lake Avenue, Unit C, Lake Worth, Florida 33460 (561) 540-1140 FAX: (561) 540-1143
☐ 210 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5031

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)

25 Apr 17
Meeting Date

840
Bill Number (if applicable)

Topic Controlled Substance Prescribing

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title Pres & CEO

Address 204 S. Monroe
Street

Phone

Tall FL 32301
City *State* *Zip*

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Fla. Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is 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 1002
INTRODUCER:	Criminal Justice Committee and Senator Perry and others
SUBJECT:	Florida Comprehensive Drug Abuse Prevention and Control Act
DATE:	April 24, 2017 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Hrdlicka	CJ	**Fav/CS**
2.	Brown	Cibula	JU	**Favorable**
3.	Erickson	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1002 amends Florida's controlled substance schedules to provide that ioflupane (123I)[1] is not included as a Schedule II controlled substance.

Currently, ioflupane (123I) is a Schedule II controlled substance in Florida because of its derivation from cocaine via ecgonine, both of which are Schedule II substances. Prior to September 2015, ioflupane (123I) was also a Schedule II controlled substance under the federal Controlled Substances Act. However, effective September 11, 2015, the U.S. Drug Enforcement Administration removed ioflupane (123I) from that schedule because the drug is not subject to abuse and currently has a medically acceptable use in DaTscan, a drug product used to visualize striatal dopamine transporters in the brains of adult patients with suspected Parkinsonian syndromes.

The bill also provides that cross-references throughout the Florida Statutes to the Florida Comprehensive Drug Abuse Prevention and Control Act (ch. 893, F.S.), or any portion thereof, include all subsequent amendments to the act.

[1] The bill refers to the substance as "Ioflupane (123I)." An analysis of the bill by the Florida Department of Law Enforcement refers to the substance as "Ioflupane I 123." Department of Law Enforcement, *2017 FDLE Legislative Bill Analysis (SB 1002)* (Jan. 26, 2017) (on file with the Senate Committee on Criminal Justice and the Senate Committee on Judiciary). However, FDLE's analysis does not indicate that the chemical nomenclature used in the bill to describe this substance is incorrect. This bill analysis uses the nomenclature used in the bill.

The Criminal Justice Impact Conference estimates that the bill will not have a prison bed impact.

II. Present Situation:

Ioflupane (123I)

An ioflupane (123I) injection, or a DaTscan, is a contrast agent used in single-photon emission computed tomography to detect dopamine transporters (DaT) for persons with suspected parkinsonian syndromes. Although a DaTscan cannot diagnose Parkinson's disease, the scan is used to help a doctor confirm a diagnosis of the disease.[2]

Florida's Controlled Substance Schedules and Scheduling of Ioflupane (123I)

Section 893.03, F.S., classifies controlled substances into five categories, known as schedules. These schedules regulate the manufacture, distribution, preparation, and dispensing of the substances listed in the statute. The most important factors in determining which schedule may apply to a substance is the "potential for abuse"[3] of the substance and whether there is a currently accepted medical use for the substance.[4] The controlled substance schedules are described as follows:

- Schedule I substances have a high potential for abuse and have no currently accepted medical use in the United States. This schedule includes substances such as cannabis and heroin.[5]
- Schedule II substances have a high potential for abuse and have a currently accepted but severely restricted medical use in the United States. This schedule includes substances such as raw opium, cocaine, and codeine.[6]
- Schedule III substances have a potential for abuse less than the substances contained in Schedules I and II and have a currently accepted medical use in the United States. This schedule includes substances such as stimulants and anabolic steroids.[7]
- Schedule IV substances have a low potential for abuse relative to the substances in Schedule III and have a currently accepted medical use in the United States. This schedule includes substances such as benzodiazepines and barbiturates.[8]
- Schedule V substances have a low potential for abuse relative to the substances in Schedule IV and have a currently accepted medical use in the United States. This schedule includes substances such as mixtures that contain small quantities of opiates and codeine.[9]

The majority of provisions criminalizing behavior relating to controlled substances are found in s. 893.13, F.S., which criminalizes the possession, sale, purchase, manufacture, and delivery of

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[2] Parkinson's Disease Foundation, *DaTscan for Parkinson's: What Does it Mean?* (Jan. 20, 2011); available at: http://www.pdf.org/en/science_news/release/pr_1295578745 (last visited March 30, 2017).
[3] Pursuant to s. 893.035(3)(a), F.S., "potential for abuse" means a substance has properties as a central nervous system stimulant or depressant or a hallucinogen that create a substantial likelihood of the substance being: (1) used in amounts that create a hazard to the user's health or the safety of the community; (2) diverted from legal channels and distributed through illegal channels; or (3) taken on the user's own initiative rather than on the basis of professional medical advice.
[4] See s. 893.03, F.S.
[5] Section 893.03(1), F.S.
[6] Section 893.03(2), F.S.
[7] Section 893.03(3), F.S.
[8] Section 893.03(4), F.S.
[9] Section 893.03(5), F.S.

controlled substances. The penalty for violating these provisions depends largely on the schedule in which the substance is listed.[10] Other factors, such as the quantity of controlled substances involved in a crime or the location where the violation occurs can also affect the penalties for violating the criminal provisions of ch. 893, F.S.

Ioflupane (123I) is a Schedule II controlled substance because it is derived from cocaine via ecgonine, both of which are Schedule II controlled substances. The substance falls under s. 893.03(2)(a)4., F.S., (cocaine or ecgonine, including any of their stereoisomers, and any salt, compound, derivative, or preparation of cocaine or ecgonine).

Federal Controlled Substance Schedules

The federal Controlled Substances Act[11] also classifies certain substances into schedules based on potential for abuse of the substance and whether there is a currently accepted medical use for it. Until 2015, federal law recognized ioflupane (123I) as a Schedule II controlled substance because of its derivation from cocaine via ecgonine, both of which are Schedule II controlled substances.[12]

Ioflupane (123I) is the active pharmaceutical ingredient in the drug product DaTscan.[13] The U.S. Food and Drug Administration (FDA) approved the New Drug Application for DaTscan, for the indication of visualizing striatal dopamine transporters in the brains of adult patients with suspected Parkinsonian syndromes.[14]

In 2010, the U.S. Department of Health and Human Services recommended to the U.S. Drug Enforcement Administration (DEA) that ioflupane (123I) be removed from the list of Schedule II substances.[15] In response, the DEA completed a review of FDA-approved diagnostic products containing ioflupane (123I), which at the time was only DaTscan.[16] The DEA agreed to remove ioflupane (123I) from the federal Controlled Substances Act based on the following:

- There is no data demonstrating that individuals are administering quantities of DaTscan sufficient to create a hazard to their health or to the safety of other individuals or to the community. Approximately 6,000 vials of DaTscan would be required to produce a subjective "high" in humans from exposure to ioflupane (123I). The volume of 6,000 vials is about 15 liters of fluid, an amount that would be lethal if administered intravenously.
- Over 168,000 doses of DaTscan were administered to patients worldwide and there was no clinical evidence of pharmacological effects.
- Meaningful extraction of ioflupane (123I) from DaTscan would be impossible due to its limited production and availability and because extraction is technically complex and would require advanced equipment not available to the general public.

[10] *See, e.g.*, s. 893.13(1)(a) and (c), F.S.
[11] 21 U.S.C. section 812.
[12] U.S. Drug Enforcement Administration, *Schedules of Controlled Substances: Removal of [123I] Ioflupane I 123 from Schedule II of the Controlled Substances Act*, pgs. 31521-31525, available at https://www.deadiversion.usdoj.gov/fed_regs/rules/2015/fr0603.htm (last visited March 29, 2017).
[13] *Id.* at 31522.
[14] *Id.*
[15] *Id.* at 31523.
[16] *Id.*

- There have been no reports of abuse of ioflupane (123I) or seizures as a result of ioflupane (123I).
- Because of the limited amounts of manufactured DaTscan, the low concentration of ioflupane (123I) per vial, and the existence of stringent regulatory controls on the manufacturing and handling of DaTscan, abuse of DaTscan is not possible as a practical matter.
- There was no psychic or physiological dependence potential of FDA-approved diagnostic products containing ioflupane (123I).
- Ioflupane (123I) is not an immediate precursor of a substance already controlled under the federal Controlled Substances Act.[17]

Accordingly, ioflupane (123I) was removed from the schedule of the federal Controlled Substances Act on September 11, 2015.[18]

III. Effect of Proposed Changes:

The bill specifies that ioflupane (123I) is not included as a Schedule II controlled substance under s. 890.03(2)(a)4., F.S., (cocaine or ecgonine, including any of their stereoisomers, and any salt, compound, derivative, or preparation of cocaine or ecgonine). Current law includes as a Schedule II controlled substance cocaine or ecgonine, including any of their stereoisomers, and any salt, compound, derivative, or preparation of cocaine or ecgonine, from which ioflupane is derived.

The bill also provides that cross-references throughout the Florida Statutes to the Florida Comprehensive Drug Abuse Prevention and Control Act (ch. 893, F.S.), or any portion thereof, include all subsequent amendments to the act.[19]

The bill takes effect July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

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[17] *Id.* at 31524.

[18] U.S. Drug Enforcement Administration, *Schedules of Controlled Substances: Removal of [123I] Ioflupane from Schedule II of the Controlled Substances Act*, pgs. 54715-54718, *available at* https://www.deadiversion.usdoj.gov/fed_regs/rules/2015/fr0911.htm (last visited on March 29, 2017).

[19] "Legislative enactments frequently incorporate portions of the Florida Statutes by reference. A cross-reference to a general body of law (without reference to a specific statute) incorporates the referenced law and any subsequent amendments to or repeal of the referenced law." Preface to the Official 2016 Florida Statutes, p. viii (case citations omitted). "In contrast, as a general rule, a cross-reference to a specific statute incorporates the language of the referenced statute as it existed at the time the reference was enacted, unaffected by any subsequent amendments to or repeal of the incorporated statute." *Id*. To avoid the necessity of reenacting specific references to sections within certain chapters of law, the Legislature has codified provisions that allow for all specific references to sections of law within certain chapters to automatically incorporate all subsequent amendments.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

By specifying that ioflupane (123I) is excluded from the list of Schedule II Controlled Substances, the administrative, civil, and criminal sanctions applicable to controlled substances will not apply to a person who possesses ioflupane (123I). [20]

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation, estimates that the bill will not have a prison bed impact.[21]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 893.03, Florida Statutes.

This bill creates section 893.015, Florida Statutes

[20] Department of Law Enforcement, *supra* note 1, at 2.
[21] Office of Economic and Demographic Research, *Criminal Justice Impact Conference Narrative Analyses of Adopted Impacts*, available at: http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/CSHB505.pdf (last visited March 29, 2017). CS/HB 505 is the companion bill to this bill.

IX. Additional Information:

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

CS by Criminal Justice on March 27, 2017:
The CS provides that cross-references throughout the Florida Statutes to the Florida Comprehensive Drug Abuse Prevention and Control Act (ch. 893, F.S.), or any portion thereof, include all subsequent amendments to the act.

B. Amendments:

None.

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

By the Committee on Criminal Justice; and Senators Perry, Rouson, and Bradley

591-02931-17 20171002c1

A bill to be entitled

An act relating to the Florida Comprehensive Drug Abuse Prevention and Control Act; creating s. 893.015, F.S.; specifying the chapter's purpose; providing that a reference to ch. 893, F.S., or to any section or portion thereof, includes all subsequent amendments; amending s. 893.03, F.S.; specifying that ioflupane (123I) is not included in Schedule II of the standards and schedules of controlled substances; providing an effective date.

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

Section 1. Section 893.015, Florida Statutes, is created to read:

893.015 Statutory references.—The purpose of this chapter is to comprehensively address drug abuse prevention and control in this state. To this end, unless expressly provided otherwise, a reference in any section of the Florida Statutes to chapter 893 or to any section or portion of a section of chapter 893 includes all subsequent amendments to chapter 893 or to the referenced section or portion of a section.

Section 2. Paragraph (a) of subsection (2) of section 893.03, Florida Statutes, is amended to read:

893.03 Standards and schedules.—The substances enumerated in this section are controlled by this chapter. The controlled substances listed or to be listed in Schedules I, II, III, IV, and V are included by whatever official, common, usual, chemical, trade name, or class designated. The provisions of

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591-02931-17 20171002c1

this section shall not be construed to include within any of the schedules contained in this section any excluded drugs listed within the purview of 21 C.F.R. s. 1308.22, styled "Excluded Substances"; 21 C.F.R. s. 1308.24, styled "Exempt Chemical Preparations"; 21 C.F.R. s. 1308.32, styled "Exempted Prescription Products"; or 21 C.F.R. s. 1308.34, styled "Exempt Anabolic Steroid Products."

(2) SCHEDULE II.—A substance in Schedule II has a high potential for abuse and has a currently accepted but severely restricted medical use in treatment in the United States, and abuse of the substance may lead to severe psychological or physical dependence. The following substances are controlled in Schedule II:

(a) Unless specifically excepted or unless listed in another schedule, any of the following substances, whether produced directly or indirectly by extraction from substances of vegetable origin or independently by means of chemical synthesis:

1. Opium and any salt, compound, derivative, or preparation of opium, except nalmefene or isoquinoline alkaloids of opium, including, but not limited to the following:

a. Raw opium.

b. Opium extracts.

c. Opium fluid extracts.

d. Powdered opium.

e. Granulated opium.

f. Tincture of opium.

g. Codeine.

h. Ethylmorphine.

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

i. Etorphine hydrochloride.

j. Hydrocodone.

k. Hydromorphone.

l. Levo-alphacetylmethadol (also known as levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM).

m. Metopon (methyldihydromorphinone).

n. Morphine.

o. Oxycodone.

p. Oxymorphone.

q. Thebaine.

2. Any salt, compound, derivative, or preparation of a substance which is chemically equivalent to or identical with any of the substances referred to in subparagraph 1., except that these substances may ~~shall~~ not include the isoquinoline alkaloids of opium.

3. Any part of the plant of the species *Papaver somniferum, L.*

4. Cocaine or ecgonine, including any of their stereoisomers, and any salt, compound, derivative, or preparation of cocaine or ecgonine, except that these substances may not include ioflupane (123I).

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

25 Apr 17
Meeting Date

1002
Bill Number (if applicable)

Topic Fla. Drug Abuse Prevention Act

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title Pres & CEO

Address 204 S. Monroe
Street

Phone

Tall FL 32301
City *State* *Zip*

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Fla. Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is 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 1008
INTRODUCER:	Rules Committee; Banking and Insurance Committee and Senators Perry and Bradley
SUBJECT:	Public Records/Injured or Deceased Employee/Department of Financial Services
DATE:	April 25, 2017 REVISED:

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1008 creates a public records exemption for personal identifying information of an injured or deceased worker contained in reports, notices, records, or supporting documentation held by the Department of Financial Services (DFS) pursuant to ch. 440, F.S. "Personal identifying information," means the injured or deceased employee's name, date of birth, home, mailing, or e-mail address, or telephone number. The bill authorizes the DFS to disclose personal identifying information made confidential and exempt only:

- To the injured employee, to the spouse or a dependent of the deceased employee, to the spouse or a dependent of the injured employee if authorized by the injured employee, or to the legal representative of the deceased employee's estate;
- To a party litigant, or his or her authorized representative, in matters pending before the Office of the Judges of Compensation Claims;
- To a carrier or an employer for the purpose of investigating the compensability of a claim or for the purpose of administering its anti-fraud investigative unit established pursuant to s. 626.9891, F.S.;
- In an aggregate reporting format that does not reveal the personal identifying information of any employee;
- Pursuant to a court order or subpoena;
- To an agency for administering its anti-fraud investigative function or in furtherance of the agency's official duties and responsibilities;
- To a federal governmental entity in the furtherance of the entity's official duties and responsibilities.

The bill provides that a person who willfully and knowingly discloses personal identifying information made confidential and exempt by this bill to an unauthorized person or entity commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, F.S.

The public records exemption created by this bill is subject to the Open Government Sunset Review and will stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

This bill requires a two-thirds vote from each chamber for passage because the bill creates a public records exemptions.

The bill takes effect 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

[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."

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. 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]

[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).
[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.

- 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 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]

Department of Financial Services

The Chief Financial Officer is the head of the DFS.[24] The DFS is responsible for various administrative and law enforcement functions. The scope of the DFS's jurisdiction includes many divisions, such as the Division of Investigative and Forensic Services, the Division of Risk Management, and the Division of Workers' Compensation.

The Bureau of Insurance Fraud of the Division of Investigative and Forensic Services investigates alleged acts of insurance fraud not categorized under workers' compensation fraud, including; licensee, healthcare, application, vehicle, homeowners, commercial, disability, arson, and life insurance fraud. Within these categories are: organized schemes to defraud the public and insurers, insolvency of insurance companies due to internal fraud, criminal activity.[25]

The Bureau of State Employee Workers' Compensation Claims within the Division of Risk Management is responsible for the administration of all workers' compensations claims filed by state employees and volunteers who are injured on the job. The bureau is primarily responsible for ensuring that covered individuals receive timely benefits, while safeguarding the State from instances of fraud, waste, and abuse.[26]

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[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).
[23] Section 119.15(7), F.S.
[24] Section 20.121(1), F.S.
[25] Section 626.989, F.S.
[26] See Bureau of State Employee Workers' Compensation Claims within the Division of Risk Management, available at http://www.fldfs.com/Division/Risk/WorkersCompensation/Default.htm (last viewed Apr. 5, 2017).

The Division of Workers' Compensation is responsible for administering many of the provisions of ch. 440, F.S.[27] In addition, the Agency for Health Care Administration and the Office of Judges of Compensation Claims within the Division of Administrative Hearings are also responsible for administering provisions of ch. 440, F.S., the Workers' Compensation Law.[28]

Section 440.185, F.S., establishes reporting requirements for employers and carriers relating to injured employees. In addition to the First Report of Injury (DWC-1), employers and carriers are required to file subsequent reports with the DFS relating to an injured worker that also contain information that would identify an injured worker. These reports or forms include, but are not limited to the: Wage Statement, Request for Wage Loss/Temporary Partial Benefits, Notice of Action/Change, Notice of Denial, and Claim Cost Report. Generally, these reports or forms[29] require the submission of the following information to the DFS:

- The name and address of the employer;
- The name, social security number, mailing address, telephone number, and occupation of the injured worker;
- The cause and nature of the injury or death;
- The year, month, day, and hour when, and the particular locality where the injury or death occurred; and
- Such other information the DFS may require.[30]

Carriers and employers are required to report to the DFS every injury that results in payment of lost wages. Further, additional reports about the condition of the employee, including copies of medical reports,[31] funeral expenses, and wage statements, must be filed with the DFS.[32]

Public Records Exemptions Relating to Florida's Workers' Compensation Law

Currently, ch. 440, F.S., provides two public records exemptions directly related to injured or deceased injured workers. The first exemption, s. 440.102(8), F.S., protects all information, interviews, reports, statements, memoranda, and drug test results, written or otherwise, received or produced because of a drug-testing program. The second exemption, s. 440.125, F.S., provides that medical records and medical reports identifying an injured worker, which are filed with the DFS pursuant to s. 440.13, F.S., are confidential and exempt.

In addition, s. 624.23, F.S., of the Florida Insurance Code provides a public record exemption for personal information submitted by a consumer seeking assistance from the DFS. The term, "consumer," is defined to include an employee seeking assistance from the Employee Assistance

[27] Effective July 1, 2002, the Department of Labor and Employment Security was abolished and the majority of the functions and programs that were within the Division of Workers' Compensation of this department were transferred to the Department of Insurance. [ch. 2002-194, Laws of Fla.] Effective January 7, 2003, the Division of Workers' Compensation will be transferred to the Department of Financial Services. [ch. 2002-404, Laws of Fla.]
[28] Section 440.01, F.S.
[29] Section 440.185(2), F.S.
[30] Rule 69L-3.025, F.A.C., incorporating DFS-F2-DWC-1 by reference.
[31] Information in the medical reports include the name and address of the injured worker, date of accident, and procedure and diagnosis code describing the treatment and nature of the injury. Section 440.13(4)(b), F.S., and Rules 69L-7.710-7.750, F.A.C.
[32] Section 440.185(4), F.S.

and Ombudsman Office under s. 440.191, F.S. Section 624.23, F.S., provides that a consumer's personal and financial information means:

- Personal health condition, disease, or injury;
- A history of a consumer's personal medical diagnosis or treatment;
- The existence, nature, source, or amount of a consumer's personal income or expenses;
- Records of or relating to a consumer's personal financial transactions of any kind;
- The existence, identification, nature, or value of a consumer's assets, liabilities, or net worth;
- The existence or content of, or any individual coverage or status under a consumer's beneficial interest in, any insurance policy or annuity contract; or
- The existence, identification, nature, or value of a consumer's interest in any insurance policy, annuity contract, or trust.

Personal financial and health information held by the DFS or Office of Insurance Regulation relating to a consumer's complaint or inquiry regarding a matter or activity regulated under the Florida Insurance Code or Employee Assistance and Ombudsman Office, are confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. Further, the section provides that such confidential and exempt information may be disclosed to:

- Another governmental entity, if disclosure is necessary for the receiving entity to perform its duties and responsibilities.
- The National Association of Insurance Commissioners.
- The consumer or the legally authorized representative of the consumer.

In 1998, the Legislature enacted a public records exemption for information, pertaining to injured or deceased workers, contained in the report of injury or death submitted to the division. This exemption provided that any information contained in a report of injury or illness that was filed pursuant to s. 440.185, F.S., that would identify an ill or injured employee was confidential and exempt from the provisions of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. This exemption was not reenacted in 2003, and was repealed as a result of a 2002 Open Government Sunset Review of the public record exemption. The Senate committee staff interim report, did not recommend[33] reenacting the exemption since the statutory exemption, as implemented, did not maintain the confidentiality of an injured worker and failed to meet all of the OGSR standards necessary to be recommended for reenactment.[34]

According to Division of Workers' Compensation (DWC), about 90 requests per month are received for requests of the names and contact information of injured workers that were reported by employers/carriers in the previous month. Pursuant to these requests, the names and contact information for approximately 4,750 injured or deceased workers are released in response to

[33] See Senate Committee on Banking and Insurance, *Open Government Sunset Review of the Public Records Exemption for Notices of Injury or Death Received by the Division of Workers' Compensation* (Nov. 2002) (on file with Senate Committee on Banking and Insurance).

[34] For example, interested parties could obtain records concerning an injured worker by providing the division with the name and social security number of the injured worker. In response, the division would provide the requestor with any applicable records of the injured worker with the name and social security number redacted. The exempt information concerning an injured workers' was also available to carriers and other parties, which subscribed to claims' databases provided by third parties, such as the Division of Workers' Compensation. This confidential information was readily available on other forms submitted to the division, pursuant to s. 440.185, F.S., and would not be protected by the exemption.

these monthly requests. The majority of the requesting parties are law firms.[35] The DWC also has an online claims database that allows users to search for claims of injured or deceased employees based on their name and social security number.[36]

III. Effect of Proposed Changes:

Section 1 creates a public records exemption for personal identifying information of an injured or deceased worker contained in reports, notices, records, or supporting documentation held by the DFS pursuant to ch. 440, F.S. "Personal identifying information," means the injured or deceased employee's name, date of birth, home mailing, or e-mail address, or telephone number.

The bill authorizes the DFS to disclose information made confidential and exempt only:

- To the injured employee, to the spouse or a dependent of the deceased employee, to the spouse or a dependent of the injured employee if authorized by the injured employee, or to the legal representative of the deceased employee's estate;
- To a party litigant, or his or her authorized representative, in matters pending before the Office of the Judges of Compensation Claims;
- To a carrier or an employer for the purpose of investigating the compensability of a claim or for the purpose of administering its anti-fraud investigative unit established pursuant to s. 626.9891;
- In an aggregate reporting format that does not reveal the personal identifying information of any employee;
- Pursuant to a court order or subpoena;
- To an agency for administering its anti-fraud investigative function or in furtherance of the agency's official duties and responsibilities; or
- To a federal governmental entity in the furtherance of the entity's official duties and responsibilities.

A carrier, employer, agency, or governmental entity receiving such information must maintain the confidentiality and exempt status of the information. The exemption applies to personally identifying information held by the DFS before, on, or after the effective date of the exemption.

The bill provides that a person who willfully and knowingly discloses personal identifying information made confidential and exempt by this bill to an unauthorized person or entity commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, F.S.

The public records exemption created by this bill is subject to the Open Government Sunset Review and will stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2 provides a public necessity statement for making personal identifying information of an injured worker or employee held by the DFS pursuant to ch. 440, F.S., confidential and

[35] Section 440.192, F.S.
[36] See Division of Workers' Compensation Claims Database available at https://apps.fldfs.com/claimsweb/logon.aspx (last viewed Apr. 5, 2017).

exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. Such information is of a sensitive, personal nature. Disclosure of such sensitive, personal information about an injured or deceased employee is an invasion of that employee's privacy or the privacy of a deceased employee's family. Further, the release of such information could lead to discrimination against the employee by coworkers, potential employers, and others. The harm caused to such an employee or his or her family by the release of this information outweighs any public benefit derived from its release.

Section 3 provides the bill takes effect July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. CS/SB 1244 creates a public record and public meeting exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a public record and public meeting exemption and therefore includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill will protect personal identifying information of injured or deceased employees held by the Department of Financial Services. Since attorneys will no longer have access to the names and contact information of injured or deceased workers, the bill may reduce attorney involvement in workers' compensation disputes.

C. Government Sector Impact:

Insignificant. The DFS estimated a nonrecurring fiscal impact of $400 for the fiscal year 2017-2018.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The public records exemption in s. 624.23, F.S., does not exempt personal identifying information of consumers, which includes employees seeking assistance from the Employee Assistance and Ombudsman Office under s. 440.191, F.S.

VIII. Statutes Affected:

This bill creates section 440.1851 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 25, 2017:

- Provides greater specificity in the public necessity statement for the public records exemption.
- Changes the effective date of the bill from October 1, 2017, to July 1, 2017.
- Provides technical, conforming changes.

CS by Banking and Insurance on April 3, 2017:

- Revises the definition of the term, "personal identifying information."
- Expands the circumstances in which the Department of Financial Services may disclose personal identifying information.
- Creates a criminal penalty for a person who willfully and knowingly discloses information made confidential and exempt.

- Provides that the exemption applies to personal identifying information held by the DFS before, on, or after the effective date of the exemption.
- Revises the effective date of the bill.

B. Amendments:

None.

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

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/25/2017	.	
	.	
	.	
	.	

The Committee on Rules (Perry) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 440.1851, Florida Statutes, is created to read:

440.1851 Personal identifying information of an injured or deceased employee; public records exemption.—

(1) The personal identifying information of an injured or deceased employee which is contained in reports, notices, records, or supporting documentation held by the department



pursuant to this chapter is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(a) As used in this section, the term "personal identifying information" means the injured or deceased employee's name, date of birth, home address or mailing address, e-mail address, or telephone number.

(b) The department may disclose information made confidential and exempt under this section only:

1. To the injured employee, to the spouse or a dependent of the deceased employee, to the spouse or a dependent of the injured employee if authorized by the injured employee, or to the legal representative of the deceased employee's estate;

2. To a party litigant, or his or her authorized representative, in matters pending before the Office of the Judges of Compensation Claims;

3. To a carrier or an employer for the purpose of investigating the compensability of a claim or for the purpose of administering its anti-fraud investigative unit established pursuant to s. 626.9891;

4. In an aggregate reporting format that does not reveal the personal identifying information of any employee;

5. Pursuant to a court order or subpoena;

6. To an agency for administering its anti-fraud investigative function or in the furtherance of the agency's official duties and responsibilities; or

7. To a federal governmental entity in the furtherance of the entity's official duties and responsibilities.

A carrier, employer, agency, or governmental entity receiving



personal identifying information from the department shall maintain the confidential and exempt status of the information.

(c) This public records exemption applies to personal identifying information held by the department before, on, or after the effective date of this exemption.

(2) A person who willfully and knowingly discloses personal identifying information made confidential and exempt under this section to an unauthorized person or entity commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(3) 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 to make confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution the personal identifying information of an injured or deceased employee which is contained in reports, notices, records, or supporting documentation held by the Department of Financial Services pursuant to chapter 440, Florida Statutes. Such information is of a sensitive, personal nature, and disclosure of such information about an injured or deceased employee is an invasion of that employee’s privacy or the privacy of his or her family. Because of Florida’s workers’ compensation system, an employee’s personal identifying information becomes public record once the Department of Financial Services is notified that the employee has been injured or has died in a work-related incident. Public records

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requests for this information have resulted in unwanted solicitation of injured workers and their families. Further, the release of such information could lead to discrimination against the employee by coworkers, potential employers, and others because of perceived social stigma related to injuries or disabilities. The harm caused to such an employee or his or her family by the release of this information outweighs any public benefit derived from its release.

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

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to public records; creating s. 440.1851, F.S.; providing an exemption from public records requirements for the personal identifying information of an injured or deceased employee which is contained in reports, notices, records, or supporting documentation held by the Department of Financial Services pursuant to the Workers' Compensation Law; defining the term "personal identifying information"; specifying circumstances under which the department may disclose such information; requiring certain entities receiving such information to maintain the confidential and exempt status of such information; providing retroactive applicability; providing a criminal penalty for

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willful and knowing disclosure of such information to an unauthorized person or entity; providing for future review and repeal of the exemption; providing a statement of public necessity; providing an effective date.

By the Committee on Banking and Insurance; and Senators Perry and Bradley

597-03360-17 20171008c1

A bill to be entitled

An act relating to public records; creating s. 440.1851, F.S.; providing an exemption from public records requirements for the personal identifying information of an injured or deceased employee which is contained in reports, notices, records, or supporting documentation held by the Department of Financial Services; defining the term "personal identifying information"; specifying circumstances under which the department may disclose such information; providing retroactive applicability; providing a criminal penalty for willful and knowing disclosure of such information; providing for future 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 440.1851, Florida Statutes, is created to read:

440.1851 Personal identifying information of an injured or deceased employee; public records exemption.—

(1) The personal identifying information of an injured or deceased employee which is contained in reports, notices, records, or supporting documentation held by the department is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(a) As used in this section, the term "personal identifying information" means:

1. The injured or deceased employee's name;

2. The injured or deceased employee's date of birth;

3. The injured or deceased employee's home address or mailing address;

4. The injured or deceased employee's e-mail address; or

5. The injured or deceased employee's telephone number.

(b) The department may disclose information made confidential and exempt under this section only:

1. To the injured employee, to the spouse or a dependent of the deceased employee, to the spouse or a dependent of the injured employee if authorized by the injured employee, or to the legal representative of the deceased employee's estate;

2. To a party litigant, or his or her authorized representative, in matters pending before the Office of the Judges of Compensation Claims;

3. To a carrier or an employer for the purpose of investigating the compensability of a claim or for the purpose of administering its anti-fraud investigative unit established pursuant to s. 626.9891;

4. In an aggregate reporting format that does not reveal the personal identifying information of any employee;

5. Pursuant to a court order or subpoena;

6. To an agency for administering its anti-fraud investigative function or in the furtherance of the agency's official duties and responsibilities; or

7. To a federal governmental entity in the furtherance of the entity's official duties and responsibilities.

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

Any carrier, employer, agency, or governmental entity receiving such information shall maintain the confidentiality of the information as long as it would otherwise be confidential.

(c) This exemption applies to personal identifying information held by the department before, on, or after the effective date of this exemption.

(2) A person who willfully and knowingly discloses personal identifying information made confidential and exempt under this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(3) 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 to make confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution the personal identifying information of an injured or deceased employee which is contained in reports, notices, records, or supporting documentation held by the Department of Financial Services. Such information is of a sensitive, personal nature, and disclosure of such information about an injured or deceased employee is an invasion of that employee's privacy or the privacy of his or her family. Further, the release of such information could lead to discrimination against the employee by coworkers, potential employers, and others. The harm caused to such an employee or his or her family by the release of this information outweighs any public benefit derived from its release.

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

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

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

The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: April 17, 2017

I respectfully request that **Senate Bill #1008**, relating to Public Records/Injured or Deceased Employee/Department of Financial Services, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

W. Keith Perry

Senator Keith Perry
Florida Senate, District 8

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/17
Meeting Date

1008
Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name Melissa Ramba

Job Title VP Government Affairs

Address 227 S Adams St
Street
Tallahassee FL.
City *State* *Zip*

Phone 850-570-0269

Email Melissa@FRF.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Retail Federation

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

4-25-17
Meeting Date

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

SB 1008
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Lance Lozano

Job Title Chief Operating Officer

Address 116 S. Monroe St.
Street
Tallahassee FL 32301
City *State* *Zip*

Phone 850-681-6265

Email llozano@fuba.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida United Businesses 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)

4/25/17
Meeting Date

1008
Bill Number (if applicable)

Topic Public Records / Workers' Comp

Amendment Barcode (if applicable)

Name Carolyn Johnson

Job Title Policy Director

Address 136 S Bronough St
Street

Tallahassee 32301
City *State* *Zip*

Phone 521-1200

Email cjohnson@flchamber.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL Chamber of Commerce

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

4-25-17
Meeting Date

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

CS/SB 1008
Bill Number (if applicable)

Topic WORKERS COMP PRE

Amendment Barcode (if applicable)

Name CAM FENTRISS

Job Title LEG. COUNSEL

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City *State* *Zip*

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Speaking: ☑ For ☐ Against ☐ Information

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

Representing FLA. ROOFING & SHEET METAL CONTRACTORS ASSN
FLA. REFRIGERATION & AC CONTRACTORS ASSN

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

S-001 (10/14/14)

Rules 4/6

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/17
Meeting Date

1008
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Public Records/Injured or Deceased Employee

Name Brewster Bevis

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City *State* *Zip*

Email bbevis@aif.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Associated Industries of Florida

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-25-17
Meeting Date

SB1008
Bill Number (if applicable)

Topic SB 1008

Amendment Barcode (if applicable)

Name Elizabeth Boyd

Job Title Legislative Affairs Director

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Tallahassee FL 32399
City *State* *Zip*

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing CFO Atwater

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/CS/CS/SB 190
INTRODUCER:	Rules Committee; Community Affairs Committee; Regulated Industries Committee; and Senator Perry
SUBJECT:	Alarm Systems
DATE:	April 26, 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kraemer	McSwain	RI	**Fav/CS**
2.	Cochran	Yeatman	CA	**Fav/CS**
3.	Kraemer	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 190 revises s. 489.529, F.S., to require that residential or commercial intrusion and burglary alarms that have central monitoring have a second verification call made to "a telephone number associated with the premises" generating the alarm signal, if the first verification call is not answered, prior to contacting law enforcement.

The bill also creates an exception to current verification calling requirements for a customer who is federally licensed as a manufacturer, importer, or dealer of firearms or ammunition. Eligible customers may notify the alarm monitoring company that the customer would like to bypass the two-call verification requirement, thereby allowing the central monitoring station to contact law enforcement agencies without making a verification call. The bill requires an alarm monitoring company to make reasonable efforts, upon initiating a new alarm monitoring service contract, to inform eligible customers of the right to opt out of the two-call verification requirement.

The bill revises s. 553.793, F.S., concerning streamlined low-voltage alarm system installation permitting, to include a new or existing low-voltage electric fence as a "low-voltage alarm system project." A low-voltage electric fence is composed of an alarm system (a device used to detect a burglary, fire, robbery, or medical emergency) consisting of a fence structure and an energizer powered by a commercial storage battery not exceeding 12 volts that produces an electric charge upon contact with the fence structure. The ancillary components or equipment

that may be attached to an alarm system or low-voltage electric fence are revised to include closed-circuit television systems, access controls, and battery-charging devices.

A low-voltage electric fence: 1) must produce a limited electric charge; 2) must be completely enclosed by a nonelectric fence or wall; 3) may be up to 2 feet higher than the perimeter nonelectric fence or wall; 4) must be identified with attached warning signs not more than 60 feet apart; 5) may not be installed in areas zoned exclusively for single-family or multifamily residential use; and 6) may not enclose portions of a property which are used for residential purposes. No further permit may be required for a low-voltage alarm system project that is composed of a low-voltage electric fence that meets all of the above requirements.

Under current law, a municipality, county, district, or other entity of local government (local government) may not adopt or maintain in effect any ordinance or rule regarding a "low-voltage alarm system project" that is inconsistent with s. 553.793, F.S., as revised in the bill. The classification of low-voltage electric fences as a "low-voltage alarm system project" will eliminate the authority of a local government to adopt new ordinances or rules, or maintain existing ordinances or rules, concerning low-voltage electric fences.

II. Present Situation:

An alarm system is "any electrical device, signaling device, or combination of electrical devices used to signal or detect a burglary, fire, robbery, or medical emergency."[1] An alarm system includes home-automation equipment, thermostats, and video cameras. Part II of ch. 489, F.S., deals with the licensing of electrical and alarm system contractors who install such alarms.[2]

Verification of Intrusion/Burglary Alarm Signals

All residential or commercial intrusion/burglary alarms that have central monitoring must have a central monitoring verification call made to the premises generating the alarm signal, before alarm monitor personnel may contact a law enforcement agency for dispatch of law enforcement officers to the premises.[3] The central monitoring station must employ call-verification methods for the premises generating the alarm signal if the first call is not answered.[4] Verification calling is not required, however, if the intrusion/burglary alarms have properly operating visual or auditory sensors that enable the monitoring personnel to verify the alarm signal.[5]

Security Measures for Premises of Federally Licensed Firearms Dealers

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) notes that each year, it receives thousands of reports of theft or loss from federally licensed firearms dealers.[6] The steps that the ATF recommends to protect a firearms business include store design measures, after-

[1] Section 489.505(1), F.S.
[2] *See* ss. 489.501-.538, F.S. and ss. 489.551-.558, F.S.
[3] *See* s. 489.529, F.S.
[4] *Id*.
[5] *Id*.
[6] *See* https://www.atf.gov/firearms/learn-about-firearms-safety-and-security (last visited Apr. 25, 2017).

hours security methods, reinforcement and narrowing of store door and window openings, alarm systems, and 24-hour video camera recording adequate to capture faces and features.[7]

Licensed Alarm System Contractors

Part II of ch. 489, F.S., dealing with electrical and alarm system contracting, sets forth requirements for qualified persons to be licensed if they have sufficient technical expertise in the applicable trade, and have been tested on technical and business matters.[8] The Electrical Contractors' Licensing Board (board) in the Department of Business and Professional Regulation (DBPR) implements Part II of ch. 489, F.S.[9] An alarm system is "any electrical device, signaling device, or combination of electrical devices used to signal or detect a burglary, fire, robbery, or medical emergency."[10] An alarm system includes home-automation equipment, thermostats, and video cameras.[11]

Section 489.505, F.S., specifies the types of contractors that may lay out, fabricate, install, maintain, alter, repair, monitor, inspect, replace or service alarm systems. An alarm system contractor is a person whose business includes the execution of contracts requiring the ability, experience, science, knowledge, and skill to conduct all alarm services for compensation, for all types of alarm systems for all purposes.[12] The term also includes any person, firm, or corporation that engages in the business of alarm contracting under an expressed or implied contract or that undertakes, offers to undertake, or submits a bid to engage in the business of alarm contracting.[13] An alarm system contractor whose business includes all types of alarm systems for all purposes is designated as an "alarm system contractor I;" the practice area of an "alarm system contractor II" is identical except that it does not include fire alarm systems.[14]

The DBPR may also issue geographically unlimited certificates of competency to an alarm system contractor (certificateholder).[15] The scope of certification is limited to specific alarm circuits and equipment.[16] No mandatory licensure requirement is created by the availability of a certification.[17]

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[7] *Id*.
[8] *See* s. 489.501, F.S.
[9] *See* ss. 489.507 through 489.517, F.S., concerning the powers and duties of the board.
[10] *See* s. 489.505(1), F.S.
[11] *See* s. 553.793(1)(b), F.S.
[12] *See* s. 489.505(2), F.S.
[13] *Id*.
[14] *Id*.
[15] *See* ss. 489.505(4), 489.505(5), and 489.515(1), F.S.
[16] Section 489.505(7), F.S., describes the limitations on the scope of a certificate of competency as those circuits originating in alarm control panels, equipment governed by the Articles 725, 760, 770, 800, and 810 of the National Electrical Code, Current Edition, and National Fire Protection Association Standard 72, Current Edition, as well as the installation, repair, fabrication, erection, alteration, addition, or design of electrical wiring, fixtures, appliances, thermostats, apparatus, raceways, and conduit, or any part thereof not to exceed 98 volts (RMS), when those items are for the purpose of transmitting data or proprietary video (satellite systems that are not part of a community antenna television or radio distribution system) or providing central vacuum capability or electric locks. RMS is the abbreviation for "root mean square," a statistical term defined as the square root of mean square. *See* http://www.practicalphysics.org/explaining-rms-voltage-and-current.html (last visited Apr. 25, 2017).
[17] *Id*.

Part IV of ch. 553, F.S., constitutes the Florida Building Codes Act (act). The act provides a mechanism for the uniform adoption, updating, amendment, interpretation, and enforcement of the Florida Building Code, consisting of a single set of documents that apply to the design, construction, erection, alteration, modification, repair, or demolition of public or private buildings, structures, or facilities, and to the enforcement of such requirements.[18] The Florida Building Code is adopted, modified, updated, interpreted, and maintained by the Florida Building Commission.[19]

Pursuant to s. 553.88, F.S., the current edition of the following standards are in effect to establish minimum electrical and alarm standards in Florida:

- National Electrical Code, NFPA[20] No. 70;
- Underwriters' Laboratories, Inc. (UL), Standards for Safety, Electrical Lighting Fixtures, and Portable Lamps, UL 57 and UL 153;
- Underwriters' Laboratories, Inc., Standard for Electric Signs, UL 48;
- The provisions of the following which prescribe minimum electrical and alarm standards:
  - NFPA No. 56A, Inhalation Anesthetics;
  - NFPA No. 56B, Respiratory Therapy;
  - NFPA No. 56C, Laboratories in Health-related Institutions;
  - NFPA No. 56D, Hyperbaric Facilities;
  - NFPA No. 56F, Nonflammable Medical Gas Systems;
  - NFPA No. 72, National Fire Alarm Code; and
  - NFPA No. 76A, Essential Electrical Systems for Health Care Facilities;
- The rules and regulations of the Department of Health, entitled "Nursing Homes and Related Facilities Licensure"; and
- The minimum standards for grounding of portable electric equipment in Florida Administrative Code Rule Chapter 8C-27, as recommended by the Division of Workers' Compensation in the Department of Financial Services.

Section 553.71(5), F.S., provides that a local enforcement agency[21] is an agency with jurisdiction to make inspections of buildings and to enforce the codes that establish standards for design, construction, erection, alteration, repair, modification, or demolition of public or private buildings, structures, or facilities. A local enforcement agency must make uniform permit labels available for purchase by a contractor for the installation or replacement of a new or existing alarm system for not more than $40 per label per project per unit, and may not require the

[18] *See* s. 553.72(1), F.S., which also indicates that effective and reasonable protection for public safety, health, and general welfare at the most reasonable cost to the consumer is also intended.
[19] *See* s. 553.72(3), F.S.
[20] NFPA is the acronym for the National Fire Protection Association, which is an international nonprofit organization established in 1896. Its mission is to reduce the worldwide burden of fire and other hazards on the quality of life by providing and advocating consensus codes, standards, research, training and education. The NFPA develops, publishes, and disseminates more than 300 consensus codes and standards intended to minimize the possibility and effects of fire and other risks. *See* http://www.nfpa.org/about-nfpa (last visited Apr. 25, 2017).
[21] Section 553.71(5), F.S., of the Florida Building Codes Act defines local enforcement agency as an agency of local government, a local school board, a community college board of trustees, or a university board of trustees in the State University System with jurisdiction to make inspections of buildings and to enforce the codes which establish standards for design, construction, erection, alteration, repair, modification, or demolition of public or private buildings, structures, or facilities.

payment of any additional fees, charges, or expenses associated with the installation or replacement of an alarm system.[22]

A municipality, county, district, or other entity of local government may not adopt or maintain in effect any ordinance or rule regarding a low-voltage alarm system project that is inconsistent with s. 553.793, F.S.[23]

III. Effect of Proposed Changes:

The bill amends s. 489.529, F.S., to clarify that intrusion/burglary alarms that have central monitoring are required to make a verification call to a "telephone number associated with the premises" rather than "to the premises," before alarm monitor personnel may contact a law enforcement agency for alarm dispatch. Under current law, verification calling is not required if the intrusion/burglary alarm has a properly operating visual or auditory sensor that enables the alarm monitoring personnel to verify the alarm signal.

The bill creates another exception to verification calling to allow central monitoring stations to contact law enforcement without a verification call, provided:

- The intrusion/burglary alarm is installed on premises used for the storage of firearms or ammunition by a person who holds a valid federal firearms license as a manufacturer, importer, or dealer of firearms or ammunition (federally licensed customer); and
- The federally licensed customer notifies the alarm monitoring company that the customer would like to bypass the two-call verification requirement.

The bill requires an alarm monitoring company to make reasonable efforts, upon initiating a new alarm monitoring service contract, to inform eligible customers of the right to opt out of the two-call verification requirement.

The bill revises s. 553.793, F.S., dealing with streamlined low-voltage alarm system installation permitting, to include a new or existing low-voltage electric fence within the definition of a low-voltage alarm system project.

A low-voltage electric fence is composed of an alarm system as defined in s. 489.505, F.S.,[24] that operates in conjunction with a fence structure and an energizer powered by a commercial storage battery not exceeding 12 volts which produces an electric charge upon contact with the fence structure.

A low-voltage electric fence:

- Must produce an electric charge upon contact that may not exceed certain energizer characteristics that are set forth in International Electrotechnical Commission Standard No. 60335-2-76;[25]

[22] *See* s. 553.793(4), F.S.
[23] *See* s. 553.793(9), F.S.
[24] Section 489.505, F.S., defines an alarm system as "any electrical device, signaling device, or combination of electrical devices used to signal or detect a burglary, fire, robbery, or medical emergency."
[25] The limits on energizer characteristics are those set forth in paragraph 22.108 and depicted in Figure 102 of International Electrotechnical Commission (IEC) Standard No. 60335-2-76, Current Edition (the Energizer Standard); however, the

- Must be completely enclosed by a nonelectric fence or wall;
- May be up to 2 feet higher than the perimeter nonelectric fence or wall;
- Must be identified with attached warning signs at least 60 feet apart;
- May not be installed in areas zoned exclusively for single-family or multifamily residential use; and
- May not enclose portions of a property which are used for residential purposes.

A low-voltage electric fence must meet all of the above requirements to be permitted as a low-voltage alarm system project, and no further permit shall be required for such low-voltage alarm system project other than as provided in this section.

Section 553.793(9), F.S., prohibits a municipality, county, district, or other entity of local government from adopting or maintaining in effect any ordinance or rule regarding a "low-voltage alarm system project" inconsistent with s. 553.793, F.S.; therefore the classification of low-voltage electric fences as "low-voltage alarm system projects" will eliminate the authority of a local government to adopt new ordinances or rules, or to maintain existing ordinances or rules, concerning low-voltage electric fences.

The bill amends s. 553.793, F.S., to conform cross-references.

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:

By including low-voltage electrical fences in s. 553.793, F.S., the bill requires local enforcement agencies, when permitting is required by the applicable local government entity, to charge not more than a $40 permitting fee for the installation or replacement of a new or existing low-voltage electrical fence.

Energizer Standard does not appear to be incorporated as a reference in the Florida Administrative Code, and use of the Energizer Standard document is subject to copyright protection. *See* https://webstore.iec.ch/publication/1736 (last visited Apr. 25, 2017). The Energizer Standard is not published on the Internet and must be purchased from the IEC.

B. Private Sector Impact:

The bill provides for improved verification of an alarm signal generated at a residential or commercial premises with a centrally monitored intrusion/burglary alarm and should assist in reducing the number of alarm dispatch calls to law enforcement agencies.

Law enforcement response times to premises used for the storage of firearms or ammunition may be reduced due to elimination of the requirement for a central monitoring verification call prior to alarm monitor personnel contacting a law enforcement agency for dispatch to such premises.

The DBPR states that the classification of a low-voltage electric fence as a low-voltage alarm system project will have no fiscal impact to the private sector.[26] Representatives of a security fence company that has been in operation in the United States for more than 20 years indicate that standardization of the requirements for installation of low-voltage electric fences will assist property owners and their tenants by:

- Qualifying many property owners and tenants to receive discounts on their property insurance premiums; and
- Reducing delay and expense to property owners and tenants associated with the differing requirements for the installation of low-voltage electric fences that exist in more than 240 jurisdictions in Florida.[27]

Persons who attempt to breach a low-voltage electric fence are shocked by electrical current that provides an electric charge of approximately 7,000 volts that pulses every 1.3 seconds, for a duration ranging from one ten-thousandth (0.0001) of a second to four ten-thousandths (0.0004) of a second.[28]

C. Government Sector Impact:

Reductions in false alarms may reduce the costs of responses to intrusion/burglary alarms by local governments and law enforcement agencies.[29]

Reduction of false alarm calls may alleviate the associated burden to law enforcement agencies that must respond to premises generating intrusion/burglary alarms. Allowing verification calling to a telephone number associated with a premises that has a central monitoring alarm system (rather than a call to the premises generating the alarm signal) will reduce false alarms by permitting calls to persons who use cellular telephones and

[26] *See 2017 Agency Legislative Bill Analysis (AGENCY: Department of Business and Professional Regulation)* for SB 190, dated January 17, 2017 (on file with Senate Committee on Regulated Industries) at page 4.
[27] Conversation with R. LaFace and S. Ross with staff of the Committee on Regulated Industries in Tallahassee, Fla. (Jan. 31, 2017).
[28] *Id*.
[29] For example, according to a 2014 press release by the City of St. Cloud Police Department: "[i]n recent years, false alarms account for approximately 98% of all alarms to which the [St. Cloud Police Department] has had to respond. These false alarms divert law enforcement resources from crimes in progress, other emergency situations and time spent patrolling their beats." *See* http://www.stcloud.org/index.aspx?NID=1066 (last visited Apr. 25, 2017).

not landlines at the premises, and to third parties authorized to verify the validity of alarm signals generated at the premises.[30]

The DBPR states that the bill as filed will have no fiscal impact to state government, and no federal impact (i.e., no federal compliance issues, federal funding issues, or federal agency involvement).[31]

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Division of Professions in the DBPR commented that the installation of low-voltage electric fences may be beyond "the scope of [a] licensed alarm contractor"[32] and may cause confusion among local building departments about the type of license or certification required to install low-voltage electric fences.[33]

The DBPR reports that the head electrical inspector in the Miami-Dade County Building Department has contacted the office of the board with concerns that plans reviewed for the types of systems used for low-voltage electrical fences "exceed the scope of work" for alarm system contractors "based on the secondary voltage."[34] The DBPR indicates that portions of these systems will utilize voltages in excess of 98 volts.[35]

Counsel for the Florida Building Commission indicates that the revisions to s. 553.793 F.S., must be incorporated into the Florida Building Code through standard rulemaking processes, and counsel for the board states that ch. 489, F.S., relating to electrical and alarm system contracting, may require an amendment to allow alarm system contractors to perform installations of low-voltage electric fences.[36]

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 489.529 and 553.793.

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[30] According to the Pew Research Center, 64% of Americans owned a smartphone in 2015, up from 58% in early 2014. *See* http://www.pewinternet.org/2015/04/01/chapter-one-a-portrait-of-smartphone-ownership/ (last visited Apr. 25, 2017).
[31] *See 2017 Agency Legislative Bill Analysis (AGENCY: Department of Business and Professional Regulation)* for SB 190, dated January 17, 2017 (on file with Senate Committee on Regulated Industries) at pp. 4-5.
[32] *Id*. at 5.
[33] *Id*.
[34] *Id*. at 3.
[35] *Id*. at 2.
[36] *Id*. at 5.

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 25, 2017:

- Allows mandatory alarm verification calls to be made to a telephone number "associated with" the premises (rather than a call "to the premises");
- Does not require verification calling when:
  - There is an operating visual or auditory sensor that allows verification of the alarm signal by alarm monitoring staff; or
  - The alarm is on premises used for the storage or firearms or ammunition by a federal firearms licensee;
- Provides that federal firearms licensees must notify their alarm monitoring company if they wish to opt-out of the required two-call verification, and for notification by such companies to such licensees of the right to opt-out; and
- Expands the title of the bill from "an act relating to low-voltage fences" to "an act relating to alarm systems".

CS/CS by Community Affairs on March 14, 2017:

- Removes the word "primarily," making it so that a low-voltage electric fence may not be installed in an area zoned exclusively for single-family or multi-family residential use in order to be permitted as a low-voltage alarm system project.
- Adds the requirement that the low-voltage electric fence may not enclose portions of a property which are used for residential purposes in order to be permitted as a low-voltage alarm system project.

CS by Regulated Industries on February 8, 2017:

- Includes the term "fence structure" in the definition of "low-voltage electric fence."
- Revises the additional ancillary components that may be attached to an alarm system or "low-voltage electric fence" to include closed-circuit television systems, access controls; and battery-charging devices;
- Clarifies and expands the requirements for a low-voltage electric fence to:
  - Require that a nonelectric fence or wall "completely enclose" the low-voltage electric fence or wall;
  - Allow the low-voltage electric fence to be up to 2 feet higher than the perimeter nonelectric fence or wall; and
  - Prohibit, as to a low-voltage alarm system project composed of a low-voltage electric fence that meets all requirements in s. 553.793(3), F.S., created in the bill, any further permit being required for such project.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/25/2017	.	
	.	
	.	
	.	

The Committee on Rules (Brandes) recommended the following:

Senate Amendment (with title amendment)

Before line 13
insert:

Section 1. Section 489.529, Florida Statutes, is amended to read:

489.529 Alarm verification calls required.—All residential or commercial intrusion/burglary alarms that have central monitoring must have a central monitoring verification call made to a telephone number associated with the premises generating the alarm signal, prior to alarm monitor personnel contacting a

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law enforcement agency for alarm dispatch. The central monitoring station must employ call-verification methods for the premises generating the alarm signal if the first call is not answered. However, ~~if the intrusion/burglary alarms have properly operating visual or auditory sensors that enable the monitoring personnel to verify the alarm signal,~~ verification calling is not required if:

(1) The intrusion/burglary alarm has a properly operating visual or auditory sensor that enables the monitoring personnel to verify the alarm signal; or

(2) The intrusion/burglary alarm is installed on a premises that is used for the storage of firearms or ammunition by a person who holds a valid federal firearms license as a manufacturer, importer, or dealer of firearms or ammunition, provided the customer notifies the alarm monitoring company that he or she holds such license and would like to bypass the two-call verification protocol. Upon initiation of a new alarm monitoring service contract, the alarm monitoring company shall make reasonable efforts to inform a customer who holds a valid federal firearms license as a manufacturer, importer, or dealer of firearms or ammunition of his or her right to opt out of the two-call verification protocol.

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

And the title is amended as follows:

Delete line 2

and insert:

An act relating to alarm systems; amending s. 489.529, F.S.; providing an exclusion from the requirement for

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a verification call prior to alarm dispatch for specified premises under certain circumstances; requiring alarm monitoring companies to make reasonable efforts to inform certain customers of specified rights;

By the Committees on Community Affairs; and Regulated Industries; and Senator Perry

578-02409-17 2017190c2

A bill to be entitled

An act relating to low-voltage electric fences; amending s. 553.793, F.S.; redefining the term "low-voltage alarm system project" to include low-voltage electric fences; defining the term "low-voltage electric fence"; providing requirements for a low-voltage electric fence to be permitted as a low-voltage alarm system project; conforming a cross-reference; providing an effective date.

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

Section 1. Present subsections (3) through (10) of section 553.793, Florida Statutes, are redesignated as subsections (4) through (11), respectively, subsection (1) and present subsection (6) of that section are amended, and a new subsection (3) is added to that section, to read:

553.793 Streamlined low-voltage alarm system installation permitting.—

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

(a) "Contractor" means a person who is qualified to engage in the business of electrical or alarm system contracting pursuant to a certificate or registration issued by the department under part II of chapter 489.

(b) "Low-voltage alarm system project" means a project related to the installation, maintenance, inspection, replacement, or service of a new or existing alarm system, as defined in s. 489.505, which ~~that~~ is hardwired and operating at low voltage, as defined in the National Electrical Code Standard

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

578-02409-17 2017190c2

70, Current Edition, or a new or existing low-voltage electric fence, and ancillary components or equipment attached to such a system or fence, including, but not limited to, home-automation equipment, thermostats, closed-circuit television systems, access controls, battery-charging devices, and video cameras.

(c) "Low-voltage electric fence" means an alarm system, as defined in s. 489.505, consisting of a fence structure and an energizer powered by a commercial storage battery not exceeding 12 volts which produces an electric charge upon contact with the fence structure.

(d) "Wireless alarm system" means a burglar alarm system or smoke detector that is not hardwired.

(3) A low-voltage electric fence must meet all of the following requirements to be permitted as a low-voltage alarm system project, and no further permit shall be required for such low-voltage alarm system project other than as provided in this section:

(a) The electric charge produced by the low-voltage electric fence upon contact does not exceed energizer characteristics set forth in paragraph 22.108 and depicted in Figure 102 of International Electrotechnical Commission Standard No. 60335-2-76, Current Edition.

(b) A nonelectric fence or wall must completely enclose the low-voltage electric fence. The low-voltage electric fence may be up to 2 feet higher than the perimeter nonelectric fence or wall.

(c) The low-voltage electric fence must be identified using warning signs attached to the fence at intervals of not more than 60 feet.

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

(d) The low-voltage electric fence may not be installed in an area zoned exclusively for single-family or multi-family residential use.

(e) The low-voltage electric fence may not enclose portions of a property which are used for residential purposes.

(7)~~(6)~~ A contractor is not required to notify the local enforcement agency before commencing work on a low-voltage alarm system project. However, a contractor must submit a Uniform Notice of a Low-Voltage Alarm System Project as provided under subsection (8) ~~(7)~~ to the local enforcement agency within 14 days after completing the project. A local enforcement agency may take disciplinary action against a contractor who fails to timely submit a Uniform Notice of a Low-Voltage Alarm System Project.

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

4/25/2017 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) 190

Meeting Date *Bill Number (if applicable)*

Topic Low Voltage *Amendment Barcode (if applicable)*

Name Jorge Chamizo

Job Title Attorney

Address 101 South Monroe Street Phone (850) 681-0024

Street

Tallahassee FL 32301 Email jorge@flapartners.com

City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against

(The Chair will read this information into the record.)

Representing ADT

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons 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 1084
INTRODUCER:	Banking and Insurance Committee and Senator Stargel
SUBJECT:	Firefighters
DATE:	April 24, 2017
REVISED:	

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1084 allows a firefighter or volunteer firefighter to apply for a Lifetime Firefighter designation if he or she:

- Has at least 20 years of service;
- Has been employed with a fire service provider and is in good standing with their last most recent fire service provider;
- Has not been convicted of a felony under s. 633.412 (2), F.S.; and
- Is recorded on a fire service provider roster in the Division of the State Fire Marshal's online electronic database; or
- Was previously certified as a firefighter or volunteer firefighter in this state.

Firefighters receiving such designation must still maintain all requirements for licensure in order to engage in firefighting activities.

The Division of State Fire Marshall is authorized to investigate complaints concerning a Lifetime Firefighter and to adopt rules.

The bill takes effect on July 1, 2017.

II. Present Situation:

State law on fire prevention and control is provided in ch. 633, F.S. Section 633.104, F.S., which designates the Chief Financial Officer (CFO) as the State Fire Marshal, operating through the Department of Financial Services (DFS), Division of the State Fire Marshal (Division).[1] Pursuant to this authority, the State Fire Marshal regulates, trains, and certifies fire service personnel; investigates the causes of fires; enforces arson laws; regulates the installation of fire equipment; conducts firesafety inspections of state property; develops firesafety standards; provides facilities for the analysis of fire debris; and operates the Florida State Fire College. Additionally, the State Fire Marshal adopts by rule the Florida Fire Prevention Code, which contains or references all firesafety laws and rules regarding public and private buildings.[2]

The Division consists of the two bureaus: the Bureau of Fire Standards and Training (BFST), and the Bureau of Fire Prevention.[3] The BFST utilizes a database within the Fire College Department of Insurance Continuing Education (FCDICE) to support the training, certification, and re-certification of approximately 100,000 various certificates held by Florida firefighters, instructors, and inspectors.[4] The Inspections Section, under the Bureau of Fire Prevention, annually inspects more than 14,000 state-owned buildings and facilities.[5] Over 1.8 million fire and emergency reports are collected every year. These reports are entered into a database to form the basis for the State Fire Marshal's annual report.[6]

Firefighters Employment, Standards, and Training Council

The Firefighters Employment, Standards, and Training Council (Council) is housed at the DFS and consists of 13 members.[7] Two are fire chiefs appointed by the Florida Fire Chiefs Association; two are firefighters, who are not officers, appointed by the Florida Professional Firefighters Association; two are firefighter officers, who are not fire chiefs, appointed by the State Fire Marshal; one individual is appointed by the Florida League of Cities; one individual is appointed by the Florida Association of Counties; one individual is appointed by the Florida Association of Special Districts; one individual is appointed by the Florida Fire Marshals' and Inspectors' Association; one employee of the Florida Forest Service of the Department of Agriculture and Consumer Services is appointed by the director of the Florida Forest Service; one individual is appointed by the State Fire Marshal; one director or instructor of a state-certified firefighting training facility is appointed by the State Fire Marshal; and the remaining member who must be appointed by the State Fire Marshal, may not be a member or representative of the firefighting profession or of any local government.

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[1] The head of the (DFS is the Chief Financial Officer. The Division of the State Fire Marshal is located within the DFS.
[2] Section 633.202(1), F.S.
[3] *See* http://www.fldfs.com/Division/sfm/ (last visited on April 12, 2017).
[4] Email from Kimberly Renspie, Cabinet and Legislative Affairs Analyst, Department of Financial Services (April 13, 2017) (Copy on file with the Senate Governmental Oversight and Accountability Committee).
[5] Division of State Fire Marshal, *About the Florida State Fire Marshal*, http://www.myfloridacfo.com/division/sfm/AbouttheStateFireMarshal.htm (last viewed March 28, 2017).
[6] *Id*.
[7] Section 633.404(1), F.S.

The Council has special powers in connection with the employment and training of firefighters as it:[8]

- Recommends for adoption by the Division, uniform minimum standards for the employment and training of firefighters and training of volunteer firefighters.
- Recommends for adoption by the Division, minimum curriculum requirements for schools operated by or for any fire service provider for the specific purpose of training firefighter trainees, firefighters, and volunteer firefighters.
- Recommends matters for adoption by the Division, relating to the funding, general operation, and administration of the Bureau of Fire Standards and Training (Florida State Fire College), including, but not limited to, all standards, training, curriculum, and the issuance of any certificate of competency required by this chapter.
- Makes or supports studies on any aspect of firefighting employment, education, and training or recruitment.

Curriculum Requirements for Firefighters

Firefighter Certificate of Compliance (FCOC)[9] is issued by the Division to an individual who does all of the following:[10]

- Satisfactorily completes the Minimum Standards Course or has satisfactorily completed training for firefighters in another state which has been determined by the Division to be at least the equivalent of the training required for the Minimum Standards Course;
- Passes the Minimum Standards Course examination within 12 months after completing the required courses; and
- Meets the character and fitness requirements in s. 633.412, F.S.[11]

"Certification" or "certified" is defined as the act of holding a current and valid certificate and that meets the requirements for renewal of certification.[12] A "fire service provider" is defined as a municipality or county, the state, the division, or any political subdivision of the state, including authorities and special districts, that employs firefighters or uses volunteer firefighters to provide fire extinguishment or fire prevention services for the protection of life and property. The term includes any organization under contract or other agreement with such entity to provide such services.[13]

In order for a firefighter to retain/renew his or her FCOC, every 4 years he or she must:[14]

- Be active as a firefighter;

[8] Section 633.404(9), F.S.
[9] Section 633.408(1)(a), F.S.
[10] Section 633.408(4), F.S.
[11] In accordance with s. 633.412, F.S., an applicant for firefighter must: be a high school graduate or the equivalent, be at least 18 years of age, not have been convicted of a misdemeanor relating to the certification or to perjury or false statements, or a felony or crime punishable by imprisonment of 1 year or more, have a good moral character, be in good physical condition as determined by a medical examination, and be a nonuser of tobacco products for at least 1 year preceding application.
[12] Section 633.426(1)(b), F.S.
[13] Section 633.102(13), F.S.
[14] Section 633.414(1), F.S.

- Maintain a current and valid fire service instructor certificate, instruct at least 40 hours during the 4-year period, and provide proof of such instruction to the Division, which proof must be registered in an electronic database designated by the Division;
- Within 6 months before the 4-year period expires, successfully complete a Firefighter Retention Refresher Course consisting of a minimum of 40 hours of training to be prescribed by rule; and
- Within 6 months before the 4-year period expires, successfully retake and pass the Minimum Standards Course examination pursuant to s. 633.408, F.S.

Curriculum Requirements for Volunteer Firefighters[15]

Volunteer firefighter training consists of Part I of the State of Florida Minimum Standards Course as required by ch. 633, F.S., and Chapters 69A-37 (Firefighters Standards and Training) and 69A-62 (Firefighter Employment Standards), F.A.C. A significant portion of this training can be completed through both on-line and practical skill courses. The on-line courses can be taken in lieu of the traditional classroom lecture and satisfies most of the required academic objectives. The following academic components make up the Part I Minimum Standards Curriculum:[16]

- Firefighter I Curriculum consists of classroom and live fire based core training.
- National Incident Management System focuses on the history, features, principles and organizational structure of Incident Command.
- Wildland Firefighter Training curriculum and field exercises that address the basic skills required of all wildland firefighters who must understand the behavior and factors that affect the spread of wildfires.
- EMS First Responder curriculum that is an introduction to basic life support and emergency care.

Volunteer firefighters who have successfully completed the Firefighter Part I training are able to operate in the exclusionary or hot zone[17] and in an Immediately Dangerous to Life or Health environment.[18]

Pursuant to s. 633.414 (2), F.S., volunteer firefighters can retain their Volunteer Firefighter Certificate of Completion by:

- Serving as a volunteer firefighter; or
- Completing a 40-hour refresher course.

III. Effect of Proposed Changes:

Section 1 allows a firefighter or volunteer firefighter to apply for a Lifetime Firefighter designation if he or she:

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[15] Guidelines for the Firefighter Part I Certificate of Completion Program (Volunteer Firefighter), Division of the State Fire Marshal, The Bureau of Fire Standards and Training at the Florida State Fire College, Revision 2.1, March 2017. *See* http://www.fldfs.com/division/sfm/bfst/REV_2_1_Guidelines_FF1.pdf.

[16] *Id.*

[17] Section 633.102(17), F.S., defines the term "Hot zone" as the area immediately around an incident where serious threat of harm exists, which includes the collapse zone for a structure fire.

[18] *See supra* note 15.

- Has at least 20 years of service;
- Has been employed with a fire service provider as defined in s. 633.102(13), F.S., and is in good standing with his or her most recent fire service provider;
- Has not been convicted of a felony under s. 633.412 (2), F.S.; and
- Is recorded on a fire service provider roster in the Division's online electronic database or was previously certified as a firefighter or volunteer firefighter in this state.

A firefighter may have his or her Firefighter Certificate of Compliance or a Volunteer Firefighter Certificate of Completion placed into a Lifetime Firefighter designation by applying to the Division at the time required to renew the certificate. The application must be made on a form prescribed by the Division.

A Lifetime Firefighter may not engage in firefighting activities with a fire department unless he or she holds a current and valid Firefighter Certificate of Compliance or Special Certificate of Compliance issued by the Division under s. 633.408, F.S.

After the Division approves a currently employed firefighter's Lifetime Firefighter designation, the Division shall, after the firefighter's 4-year period pursuant to s. 633.414, F.S., issue in its online electronic database the Lifetime Firefighter designation upon the end of such period.

If a firefighter's Firefighter Certificate of Compliance or Volunteer Firefighter Certificate of Completion is current upon the approval of a Lifetime Firefighter designation and he or she applies to renew such certification within the first 4 years after the date of such approval, he or she must successfully complete the Minimum Standards Course Examination for a firefighter or a volunteer firefighter task book for a volunteer firefighter, and meet all requirements in s. 633.412, F.S.

If a firefighter's Firefighter Certificate of Compliance or Volunteer Firefighter Certificate of Completion has expired upon receiving the Lifetime Firefighter designation and he or she desires to perform firefighting services within the first 4 years after the date of approval of the Lifetime Firefighter designation, the firefighter must successfully complete the Minimum Standards Course Examination for a firefighter or a volunteer firefighter task book for a volunteer firefighter, and meet all requirements in s. 633.412, F.S.

This bill also authorizes the Division to investigate any report, complaint, or felony conviction concerning a Lifetime Firefighter pursuant to s. 633.412 or s. 633.426, F.S.

The bill authorizes the Division to adopt rules pursuant to its authority under s. 633.104(1), F.S., to implement this section.

Section 2 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 DFS may incur minimal costs for the implantation of the Lifetime Firefighter Designation.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 633.414 of the Florida Statutes.

IX. Additional Information:

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

CS by Banking and Insurance on April 3, 2017:
The CS establishes the Lifetime Firefighter designation while maintaining recipients of such designation engaging in firefighting activities must still complete all requirements for licensure under ch. 633, F.S.

B. Amendments:

None.

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

By the Committee on Banking and Insurance; and Senator Stargel

597-03365-17 20171084c1

A bill to be entitled

An act relating to firefighters; creating s. 633.415, F.S.; providing for the designation as a Lifetime Firefighter; providing requirements for such designation; providing responsibilities of the Division of State Fire Marshal within the Department of Financial Services; authorizing the division to investigate reports, complaints, or felony convictions concerning Lifetime Firefighters; authorizing the division to adopt rules; providing an effective date.

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

Section 1. Section 633.415, Florida Statutes, is created to read:

633.415 Lifetime Firefighter designation.—

(1) A firefighter or volunteer firefighter may apply for a Lifetime Firefighter designation if he or she:

(a) Has at least 20 years of service;

(b) Has been employed by a fire service provider, as defined in s. 633.102(13), and is in good standing with his or her most recent fire service provider;

(c) Has not been convicted of a felony under s. 633.412(2), and so attests; and

(d)1. Is recorded on a fire service provider roster in the division's online electronic database; or

2. Was previously certified as a firefighter or volunteer firefighter in this state.

(2) A firefighter may have his or her Firefighter

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597-03365-17 20171084c1

Certificate of Compliance or a Volunteer Firefighter Certificate of Completion placed into a Lifetime Firefighter designation by applying to the division at the time required to renew the certificate. The application shall be made on a form prescribed by the division.

(3) A Lifetime Firefighter may not engage in firefighting activities with a fire department unless he or she holds a current and valid Firefighter Certificate of Compliance or Special Certificate of Compliance issued by the division under s. 633.408.

(4) After the division approves a currently employed firefighter's Lifetime Firefighter designation, the division shall, after the firefighter's 4-year period pursuant to s. 633.414, issue in its online electronic database the Lifetime Firefighter designation upon the end of such period.

(5) If a firefighter's Firefighter Certificate of Compliance or Volunteer Firefighter Certificate of Completion is current upon the approval of a Lifetime Firefighter designation and he or she applies to renew such certification within the first 4 years after the date of such approval, he or she must successfully complete the Minimum Standards Course Examination for a firefighter or a volunteer firefighter task book for a volunteer firefighter, and meet all requirements in s. 633.412.

(6) If a firefighter's Firefighter Certificate of Compliance or Volunteer Firefighter Certificate of Completion has expired upon receiving the Lifetime Firefighter designation and he or she desires to perform firefighting services within the first 4 years after the date of approval of the Lifetime Firefighter designation, the firefighter must successfully

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

complete the Minimum Standards Course Examination for a firefighter or a volunteer firefighter task book for a volunteer firefighter, and meet all requirements in s. 633.412.

(7) The division may investigate any report, complaint, or felony conviction concerning a Lifetime Firefighter pursuant to s. 633.412 or s. 633.426.

(8) The division may adopt rules pursuant to its authority under s. 633.104(1) to implement this section.

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

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

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

SENATOR KELLI STARGEL
22nd District

April 17, 2017

The Honorable 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 1084, related to *Firefighters*, be placed on the next Committee on Rules agenda.

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

Sincerely,

Kelli Stargel
State Senator, District 22

Cc: 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

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is 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 1408
INTRODUCER:	Senator Broxson
SUBJECT:	Public Records/Confidentiality/Department of Elderly Affairs
DATE:	April 24, 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 1408 creates a public records exemption for certain information held by the Department of Elderly Affairs in connection with a complaint filed against or an investigation of a professional guardian.

The investigative information that is confidential and exempt indefinitely are: the names and identifying information of a ward and guardian; the ward's personal health and financial records; and all photographs and video recordings. All other investigative information become public once an investigation concludes.

The exemption is subject to the Open Government Sunset Review Act and will be repealed on October 2, 2022 unless reviewed and saved by the Legislature.

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

II. Present Situation:

Guardianship

Guardianship is a concept whereby a "guardian" acts for another, called a "ward," whom the law regards as incapable of managing his or her own affairs due to age or incapacity. Guardianships are generally disfavored due to the loss of individual civil rights, and a guardian may be appointed only if the court finds there is no sufficient alternative to guardianship.

There are two main forms of guardianship: guardianship over a person or guardianship over property, which may be limited or plenary.[1] For adults, a guardianship may be established when a person has demonstrated that he or she is unable to manage his or her own affairs. If the adult is competent, this can be accomplished voluntarily. However, in situations where an individual's mental competence is in question, an involuntary guardianship may be established through the adjudication of incompetence which is based on the determination of a court appointed examination committee.[2]

Section 744.362, F.S., imposes specific duties upon a guardian consistent with the basic duties of a fiduciary including protecting and preserving the property of the ward's overall physical and social health. A guardian must file with the court an initial guardianship report,[3] an annual guardianship report,[4] and an annual accounting of the ward's property.[5] The reports provide evidence of the guardian's faithful execution of his or her fiduciary duties.[6]

In 2016, the Legislature passed and the Governor signed, CS/SB 232 to expand and rename the Statewide Public Guardianship Office within the Department of Elder Affairs (DOEA) as the Office of Public and Professional Guardians (office).[7] In its new capacity, the office is given authority to regulate professional guardians. The office is to establish standards of practice for public and professional guardians, receive and investigate complaints, establish procedures for disciplinary oversight, conduct hearings, and take administrative action pursuant to ch. 120, F.S. In conducting these investigations, the office may collect identifying information, medical records and financial records.

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.[8] 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.[9]

In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.[10] Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.[11] The Public Records Act states that

[1] Section 744.102(9), F.S.
[2] Section 744.102(12), F.S.
[3] Section 744.362, F.S.
[4] Section 744.367, F.S.
[5] Section 744.3678, F.S.
[6] Section 744.368(1), F.S.
[7] Ch. 2016-40, Laws of Florida
[8] FLA. CONST., art. I, s. 24(a).
[9] *Id*.
[10] 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.
[11] Public records laws are found throughout the Florida Statutes.

> 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.[12]

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.[13] 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."[14] A violation of the Public Records Act may result in civil or criminal liability.[15]

The Legislature may create an exemption to public records requirements.[16] An exemption must pass by a two-thirds vote of the House and the Senate.[17] 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.[18] A statutory exemption which does not meet these criteria may be unconstitutional and may not be judicially saved.[19]

When creating a public records exemption, the Legislature may provide that a record is "confidential and exempt" or "exempt."[20] 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.[21]

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

[12] Section 119.01(1), F.S.
[13] 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."
[14] *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc*., 379 So. 2d 633, 640 (Fla. 1980).
[15] Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.
[16] FLA. CONST., art. I, s. 24(c).
[17] *Id.*
[18] *Id.*
[19] *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).
[20] 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).
[21] *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991).

meetings exemptions.[22] 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.[23]

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.[24] 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;[25]
- 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;[26] or
- It protects trade or business secrets.[27]

The OGSR also requires specified questions to be considered during the review process.[28] 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.[29] 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.[30]

III. Effect of Proposed Changes:

The bill creates s. 744.20042, F.S., which makes the following information in a complaint and investigation held by DOEA confidential and exempt from public disclosure indefinitely:

- A complainant's identity;

[22] 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.
[23] Section 119.15(3), F.S.
[24] Section 119.15(6)(b), F.S.
[25] Section 119.15(6)(b)1., F.S.
[26] Section 119.15(6)(b)2., F.S.
[27] Section 119.15(6)(b)3., F.S.
[28] 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?

[29] FLA. CONST. art. I, s. 24(c).
[30] Section 119.15(7), F.S.

- A ward's identity, health information and financial records; and,
- All photographs and video records.

All other investigative information would become public when DOEA completes its investigation or the investigation ceases to be active. The bill provides that the DOEA may release confidential and records to the law enforcement, regulatory agencies, the clerk of court, and pursuant to a court order.

The bill provides a public necessity statement as required by the State Constitution, specifying that it is a public necessity to protect the identity of a complainant because revealing the identity of the complainant may damage their good name and the complainant could be put at risk of retaliation.

The bill also provides that investigative information should be exempt from public disclosure because an investigation could lead to legal action and the loss of a license. Releasing investigative information may also frustrate the purpose of an investigation and impair DOEA's ability to regulate guardians. The public necessity statement also provides that the records DOEA provides to law enforcement, regulatory agencies and clerks of court should maintain their confidential and exempt status. The bill itself does not expressly provide that the confidential and exempt status of investigative records travels with the records; the bill only provides that records are confidential and exempt when they are held by DOEA.

The bill provides for repeal of the exemption on October 2, 2022, unless reviewed and reenacted by the Legislature.

The bill has 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 public records exemptions to pass.

Public Necessity Statement

Article I, Section 24(c) of the Florida Constitution requires a newly created public records exemption must "state with specificity the public necessity justifying the exemption and shall be no broader than necessary to accomplish the state purpose of the law."

The bill exempts certain identifying information of a complainant contained in the DOEA's investigations of complaints filed on a professional guardian, which is supported by a public necessity statement.

Portions of the public exemption are not as well supported by public necessity statements. The bill does not provide a public necessity statement supporting the confidential and exempt status of the identity of the ward. The bill exempts the health and financial records of a ward, as well as photos and videos taken during the investigation, however, the specific necessity for the exemption are not apparent. Although the bill contains a general statement about investigatory information, the public necessity statement could be interpreted as lacking sufficient specificity.

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:

The bill does not provide that records are confidential and exempt once they are transferred to law enforcement, regulatory agencies and the clerks of court, however the public necessity statement says that confidentiality travels with the documents.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 744.20042 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

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

By Senator Broxson

1-00979A-17 20171408__

A bill to be entitled

An act relating to public records; creating s. 744.20042, F.S.; creating an exemption from public records requirements for certain personal identifying information, personal health and financial records, and photographs and video recordings held by the Department of Elderly Affairs in connection with a complaint filed or an investigation conducted pursuant to part II of ch. 744, F.S.; specifying that information retains its confidential and exempt status for the duration of an investigation; authorizing disclosure to specified entities and officers; providing for future legislative review and repeal; providing a statement of public necessity; providing an effective date.

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

Section 1. Section 744.20042, Florida Statutes, is created to read:

744.20042 Confidentiality.—

(1) The following are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution when held by the Department of Elderly Affairs in connection with a complaint filed and any subsequent investigation conducted pursuant to this part, unless the disclosure is required by court order:

(a) The names or identities of the complainants and the ward involved in a complaint or subsequent investigation.

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

1-00979A-17 20171408__

(b) All personal health and financial records of the ward related to a complaint or obtained during the course of an investigation.

(c) All photographs and video recordings related to a complaint or obtained during the course of an investigation.

(2) Except as otherwise provided in this section, information held by the department pursuant to an investigation under this part is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until the investigation is completed or ceases to be active, unless disclosure is required by court order.

(3) This section does not prohibit the department from providing such information to any law enforcement agency, any other regulatory agency in the performance of its official duties and responsibilities, or the clerk of the circuit court pursuant to s. 744.368.

(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 information held by the Department of Elderly Affairs pursuant to an investigation conducted under part II of chapter 744, Florida Statutes, be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution for the following reasons:

(1) If the complainants are identifiable, the disclosure of their identity to the public could cause unwarranted damage to their good name or reputation, especially if the information

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

associated with them is inaccurate. Furthermore, if the complainants are identifiable, public access to such information could jeopardize the safety of such individuals by placing them at risk for retaliation.

(2) An investigation of a complaint conducted by the Department of Elderly Affairs may lead to the filing of an administrative, civil, or criminal proceeding or to the denial or conditional granting of a registration. The release could frustrate or thwart the investigation and impair the ability of the department to effectively and efficiently administer part II of chapter 744, Florida Statutes. Information held by the Department of Elderly Affairs that is provided to a law enforcement agency, any other regulatory agency in the performance of its official duties and responsibilities, or the clerk of the circuit court pursuant to s. 744.368, Florida Statutes, should remain confidential and exempt from public records requirements. The release of this information could jeopardize the integrity of the investigation and impair the ability of other entities to carry out their statutory duties.

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/17
Meeting Date

SB 1408
Bill Number (if applicable)

Topic SB 1408

Amendment Barcode (if applicable)

Name JON CONLEY

Job Title DIRECTOR OF LEGISLATIVE AFFAIRS

Address 4040 ESPLANADE WAY
Street

Phone 850-414-2155

TALLAHASSEE FL 32399
City *State* *Zip*

Email conleyj@elderaffairs.org

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

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

Representing DEPARTMENT OF ELDER AFFAIRS

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

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

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is 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/SR 1440
INTRODUCER:	Judiciary Committee and Senator Rouson
SUBJECT:	Arthur G. Dozier School for Boys
DATE:	April 25, 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Cibula	JU	**Fav/CS**
2.	Brown	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SR 1440 recognizes the widespread and considerable abuse that took place at the Arthur G. Dozier School for Boys (Dozier) in Marianna and Okeechobee, Florida.[1] The State of Florida operated the school in Marianna from 1900 to 2011.

The resolution further declares that:

- The Senate regrets that the treatment of children at the Dozier School for Boys and the Okeechobee school was cruel, unjust, and a violation of human decency, and acknowledges this shameful part of the state's history;
- The Senate apologizes to the boys sent to Dozier and the Okeechobee School and their family members for what happened to them by employees of the state;
- The Senate commits to ensuring that the children of Florida are protected from this kind of abuse and violations of fundamental human decency.

Legislative resolutions have no force of law and are not subject to the approval and veto powers of the Governor.

[1] Due to overcrowding at the Marianna school, a second school opened in Okeechobee, Florida in 1955.

II. Present Situation:

Dozier School for Boys

Dozier was a state reform school located in Marianna, Florida, which operated from January 1, 1900 to June 30, 2011. Children were sent to the school for serious crimes, but also for "incorrigibility," "truancy," and "dependency."[2] Originally, the school housed children as young as 5 years old. As early as 1901, reports surfaced of children being chained to walls in irons, brutal whippings, and peonage (involuntary servitude).[3] In the first 13 years of operation, more than six state-led investigations took place. Over the years, allegations of severe abuse, including physical and sexual abuse, and suspicious disappearances and death of children in the care of Dozier continued. Of the 100 deaths recorded in historical documents maintained by the school, and available for review up through the year 1960, just two persons who died were staff, and the remaining were boys ranging in age from 6 to 18.[4] Investigators noted that deaths were significantly underreported.[5] Also, investigators were able to ascertain a correlation between attempted escapes and mortality of the children.[6]

In 2005, former students of the school began to publish accounts of the abuse they experienced at Dozier.[7] In 2008, Governor Charlie Crist directed the Florida Department of Law Enforcement (FDLE) to investigate 32 unmarked graves located on the property surrounding the school in response to complaints lodged by former students at Dozier.[8] The former students of Dozier alleged that students who died as a result of abuse were buried at the school cemetery.[9] The University of South Florida (USF) subsequently conducted research which included excavations and exhumations.[10]

University of South Florida Investigation

The University of South Florida received funding to determine the location of the missing children buried at the Arthur G. Dozier School for Boys in Marianna.[11] Funding was provided by

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[2] Erin H. Kimmerle, Ph.D.; E. Christian Wells, Ph.D.; and Antoinette Jackson, Ph.D.; Florida Institute for Forensic Anthropology & Applied Sciences, University of South Florida, *Report on the Investigation into the Deaths and Burials at the Former Arthur G. Dozier School for Boys in Marianna, Florida*, pg. 12 (Jan. 18, 2016) (on file with the Senate Judiciary Committee).
[3] *Id*.
[4] *Id*. at 14.
[5] *Id*. at 22.
[6] *Id*. at 14.
[7] *Id*. at 30. The men who had been sent to Dozier from the late 1950's through the 1960's organized themselves as "The White House Boys Survivors Organization."
[8] Office of Executive Investigations, Florida Department of Law Enforcement, *FDLE Investigative Report* (May 14, 2009); available at http://thewhitehouseboys.com/fdlereport.html (last visited March 31, 2017).
[9] *Id*. at 1.
[10] *Id*. at 4.
[11] Erin H. Kimmerle, Ph.D.; E. Christian Wells, Ph.D.; and Antoinette Jackson, Ph.D.; Florida Institute for Forensic Anthropology & Applied Sciences, University of South Florida, *Report on the Investigation into the Deaths and Burials at the Former Arthur G. Dozier School for Boys in Marianna, Florida*, pg. 11 (Jan. 18, 2016) (on file with the Senate Judiciary Committee).

the Legislature, USF, a grant from the National Institute of Justice, U.S. Department of Justice, and private donations.[12]

Using a forensic team, the USF employed at the site of the school a Ground Penetrating Radar (GPR) to detect graves, followed by archaeological test excavations in those areas.[13]

As of January 28, 2014, USF's work at Dozier has resulted in the discovery of 55 bodies.[14] Twenty-four of the 55 bodies found are unaccounted for in any official record.[15]

In January of 2016, the team submitted its report to the Florida Cabinet and Governor, and the Department of Environmental Protection.[16]

United States Department of Justice Investigation

In 1983, Dozier was the subject of a class action regarding the conditions of confinement. Plaintiffs alleged that youth continued to be hogtied, shackled, and held in solitary confinement, amidst media reports that continued to emerge of significant abuse perpetrated by staff on the children.[17] In 2011, plaintiffs filed another class action lawsuit against the facility alleging abusive and unsafe conditions of confinement.[18]

On April 7, 2010, the U.S. Department of Justice (DOJ) launched its own investigation of practices at Dozier and at the Jackson Juvenile Offender Center (JJOC), which together comprised the North Florida Youth Development Center (NYFDC). The DOJ found reasonable cause that the NFYDC had committed and was continuing to commit unconstitutional practices and violations of federal law protecting youths from harm.

On May 26, 2011, Florida's Department of Juvenile Justice announced the pending closure of the two facilities at the NYFDC, based on budgetary limitations. The DOJ released its report on conditions at Dozier and JJOC on December 1, 2011.[19]

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[12] *Id*. at 4.
[13] *Id*. at 11.
[14] Ben Montgomery, *More Bodies Found Than Expected at the Dozier School for Boys*, MIAMI HERALD, Jan. 4, 2015 http://www.miamiherald.com/news/state/florida/article5427669.html (last visited March 31, 2017).
[15] University of South Florida News, *USF Researchers Find Additional Bodies at Dozier School for Boys*, http://news.usf.edu/article/templates/?a=5997 (last visited March 31, 2017).
[16] Erin H. Kimmerle, Ph.D.; E. Christian Wells, Ph.D.; and Antoinette Jackson, Ph.D.; Florida Institute for Forensic Anthropology & Applied Sciences, University of South Florida, *Report on the Investigation into the Deaths and Burials at the Former Arthur G. Dozier School for Boys in Marianna, Florida* (Jan. 18, 2016) (on file with the Senate Judiciary Committee).
[17] In the case of *Bobby M v. Chiles*, 907 F.Supp. 368, 372-373 (N.D. Fla. 1995), the court dismissed with prejudice the consent decree that had been entered into by the class and the defendant, on the basis that the Dozier school had remedied the abuse.
[18] *J.B. v. Walters, et al.*, 4:11-cv-00083-RH (N.D. Fla. 2011).
[19] U.S. Department of Justice, *Investigation of the Arthur G. Dozier School for Boys and the Jackson Juvenile Offender Center, Marianna, Florida* (Dec. 1, 2011), https://www.justice.gov/opa/pr/department-justice-releases-investigative-findings-arthur-g-dozier-school-boys-and-jackson (last visited March 31, 2017).

Payment for Funeral Expenses and Creation of the Dozier Task Force

In 2016, the Legislature approved payment of up to $7,500 for each child whose body was buried at and exhumed from the Dozier School for Boys, for funeral, reinternment, and grave marker expenses.[20] The legislation requires the Department of State (Department) to contract with the University of South Florida to identify and locate eligible next of kin for the children. By February 1, 2018, the Department must submit a report to the Governor and Cabinet, the President of the Senate, and the Speaker of the House of Representatives regarding payments and reimbursements made for these expenses.
To fund these provisions, ch. 2016-163, Laws of Fla., includes an appropriation from the General Revenue Fund in the amount of $500,000 in nonrecurring funds to the Department. The legislation directed any amount remaining as of July 1, 2017, to revert back to General Revenue and be reappropriated for the same purpose in the 2017-2018 fiscal year.

Additionally, the bill created the Dozier Task Force to make a recommendation on the creation and maintenance of a memorial and a site for the reinternment of unidentified or unclaimed remains.[21]

The Task Force submitted the following recommendations to the Department of State, Governor and Cabinet, and the Legislature:
- Provide two memorials, one in Tallahassee and one in Jackson County; and
- Provide for the reburial of unclaimed remains in Tallahassee, at a location to be determined by the Legislature.[22]

III. Effect of Proposed Changes:

CS/SR 1440 recognizes the widespread and considerable abuse that took place at the Arthur G. Dozier School for Boys (Dozier) in Marianna and Okeechobee, Florida. The state operated the school from 1900 to 2011.

In support of the resolution, SR 1440 specifically finds that:
- The Dozier school for boys opened in 1900 to house children who had committed serious offenses, but also for incorrigibility, truancy, and smoking;
- Many of the children were sentenced to Dozier for an indeterminate time without legal representation or a proper trial;

[20] Chapter 2016-163, Laws of Fla. (CS/CS/SB 708).
[21] The Legislature provided for the membership of the task force to include: the Secretary of State, or his or her designee, to serve as chair; an appointee by the President of the Florida State Conference of the National Association for the Advancement of Colored People (NAACP); an appointee from the Florida Council of Churches; an appointee by the Attorney General who is a next of kin of a child buried at Dozier; an appointee by the Chief Financial Officer who promotes the welfare of people who were formerly sent to Dozier; an appointee each by the President of the Senate and the Speaker of the House of Representatives; an appointee by the Jackson County Board of County Commissioners; and an appointee by the Commissioner of Agriculture. *Id.*
[22] WFSU, *Task Force Recommends Tallahassee, Jackson County as Sites for Dozier Memorials* (Aug. 19, 2016), http://news.wfsu.org/post/task-force-recommends-tallahassee-jackson-county-sites-dozier-memorials (last visited March 31, 2017).

- Within the first 13 years of operation six state-led investigations took place at Dozier, based on reports of children being chained to walls in irons, severely beaten, and used for child labor;
- Throughout Dozier's history, threats of closure plagued the school based on allegations of abuse and suspicious deaths;
- At a United States Senate Judiciary Committee hearing in 1958, a psychologist employed at Dozier testified having heard that boys were severely beaten by the administrator, which constituted "brutality";
- A former Dozier employee told law enforcement officers that several employees were terminated based on allegations that they made sexual advances towards boys at the facility;
- A team of forensic anthropologists from the University of South Florida, funded by the Legislature to investigate deaths at Dozier, found incomplete records of deaths and burials at Dozier between 1900 and 1960 and discovered that parents were often told of their child's death after burial;
- Forensic anthropologists also excavated the site at Dozier and found 55 burial sites, which was 24 more than reported in official records;
- In 1955, the state transferred some Dozier staff to a new school, the Okeechobee School, and similar practices followed;
- Dozier closed in 2011 after the Department of Law Enforcement and the Civil Rights Division of the United States Department of Justice confirmed harmful conditions; and
- The abuse has been substantiated by more than 500 former students of Dozier from the 1940's through the 1960's.

The resolution further declares that:

- The Senate regrets that the treatment of children at the Dozier School for Boys and the Okeechobee school was cruel, unjust, and a violation of human decency, and acknowledges this shameful part of the state's history.
- The Senate apologizes to the boys sent to Dozier and the Okeechobee School and their family members for what happened to them by employees of the state.
- The Senate commits to ensuring that the children of Florida are protected from this kind of abuse and violations of fundamental human decency.

Legislative resolutions have no force of law and are not subject to the approval and veto powers of the Governor.

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 by Judiciary on April 4, 2017:
The CS revises the resolution and the facts set forth in the whereas clauses to provide:

- Children were often sent to the schools without a known basis for being sent or a specific duration of confinement;
- Within the first 13 years of operation six state-led investigations took place at Dozier, based on reports of children being chained to walls in irons, severely beaten, and used for child labor;
- Throughout Dozier's history threats of closure plagued the school, based on allegations of abuse and suspicious deaths;
- At a United States Senate Judiciary Committee hearing in 1958, a psychologist employed at Dozier testified having heard that boys were severely beaten by the administrator, which constituted "brutality";

- A former Dozier employee told law enforcement officers that several employees were terminated based on allegations that they made sexual advances towards boys at the facility; and
- In 1955, the state transferred some Dozier staff to a new school, the Okeechobee School, and similar practices followed.

B. Amendments:

None.

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

The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: April 4, 2017

I respectfully request that **Senate Bill #1440**, relating to Arthur G. Dozier School for Boys , be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Darryl S. Rouson

Senator Darryl Rouson
Florida Senate, District 19

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

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

April 25, 2017
Meeting Date

1440
Bill Number (if applicable)

Topic Arthur G. Dozier School for Boys/Florida School for Boys

Amendment Barcode (if applicable)

Name Nancy Daniels

Job Title Legislative Consultant

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Street

Phone 850-488-6850

Tallahassee FL 32301
City *State* *Zip*

Email ndaniels@flpda.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Public Defender Association, Inc.

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is 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 1470
INTRODUCER:	Senator Simmons
SUBJECT:	Agency Inspectors General
DATE:	April 24, 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	Ferrin	GO	**Favorable**
2.	Cochran	Yeatman	CA	**Favorable**
3.	Peacock	Phelps	RC	**Favorable**

I. Summary:

SB 1470 prohibits an agency from offering a bonus on work performance in an inspector general contract or agreement. The bill also prohibits the Florida Housing Finance Corporation from offering a bonus on work performance in an inspector general contract or agreement.

II. Present Situation:

Chief Inspector General

Section 14.32, F.S., creates the Office of Chief Inspector General in the Executive Office of the Governor. The Chief Inspector General is responsible for promoting accountability, integrity, and efficiency in the agencies under the jurisdiction of the Governor.[1] The Chief Inspector General is appointed by, and serves at the pleasure of, the Governor and serves as the inspector general for the Executive Office of the Governor.[2] Some of the duties of the Chief Inspector General include:

- Initiating investigations, recommending policies, and carrying out other activities designed to deter, detect, and prevent, fraud, waste, mismanagement, and misconduct in government;
- Investigating and examining records of any agency under the direct supervision of the Governor, and coordinating complaint-handling activities with the agencies;
- Coordinating the activities of the Whistle-blower's Act[3] and maintaining the whistle-blower's hotline;
- Acting as liaison and monitoring the activities of the inspectors general in the agencies under the Governor's jurisdiction; and
- Conducting special investigations and management reviews at the request of the Governor.[4]

[1] Section 14.32(1), F.S.
[2] *Id*.
[3] The Whistle-blower's Act can be found in ss. 112.3187-112.31895, F.S.
[4] Section 14.32(2), F.S.

The Chief Inspector General also has various duties relating to public-private partnerships, including advising on internal control and performance measures, conducting audits, investigating complaints of fraud, and monitoring contract compliance.[5]

Agency Inspectors General

Duties

Section 20.055, F.S., requires each state agency[6] of state government to have an Office of Inspector General (OIG). The OIG is created to provide a focal point of accountability efforts within the agency.[7] Each agency inspector general is responsible for the following:[8]

- Advising in the development of performance measures, standards, and procedures for the evaluation of state agency programs;
- Assessing the reliability and validity of information provided by the agency on performance measures and standards;
- Reviewing the actions taken by the agency to improve agency performance, and making recommendations, if necessary;
- Supervising and coordinating audits, investigations, and management reviews relating to the programs and operations of the agency;
- Conducting, supervising, or coordinating other activities carried out or financed by the agency for the purpose of promoting economy and efficiency in the administration of, or preventing and detecting fraud and abuse in, its programs and operations;
- Informing and recommending corrective action to the agency head or, for state agencies under the jurisdiction of the Governor, the Chief Inspector General about fraud, abuses, deficiencies relating to programs and operations administered or financed by the state agency, and reporting on progress made in implementing corrective action;
- Ensuring effective coordination and cooperation between the Auditor General, federal auditors, and other governmental bodies to avoid duplication;
- Reviewing rules relating to the programs and operations of the agency and making recommendations concerning their impact;
- Ensuring that an appropriate balance is maintained between audit, investigative, and other accountability activities; and
- Complying with the General Principles and Standards for Offices of Inspector General as published and revised by the Association of Inspectors General.

[5] Section 14.32(3), F.S.
[6] Section 20.055(1)(d), F.S., defines the term "state agency" as "each department created pursuant to this chapter and the Executive Office of the Governor, the Department of Military Affairs, the Fish and Wildlife Conservation Commission, the Office of Insurance Regulation of the Financial Services Commission, the Office of Financial Regulation of the Financial Services Commission, the Public Service Commission, the Board of Governors of the State University System, the Florida Housing Finance Corporation, the Agency for State Technology, the Office of Early Learning, and the state courts system."
[7] Section 20.055(2), F.S.
[8] *Id*.

In carrying out the investigative duties and responsibilities, the inspector general initiates, conducts, supervises, and coordinates investigations designed to detect, deter, prevent, and eradicate fraud, waste, mismanagement, misconduct, and other abuses in state government.[9]

Each inspector general must submit an annual report on its activities to the agency head,[10] and provide any written complaints about the operations of the inspector general.[11] Audit plans and reports are submitted to the Auditor General.[12]

Appointment

Section 20.055(3)(a), F.S., governs appointment of inspectors general. For state agencies under the jurisdiction of the Governor and Cabinet, the inspector general is appointed by the agency head. For agencies under the jurisdiction of the Governor, the inspector general is appointed by the Chief Inspector General. The agency head or Chief Inspector General is required to notify the Governor in writing of their intent to hire the inspector general at least 7 days prior to an offer of employment. Inspectors general are appointed without regard to political affiliation.[13]

Removal

Section 20.055(3)(c), F.S., governs removal of inspectors general. For agencies under the jurisdiction of the Governor and Cabinet, inspectors general may be removed by the agency head. For agencies under the jurisdiction of the Governor, the inspector general may only be removed from office by the Chief Inspector General for cause, including concerns regarding performance, malfeasance, misfeasance, misconduct, or failure to carry out his or her duties. At least 21 days before removal, the Chief Inspector General must notify the Governor in writing of his or her intention to remove an inspector general. For state agencies under the jurisdiction of the Governor and Cabinet, the agency head shall notify the Governor and Cabinet in writing of his or her intention to remove the inspector general at least 21 days before the removal. If the inspector general disagrees with the removal, the inspector general may present objections in writing to the Governor within the 21-day period.

Internal Audits

Each inspector general must review and evaluate internal controls necessary to ensure the fiscal accountability of the state agency.[14] The inspector general must conduct financial, compliance, electronic data processing, and performance audits of the agency and prepare audit reports of his or her findings.[15] If the inspector general does not possess the specified qualifications, the director of auditing must perform the auditing functions.[16]

[9] Section 20.055(7), F.S.
[10] Section 20.055(8), F.S.
[11] Section 20.055(9), F.S. For agencies under the jurisdiction of the Governor, the inspector general must provide the complaint to the Chief Inspector General.
[12] Section 20.055(6)(f)-(i), F.S.
[13] Section 20.055(3)(a),1., F.S.
[14] Section 20.055(6), F.S.
[15] *Id*.
[16] *Id*.

Florida Housing Finance Corporation

The Florida Housing Finance Corporation (FHFC), a public corporation administratively housed within the Department of Economic Opportunity,[17] is the state's affordable housing finance agency. As such, the FHFC is responsible for increasing the amount of affordable housing available to individuals and families by stimulating investment of private capital and encouraging public and private sector housing partnerships. To accomplish this, the FHFC uses federal and state resources to finance the development of safe, affordable homes and rental housing and to assist first-time homebuyers.[18]

The FHFC is authorized to employ an inspector general, who is appointed by the corporation's executive director, with the advice and consent of the corporation's nine-member board of directors.[19] The inspector general is charged with performing the same duties outlined above for inspectors general of other state agencies.[20]

Bonus Payments

Section 110.1245(2), F.S., requires state agencies to pay employees bonuses from funds authorized by the Legislature in an appropriation specifically for bonuses. Each agency is required to develop a plan[21] for awarding lump-sum bonuses, which must be submitted no later than September 15 of each year and approved by the Office of Policy and Budget in the Executive Office of the Governor. To be eligible for a bonus, employees must meet specified eligibility criteria.[22] No more than 35 percent of an agency's total authorized positions can receive a bonus.[23]

Section 215.425(3), F.S., provides that any policy, ordinance, rule, or resolution designed to implement a bonus scheme must:

- Base the award of a bonus on work performance;
- Describe the performance standards and evaluation process by which a bonus will be awarded;
- Notify all employees of the policy, ordinance, rule, or resolution before the beginning of the evaluation period on which a bonus will be based; and
- Consider all employees for the bonus.

III. Effect of Proposed Changes:

Section 1 amends s. 20.055, F.S., to prohibit a state agency, effective July 1, 2017, that enters into an employment agreement, or renewal or renegotiation of an existing contract or employment agreement, with an inspector general or deputy inspector general from offering a

[17] Section 420.504(1), F.S.
[18] *See* ss. 420.502 and 420.507, F.S.
[19] Section 420.506(2), F.S.
[20] *Id.*
[21] Section 110.1245(2), F.S.
[22] Section 110.245(2)(b), F.S.
[23] Section 110.1245(2)(f), F.S.

bonus on work performance in the contract or agreement. The awarding of such a bonus is also prohibited.

Section 2 amends s. 420.506, F.S., to prohibit the FHFC, effective July 1, 2017, from entering into an employment agreement, or renewal or renegotiation of an existing contract or employment agreement, with an inspector general or deputy inspector general that offers a bonus on work performance in the contract or agreement. The awarding of such a bonus is also prohibited.

Section 3 provides an effective date of 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:

Indeterminate.

C. Government Sector Impact:

The bill may have a positive effect on agency expenditures because agencies will no longer be permitted to provide bonuses to inspectors general or deputy inspectors general. If the inspector general or deputy inspector general of an agency or the FHFC was a hired employee and not under a contract or an employment agreement, the provisions of SB 1470 prohibiting bonuses might not be applicable to such employees.[24] In addition, if an agency offered employees of an agency bonus payments, the prohibition of inspectors

[24] Florida Housing Finance Corporation, *2017 Legislative Bill Analysis HB 207* (March 2, 2017) (Copy on file with the Senate Governmental Oversight and Accountability Committee).

general and deputy inspectors general from being eligible to receive and from receiving such payments would appear to violate ss. 110.1245(2) and 215.425(3), F.S.[25]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 20.055 and 420.506 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

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

[25] Florida Agency for Health Care Administration, *2017 Legislative Bill Analysis HB 207* (January 18, 2017)(Copy on file with the Senate Governmental Oversight and Accountability Committee).

By Senator Simmons

9-01378-17 20171470__

A bill to be entitled

An act relating to agency inspectors general; amending s. 20.055, F.S.; prohibiting an agency from offering a bonus on work performance in an inspector general contract or agreement; amending s. 420.506, F.S.; prohibiting the Florida Housing Finance Corporation from offering a bonus on work performance in an inspector general contract or agreement; providing an effective date.

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

Section 1. Paragraph (a) of subsection (3) of section 20.055, Florida Statutes, is amended to read:

20.055 Agency inspectors general.—

(3)(a)1. For state agencies under the jurisdiction of the Cabinet or the Governor and Cabinet, the inspector general shall be appointed by the agency head. For state agencies under the jurisdiction of the Governor, the inspector general shall be appointed by the Chief Inspector General. The agency head or Chief Inspector General shall notify the Governor in writing of his or her intention to hire the inspector general at least 7 days before an offer of employment. The inspector general shall be appointed without regard to political affiliation.

2. Within 60 days after a vacancy or anticipated vacancy in the position of inspector general, the agency head or, for agencies under the jurisdiction of the Governor, the Chief Inspector General, shall initiate a national search for an inspector general and shall set the salary of the inspector

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

9-01378-17 20171470__

general. Effective July 1, 2017, an agency that enters into an employment agreement, or renewal or renegotiation of an existing contract or employment agreement, with an inspector general or deputy inspector may not offer a bonus on work performance in the contract or agreement, and the awarding of such bonuses is prohibited. In the event of a vacancy in the position of inspector general, the agency head or, for agencies under the jurisdiction of the Governor, the Chief Inspector General, may appoint other office of inspector general management personnel as interim inspector general until such time as a successor inspector general is appointed.

3. A former or current elected official may not be appointed inspector general within 5 years after the end of such individual's period of service. This restriction does not prohibit the reappointment of a current inspector general.

Section 2. Subsection (2) of section 420.506, Florida Statutes, is amended to read:

420.506 Executive director; agents and employees; inspector general.—

(2)(a) The appointment and removal of an inspector general shall be by the executive director, with the advice and consent of the corporation's board of directors. The corporation's inspector general shall perform for the corporation the functions set forth in s. 20.055. The inspector general shall administratively report to the executive director. The inspector general shall meet the minimum qualifications as set forth in s. 20.055(4). The corporation may establish additional qualifications deemed necessary by the board of directors to meet the unique needs of the corporation. The inspector general

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

shall be responsible for coordinating the responsibilities set forth in s. 420.0006.

(b) Effective July 1, 2017, if the corporation enters into an employment agreement, or renewal or renegotiation of an existing contract or employment agreement, with an inspector general or deputy inspector, the corporation may not offer a bonus on work performance in the contract or agreement, and the awarding of such bonuses is prohibited.

Section 3. This act shall take effect upon becoming a law.

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

The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: April 4, 2017

I respectfully request that **Senate Bill 1470**, relating to Agency Inspectors General, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator David Simmons
Florida Senate, District 9

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/17
Meeting Date

SB 1470
Bill Number (if applicable)

Topic Senate Rules

Amendment Barcode (if applicable)

Name Jacqui Peters

Job Title Legislative Director

Address 227 N Bronough St., Suite 5000
Street

Phone 8504884197

Tallahassee FL 32301
City *State* *Zip*

Email jacqueline.peters@floridahousing.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Housing Finance Corporation

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons 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 1682
INTRODUCER:	Rules Committee; Regulated Industries Committee and Senators Garcia and Rodriguez
SUBJECT:	Condominiums
DATE:	April 26, 2017 REVISED:

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1682 makes three main categories of changes relating to the regulation and operation of condominium associations. The changes:

- Define and prohibit or restrict activities constituting a conflict of interest which may be detrimental to the unit owners of a condominium.
- Increase access to records by unit owners.

These changes are substantially based on a final report by a Miami-Dade County grand jury, titled, *Addressing Condo Owners' Pleas for Help: Recommendations for Legislative Action*. The grand jury found that the existing statutes do not sufficiently restrict self-dealing by members of the boards of condominiums or sufficiently deter other forms of misconduct such as election fraud. Additionally, the grand jury found that the existing statutory mechanisms are insufficient to force condominium associations to make their official records available to unit owners in a timely manner.

II. Present Situation:

A condominium is a form of ownership of real property which is comprised entirely of units which are accompanied by an undivided share in common elements, such as hallways, staircases, parking lots, and recreational facilities.[1] An association, which is a nonprofit corporation

[1] Section 718.103(11), F.S.

comprised of the unit owners of the condominium, is responsible for operating the condominium.[2] The board of the condominium is a representative body that is responsible for managing the association.[3]

Condominium associations are self-governing but are regulated to some degree by the Division of Florida Condominiums, Timeshares, and Mobile Homes (division) of the Department of Business and Professional Regulation (DBPR). Larger condominium associations may operate with the assistance of a community association management firm or community association manager. Community association management firms and community association managers are also licensed and regulated by the department.[4]

Condominium Powers and Duties

The powers and duties of the association, operated by the board, include the power or duty to:

- Manage the condominium's property.
- Contract, sue, and be sued.
- Make and collect assessments and maintain the common elements of the association.
- Purchase adequate property insurance.
- Obtain liability insurance for its directors and officers.
- Maintain insurance or a fidelity bond for those persons who control or disburse the association's funds.
- Maintain the official records of the association, which include:
  - Minutes of the meetings of the board of administration.
  - The association's insurance policies.
  - Accounting records for the association.
  - Ballots, sign-in sheets, and other papers relating to voting by unit owners.
- Make the official records of the association available to a unit owner within five working days after the receipt of a written request.
- Preparing financial reports and providing them to unit owners.[5]

Restrictions on Conflicts of Interest

Chapter 718, F.S., imposes a number of general restrictions on conflicts of interest by members of the board of a condominium association. The members of the board of the association have a fiduciary relationship to the unit owners.[6] Consistent with this responsibility, officers and directors may not solicit or accept anything of value from a person providing or proposing to provide goods or services to the association. An officer or director who violates the prohibition is subject to a civil penalty.[7]

Additionally, officers and directors are required to exercise their duties "in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances,

[2] Section 718.111(1)(a), F.S.
[3] Section 718.103(4), F.S.
[4] *See* part VIII of ch. 468, F.S.
[5] Section 718.111, F.S.
[6] Section 718.111(1)(a), F.S.
[7] *Id.*

and in a manner he or she reasonably believes to be in the interests of the association."[8] An officer or director of an association is liable for monetary damages if he or she breaches or fails to perform his or her duties and the breach or failure related to certain violations of criminal law, an improper personal benefit, or certain reckless acts.[9]

The restrictions on conflicts of interest by board members do not prohibit a board member from having a financial interest in a party providing maintenance or management services to the association.[10] In those cases, contracts between the party providing maintenance or services are permissible if the board member's interest in the party is disclosed in the contract.

Officers and directors of a condominium association are required to comply with s. 617.0832, F.S., dealing with the general standards for directors in not-for-profit corporations. Officers and directors must disclose and seek approval of conflicts of interest related to contracts between the board of a not-for-profit corporation and a member or members of the board. Such a contract is not void or voidable, if:

- The relationship is disclosed to the board or committee that approves or ratifies the contract or transaction by a vote or consent that does not count the interested director or directors;
- The fact of such relationship or interest is disclosed or known to the members of the board or committee entitled to vote on such contract or transaction, if any, and they authorize, approve, or ratify it by vote or written consent; or
- The contract or transaction is fair and reasonable as to the corporation at the time it is authorized by the board, a committee, or the members.

To ratify or approve a conflict of interest, an affirmative vote is required by a majority of the directors on the board who have no relationship or interest in the transaction or contract. The conflict of interest may not be approved or ratified by a single director.[11] However, the presence or vote of such a director, whose conflict of interest has been ratified or approved by the board, may be counted for purposes of determining whether the transaction is approved.[12]

Homeowners' Association Comparison – Conflicts of Interest

In contrast, contracts between mandatory homeowners' associations under ch. 720, F.S., and directors or entities in which a director has a financial interest, must comply with conflict of interest procedures outlined in s. 617.0832, F.S., comply with disclosure requirements outlined in s. 617.0832, F.S., be approved by a two-thirds vote of the directors present, and be disclosed at the next regular or special meeting of the members.[13] If any member of a homeowners' association makes a motion at the next regular or special meeting of the members, the contract may be canceled by a majority vote of the members present. If the contract is canceled, the association is only liable for the reasonable value of goods and service previously provided and is not liable for any fee or damages connected to the cancellation.[14]

[8] Section 718.111(1)(d), F.S.
[9] *Id.*; s. 617.0834, F.S.
[10] Section 718.3025, F.S.
[11] Section 617.0832, F.S.
[12] *Id.*
[13] Section 720.3033(2), F.S.
[14] *Id.*

Officers, directors and managers in a homeowners' association may not solicit or accept anything of value from any person providing or offering to provide goods or services to the association. Upon a finding by the board that an officer or director has violated this prohibition, the board must immediately remove the officer or director from office. However, board members may accept food to be consumed at a business meeting with a value of less than $25 per individual or services or items in connection to trade fairs or education programs.

Elections

Members of the board of an association are generally selected through elections.[15] Candidates for election to the board, however, may not include a member who is delinquent in the payment of any monetary obligation due to the association. Similarly, the association may suspend the voting rights of members who are delinquent in paying any monetary obligation to the association by more than 90 days.[16] Notices of elections must be delivered to each unit owner entitled to vote at least 60 days before the election.[17] The elections must be conducted using secret ballots.[18]

Members of the board may be recalled by an agreement among a majority of the unit owners who are entitled to vote in condominium matters, or a by a vote of the unit owners at a special meeting.[19] A recalled member must turn over association records and other property of the association within 5 days after he or she is recalled. If the board does not certify the recall of a board member, the board must file a petition for arbitration with the division.[20]

Arbitration

The division is authorized to employ attorneys and certify attorneys who may act as arbitrators to resolve condominium disputes.[21] An attorney who is certified by the division as an arbitrator must be in good standing with The Florida Bar. The disputes that are subject to arbitration may relate to the authority of the board to require or prohibit a unit owner from taking actions relating to his or her unit.[22] Other disputes eligible for arbitration may relate to the failure of the board to properly conduct an election, give adequate notice of meetings and other actions, or allow inspection of the association's books and records. A dispute relating to election irregularities in an election for a member of the board must be handled on an expedited basis.[23]

[15] *See* s. 718.112(2), F.S.
[16] Section 718.303(5), F.S.
[17] Section 718.112(2)(d)4.a., F.S.
[18] *Id.*
[19] Section 718.112(2)(j), F.S.
[20] Section 718.112(2)(j)3., F.S.
[21] Section 718.1255(4), F.S.
[22] Section 718.1255(1), F.S.
[23] Section 718.1255(5), F.S.

Regulation by the Department of Business and Professional Regulation

The division has authority to ensure that condominium associations and boards comply with the statutes and rules governing condominiums. This includes the authority to investigate complaints relating to financial issues, elections, and access to records by unit owners.[24]

If the division has reasonable cause to believe that a condominium association, its board, or officer of the board has violated the statutes or rules governing condominiums, the division may initiate enforcement proceedings.[25] These enforcement proceedings may result in letters of censure or warning, cease and desist orders, restitution, declaratory relief, injunctive relief, and civil penalties.

The division is also required to maintain a toll-free number for condominium unit owners.[26] When the division receives a complaint, it generally must conduct its investigation and take action on the complaint within 90 days.[27] If the division believes that a person has altered, concealed, or destroyed a document that must be maintained by an association for the purpose of impairing its accuracy or availability in an investigation, the division must refer the matter to a local law enforcement agency.[28]

The division also houses a condominium ombudsman whose duties include:
- Acting as a liaison between the division, unit owners, boards of directors, and board members.
- Developing policies and procedures to assist unit owners, boards of directors, board members and community association managers to understand their rights and responsibilities.
- Monitoring and reviewing procedures and disputes concerning condominium election and meetings.
- Appointing an election monitor to attend the annual meeting of unit owners and conduct the election of directors upon a petition by at least 15 percent of the voting interests in the association or six unit owners, whichever is greater.[29]

Grand Jury Report—Addressing Condo Owners' Pleas for Help: Recommendations for Legislative Action

The increasing numbers of condominiums in this state, the increasing numbers of problems for people living in them, and the increasing numbers of complaints against the DBPR motivated a Miami-Dade County grand jury to conduct an investigation of complaints by condominium

[24] Section 718.501(1), F.S.
[25] Section 718.501(1)(d), F.S.
[26] Section 718.501(1)(k), F.S.
[27] Section 718.501(1)(m), F.S.
[28] Section 718.501(1)(n), F.S.
[29] Section 718.5012, F.S.

residents and the DBPR's responses to their complaints.[30,31] The grand jury's report contains several findings and recommendations, including:

- The statutes governing unit owner access to records are ineffective because the financial penalties for the denial of access to records may be paid from assessments levied against the unit owners, not by the person who wrongfully withheld access to records.[32]
- The statutes should not allow a member of a board of a condominium to vote for or against awarding a contract that involves the board member, a relative of the board member, or any person or entity who has a relationship with that board member or the board member's relative.[33]
- Investigators with the department have little experience or training and seem more intent of closing complaints than resolving them.[34]
- Some associations delay notifying unit owners of delinquent assessments that disqualify them from voting in elections in order to impede those unit owners from becoming current in their financial obligations before the election.[35]
- There are many complaints about fraud in condominium elections, and the statutes should be revised to provide criminal punishments for those who engage in fraudulent activities in condominium elections.[36]
- Election monitors should have the authority to collect evidence and void a condominium election when they reasonably believe that fraudulent election activities have occurred.[37]
- The broad scope of the department's responsibilities may be the cause of its ineffective regulation of condominiums, and if placed elsewhere, the department's investigative arm should employ trained and experienced investigators who have the authority to conduct criminal investigations and to initiate investigations based on their own observations.[38]

III. Effect of Proposed Changes:

This bill makes two main categories of changes relating to the regulation and operation of condominium associations. The changes:

- Define and prohibit or restrict activities constituting a conflict of interest.
- Increase access to records by unit owners.

The bill also addresses a number of other issues pertaining to condominiums.

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[30] FINAL REPORT OF THE MIAMI-DADE COUNTY GRAND JURY, ADDRESSING CONDO OWNERS' PLEAS FOR HELP: RECOMMENDATIONS FOR LEGISLATIVE ACTION (Feb. 6, 2017), http://www.miamisao.com/wp-content/uploads/2017/02/Grand-Jury-Report-Final.pdf.

[31] In addition to issuing criminal indictments, grand juries "consider the actions of public bodies and officials in the use of public funds and report or present findings and recommendations as to practices, procedures, incompetency, inefficiency, mistakes and misconduct involving public offices and public monies." *Miami Herald Pub. Co. v. Marko*, 352 So. 2d 518, 522 (Fla. 1977).

[32] FINAL REPORT OF THE MIAMI-DADE COUNTY GRAND JURY, *supra* note 24 at 8-9.

[33] *Id.* at 9-10.

[34] *Id.* at 19.

[35] *Id.* at 21.

[36] *Id.* at 20-22.

[37] *Id.* 24-26.

[38] *Id.* at 27.

Conflicts of Interest (Sections 1, 3, 5, & 6)

The bill prohibits conflicts of interest among those who are responsible for operating a condominium as follows:

- Attorneys are prohibited from representing both the board of a condominium association and the management company of the association.
- Members of the board or the management company for a condominium association that is not a timeshare condominium are prohibited from purchasing a unit at a foreclosure sale resulting from the association's foreclosure of its lien for unpaid assessments or from taking title to the unit by deed in lieu of foreclosure.
- Condominium associations that are not timeshare condominiums are prohibited from contracting with a service provider that is owned or operated by a board member or a person who has a financial relationship with a board member, or a close relative of a board member or officer.

The bill also prohibits a party that contracts to provide maintenance or management services or a board member of the party from owning more than 50 percent of the units of the condominium or from purchasing a property that is subject to a lien by the association. This prohibition does not apply to a condominium association that is a timeshare condominium and to associations in which the non-developer unit owners are not entitled to elect a majority of the board.

Additionally, officers and directors of a condominium board are required to disclose activities that may reasonably be construed to be a conflict of interest. The existence of the conflict of interest must be documented on contracts and meeting agendas. In some cases, the officer or director engaged in a conflict of interest must choose to no longer pursue the activity creating the conflict or withdraw from office. Otherwise, the board must remove the officer or director from office.

In other cases, where the potential for a conflict of interest exists, the person responsible for creating the potential conflict may not be present during the board's deliberations or vote on the matter. Additionally, a contract between a director, officer, or relative of either and the association which is not properly noticed to the unit owners is void.

Criminal Penalties (Section 1)

The bill does not directly impose criminal penalties for misconduct relating to condominiums, but the bill expressly declares that certain types of misconduct are subject to punishment under existing criminal laws as follows:

- The forgery of a ballot envelope used in a condominium election or the forgery of a voting certificate constitutes the crime of forgery under existing s. 831.01, F.S.
- The theft or embezzlement of the funds of a condominium association is theft under existing s. 831.014, F.S.
- The destruction of an official record of a condominium association in furtherance of a crime constitutes tampering with evidence under existing s. 918.13, F.S., or obstruction of justice under existing s. 843.02, F.S.

- The use of a debit card issued in the name of a condominium association or billed to an association for expenses that are not lawful obligations of the association constitutes credit card fraud under existing s. 817.61, F.S.

Access to Association Records (Sections 1 & 9)

The bill requires condominium associations to keep additional records and generally to take actions to make those records available to unit owners as follows:

- A condominium association must maintain bids for materials, equipment, and services as part of its official records.
- A condominium association must permit renters to inspect and copy the association's bylaws and rules.
- A condominium association must provide an annual report to the Department of Business and Professional Regulation listing the financial institutions at which it maintains accounts, and unit owners may obtain the report from the department.
- A unit owner may give notice to the Division of Condominiums, Timeshares, and Mobile Homes (division) of the Department of Business and Professional Regulation that an association has failed to mail or hand deliver to the unit owner a copy of the most recent financial statement after a request. The division must then give the association notice that it must comply with the request. If the association fails to comply with that request within 5 business days, the association may not prepare less complex financial statements than the statutory default requirements for 3 years.
- An officer or director of a condominium who is charged with certain crimes relating to the condominium generally may not access association records without a court order while the charges are pending.

Additionally, by July 1, 2018, condominium associations having 150 or more units must post copies of certain types of its official records on its website. However, the records must be inaccessible to the general public. The records that must be posted on the website include:

- The declaration of condominium and related amendments.
- The bylaws.
- Articles of incorporation of the association and related amendments filed with the Department of State.
- The rules of the association.
- Management agreements, leases, and other contracts to which the association is a party.
- The annual budget for the association.
- Documents to considered and voted on during a meeting and any documents listed on a meeting agenda.
- The annual financial report for the association.
- Certifications by directors relating to conflicts of interest.
- Contracts and transactions between the association and other entities in which a director has a financial interest.
- Notices of board meetings and agendas for those meetings.

The bill also requires the department to notify condominium associations in the next condominium annual fee statement of the obligation to maintain records on a website.

Miscellaneous Changes (Sections 1, 3, 4, 7 & 8)

Finally, the bill includes a number of changes to the laws governing condominiums that:

- Prohibit an association from using a debit card to pay association obligations.
- Require an association to timely provide copies of financial reports to unit owners or lose the authority to waive heightened financial reporting requirements.
- Prohibit member of a condominium board from serving more than four consecutive 2-year terms unless approved by a two-thirds vote of the total voting interests of the association.
- Eliminate the authority of a condominium board to certify the recall of a board member.
- Extend the time period for a recalled board member to turn over records and other association property to 10 days from 5 days after the recall.
- Specify minimum qualifications for arbitrators who are certified by the Division of Florida Condominiums, Timeshares and Mobile Homes to arbitrate a condominium dispute.
- Require arbitrators to conduct a hearing within 30 days after being assigned or entering a contract for the arbitration unless the arbitration petition is withdrawn or a continuance is granted for good cause.
- Require arbitrators who arbitrate condominium disputes to render decisions within 30 days after a hearing.
- Provide that failing to render a written decision within 30 days after a hearing may result in the cancellation of the arbitrator's certification.[39]
- Prohibit a condominium from suspending the voting rights of a unit owner unless the unit owner owes more than $1,000 to the association.
- Require that proof of nonpayment of a monetary obligation must be provided to the unit owner 30 days before the unit's owners membership rights are suspended because of the nonpayment.[40]
- Prohibit a receiver from exercising the voting rights of a unit that is in receivership for the benefit of the association.
- Authorize the ombudsman to review secret ballots cast in the vote of an association where there is reasonable cause to believe that election misconduct has occurred.
- Suspend an officer or director of a condominium while certain criminal charges are pending against him or her for criminal conduct relating to the condominium.
- Repeal a provision of existing law which provides that a condominium association having fewer than 50 units must prepare an annual report of cash receipts and expenditures instead of a potentially more extensive financial report based on the association's revenues.

Effective Date

The bill takes effect July 1, 2017.

[39] Section 44.106, F.S., provides that the Florida Supreme Court establishes the minimum standards and procedures for qualifications, certification, professional conduct, and discipline of arbitrators.

[40] Section 718.303(6), F.S., requires that the unit owner's suspension must be approved at a properly noticed meeting of the board. A nonemergency meeting of the board requires a 14-day notice pursuant to s. 718.112(2)(c), F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The provisions of the bill that define and restrict conflicts of interests may result in lower costs for contracted services to condominiums.

Condominiums may incur increased costs to maintain and make their records available to unit owners.

C. Government Sector Impact:

The minimum qualifications for arbitrators who may arbitrate condominium disputes as set forth in the bill may reduce the pool of qualified arbitrators. This may result in greater costs to the Department of Business and Professional Regulation to employ these arbitrators.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 718.111, 718.112, 718.1255, 718.3025, 718.303, 718.5012, and 718.71.

This bill creates section 718.3207, 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 25, 2017:
The committee substitute differs from the underlying committee substitute in that it:

- Prohibits an officer, director, or manager of a condominium association from accepting a "kickback" from a person providing or proposing to provide goods or services to the condominium.
- Provides for the suspension of officers and directors of a condominium who are charged with certain crimes relating to the condominium.
- Provides that certain types of misconduct relating to condominiums are crimes under existing laws.
- No longer includes provisions which would have created new criminal offenses relating to fraudulent election activity in condominium elections, the theft or embezzlement of condominium funds, the destruction of condominium records, and the repeated failure to provide access to condominium records.
- Delays the implementation of requirements for certain condominium associations to their post records on a website and makes the requirements applicable to associations having at least 150 units instead of 500 units.
- Prohibits condominiums from using debit cards to pay condominium expenses.
- Prohibits a condominium from contracting with or employing a relative within the third degree of consanguinity by blood or marriage to a board member or officer.
- Ties the complexity of the financial reporting requirements for condominiums having fewer than 50 units to the same revenue thresholds that apply to other condominiums.

CS by Regulated Industries on April 4, 2017:
The committee substitute:

- Permits a renter to inspect and copy only the association's bylaws and rules.
- Removes the provision that requires a condominium association to make its records available to renters and authorized representatives of unit owners and renters.
- Extends until October 1, 2017, the requirement in the bill that an association with 500 or more units must maintain a website to provide members access to the information specified in the bill.
- Provides that the copy of the Articles of incorporation of the association posted on the website of an association 500 or more units must be the copy filed with the Department of State.
- Removes the requirement that an association with 500 or more units must provide a copy of its proposed annual budget and proposed financial report on its website.
- Requires associations with 500 or more units to post on their website documents to be voted on at a board meeting and a notice of any board meeting.
- Exempts timeshare condominiums from the prohibitions in the bill against:
    - A board member, manager, or management company purchasing a unit in a foreclosure sale resulting from unpaid assessments;

  - Employing or contracting with a service provider owned or operated by a board member or any person who has a financial relationship with a board member; and
  - A person contracting to provide management services purchasing a unit in a foreclosure sale resulting from unpaid assessments.
- Limits to non-developer controlled residential condominium associations the prohibition against a person contracted to provide management services purchasing a unit in a foreclosure sale or owning more than 50 percent of the units of the condominium.

B. Amendments:

None.

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

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/25/2017	.	
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The Committee on Rules (Garcia) recommended the following:

Senate Amendment (with title amendment)

Delete lines 68 - 1152
and insert:
Section 1. Paragraphs (a) and (d) of subsection (1), subsections (3) and (9), paragraphs (a) and (c) of subsection (12), and subsection (13) of section 718.111, Florida Statutes, are amended, paragraph (g) is added to subsection (12), and subsection (15) is added to that section, to read:
718.111 The association.—
(1) CORPORATE ENTITY.—



(a) The operation of the condominium shall be by the association, which must be a Florida corporation for profit or a Florida corporation not for profit. However, any association which was in existence on January 1, 1977, need not be incorporated. The owners of units shall be shareholders or members of the association. The officers and directors of the association have a fiduciary relationship to the unit owners. It is the intent of the Legislature that nothing in this paragraph shall be construed as providing for or removing a requirement of a fiduciary relationship between any manager employed by the association and the unit owners. An officer, director, or manager may not solicit, offer to accept, or accept any thing or service of value or kickback for which consideration has not been provided for his or her own benefit or that of his or her immediate family, from any person providing or proposing to provide goods or services to the association. Any such officer, director, or manager who knowingly so solicits, offers to accept, or accepts any thing or service of value or kickback is subject to a civil penalty pursuant to s. 718.501(1)(d), and if applicable, a criminal penalty as provided in paragraph (d). However, this paragraph does not prohibit an officer, director, or manager from accepting services or items received in connection with trade fairs or education programs. An association may operate more than one condominium.

(d) As required by s. 617.0830, an officer, director, or agent shall discharge his or her duties in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner he or she reasonably believes to be in the interests of the association.



An officer, director, or agent shall be liable for monetary damages as provided in s. 617.0834 if such officer, director, or agent breached or failed to perform his or her duties and the breach of, or failure to perform, his or her duties constitutes a violation of criminal law as provided in s. 617.0834; constitutes a transaction from which the officer or director derived an improper personal benefit, either directly or indirectly; or constitutes recklessness or an act or omission that was in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. Forgery of a ballot envelope used in a condominium association election or voting certificate is punishable as provided in s. 831.01, the theft or embezzlement of funds of a condominium association is punishable as provided in s. 812.014, and destruction of any document that is an official record of a condominium association in furtherance of any crime is punishable as tampering with evidence as provided in s. 918.13 or as obstruction of justice as provided in s. 843.02. An officer or director charged by information or indictment with a crime referenced in this paragraph must be removed from office, and the vacancy shall be filled as provided in s. 718.112(2)(d)2. until the earlier of the end of the officer's or director's period of suspension or the end of his or her term of office. While a criminal charge is pending against the officer or director, he or she may not be appointed or elected to a position as an officer or director of any association and may not have access to the official records of any association, except pursuant to a court order. However, if the charges are resolved without a finding of guilt, the officer or director



must be reinstated for the remainder of his or her term of office, if any.

(3) POWER TO MANAGE CONDOMINIUM PROPERTY AND TO CONTRACT, SUE, AND BE SUED; CONFLICT OF INTEREST.—

(a) The association may contract, sue, or be sued with respect to the exercise or nonexercise of its powers. For these purposes, the powers of the association include, but are not limited to, the maintenance, management, and operation of the condominium property. After control of the association is obtained by unit owners other than the developer, the association may institute, maintain, settle, or appeal actions or hearings in its name on behalf of all unit owners concerning matters of common interest to most or all unit owners, including, but not limited to, the common elements; the roof and structural components of a building or other improvements; mechanical, electrical, and plumbing elements serving an improvement or a building; representations of the developer pertaining to any existing or proposed commonly used facilities; and protesting ad valorem taxes on commonly used facilities and on units; and may defend actions in eminent domain or bring inverse condemnation actions. If the association has the authority to maintain a class action, the association may be joined in an action as representative of that class with reference to litigation and disputes involving the matters for which the association could bring a class action. Nothing herein limits any statutory or common-law right of any individual unit owner or class of unit owners to bring any action without participation by the association which may otherwise be available.



(b) An association may not hire an attorney who represents the management company of the association.

(9) PURCHASE OF UNITS.—The association has the power, unless prohibited by the declaration, articles of incorporation, or bylaws of the association, to purchase units in the condominium and to acquire and hold, lease, mortgage, and convey them. There shall be no limitation on the association's right to purchase a unit at a foreclosure sale resulting from the association's foreclosure of its lien for unpaid assessments, or to take title by deed in lieu of foreclosure. However, except for a timeshare condominium, a board member, manager, or management company may not purchase a unit at a foreclosure sale resulting from the association's foreclosure of its lien for unpaid assessments or take title by deed in lieu of foreclosure.

(12) OFFICIAL RECORDS.—

(a) From the inception of the association, the association shall maintain each of the following items, if applicable, which constitutes the official records of the association:

1. A copy of the plans, permits, warranties, and other items provided by the developer pursuant to s. 718.301(4).

2. A photocopy of the recorded declaration of condominium of each condominium operated by the association and each amendment to each declaration.

3. A photocopy of the recorded bylaws of the association and each amendment to the bylaws.

4. A certified copy of the articles of incorporation of the association, or other documents creating the association, and each amendment thereto.

5. A copy of the current rules of the association.


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6. A book or books that contain the minutes of all meetings of the association, the board of administration, and the unit owners, which minutes must be retained for at least 7 years.

7. A current roster of all unit owners and their mailing addresses, unit identifications, voting certifications, and, if known, telephone numbers. The association shall also maintain the electronic mailing addresses and facsimile numbers of unit owners consenting to receive notice by electronic transmission. The electronic mailing addresses and facsimile numbers are not accessible to unit owners if consent to receive notice by electronic transmission is not provided in accordance with sub-subparagraph (c)5.e. ~~subparagraph (c)5.~~ However, the association is not liable for an inadvertent disclosure of the electronic mail address or facsimile number for receiving electronic transmission of notices.

8. All current insurance policies of the association and condominiums operated by the association.

9. A current copy of any management agreement, lease, or other contract to which the association is a party or under which the association or the unit owners have an obligation or responsibility.

10. Bills of sale or transfer for all property owned by the association.

11. Accounting records for the association and separate accounting records for each condominium that the association operates. All accounting records must be maintained for at least 7 years. Any person who knowingly or intentionally defaces or destroys such records, or who knowingly or intentionally fails to create or maintain such records, with the intent of causing



harm to the association or one or more of its members, is personally subject to a civil penalty pursuant to s. 718.501(1)(d). The accounting records must include, but are not limited to:

a. Accurate, itemized, and detailed records of all receipts and expenditures.

b. A current account and a monthly, bimonthly, or quarterly statement of the account for each unit designating the name of the unit owner, the due date and amount of each assessment, the amount paid on the account, and the balance due.

c. All audits, reviews, accounting statements, and financial reports of the association or condominium.

d. All contracts for work to be performed. Bids for work to be performed are also considered official records and must be maintained by the association.

12. Ballots, sign-in sheets, voting proxies, and all other papers relating to voting by unit owners, which must be maintained for 1 year from the date of the election, vote, or meeting to which the document relates, notwithstanding paragraph (b).

13. All rental records if the association is acting as agent for the rental of condominium units.

14. A copy of the current question and answer sheet as described in s. 718.504.

15. All other written records of the association not specifically included in the foregoing which are related to the operation of the association.

16. A copy of the inspection report as described in s. 718.301(4)(p).

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17. Bids for materials, equipment, or services.

(c)1. The official records of the association are open to inspection by any association member or the authorized representative of such member at all reasonable times. The right to inspect the records includes the right to make or obtain copies, at the reasonable expense, if any, of the member or authorized representative of such member. A renter of a unit has a right to inspect and copy the association's bylaws and rules. The association may adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections and copying. The failure of an association to provide the records within 10 working days after receipt of a written request creates a rebuttable presumption that the association willfully failed to comply with this paragraph. A unit owner who is denied access to official records is entitled to the actual damages or minimum damages for the association's willful failure to comply. Minimum damages are $50 per calendar day for up to 10 days, beginning on the 11th working day after receipt of the written request. The failure to permit inspection entitles any person prevailing in an enforcement action to recover reasonable attorney fees from the person in control of the records who, directly or indirectly, knowingly denied access to the records.

2. Any person who knowingly or intentionally defaces or destroys accounting records that are required by this chapter to be maintained during the period for which such records are required to be maintained, or who knowingly or intentionally fails to create or maintain accounting records that are required to be created or maintained, with the intent of causing harm to



the association or one or more of its members, is personally subject to a civil penalty pursuant to s. 718.501(1)(d).

3. The association shall maintain an adequate number of copies of the declaration, articles of incorporation, bylaws, and rules, and all amendments to each of the foregoing, as well as the question and answer sheet as described in s. 718.504 and year-end financial information required under this section, on the condominium property to ensure their availability to unit owners and prospective purchasers, and may charge its actual costs for preparing and furnishing these documents to those requesting the documents. An association shall allow a member or his or her authorized representative to use a portable device, including a smartphone, tablet, portable scanner, or any other technology capable of scanning or taking photographs, to make an electronic copy of the official records in lieu of the association's providing the member or his or her authorized representative with a copy of such records. The association may not charge a member or his or her authorized representative for the use of a portable device. Notwithstanding this paragraph, the following records are not accessible to unit owners:

a.~~1.~~ Any record protected by the lawyer-client privilege as described in s. 90.502 and any record protected by the work-product privilege, including a record prepared by an association attorney or prepared at the attorney's express direction, which reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the association, and which was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings, or which was prepared in anticipation of such litigation or proceedings until the


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conclusion of the litigation or proceedings.

b.~~2.~~ Information obtained by an association in connection with the approval of the lease, sale, or other transfer of a unit.

c.~~3.~~ Personnel records of association or management company employees, including, but not limited to, disciplinary, payroll, health, and insurance records. For purposes of this sub-subparagraph ~~subparagraph~~, the term "personnel records" does not include written employment agreements with an association employee or management company, or budgetary or financial records that indicate the compensation paid to an association employee.

d.~~4.~~ Medical records of unit owners.

e.~~5.~~ Social security numbers, driver license numbers, credit card numbers, e-mail addresses, telephone numbers, facsimile numbers, emergency contact information, addresses of a unit owner other than as provided to fulfill the association's notice requirements, and other personal identifying information of any person, excluding the person's name, unit designation, mailing address, property address, and any address, e-mail address, or facsimile number provided to the association to fulfill the association's notice requirements. Notwithstanding the restrictions in this sub-subparagraph ~~subparagraph~~, an association may print and distribute to parcel owners a directory containing the name, parcel address, and all telephone numbers of each parcel owner. However, an owner may exclude his or her telephone numbers from the directory by so requesting in writing to the association. An owner may consent in writing to the disclosure of other contact information described in this

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sub-subparagraph ~~subparagraph~~. The association is not liable for the inadvertent disclosure of information that is protected under this sub-subparagraph ~~subparagraph~~ if the information is included in an official record of the association and is voluntarily provided by an owner and not requested by the association.

f.~~6.~~ Electronic security measures that are used by the association to safeguard data, including passwords.

g.~~7.~~ The software and operating system used by the association which allow the manipulation of data, even if the owner owns a copy of the same software used by the association. The data is part of the official records of the association.

(g)1. By July 1, 2018, an association with 150 or more units which does not manage timeshare units shall post digital copies of the documents specified in subparagraph 2. on its website.

a. The association’s website must be:

(I) An independent website or web portal wholly owned and operated by the association; or

(II) A website or web portal operated by a third-party provider with whom the association owns, leases, rents, or otherwise obtains the right to operate a web page, subpage, web portal, or collection of subpages or web portals dedicated to the association’s activities and on which required notices, records, and documents may be posted by the association.

b. The association’s website must be accessible through the Internet and must contain a subpage, web portal, or other protected electronic location that is inaccessible to the general public and accessible only to unit owners and employees

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of the association.

c. Upon a unit owner's written request, the association must provide the unit owner with a username and password and access to the protected sections of the association's website that contain any notices, records, or documents that must be electronically provided.

2. A current copy of the following documents must be posted in digital format on the association's website:

a. The recorded declaration of condominium of each condominium operated by the association and each amendment to each declaration.

b. The recorded bylaws of the association and each amendment to the bylaws.

c. The articles of incorporation of the association, or other documents creating the association, and each amendment thereto. The copy posted pursuant to this sub-subparagraph must be a copy of the articles of incorporation filed with the Department of State.

d. The rules of the association.

e. Any management agreement, lease, or other contract to which the association is a party or under which the association or the unit owners have an obligation or responsibility. Summaries of bids for materials, equipment, or services must be maintained on the website for 1 year.

f. The annual budget required by s. 718.112(2)(f) and any proposed budget to be considered at the annual meeting.

g. The financial report required by subsection (13) and any proposed financial report to be considered at a meeting.

h. The certification of each director required by s.



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718.112(2)(d)4.b.

i. All contracts or transactions between the association and any director, officer, corporation, firm, or association that is not an affiliated condominium association or any other entity in which an association director is also a director or officer and financially interested.

j. Any contract or document regarding a conflict of interest or possible conflict of interest as provided in ss. 468.436(2) and 718.3026(3).

k. The notice of any unit owner meeting and the agenda for the meeting, as required by s. 718.112(2)(d)3., no later than 14 days before the meeting. The notice must be posted in plain view on the front page of the website, or on a separate subpage of the website labeled "Notices" which is conspicuously visible and linked from the front page. The association must also post on its website any document to be considered and voted on by the owners during the meeting or any document listed on the agenda at least 7 days before the meeting at which the document or the information within the document will be considered.

l. Notice of any board meeting, and the agenda and any other document required for the meeting as required by s. 718.112(2)(c), which must be posted no later than the date required for notice pursuant to s. 718.112(2)(c).

3. The association shall ensure that the information and records described in paragraph (c), which are not permitted to be accessible to unit owners, are not posted on the association's website. If protected information or information restricted from being accessible to unit owners is included in documents that are required to be posted on the association's



website, the association shall ensure the information is redacted before posting the documents online.

(13) FINANCIAL REPORTING.—Within 90 days after the end of the fiscal year, or annually on a date provided in the bylaws, the association shall prepare and complete, or contract for the preparation and completion of, a financial report for the preceding fiscal year. Within 21 days after the final financial report is completed by the association or received from the third party, but not later than 120 days after the end of the fiscal year or other date as provided in the bylaws, the association shall mail to each unit owner at the address last furnished to the association by the unit owner, or hand deliver to each unit owner, a copy of the most recent financial report or a notice that a copy of the most recent financial report will be mailed or hand delivered to the unit owner, without charge, within 5 business days after ~~upon~~ receipt of a written request from the unit owner. The division shall adopt rules setting forth uniform accounting principles and standards to be used by all associations and addressing the financial reporting requirements for multicondominium associations. The rules must include, but not be limited to, standards for presenting a summary of association reserves, including a good faith estimate disclosing the annual amount of reserve funds that would be necessary for the association to fully fund reserves for each reserve item based on the straight-line accounting method. This disclosure is not applicable to reserves funded via the pooling method. In adopting such rules, the division shall consider the number of members and annual revenues of an association. Financial reports shall be prepared as follows:



(a) An association that meets the criteria of this paragraph shall prepare a complete set of financial statements in accordance with generally accepted accounting principles. The financial statements must be based upon the association's total annual revenues, as follows:

1. An association with total annual revenues of $150,000 or more, but less than $300,000, shall prepare compiled financial statements.

2. An association with total annual revenues of at least $300,000, but less than $500,000, shall prepare reviewed financial statements.

3. An association with total annual revenues of $500,000 or more shall prepare audited financial statements.

(b)1. An association with total annual revenues of less than $150,000 shall prepare a report of cash receipts and expenditures.

2. An association that operates fewer than 50 units, regardless of the association's annual revenues, shall prepare a report of cash receipts and expenditures in lieu of financial statements required by paragraph (a).

3. A report of cash receipts and disbursements must disclose the amount of receipts by accounts and receipt classifications and the amount of expenses by accounts and expense classifications, including, but not limited to, the following, as applicable: costs for security, professional and management fees and expenses, taxes, costs for recreation facilities, expenses for refuse collection and utility services, expenses for lawn care, costs for building maintenance and repair, insurance costs, administration and salary expenses, and


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reserves accumulated and expended for capital expenditures, deferred maintenance, and any other category for which the association maintains reserves.

(c) An association may prepare, without a meeting of or approval by the unit owners:

1. Compiled, reviewed, or audited financial statements, if the association is required to prepare a report of cash receipts and expenditures;

2. Reviewed or audited financial statements, if the association is required to prepare compiled financial statements; or

3. Audited financial statements if the association is required to prepare reviewed financial statements.

(d) If approved by a majority of the voting interests present at a properly called meeting of the association, an association may prepare:

1. A report of cash receipts and expenditures in lieu of a compiled, reviewed, or audited financial statement;

2. A report of cash receipts and expenditures or a compiled financial statement in lieu of a reviewed or audited financial statement; or

3. A report of cash receipts and expenditures, a compiled financial statement, or a reviewed financial statement in lieu of an audited financial statement.

Such meeting and approval must occur before the end of the fiscal year and is effective only for the fiscal year in which the vote is taken, except that the approval may also be effective for the following fiscal year. If the developer has



not turned over control of the association, all unit owners, including the developer, may vote on issues related to the preparation of the association's financial reports, from the date of incorporation of the association through the end of the second fiscal year after the fiscal year in which the certificate of a surveyor and mapper is recorded pursuant to s. 718.104(4)(e) or an instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit is recorded, whichever occurs first. Thereafter, all unit owners except the developer may vote on such issues until control is turned over to the association by the developer. Any audit or review prepared under this section shall be paid for by the developer if done before turnover of control of the association. An association may not waive the financial reporting requirements of this section for more than 3 consecutive years.

(e) If the division determines that an association has not mailed or hand delivered to the unit owner a copy of the most recent financial report within 5 business days after receipt of a written request from the unit owner, the unit owner may give notice to the division of the association's failure to comply. Upon notification, the division shall give notice to the association that the association must mail or hand deliver the copy of the most recent financial report to the unit owner and the division within 5 business days after such notice. Any association that fails to comply with the division's request may not waive the financial reporting requirement provided in paragraph (d). A financial report received by the division



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pursuant to this paragraph shall be maintained, and the division shall provide a copy of such report to an association member upon his or her request.

(15) DEBIT CARDS.—An association or any officer, director, employee, or agent of an association may not use a debit card issued in the name of the association, or which is billed directly to the association, for the payment of any association expense. Use of a debit card issued in the name of the association or billed directly to the association for any expense that is not a lawful obligation of the association may be prosecuted as credit card fraud pursuant to s. 817.61.

Section 2. In order to implement the website requirement in section 1 of this act, the Department of Business and Professional Regulation is directed to include in the next condominium association annual fee statement required by s. 718.501(2)(a), Florida Statutes, a notice informing condominium associations of 150 or more units of the requirement to create a website for association documents which is operational no later than July 1, 2018.

Section 3. Paragraphs (d) and (j) of subsection (2) of section 718.112, Florida Statutes, are amended, and paragraph (p) is added to that subsection, to read:

718.112 Bylaws.—

(2) REQUIRED PROVISIONS.—The bylaws shall provide for the following and, if they do not do so, shall be deemed to include the following:

(d) *Unit owner meetings.*—

1. An annual meeting of the unit owners shall be held at the location provided in the association bylaws and, if the


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bylaws are silent as to the location, the meeting shall be held within 45 miles of the condominium property. However, such distance requirement does not apply to an association governing a timeshare condominium.

2. Unless the bylaws provide otherwise, a vacancy on the board caused by the expiration of a director's term shall be filled by electing a new board member, and the election must be by secret ballot. An election is not required if the number of vacancies equals or exceeds the number of candidates. For purposes of this paragraph, the term "candidate" means an eligible person who has timely submitted the written notice, as described in sub-subparagraph 4.a., of his or her intention to become a candidate. Except in a timeshare or nonresidential condominium, or if the staggered term of a board member does not expire until a later annual meeting, or if all members' terms would otherwise expire but there are no candidates, the terms of all board members expire at the annual meeting, and such members may stand for reelection unless prohibited by the bylaws. ~~If the bylaws or articles of incorporation permit terms of no more than 2 years, the association~~ Board members may serve 2-year terms if permitted by the bylaws or articles of incorporation. A board member may not serve more than 4 consecutive 2-year terms, unless approved by an affirmative vote of two-thirds of the total voting interests of the association or unless there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy. If the number of board members whose terms expire at the annual meeting equals or exceeds the number of candidates, the candidates become members of the board effective upon the adjournment of the annual meeting. Unless the



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bylaws provide otherwise, any remaining vacancies shall be filled by the affirmative vote of the majority of the directors making up the newly constituted board even if the directors constitute less than a quorum or there is only one director. In a residential condominium association of more than 10 units or in a residential condominium association that does not include timeshare units or timeshare interests, coowners of a unit may not serve as members of the board of directors at the same time unless they own more than one unit or unless there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy. A unit owner in a residential condominium desiring to be a candidate for board membership must comply with sub-subparagraph 4.a. and must be eligible to be a candidate to serve on the board of directors at the time of the deadline for submitting a notice of intent to run in order to have his or her name listed as a proper candidate on the ballot or to serve on the board. A person who has been suspended or removed by the division under this chapter, or who is delinquent in the payment of any monetary obligation due to the association, is not eligible to be a candidate for board membership and may not be listed on the ballot. A person who has been convicted of any felony in this state or in a United States District or Territorial Court, or who has been convicted of any offense in another jurisdiction which would be considered a felony if committed in this state, is not eligible for board membership unless such felon’s civil rights have been restored for at least 5 years as of the date such person seeks election to the board. The validity of an action by the board is not affected if it is later determined that a board member is



ineligible for board membership due to having been convicted of a felony. This subparagraph does not limit the term of a member of the board of a nonresidential or timeshare condominium.

3. The bylaws must provide the method of calling meetings of unit owners, including annual meetings. Written notice must include an agenda, must be mailed, hand delivered, or electronically transmitted to each unit owner at least 14 days before the annual meeting, and must be posted in a conspicuous place on the condominium property at least 14 continuous days before the annual meeting. Upon notice to the unit owners, the board shall, by duly adopted rule, designate a specific location on the condominium property or association property where all notices of unit owner meetings shall be posted. This requirement does not apply if there is no condominium property or association property for posting notices. In lieu of, or in addition to, the physical posting of meeting notices, the association may, by reasonable rule, adopt a procedure for conspicuously posting and repeatedly broadcasting the notice and the agenda on a closed-circuit cable television system serving the condominium association. However, if broadcast notice is used in lieu of a notice posted physically on the condominium property, the notice and agenda must be broadcast at least four times every broadcast hour of each day that a posted notice is otherwise required under this section. If broadcast notice is provided, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda. Unless a unit owner waives in writing the right to receive notice of the annual


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meeting, such notice must be hand delivered, mailed, or electronically transmitted to each unit owner. Notice for meetings and notice for all other purposes must be mailed to each unit owner at the address last furnished to the association by the unit owner, or hand delivered to each unit owner. However, if a unit is owned by more than one person, the association must provide notice to the address that the developer identifies for that purpose and thereafter as one or more of the owners of the unit advise the association in writing, or if no address is given or the owners of the unit do not agree, to the address provided on the deed of record. An officer of the association, or the manager or other person providing notice of the association meeting, must provide an affidavit or United States Postal Service certificate of mailing, to be included in the official records of the association affirming that the notice was mailed or hand delivered in accordance with this provision.

4. The members of the board of a residential condominium shall be elected by written ballot or voting machine. Proxies may not be used in electing the board in general elections or elections to fill vacancies caused by recall, resignation, or otherwise, unless otherwise provided in this chapter. This subparagraph does not apply to an association governing a timeshare condominium.

a. At least 60 days before a scheduled election, the association shall mail, deliver, or electronically transmit, by separate association mailing or included in another association mailing, delivery, or transmission, including regularly published newsletters, to each unit owner entitled to a vote, a



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first notice of the date of the election. A unit owner or other eligible person desiring to be a candidate for the board must give written notice of his or her intent to be a candidate to the association at least 40 days before a scheduled election. Together with the written notice and agenda as set forth in subparagraph 3., the association shall mail, deliver, or electronically transmit a second notice of the election to all unit owners entitled to vote, together with a ballot that lists all candidates. Upon request of a candidate, an information sheet, no larger than 8 1/2 inches by 11 inches, which must be furnished by the candidate at least 35 days before the election, must be included with the mailing, delivery, or transmission of the ballot, with the costs of mailing, delivery, or electronic transmission and copying to be borne by the association. The association is not liable for the contents of the information sheets prepared by the candidates. In order to reduce costs, the association may print or duplicate the information sheets on both sides of the paper. The division shall by rule establish voting procedures consistent with this sub-subparagraph, including rules establishing procedures for giving notice by electronic transmission and rules providing for the secrecy of ballots. Elections shall be decided by a plurality of ballots cast. There is no quorum requirement; however, at least 20 percent of the eligible voters must cast a ballot in order to have a valid election. A unit owner may not permit any other person to vote his or her ballot, and any ballots improperly cast are invalid. A unit owner who violates this provision may be fined by the association in accordance with s. 718.303. A unit owner who needs assistance in casting the ballot for the



reasons stated in s. 101.051 may obtain such assistance. The regular election must occur on the date of the annual meeting. Notwithstanding this sub-subparagraph, an election is not required unless more candidates file notices of intent to run or are nominated than board vacancies exist.

b. Within 90 days after being elected or appointed to the board of an association of a residential condominium, each newly elected or appointed director shall certify in writing to the secretary of the association that he or she has read the association's declaration of condominium, articles of incorporation, bylaws, and current written policies; that he or she will work to uphold such documents and policies to the best of his or her ability; and that he or she will faithfully discharge his or her fiduciary responsibility to the association's members. In lieu of this written certification, within 90 days after being elected or appointed to the board, the newly elected or appointed director may submit a certificate of having satisfactorily completed the educational curriculum administered by a division-approved condominium education provider within 1 year before or 90 days after the date of election or appointment. The written certification or educational certificate is valid and does not have to be resubmitted as long as the director serves on the board without interruption. A director of an association of a residential condominium who fails to timely file the written certification or educational certificate is suspended from service on the board until he or she complies with this sub-subparagraph. The board may temporarily fill the vacancy during the period of suspension. The secretary shall cause the association to retain


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a director's written certification or educational certificate for inspection by the members for 5 years after a director's election or the duration of the director's uninterrupted tenure, whichever is longer. Failure to have such written certification or educational certificate on file does not affect the validity of any board action.

c. Any challenge to the election process must be commenced within 60 days after the election results are announced.

5. Any approval by unit owners called for by this chapter or the applicable declaration or bylaws, including, but not limited to, the approval requirement in s. 718.111(8), must be made at a duly noticed meeting of unit owners and is subject to all requirements of this chapter or the applicable condominium documents relating to unit owner decisionmaking, except that unit owners may take action by written agreement, without meetings, on matters for which action by written agreement without meetings is expressly allowed by the applicable bylaws or declaration or any law that provides for such action.

6. Unit owners may waive notice of specific meetings if allowed by the applicable bylaws or declaration or any law. Notice of meetings of the board of administration, unit owner meetings, except unit owner meetings called to recall board members under paragraph (j), and committee meetings may be given by electronic transmission to unit owners who consent to receive notice by electronic transmission.

7. Unit owners have the right to participate in meetings of unit owners with reference to all designated agenda items. However, the association may adopt reasonable rules governing the frequency, duration, and manner of unit owner participation.



8. A unit owner may tape record or videotape a meeting of the unit owners subject to reasonable rules adopted by the division.

9. Unless otherwise provided in the bylaws, any vacancy occurring on the board before the expiration of a term may be filled by the affirmative vote of the majority of the remaining directors, even if the remaining directors constitute less than a quorum, or by the sole remaining director. In the alternative, a board may hold an election to fill the vacancy, in which case the election procedures must conform to sub-subparagraph 4.a. unless the association governs 10 units or fewer and has opted out of the statutory election process, in which case the bylaws of the association control. Unless otherwise provided in the bylaws, a board member appointed or elected under this section shall fill the vacancy for the unexpired term of the seat being filled. Filling vacancies created by recall is governed by paragraph (j) and rules adopted by the division.

10. This chapter does not limit the use of general or limited proxies, require the use of general or limited proxies, or require the use of a written ballot or voting machine for any agenda item or election at any meeting of a timeshare condominium association or nonresidential condominium association.

Notwithstanding subparagraph (b)2. and sub-subparagraph 4.a., an association of 10 or fewer units may, by affirmative vote of a majority of the total voting interests, provide for different voting and election procedures in its bylaws, which may be by a proxy specifically delineating the different voting and election

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procedures. The different voting and election procedures may provide for elections to be conducted by limited or general proxy.

(j) *Recall of board members.*—Subject to s. 718.301, any member of the board of administration may be recalled and removed from office with or without cause by the vote or agreement in writing by a majority of all the voting interests. A special meeting of the unit owners to recall a member or members of the board of administration may be called by 10 percent of the voting interests giving notice of the meeting as required for a meeting of unit owners, and the notice shall state the purpose of the meeting. Electronic transmission may not be used as a method of giving notice of a meeting called in whole or in part for this purpose.

1. If the recall is approved by a majority of all voting interests by a vote at a meeting, the recall will be effective as provided in this paragraph. The board shall duly notice and hold a board meeting within 5 full business days after the adjournment of the unit owner meeting to recall one or more board members. ~~At the meeting, the board shall either certify the recall, in which case~~ Such member or members shall be recalled effective immediately and shall turn over to the board within 10 ~~5~~ full business days after the vote any and all records and property of the association in their possession~~, or shall proceed as set forth in subparagraph 3~~.

2. If the proposed recall is by an agreement in writing by a majority of all voting interests, the agreement in writing or a copy thereof shall be served on the association by certified mail or by personal service in the manner authorized by chapter

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48 and the Florida Rules of Civil Procedure. The board of administration shall duly notice and hold a meeting of the board within 5 full business days after receipt of the agreement in writing. ~~At the meeting, the board shall either certify the written agreement to recall a member or members of the board, in which case~~ Such member or members shall be recalled effective immediately and shall turn over to the board within 10 ~~5~~ full business days any and all records and property of the association in their possession~~, or proceed as described in subparagraph 3~~.

~~3. If the board determines not to certify the written agreement to recall a member or members of the board, or does not certify the recall by a vote at a meeting, the board shall, within 5 full business days after the meeting, file with the division a petition for arbitration pursuant to the procedures in s. 718.1255. For the purposes of this section, the unit owners who voted at the meeting or who executed the agreement in writing shall constitute one party under the petition for arbitration. If the arbitrator certifies the recall as to any member or members of the board, the recall will be effective upon mailing of the final order of arbitration to the association. If the association fails to comply with the order of the arbitrator, the division may take action pursuant to s. 718.501. Any member or members so recalled shall deliver to the board any and all records of the association in their possession within 5 full business days after the effective date of the recall.~~

3.~~4.~~ If the board fails to duly notice and hold a board meeting within 5 full business days after service of an


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agreement in writing or within 5 full business days after the adjournment of the unit owner recall meeting, the recall shall be deemed effective and the board members so recalled shall ~~immediately~~ turn over to the board within 10 full business days after the vote any and all records and property of the association.

4.~~5.~~ If the board fails to duly notice and hold the required meeting or fails to file the required petition, the unit owner representative may file a petition pursuant to s. 718.1255 challenging the board's failure to act. The petition must be filed within 60 days after the expiration of the applicable 5-full-business-day period. The review of a petition under this subparagraph is limited to the sufficiency of service on the board and the facial validity of the written agreement or ballots filed.

5.~~6.~~ If a vacancy occurs on the board as a result of a recall or removal and less than a majority of the board members are removed, the vacancy may be filled by the affirmative vote of a majority of the remaining directors, notwithstanding any provision to the contrary contained in this subsection. If vacancies occur on the board as a result of a recall and a majority or more of the board members are removed, the vacancies shall be filled in accordance with procedural rules to be adopted by the division, which rules need not be consistent with this subsection. The rules must provide procedures governing the conduct of the recall election as well as the operation of the association during the period after a recall but before the recall election.

6.~~7.~~ A board member who has been recalled may file a

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petition pursuant to s. 718.1255 challenging the validity of the recall. The petition must be filed within 60 days after the recall ~~is deemed certified~~. The association and the unit owner representative shall be named as the respondents.

7.~~8.~~ The division may not accept for filing a recall petition, whether filed pursuant to subparagraph 1., subparagraph 2., subparagraph 4. ~~5.~~, or subparagraph 6. ~~7. and regardless of whether the recall was certified,~~ when there are 60 or fewer days until the scheduled reelection of the board member sought to be recalled or when 60 or fewer days have elapsed since the election of the board member sought to be recalled.

(p) *Service providers; conflicts of interest.*—An association that is not a timeshare condominium association may not employ or contract with any service provider owned or operated by a board member or with any person who has a financial relationship with a board member or officer, or a relative within the third degree of consanguinity by blood or marriage of a board member or officer. This paragraph does not apply to a service provider in which a board member or officer, or a relative within the third degree of consanguinity by blood or marriage of a board member or officer, owns less than 1 percent of the equity shares of the service provider.

Section 4. Subsection (4) of section 718.1255, Florida Statutes, is amended to read:

718.1255 Alternative dispute resolution; voluntary mediation; mandatory nonbinding arbitration; legislative findings.—

(4) MANDATORY NONBINDING ARBITRATION AND MEDIATION OF

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DISPUTES.—The Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation may ~~shall~~ employ full-time attorneys to act as arbitrators to conduct the arbitration hearings provided by this chapter. The division may also certify attorneys who are not employed by the division to act as arbitrators to conduct the arbitration hearings provided by this chapter ~~section~~. No person may be employed by the department as a full-time arbitrator unless he or she is a member in good standing of The Florida Bar. A person may only be certified by the division to act as an arbitrator if he or she has been a member in good standing of The Florida Bar for at least 5 years and has mediated or arbitrated at least 10 disputes involving condominiums in this state during the 3 years immediately preceding the date of application, mediated or arbitrated at least 30 disputes in any subject area in this state during the 3 years immediately preceding the date of application, or attained board certification in real estate law or condominium and planned development law from The Florida Bar. Arbitrator certification is valid for 1 year. An arbitrator who does not maintain the minimum qualifications for initial certification may not have his or her certification renewed. The department may not enter into a legal services contract for an arbitration hearing under this chapter with an attorney who is not a certified arbitrator unless a certified arbitrator is not available within 50 miles of the dispute. The department shall adopt rules of procedure to govern such arbitration hearings including mediation incident thereto. The decision of an arbitrator shall be final; however, a decision shall not be deemed final agency action. Nothing in


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this provision shall be construed to foreclose parties from proceeding in a trial de novo unless the parties have agreed that the arbitration is binding. If judicial proceedings are initiated, the final decision of the arbitrator shall be admissible in evidence in the trial de novo.

(a) Prior to the institution of court litigation, a party to a dispute shall petition the division for nonbinding arbitration. The petition must be accompanied by a filing fee in the amount of $50. Filing fees collected under this section must be used to defray the expenses of the alternative dispute resolution program.

(b) The petition must recite, and have attached thereto, supporting proof that the petitioner gave the respondents:

1. Advance written notice of the specific nature of the dispute;

2. A demand for relief, and a reasonable opportunity to comply or to provide the relief; and

3. Notice of the intention to file an arbitration petition or other legal action in the absence of a resolution of the dispute.

Failure to include the allegations or proof of compliance with these prerequisites requires dismissal of the petition without prejudice.

(c) Upon receipt, the petition shall be promptly reviewed by the division to determine the existence of a dispute and compliance with the requirements of paragraphs (a) and (b). If emergency relief is required and is not available through arbitration, a motion to stay the arbitration may be filed. The

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motion must be accompanied by a verified petition alleging facts that, if proven, would support entry of a temporary injunction, and if an appropriate motion and supporting papers are filed, the division may abate the arbitration pending a court hearing and disposition of a motion for temporary injunction.

(d) Upon determination by the division that a dispute exists and that the petition substantially meets the requirements of paragraphs (a) and (b) and any other applicable rules, the division shall assign or enter into a contract with an arbitrator and serve a copy of the petition ~~shall be served by the division~~ upon all respondents. The arbitrator shall conduct a hearing within 30 days after being assigned or entering into a contract unless the petition is withdrawn or a continuance is granted for good cause shown.

(e) Before or after the filing of the respondents' answer to the petition, any party may request that the arbitrator refer the case to mediation under this section and any rules adopted by the division. Upon receipt of a request for mediation, the division shall promptly contact the parties to determine if there is agreement that mediation would be appropriate. If all parties agree, the dispute must be referred to mediation. Notwithstanding a lack of an agreement by all parties, the arbitrator may refer a dispute to mediation at any time.

(f) Upon referral of a case to mediation, the parties must select a mutually acceptable mediator. To assist in the selection, the arbitrator shall provide the parties with a list of both volunteer and paid mediators that have been certified by the division under s. 718.501. If the parties are unable to agree on a mediator within the time allowed by the arbitrator,


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the arbitrator shall appoint a mediator from the list of certified mediators. If a case is referred to mediation, the parties shall attend a mediation conference, as scheduled by the parties and the mediator. If any party fails to attend a duly noticed mediation conference, without the permission or approval of the arbitrator or mediator, the arbitrator must impose sanctions against the party, including the striking of any pleadings filed, the entry of an order of dismissal or default if appropriate, and the award of costs and attorney ~~attorneys'~~ fees incurred by the other parties. Unless otherwise agreed to by the parties or as provided by order of the arbitrator, a party is deemed to have appeared at a mediation conference by the physical presence of the party or its representative having full authority to settle without further consultation, provided that an association may comply by having one or more representatives present with full authority to negotiate a settlement and recommend that the board of administration ratify and approve such a settlement within 5 days from the date of the mediation conference. The parties shall share equally the expense of mediation, unless they agree otherwise.

(g) The purpose of mediation as provided for by this section is to present the parties with an opportunity to resolve the underlying dispute in good faith, and with a minimum expenditure of time and resources.

(h) Mediation proceedings must generally be conducted in accordance with the Florida Rules of Civil Procedure, and these proceedings are privileged and confidential to the same extent as court-ordered mediation. Persons who are not parties to the dispute are not allowed to attend the mediation conference



without the consent of all parties, with the exception of counsel for the parties and corporate representatives designated to appear for a party. If the mediator declares an impasse after a mediation conference has been held, the arbitration proceeding terminates, unless all parties agree in writing to continue the arbitration proceeding, in which case the arbitrator's decision shall be binding or nonbinding, as agreed upon by the parties; in the arbitration proceeding, the arbitrator shall not consider any evidence relating to the unsuccessful mediation except in a proceeding to impose sanctions for failure to appear at the mediation conference. If the parties do not agree to continue arbitration, the arbitrator shall enter an order of dismissal, and either party may institute a suit in a court of competent jurisdiction. The parties may seek to recover any costs and attorney ~~attorneys'~~ fees incurred in connection with arbitration and mediation proceedings under this section as part of the costs and fees that may be recovered by the prevailing party in any subsequent litigation.

(i) Arbitration shall be conducted according to rules adopted by the division. The filing of a petition for arbitration shall toll the applicable statute of limitations.

(j) At the request of any party to the arbitration, the arbitrator shall issue subpoenas for the attendance of witnesses and the production of books, records, documents, and other evidence and any party on whose behalf a subpoena is issued may apply to the court for orders compelling such attendance and production. Subpoenas shall be served and shall be enforceable in the manner provided by the Florida Rules of Civil Procedure. Discovery may, in the discretion of the arbitrator, be permitted


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in the manner provided by the Florida Rules of Civil Procedure. Rules adopted by the division may authorize any reasonable sanctions except contempt for a violation of the arbitration procedural rules of the division or for the failure of a party to comply with a reasonable nonfinal order issued by an arbitrator which is not under judicial review.

(k) The arbitration decision shall be rendered within 30 days after the hearing and presented to the parties in writing. An arbitration decision is final in those disputes in which the parties have agreed to be bound. An arbitration decision is also final if a complaint for a trial de novo is not filed in a court of competent jurisdiction in which the condominium is located within 30 days. The right to file for a trial de novo entitles the parties to file a complaint in the appropriate trial court for a judicial resolution of the dispute. The prevailing party in an arbitration proceeding shall be awarded the costs of the arbitration and reasonable attorney ~~attorney's~~ fees in an amount determined by the arbitrator. Such an award shall include the costs and reasonable attorney ~~attorney's~~ fees incurred in the arbitration proceeding as well as the costs and reasonable attorney ~~attorney's~~ fees incurred in preparing for and attending any scheduled mediation. An arbitrator's failure to render a written decision within 30 days after the hearing may result in the cancellation of his or her arbitration certification.

(l) The party who files a complaint for a trial de novo shall be assessed the other party's arbitration costs, court costs, and other reasonable costs, including attorney ~~attorney's~~ fees, investigation expenses, and expenses for expert or other testimony or evidence incurred after the arbitration hearing if

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the judgment upon the trial de novo is not more favorable than the arbitration decision. If the judgment is more favorable, the party who filed a complaint for trial de novo shall be awarded reasonable court costs and attorney ~~attorney's~~ fees.

(m) Any party to an arbitration proceeding may enforce an arbitration award by filing a petition in a court of competent jurisdiction in which the condominium is located. A petition may not be granted unless the time for appeal by the filing of a complaint for trial de novo has expired. If a complaint for a trial de novo has been filed, a petition may not be granted with respect to an arbitration award that has been stayed. If the petition for enforcement is granted, the petitioner shall recover reasonable attorney ~~attorney's~~ fees and costs incurred in enforcing the arbitration award. A mediation settlement may also be enforced through the county or circuit court, as applicable, and any costs and fees incurred in the enforcement of a settlement agreement reached at mediation must be awarded to the prevailing party in any enforcement action.

Section 5. Subsection (5) is added to section 718.3025, Florida Statutes, to read:

718.3025 Agreements for operation, maintenance, or management of condominiums; specific requirements.—

(5) A party contracting to provide maintenance or management services to an association managing a residential condominium after transfer of control of the association, as provided in s. 718.301, which is not a timeshare condominium association, or an officer or board member of such party, may not purchase a unit at a foreclosure sale resulting from the association's foreclosure of association lien for unpaid

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assessments or take a deed in lieu of foreclosure. If 50 percent or more of the units in the condominium are owned by a party contracting to provide maintenance or management services to an association managing a residential condominium after transfer of control of the association, as provided in s. 718.301, which is not a timeshare condominium association, or by an officer or board member of such party, the contract with the party providing maintenance or management services may be canceled by a majority vote of the unit owners other than the contracting party or an officer or board member of such party.

Section 6. Section 718.3027, Florida Statutes, is created to read:

718.3027 Conflicts of interest.—

(1) Directors and officers of a board of an association that is not a timeshare condominium association, and the relatives of such directors and officers, must disclose to the board any activity that may reasonably be construed to be a conflict of interest. A rebuttable presumption of a conflict of interest exists if any of the following occurs without prior notice, as required in subsection (4):

(a) Any director, officer, or relative of any director or officer enters into a contract for goods or services with the association.

(b) Any director, officer, or relative of any director or officer holds an interest in a corporation, limited liability corporation, partnership, limited liability partnership, or other business entity that conducts business with the association or proposes to enter into a contract or other transaction with the association.



(2) If any director, officer, or relative of any director or officer proposes to engage in an activity that is a conflict of interest, as described in subsection (1), the proposed activity must be listed on, and all contracts and transactional documents related to the proposed activity must be attached to, the meeting agenda. If the board votes against the proposed activity, the director, officer, or relative must notify the board in writing of his or her intention not to pursue the proposed activity, or the director or officer shall withdraw from office. If the board finds that any officer or director has violated this subsection, the officer or director shall be deemed removed from office. The vacancy shall be filled according to general law.

(3) Any director, officer, or relative of any director or officer who is a party to, or has an interest in, an activity that is a possible conflict of interest, as described in subsection (1), may attend the meeting at which the activity is considered by the board, and is authorized to make a presentation to the board regarding the activity. After the presentation, the director, officer, or relative must leave the meeting during the discussion of, and the vote on, the activity. Any director or officer who is a party to, or has an interest in, the activity must recuse himself or herself from the vote.

(4) Any contract entered into between any director, officer, or relative of any director or officer and the association, which is not a timeshare condominium association, which has not been properly disclosed as a conflict of interest or potential conflict of interest as required by s. 718.111(12)(g) is voidable and terminates upon the filing of a



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written notice terminating the contract with the board of directors which contains the consent of at least 20 percent of the voting interests of the association.

(5) As used in this section, reference to a "relative" means a relative within the third degree of consanguinity by blood or marriage.

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

And the title is amended as follows:

Delete lines 2 - 55

and insert:

An act relating to condominiums; amending s. 718.111, F.S.; prohibiting an officer, director, or manager from soliciting, offering to accept, or accepting a kickback for which consideration has not been provided; providing criminal penalties; requiring that an officer or director charged with certain crimes be removed from office; providing requirements for filling the vacancy left by such removal; prohibiting such officer or director from being appointed or elected or having access to official condominium association records for a specified time; providing an exception; requiring an officer or director to be reinstated if the charges are resolved without a finding of guilt; prohibiting an association from hiring an attorney who represents the management company of the association; prohibiting a board member, manager, or management company from purchasing a unit at a foreclosure sale under certain


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circumstances; providing recordkeeping requirements; providing that the official records of an association are open to inspection by unit renters; providing that a renter of a unit has a right to inspect and copy the association's bylaws and rules; providing requirements relating to the posting of specified documents on an association's website; providing a remedy for an association's failure to provide a unit owner with a copy of the most recent financial report; requiring the Division of Florida Condominiums, Timeshares, and Mobile Homes to maintain and provide copies of financial reports; prohibiting a condominium association and its officers, directors, employees, and agents from using a debit card issued in the name of the association or billed to the association; providing that use of such a debit card for any expense that is not a lawful obligation of the association may be prosecuted as credit card fraud; providing direction to the Department of Business and Professional Regulation; amending s. 718.112, F.S.; providing board member term limits; providing an exception; deleting certification requirements relating to the recall of board members; revising the amount of time a recalled board member has to turn over records and property of the association to the board; prohibiting certain associations from employing or contracting with a service provider owned or operated by certain persons; amending s. 718.1255, F.S.; authorizing, rather than requiring, the division


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to employ full-time attorneys to conduct certain arbitration hearings; providing requirements for the certification of arbitrators; prohibiting the Department of Business and Professional Regulation from entering into a legal services contract for certain arbitration hearings; requiring the division to assign or enter into contracts with arbitrators; requiring arbitrators to conduct hearings within a specified period; providing an exception; providing arbitration proceeding requirements; amending s. 718.3025, F.S.; prohibiting specified parties from purchasing a unit at a foreclosure sale resulting from the association's foreclosure of association lien for unpaid assessments or from taking a deed in lieu of foreclosures; authorizing a contract with a party providing maintenance or management services to be canceled by a majority vote of certain unit owners under specified conditions; creating s. 718.3027, F.S.; providing requirements relating to board director and officer conflicts of interest; providing that certain contracts are voidable if they do not meet specified notice requirements and terminate, subject to a certain condition; specifying who is considered a relative for certain purposes; amending s.

902636

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/25/2017	.	
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The Committee on Rules (Garcia) recommended the following:

Senate Amendment to Amendment (421264) (with title amendment)

Delete lines 405 - 409
and insert:
2. ~~An association that operates fewer than 50 units, regardless of the association's annual revenues, shall prepare a report of cash receipts and expenditures in lieu of financial statements required by paragraph (a).~~
~~3.~~ A report of cash receipts and disbursements must

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12 ================= T I T L E A M E N D M E N T ================
13 And the title is amended as follows:
14 Delete line 1143
15 and insert:
16 circumstances; revising recordkeeping requirements;

By the Committee on Regulated Industries; and Senators Garcia, Rodriguez, and Artiles

580-03447-17 20171682c1

A bill to be entitled

An act relating to condominiums; amending s. 718.111, F.S.; prohibiting an association from hiring an attorney that represents the management company of the association; prohibiting a board member, manager, or management company from purchasing a unit at a foreclosure sale under certain circumstances; providing recordkeeping requirements; providing that the official records of an association are open to inspection by unit renters; providing that a renter of a unit has a right to inspect and copy the association's bylaws and rules; providing criminal penalties; providing a definition; providing requirements relating to the posting of specified documents on an association's website; providing a remedy for an association's failure to provide a unit owner with a copy of the most recent financial report; requiring the Division of Florida Condominiums, Timeshares, and Mobile Homes to maintain and provide copies of financial reports; amending s. 718.112, F.S.; providing board member term limits; providing an exception; deleting certification requirements relating to the recall of board members; revising the amount of time in which a recalled board member must turn over records and property of the association to the board; prohibiting certain associations from employing or contracting with a service provider that is owned or operated by certain persons; amending s. 718.1255, F.S.; authorizing, rather than requiring,

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

580-03447-17 20171682c1

the division to employ full-time attorneys to conduct certain arbitration hearings; providing requirements for the certification of arbitrators; prohibiting the Department of Business and Professional Regulation from entering into a legal services contract for certain arbitration hearings; requiring the division to assign or enter into contracts with arbitrators; requiring arbitrators to conduct hearings within a specified period; providing an exception; providing arbitration proceeding requirements; creating s. 718.129, F.S.; providing that certain activities constitute fraudulent voting activities related to association elections; providing criminal penalties; amending s. 718.3025, F.S.; prohibiting specified parties from purchasing a unit at a foreclosure sale resulting from the association's foreclosure of association lien for unpaid assessments or from taking a deed in lieu of foreclosures; authorizing a contract with a party providing maintenance or management services to be cancelled by a majority vote of certain unit owners under specified conditions; creating s. 718.3027, F.S.; providing requirements relating to board director and officer conflicts of interest; providing that certain contracts are voidable if they do not meet specified notice requirements and terminate, subject to a certain condition; amending s. 718.303, F.S.; providing requirements relating to the suspension of voting rights of unit owners and members; prohibiting a receiver from exercising the

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

voting rights of a unit owner whose unit is placed in receivership; amending s. 718.5012, F.S.; providing the ombudsman with an additional power; creating s. 718.71, F.S.; providing financial reporting requirements of an association; providing an effective date.

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

Section 1. Subsections (3) and (9), paragraphs (a) and (c) of subsection (12), and subsection (13) of section 718.111, Florida Statutes, are amended, and paragraph (g) is added to subsection (12) of that section, to read:

718.111 The association.—

(3) POWER TO MANAGE CONDOMINIUM PROPERTY AND TO CONTRACT, SUE, AND BE SUED; CONFLICT OF INTEREST.—

(a) The association may contract, sue, or be sued with respect to the exercise or nonexercise of its powers. For these purposes, the powers of the association include, but are not limited to, the maintenance, management, and operation of the condominium property. After control of the association is obtained by unit owners other than the developer, the association may institute, maintain, settle, or appeal actions or hearings in its name on behalf of all unit owners concerning matters of common interest to most or all unit owners, including, but not limited to, the common elements; the roof and structural components of a building or other improvements; mechanical, electrical, and plumbing elements serving an improvement or a building; representations of the developer

pertaining to any existing or proposed commonly used facilities; and protesting ad valorem taxes on commonly used facilities and on units; and may defend actions in eminent domain or bring inverse condemnation actions. If the association has the authority to maintain a class action, the association may be joined in an action as representative of that class with reference to litigation and disputes involving the matters for which the association could bring a class action. Nothing herein limits any statutory or common-law right of any individual unit owner or class of unit owners to bring any action without participation by the association which may otherwise be available.

(b) An association may not hire an attorney that represents the management company of the association.

(9) PURCHASE OF UNITS.—The association has the power, unless prohibited by the declaration, articles of incorporation, or bylaws of the association, to purchase units in the condominium and to acquire and hold, lease, mortgage, and convey them. There shall be no limitation on the association's right to purchase a unit at a foreclosure sale resulting from the association's foreclosure of its lien for unpaid assessments, or to take title by deed in lieu of foreclosure. However, except for a timeshare condominium, a board member, manager, or management company may not purchase a unit at a foreclosure sale resulting from the association's foreclosure of its lien for unpaid assessments or take title by deed in lieu of foreclosure.

(12) OFFICIAL RECORDS.—

(a) From the inception of the association, the association shall maintain each of the following items, if applicable, which

constitutes the official records of the association:

1. A copy of the plans, permits, warranties, and other items provided by the developer pursuant to s. 718.301(4).

2. A photocopy of the recorded declaration of condominium of each condominium operated by the association and each amendment to each declaration.

3. A photocopy of the recorded bylaws of the association and each amendment to the bylaws.

4. A certified copy of the articles of incorporation of the association, or other documents creating the association, and each amendment thereto.

5. A copy of the current rules of the association.

6. A book or books that contain the minutes of all meetings of the association, the board of administration, and the unit owners, which minutes must be retained for at least 7 years.

7. A current roster of all unit owners and their mailing addresses, unit identifications, voting certifications, and, if known, telephone numbers. The association shall also maintain the electronic mailing addresses and facsimile numbers of unit owners consenting to receive notice by electronic transmission. The electronic mailing addresses and facsimile numbers are not accessible to unit owners if consent to receive notice by electronic transmission is not provided in accordance with sub-subparagraph (c)5.e. ~~subparagraph (c)5.~~ However, the association is not liable for an inadvertent disclosure of the electronic mail address or facsimile number for receiving electronic transmission of notices.

8. All current insurance policies of the association and condominiums operated by the association.

9. A current copy of any management agreement, lease, or other contract to which the association is a party or under which the association or the unit owners have an obligation or responsibility.

10. Bills of sale or transfer for all property owned by the association.

11. Accounting records for the association and separate accounting records for each condominium that the association operates. All accounting records must be maintained for at least 7 years. Any person who knowingly or intentionally defaces or destroys such records, or who knowingly or intentionally fails to create or maintain such records, with the intent of causing harm to the association or one or more of its members, is personally subject to a civil penalty pursuant to s. 718.501(1)(d). The accounting records must include, but are not limited to:

a. Accurate, itemized, and detailed records of all receipts and expenditures.

b. A current account and a monthly, bimonthly, or quarterly statement of the account for each unit designating the name of the unit owner, the due date and amount of each assessment, the amount paid on the account, and the balance due.

c. All audits, reviews, accounting statements, and financial reports of the association or condominium.

d. All contracts for work to be performed. Bids for work to be performed are also considered official records and must be maintained by the association.

12. Ballots, sign-in sheets, voting proxies, and all other papers relating to voting by unit owners, which must be

maintained for 1 year from the date of the election, vote, or meeting to which the document relates, notwithstanding paragraph (b).

13. All rental records if the association is acting as agent for the rental of condominium units.

14. A copy of the current question and answer sheet as described in s. 718.504.

15. All other written records of the association not specifically included in the foregoing which are related to the operation of the association.

16. A copy of the inspection report as described in s. 718.301(4)(p).

17. Bids for materials, equipment, or services.

(c)1. The official records of the association are open to inspection by any association member or the authorized representative of such member at all reasonable times. The right to inspect the records includes the right to make or obtain copies, at the reasonable expense, if any, of the member or authorized representative of such member. A renter of a unit has a right to inspect and copy the association's bylaws and rules. The association may adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections and copying. The failure of an association to provide the records within 10 working days after receipt of a written request creates a rebuttable presumption that the association willfully failed to comply with this paragraph. A unit owner who is denied access to official records is entitled to the actual damages or minimum damages for the association's willful failure to comply. Minimum damages are $50 per calendar

day for up to 10 days, beginning on the 11th working day after receipt of the written request. The failure to permit inspection entitles any person prevailing in an enforcement action to recover reasonable attorney fees from the person in control of the records who, directly or indirectly, knowingly denied access to the records.

2. Any director or member of the board or association who knowingly, willfully, and repeatedly violates subparagraph 1. commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. For purposes of this subparagraph, the term "repeatedly violates" means more than two violations within a 12-month period.

3. Any person who knowingly or intentionally defaces or destroys accounting records that are required by this chapter to be maintained during the period for which such records are required to be maintained, or who knowingly or intentionally fails to create or maintain accounting records that are required to be created or maintained, with the intent of causing harm to the association or one or more of its members, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

4. Any person who willfully and knowingly refuses to release or otherwise produce association records with the intent of facilitating the commission of a crime or avoiding or escaping detection, arrest, trial, or punishment for a crime commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084 ~~is personally subject to a civil penalty pursuant to s. 718.501(1)(d)~~.

5. The association shall maintain an adequate number of

copies of the declaration, articles of incorporation, bylaws, and rules, and all amendments to each of the foregoing, as well as the question and answer sheet as described in s. 718.504 and year-end financial information required under this section, on the condominium property to ensure their availability to unit owners and prospective purchasers, and may charge its actual costs for preparing and furnishing these documents to those requesting the documents. An association shall allow a member or his or her authorized representative to use a portable device, including a smartphone, tablet, portable scanner, or any other technology capable of scanning or taking photographs, to make an electronic copy of the official records in lieu of the association's providing the member or his or her authorized representative with a copy of such records. The association may not charge a member or his or her authorized representative for the use of a portable device. Notwithstanding this paragraph, the following records are not accessible to unit owners:

a.~~1.~~ Any record protected by the lawyer-client privilege as described in s. 90.502 and any record protected by the work-product privilege, including a record prepared by an association attorney or prepared at the attorney's express direction, which reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the association, and which was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings, or which was prepared in anticipation of such litigation or proceedings until the conclusion of the litigation or proceedings.

b.~~2.~~ Information obtained by an association in connection with the approval of the lease, sale, or other transfer of a

unit.

c.~~3.~~ Personnel records of association or management company employees, including, but not limited to, disciplinary, payroll, health, and insurance records. For purposes of this sub-subparagraph ~~subparagraph~~, the term "personnel records" does not include written employment agreements with an association employee or management company, or budgetary or financial records that indicate the compensation paid to an association employee.

d.~~4.~~ Medical records of unit owners.

e.~~5.~~ Social security numbers, driver license numbers, credit card numbers, e-mail addresses, telephone numbers, facsimile numbers, emergency contact information, addresses of a unit owner other than as provided to fulfill the association's notice requirements, and other personal identifying information of any person, excluding the person's name, unit designation, mailing address, property address, and any address, e-mail address, or facsimile number provided to the association to fulfill the association's notice requirements. Notwithstanding the restrictions in this sub-subparagraph ~~subparagraph~~, an association may print and distribute to parcel owners a directory containing the name, parcel address, and all telephone numbers of each parcel owner. However, an owner may exclude his or her telephone numbers from the directory by so requesting in writing to the association. An owner may consent in writing to the disclosure of other contact information described in this sub-subparagraph ~~subparagraph~~. The association is not liable for the inadvertent disclosure of information that is protected under this sub-subparagraph ~~subparagraph~~ if the information is

included in an official record of the association and is voluntarily provided by an owner and not requested by the association.

f.~~6.~~ Electronic security measures that are used by the association to safeguard data, including passwords.

g.~~7.~~ The software and operating system used by the association which allow the manipulation of data, even if the owner owns a copy of the same software used by the association. The data is part of the official records of the association.

(g)1. By October 1, 2017, an association with 500 or more units which does not manage timeshare units shall post digital copies of the documents specified in subparagraph 2. on its website.

a. The association's website must be:

(I) An independent website or web portal wholly owned and operated by the association; or

(II) A website or web portal operated by a third-party provider with whom the association owns, leases, rents, or otherwise obtains the right to operate a web page, subpage, web portal, or collection of subpages or web portals dedicated to the association's activities and on which required notices, records, and documents may be posted by the association.

b. The association's website must be accessible through the Internet and must contain a subpage, web portal, or other protected electronic location that is inaccessible to the general public and accessible only to unit owners and employees of the association.

c. Upon a unit owner's written request, the association must provide the unit owner with a username and password and

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access to the protected sections of the association's website that contain any notices, records, or documents that must be electronically provided.

2. A current copy of the following documents must be posted in digital format on the association's website:

a. The recorded declaration of condominium of each condominium operated by the association and each amendment to each declaration.

b. The recorded bylaws of the association and each amendment to the bylaws.

c. The articles of incorporation of the association, or other documents creating the association, and each amendment thereto. The copy posted pursuant to this sub-subparagraph must be a copy of the articles of incorporation filed with the Department of State.

d. The rules of the association.

e. Any management agreement, lease, or other contract to which the association is a party or under which the association or the unit owners have an obligation or responsibility. Summaries of bids for materials, equipment, or services must be maintained on the website for 1 year.

f. The annual budget required by s. 718.112(2)(f) and any proposed budget to be considered at the annual meeting.

g. The financial report required by subsection (13) and any proposed financial report to be considered at a meeting.

h. The certification of each director required by s. 718.112(2)(d)4.b.

i. All contracts or transactions between the association and any director, officer, corporation, firm, or association

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that is not an affiliated condominium association or any other entity in which an association director is also a director or officer and financially interested.

j. Any contract or document regarding a conflict of interest or possible conflict of interest as provided in ss. 468.436(2) and 718.3026(3).

k. The notice of any unit owner meeting and the agenda for the meeting, as required by s. 718.112(2)(d)3., no later than 14 days before the meeting. The notice must be posted in plain view on the front page of the website, or on a separate subpage of the website labeled "Notices" which is conspicuously visible and linked from the front page. The association must also post on its website any document to be considered and voted on by the owners during the meeting or any document listed on the agenda at least 7 days before the meeting at which the document or the information within the document will be considered.

l. Notice of any board meeting, and the agenda and any other document required for the meeting as required by s. 718.112(2)(c), which must be posted no later than the date required for notice pursuant to s. 718.112(2)(c).

3. The association shall ensure that the information and records described in paragraph (c), which are not permitted to be accessible to unit owners, are not posted on the association's website. If protected information or information restricted from being accessible to unit owners is included in documents that are required to be posted on the association's website, the association shall ensure the information is redacted before posting the documents online.

(13) FINANCIAL REPORTING.—Within 90 days after the end of

the fiscal year, or annually on a date provided in the bylaws, the association shall prepare and complete, or contract for the preparation and completion of, a financial report for the preceding fiscal year. Within 21 days after the final financial report is completed by the association or received from the third party, but not later than 120 days after the end of the fiscal year or other date as provided in the bylaws, the association shall mail to each unit owner at the address last furnished to the association by the unit owner, or hand deliver to each unit owner, a copy of the most recent financial report or a notice that a copy of the most recent financial report will be mailed or hand delivered to the unit owner, without charge, within 5 business days after ~~upon~~ receipt of a written request from the unit owner. The division shall adopt rules setting forth uniform accounting principles and standards to be used by all associations and addressing the financial reporting requirements for multicondominium associations. The rules must include, but not be limited to, standards for presenting a summary of association reserves, including a good faith estimate disclosing the annual amount of reserve funds that would be necessary for the association to fully fund reserves for each reserve item based on the straight-line accounting method. This disclosure is not applicable to reserves funded via the pooling method. In adopting such rules, the division shall consider the number of members and annual revenues of an association. Financial reports shall be prepared as follows:

(a) An association that meets the criteria of this paragraph shall prepare a complete set of financial statements in accordance with generally accepted accounting principles. The

financial statements must be based upon the association's total annual revenues, as follows:

1. An association with total annual revenues of $150,000 or more, but less than $300,000, shall prepare compiled financial statements.

2. An association with total annual revenues of at least $300,000, but less than $500,000, shall prepare reviewed financial statements.

3. An association with total annual revenues of $500,000 or more shall prepare audited financial statements.

(b)1. An association with total annual revenues of less than $150,000 shall prepare a report of cash receipts and expenditures.

2. An association that operates fewer than 50 units, regardless of the association's annual revenues, shall prepare a report of cash receipts and expenditures in lieu of financial statements required by paragraph (a).

3. A report of cash receipts and disbursements must disclose the amount of receipts by accounts and receipt classifications and the amount of expenses by accounts and expense classifications, including, but not limited to, the following, as applicable: costs for security, professional and management fees and expenses, taxes, costs for recreation facilities, expenses for refuse collection and utility services, expenses for lawn care, costs for building maintenance and repair, insurance costs, administration and salary expenses, and reserves accumulated and expended for capital expenditures, deferred maintenance, and any other category for which the association maintains reserves.

(c) An association may prepare, without a meeting of or approval by the unit owners:

1. Compiled, reviewed, or audited financial statements, if the association is required to prepare a report of cash receipts and expenditures;

2. Reviewed or audited financial statements, if the association is required to prepare compiled financial statements; or

3. Audited financial statements if the association is required to prepare reviewed financial statements.

(d) If approved by a majority of the voting interests present at a properly called meeting of the association, an association may prepare:

1. A report of cash receipts and expenditures in lieu of a compiled, reviewed, or audited financial statement;

2. A report of cash receipts and expenditures or a compiled financial statement in lieu of a reviewed or audited financial statement; or

3. A report of cash receipts and expenditures, a compiled financial statement, or a reviewed financial statement in lieu of an audited financial statement.

Such meeting and approval must occur before the end of the fiscal year and is effective only for the fiscal year in which the vote is taken, except that the approval may also be effective for the following fiscal year. If the developer has not turned over control of the association, all unit owners, including the developer, may vote on issues related to the preparation of the association's financial reports, from the

date of incorporation of the association through the end of the second fiscal year after the fiscal year in which the certificate of a surveyor and mapper is recorded pursuant to s. 718.104(4)(e) or an instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit is recorded, whichever occurs first. Thereafter, all unit owners except the developer may vote on such issues until control is turned over to the association by the developer. Any audit or review prepared under this section shall be paid for by the developer if done before turnover of control of the association. An association may not waive the financial reporting requirements of this section for more than 3 consecutive years.

(e) If the division determines that an association has not mailed or hand delivered to the unit owner a copy of the most recent financial report within 5 business days after receipt of a written request from the unit owner, the unit owner may give notice to the division of the association's failure to comply. Upon notification, the division shall give notice to the association that the association must mail or hand deliver the copy of the most recent financial report to the unit owner and the division within 5 business days after such notice. Any association that fails to comply with the division's request may not waive the financial reporting requirement provided in paragraph (d). A financial report received by the division pursuant to this paragraph shall be maintained, and the division shall provide a copy of such report to an association member upon his or her request.

Section 2. Paragraphs (d) and (j) of subsection (2) of section 718.112, Florida Statutes, are amended, and paragraph (p) is added to that subsection, to read:

718.112 Bylaws.—

(2) REQUIRED PROVISIONS.—The bylaws shall provide for the following and, if they do not do so, shall be deemed to include the following:

(d) *Unit owner meetings.*—

1. An annual meeting of the unit owners shall be held at the location provided in the association bylaws and, if the bylaws are silent as to the location, the meeting shall be held within 45 miles of the condominium property. However, such distance requirement does not apply to an association governing a timeshare condominium.

2. Unless the bylaws provide otherwise, a vacancy on the board caused by the expiration of a director's term shall be filled by electing a new board member, and the election must be by secret ballot. An election is not required if the number of vacancies equals or exceeds the number of candidates. For purposes of this paragraph, the term "candidate" means an eligible person who has timely submitted the written notice, as described in sub-subparagraph 4.a., of his or her intention to become a candidate. Except in a timeshare or nonresidential condominium, or if the staggered term of a board member does not expire until a later annual meeting, or if all members' terms would otherwise expire but there are no candidates, the terms of all board members expire at the annual meeting, and such members may stand for reelection unless prohibited by the bylaws. ~~If the bylaws or articles of incorporation permit terms of no more than~~

~~2 years, the association~~ Board members may serve 2-year terms if permitted by the bylaws or articles of incorporation. A board member may not serve more than four consecutive 2-year terms, unless approved by an affirmative vote of two-thirds of the total voting interests of the association. If the number of board members whose terms expire at the annual meeting equals or exceeds the number of candidates, the candidates become members of the board effective upon the adjournment of the annual meeting. Unless the bylaws provide otherwise, any remaining vacancies shall be filled by the affirmative vote of the majority of the directors making up the newly constituted board even if the directors constitute less than a quorum or there is only one director. In a residential condominium association of more than 10 units or in a residential condominium association that does not include timeshare units or timeshare interests, coowners of a unit may not serve as members of the board of directors at the same time unless they own more than one unit or unless there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy. A unit owner in a residential condominium desiring to be a candidate for board membership must comply with sub-subparagraph 4.a. and must be eligible to be a candidate to serve on the board of directors at the time of the deadline for submitting a notice of intent to run in order to have his or her name listed as a proper candidate on the ballot or to serve on the board. A person who has been suspended or removed by the division under this chapter, or who is delinquent in the payment of any monetary obligation due to the association, is not eligible to be a candidate for board membership and may not be listed on the

ballot. A person who has been convicted of any felony in this state or in a United States District or Territorial Court, or who has been convicted of any offense in another jurisdiction which would be considered a felony if committed in this state, is not eligible for board membership unless such felon's civil rights have been restored for at least 5 years as of the date such person seeks election to the board. The validity of an action by the board is not affected if it is later determined that a board member is ineligible for board membership due to having been convicted of a felony. This subparagraph does not limit the term of a member of the board of a nonresidential condominium.

3. The bylaws must provide the method of calling meetings of unit owners, including annual meetings. Written notice must include an agenda, must be mailed, hand delivered, or electronically transmitted to each unit owner at least 14 days before the annual meeting, and must be posted in a conspicuous place on the condominium property at least 14 continuous days before the annual meeting. Upon notice to the unit owners, the board shall, by duly adopted rule, designate a specific location on the condominium property or association property where all notices of unit owner meetings shall be posted. This requirement does not apply if there is no condominium property or association property for posting notices. In lieu of, or in addition to, the physical posting of meeting notices, the association may, by reasonable rule, adopt a procedure for conspicuously posting and repeatedly broadcasting the notice and the agenda on a closed-circuit cable television system serving the condominium association. However, if broadcast notice is

used in lieu of a notice posted physically on the condominium property, the notice and agenda must be broadcast at least four times every broadcast hour of each day that a posted notice is otherwise required under this section. If broadcast notice is provided, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda. Unless a unit owner waives in writing the right to receive notice of the annual meeting, such notice must be hand delivered, mailed, or electronically transmitted to each unit owner. Notice for meetings and notice for all other purposes must be mailed to each unit owner at the address last furnished to the association by the unit owner, or hand delivered to each unit owner. However, if a unit is owned by more than one person, the association must provide notice to the address that the developer identifies for that purpose and thereafter as one or more of the owners of the unit advise the association in writing, or if no address is given or the owners of the unit do not agree, to the address provided on the deed of record. An officer of the association, or the manager or other person providing notice of the association meeting, must provide an affidavit or United States Postal Service certificate of mailing, to be included in the official records of the association affirming that the notice was mailed or hand delivered in accordance with this provision.

4. The members of the board of a residential condominium shall be elected by written ballot or voting machine. Proxies may not be used in electing the board in general elections or

elections to fill vacancies caused by recall, resignation, or otherwise, unless otherwise provided in this chapter. This subparagraph does not apply to an association governing a timeshare condominium.

a. At least 60 days before a scheduled election, the association shall mail, deliver, or electronically transmit, by separate association mailing or included in another association mailing, delivery, or transmission, including regularly published newsletters, to each unit owner entitled to a vote, a first notice of the date of the election. A unit owner or other eligible person desiring to be a candidate for the board must give written notice of his or her intent to be a candidate to the association at least 40 days before a scheduled election. Together with the written notice and agenda as set forth in subparagraph 3., the association shall mail, deliver, or electronically transmit a second notice of the election to all unit owners entitled to vote, together with a ballot that lists all candidates. Upon request of a candidate, an information sheet, no larger than 8 1/2 inches by 11 inches, which must be furnished by the candidate at least 35 days before the election, must be included with the mailing, delivery, or transmission of the ballot, with the costs of mailing, delivery, or electronic transmission and copying to be borne by the association. The association is not liable for the contents of the information sheets prepared by the candidates. In order to reduce costs, the association may print or duplicate the information sheets on both sides of the paper. The division shall by rule establish voting procedures consistent with this sub-subparagraph, including rules establishing procedures for giving notice by

electronic transmission and rules providing for the secrecy of ballots. Elections shall be decided by a plurality of ballots cast. There is no quorum requirement; however, at least 20 percent of the eligible voters must cast a ballot in order to have a valid election. A unit owner may not permit any other person to vote his or her ballot, and any ballots improperly cast are invalid. A unit owner who violates this provision may be fined by the association in accordance with s. 718.303. A unit owner who needs assistance in casting the ballot for the reasons stated in s. 101.051 may obtain such assistance. The regular election must occur on the date of the annual meeting. Notwithstanding this sub-subparagraph, an election is not required unless more candidates file notices of intent to run or are nominated than board vacancies exist.

b. Within 90 days after being elected or appointed to the board of an association of a residential condominium, each newly elected or appointed director shall certify in writing to the secretary of the association that he or she has read the association's declaration of condominium, articles of incorporation, bylaws, and current written policies; that he or she will work to uphold such documents and policies to the best of his or her ability; and that he or she will faithfully discharge his or her fiduciary responsibility to the association's members. In lieu of this written certification, within 90 days after being elected or appointed to the board, the newly elected or appointed director may submit a certificate of having satisfactorily completed the educational curriculum administered by a division-approved condominium education provider within 1 year before or 90 days after the date of

election or appointment. The written certification or educational certificate is valid and does not have to be resubmitted as long as the director serves on the board without interruption. A director of an association of a residential condominium who fails to timely file the written certification or educational certificate is suspended from service on the board until he or she complies with this sub-subparagraph. The board may temporarily fill the vacancy during the period of suspension. The secretary shall cause the association to retain a director's written certification or educational certificate for inspection by the members for 5 years after a director's election or the duration of the director's uninterrupted tenure, whichever is longer. Failure to have such written certification or educational certificate on file does not affect the validity of any board action.

c. Any challenge to the election process must be commenced within 60 days after the election results are announced.

5. Any approval by unit owners called for by this chapter or the applicable declaration or bylaws, including, but not limited to, the approval requirement in s. 718.111(8), must be made at a duly noticed meeting of unit owners and is subject to all requirements of this chapter or the applicable condominium documents relating to unit owner decisionmaking, except that unit owners may take action by written agreement, without meetings, on matters for which action by written agreement without meetings is expressly allowed by the applicable bylaws or declaration or any law that provides for such action.

6. Unit owners may waive notice of specific meetings if allowed by the applicable bylaws or declaration or any law.

Notice of meetings of the board of administration, unit owner meetings, except unit owner meetings called to recall board members under paragraph (j), and committee meetings may be given by electronic transmission to unit owners who consent to receive notice by electronic transmission.

7. Unit owners have the right to participate in meetings of unit owners with reference to all designated agenda items. However, the association may adopt reasonable rules governing the frequency, duration, and manner of unit owner participation.

8. A unit owner may tape record or videotape a meeting of the unit owners subject to reasonable rules adopted by the division.

9. Unless otherwise provided in the bylaws, any vacancy occurring on the board before the expiration of a term may be filled by the affirmative vote of the majority of the remaining directors, even if the remaining directors constitute less than a quorum, or by the sole remaining director. In the alternative, a board may hold an election to fill the vacancy, in which case the election procedures must conform to sub-subparagraph 4.a. unless the association governs 10 units or fewer and has opted out of the statutory election process, in which case the bylaws of the association control. Unless otherwise provided in the bylaws, a board member appointed or elected under this section shall fill the vacancy for the unexpired term of the seat being filled. Filling vacancies created by recall is governed by paragraph (j) and rules adopted by the division.

10. This chapter does not limit the use of general or limited proxies, require the use of general or limited proxies, or require the use of a written ballot or voting machine for any

agenda item or election at any meeting of a timeshare condominium association or nonresidential condominium association.

Notwithstanding subparagraph (b)2. and sub-subparagraph 4.a., an association of 10 or fewer units may, by affirmative vote of a majority of the total voting interests, provide for different voting and election procedures in its bylaws, which may be by a proxy specifically delineating the different voting and election procedures. The different voting and election procedures may provide for elections to be conducted by limited or general proxy.

(j) *Recall of board members.*—Subject to s. 718.301, any member of the board of administration may be recalled and removed from office with or without cause by the vote or agreement in writing by a majority of all the voting interests. A special meeting of the unit owners to recall a member or members of the board of administration may be called by 10 percent of the voting interests giving notice of the meeting as required for a meeting of unit owners, and the notice shall state the purpose of the meeting. Electronic transmission may not be used as a method of giving notice of a meeting called in whole or in part for this purpose.

1. If the recall is approved by a majority of all voting interests by a vote at a meeting, the recall will be effective as provided in this paragraph. The board shall duly notice and hold a board meeting within 5 full business days after the adjournment of the unit owner meeting to recall one or more board members. ~~At the meeting, the board shall either certify~~

~~the recall, in which case~~ Such member or members shall be recalled effective immediately and shall turn over to the board within 10 ~~5~~ full business days after the vote any and all records and property of the association in their possession~~, or shall proceed as set forth in subparagraph 3~~.

2. If the proposed recall is by an agreement in writing by a majority of all voting interests, the agreement in writing or a copy thereof shall be served on the association by certified mail or by personal service in the manner authorized by chapter 48 and the Florida Rules of Civil Procedure. The board of administration shall duly notice and hold a meeting of the board within 5 full business days after receipt of the agreement in writing. ~~At the meeting, the board shall either certify the written agreement to recall a member or members of the board, in which case such member or members shall be recalled effective immediately and shall turn over to the board within 5 full business days any and all records and property of the association in their possession, or proceed as described in subparagraph 3.~~

~~3. If the board determines not to certify the written agreement to recall a member or members of the board, or does not certify the recall by a vote at a meeting, The board shall, within 5 full business days after the meeting, file with the division a petition for arbitration pursuant to the procedures in s. 718.1255. For the purposes of this section, the unit owners who voted at the meeting or who executed the agreement in writing shall constitute one party under the petition for arbitration. If the arbitrator certifies the recall as to any member or members of the board, the recall will be effective~~

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~~upon mailing of the final order of arbitration to the association. If the association fails to comply with the order of the arbitrator, the division may take action pursuant to s. 718.501. Any member or members so recalled shall deliver to the board any and all records of the association in their possession within 5 full business days after the effective date of the recall.~~

3.~~4.~~ If the board fails to duly notice and hold a board meeting within 5 full business days after service of an agreement in writing or within 5 full business days after the adjournment of the unit owner recall meeting, the recall shall be deemed effective and the board members so recalled shall ~~immediately~~ turn over to the board within 10 full business days after the vote any and all records and property of the association.

4.~~5.~~ If the board fails to duly notice and hold the required meeting or fails to file the required petition, the unit owner representative may file a petition pursuant to s. 718.1255 challenging the board's failure to act. The petition must be filed within 60 days after the expiration of the applicable 5-full-business-day period. The review of a petition under this subparagraph is limited to the sufficiency of service on the board and the facial validity of the written agreement or ballots filed.

5.~~6.~~ If a vacancy occurs on the board as a result of a recall or removal and less than a majority of the board members are removed, the vacancy may be filled by the affirmative vote of a majority of the remaining directors, notwithstanding any provision to the contrary contained in this subsection. If

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

vacancies occur on the board as a result of a recall and a majority or more of the board members are removed, the vacancies shall be filled in accordance with procedural rules to be adopted by the division, which rules need not be consistent with this subsection. The rules must provide procedures governing the conduct of the recall election as well as the operation of the association during the period after a recall but before the recall election.

6.~~7.~~ A board member who has been recalled may file a petition pursuant to s. 718.1255 challenging the validity of the recall. The petition must be filed within 60 days after the recall ~~is deemed certified~~. The association and the unit owner representative shall be named as the respondents.

7.~~8.~~ The division may not accept for filing a recall petition, whether filed pursuant to subparagraph 1., subparagraph 2., subparagraph 4. ~~5.~~, or subparagraph 6. ~~7. and regardless of whether the recall was certified,~~ when there are 60 or fewer days until the scheduled reelection of the board member sought to be recalled or when 60 or fewer days have elapsed since the election of the board member sought to be recalled.

(p) *Service providers; conflicts of interest.*—An association that is not a timeshare condominium association may not employ or contract with any service provider that is owned or operated by a board member or with any person who has a financial relationship with a board member or officer.

Section 3. Subsection (4) of section 718.1255, Florida Statutes, is amended to read:

718.1255 Alternative dispute resolution; voluntary

mediation; mandatory nonbinding arbitration; legislative findings.—

(4) MANDATORY NONBINDING ARBITRATION AND MEDIATION OF DISPUTES.—The Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation may ~~shall~~ employ full-time attorneys to act as arbitrators to conduct the arbitration hearings provided by this chapter. The division may also certify attorneys who are not employed by the division to act as arbitrators to conduct the arbitration hearings provided by this chapter ~~section~~. No person may be employed by the department as a full-time arbitrator unless he or she is a member in good standing of The Florida Bar. A person may only be certified by the division to act as an arbitrator if he or she has been a member in good standing of The Florida Bar for at least 5 years and has mediated or arbitrated at least 10 disputes involving condominiums in this state during the 3 years immediately preceding the date of application, mediated or arbitrated at least 30 disputes in any subject area in this state during the 3 years immediately preceding the date of application, or attained board certification in real estate law or condominium and planned development law from The Florida Bar. Arbitrator certification is valid for 1 year. An arbitrator who does not maintain the minimum qualifications for initial certification may not have his or her certification renewed. The department may not enter into a legal services contract for an arbitration hearing under this chapter with an attorney who is not a certified arbitrator unless a certified arbitrator is not available within 50 miles of the dispute. The department shall adopt rules of procedure to

govern such arbitration hearings including mediation incident thereto. The decision of an arbitrator shall be final; however, a decision shall not be deemed final agency action. Nothing in this provision shall be construed to foreclose parties from proceeding in a trial de novo unless the parties have agreed that the arbitration is binding. If judicial proceedings are initiated, the final decision of the arbitrator shall be admissible in evidence in the trial de novo.

(a) Prior to the institution of court litigation, a party to a dispute shall petition the division for nonbinding arbitration. The petition must be accompanied by a filing fee in the amount of $50. Filing fees collected under this section must be used to defray the expenses of the alternative dispute resolution program.

(b) The petition must recite, and have attached thereto, supporting proof that the petitioner gave the respondents:

1. Advance written notice of the specific nature of the dispute;

2. A demand for relief, and a reasonable opportunity to comply or to provide the relief; and

3. Notice of the intention to file an arbitration petition or other legal action in the absence of a resolution of the dispute.

Failure to include the allegations or proof of compliance with these prerequisites requires dismissal of the petition without prejudice.

(c) Upon receipt, the petition shall be promptly reviewed by the division to determine the existence of a dispute and

compliance with the requirements of paragraphs (a) and (b). If emergency relief is required and is not available through arbitration, a motion to stay the arbitration may be filed. The motion must be accompanied by a verified petition alleging facts that, if proven, would support entry of a temporary injunction, and if an appropriate motion and supporting papers are filed, the division may abate the arbitration pending a court hearing and disposition of a motion for temporary injunction.

(d) Upon determination by the division that a dispute exists and that the petition substantially meets the requirements of paragraphs (a) and (b) and any other applicable rules, the division shall assign or enter into a contract with an arbitrator and serve a copy of the petition ~~shall be served by the division~~ upon all respondents. The arbitrator shall conduct a hearing within 30 days after being assigned or entering into a contract unless the petition is withdrawn or a continuance is granted for good cause shown.

(e) Before or after the filing of the respondents' answer to the petition, any party may request that the arbitrator refer the case to mediation under this section and any rules adopted by the division. Upon receipt of a request for mediation, the division shall promptly contact the parties to determine if there is agreement that mediation would be appropriate. If all parties agree, the dispute must be referred to mediation. Notwithstanding a lack of an agreement by all parties, the arbitrator may refer a dispute to mediation at any time.

(f) Upon referral of a case to mediation, the parties must select a mutually acceptable mediator. To assist in the selection, the arbitrator shall provide the parties with a list

of both volunteer and paid mediators that have been certified by the division under s. 718.501. If the parties are unable to agree on a mediator within the time allowed by the arbitrator, the arbitrator shall appoint a mediator from the list of certified mediators. If a case is referred to mediation, the parties shall attend a mediation conference, as scheduled by the parties and the mediator. If any party fails to attend a duly noticed mediation conference, without the permission or approval of the arbitrator or mediator, the arbitrator must impose sanctions against the party, including the striking of any pleadings filed, the entry of an order of dismissal or default if appropriate, and the award of costs and attorney ~~attorneys'~~ fees incurred by the other parties. Unless otherwise agreed to by the parties or as provided by order of the arbitrator, a party is deemed to have appeared at a mediation conference by the physical presence of the party or its representative having full authority to settle without further consultation, provided that an association may comply by having one or more representatives present with full authority to negotiate a settlement and recommend that the board of administration ratify and approve such a settlement within 5 days from the date of the mediation conference. The parties shall share equally the expense of mediation, unless they agree otherwise.

(g) The purpose of mediation as provided for by this section is to present the parties with an opportunity to resolve the underlying dispute in good faith, and with a minimum expenditure of time and resources.

(h) Mediation proceedings must generally be conducted in accordance with the Florida Rules of Civil Procedure, and these

proceedings are privileged and confidential to the same extent as court-ordered mediation. Persons who are not parties to the dispute are not allowed to attend the mediation conference without the consent of all parties, with the exception of counsel for the parties and corporate representatives designated to appear for a party. If the mediator declares an impasse after a mediation conference has been held, the arbitration proceeding terminates, unless all parties agree in writing to continue the arbitration proceeding, in which case the arbitrator's decision shall be binding or nonbinding, as agreed upon by the parties; in the arbitration proceeding, the arbitrator shall not consider any evidence relating to the unsuccessful mediation except in a proceeding to impose sanctions for failure to appear at the mediation conference. If the parties do not agree to continue arbitration, the arbitrator shall enter an order of dismissal, and either party may institute a suit in a court of competent jurisdiction. The parties may seek to recover any costs and attorney ~~attorneys'~~ fees incurred in connection with arbitration and mediation proceedings under this section as part of the costs and fees that may be recovered by the prevailing party in any subsequent litigation.

(i) Arbitration shall be conducted according to rules adopted by the division. The filing of a petition for arbitration shall toll the applicable statute of limitations.

(j) At the request of any party to the arbitration, the arbitrator shall issue subpoenas for the attendance of witnesses and the production of books, records, documents, and other evidence and any party on whose behalf a subpoena is issued may apply to the court for orders compelling such attendance and

production. Subpoenas shall be served and shall be enforceable in the manner provided by the Florida Rules of Civil Procedure. Discovery may, in the discretion of the arbitrator, be permitted in the manner provided by the Florida Rules of Civil Procedure. Rules adopted by the division may authorize any reasonable sanctions except contempt for a violation of the arbitration procedural rules of the division or for the failure of a party to comply with a reasonable nonfinal order issued by an arbitrator which is not under judicial review.

(k) The arbitration decision shall be rendered within 30 days after the hearing and presented to the parties in writing. An arbitration decision is final in those disputes in which the parties have agreed to be bound. An arbitration decision is also final if a complaint for a trial de novo is not filed in a court of competent jurisdiction in which the condominium is located within 30 days. The right to file for a trial de novo entitles the parties to file a complaint in the appropriate trial court for a judicial resolution of the dispute. The prevailing party in an arbitration proceeding shall be awarded the costs of the arbitration and reasonable attorney ~~attorney's~~ fees in an amount determined by the arbitrator. Such an award shall include the costs and reasonable attorney ~~attorney's~~ fees incurred in the arbitration proceeding as well as the costs and reasonable attorney ~~attorney's~~ fees incurred in preparing for and attending any scheduled mediation. An arbitrator's failure to render a written decision within 30 days after the hearing may result in the cancellation of his or her arbitration certification.

(l) The party who files a complaint for a trial de novo shall be assessed the other party's arbitration costs, court

costs, and other reasonable costs, including attorney ~~attorney's~~ fees, investigation expenses, and expenses for expert or other testimony or evidence incurred after the arbitration hearing if the judgment upon the trial de novo is not more favorable than the arbitration decision. If the judgment is more favorable, the party who filed a complaint for trial de novo shall be awarded reasonable court costs and attorney ~~attorney's~~ fees.

(m) Any party to an arbitration proceeding may enforce an arbitration award by filing a petition in a court of competent jurisdiction in which the condominium is located. A petition may not be granted unless the time for appeal by the filing of a complaint for trial de novo has expired. If a complaint for a trial de novo has been filed, a petition may not be granted with respect to an arbitration award that has been stayed. If the petition for enforcement is granted, the petitioner shall recover reasonable attorney ~~attorney's~~ fees and costs incurred in enforcing the arbitration award. A mediation settlement may also be enforced through the county or circuit court, as applicable, and any costs and fees incurred in the enforcement of a settlement agreement reached at mediation must be awarded to the prevailing party in any enforcement action.

Section 4. Section 718.129, Florida Statutes, is created to read:

718.129 Fraudulent voting activities related to association elections; penalties.—The following acts constitute fraudulent voting activities related to association elections:

(1) A person who willfully, knowingly, and falsely swears or affirms to an oath or affirmation, or procures another person to willfully, knowingly, and falsely swear or affirm to an oath

or affirmation, in connection with or arising out of voting or casting a ballot in an association election commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) A person who willfully and knowingly perpetrates or attempts to perpetrate, or willfully and knowingly aids another person in perpetrating or attempting to perpetrate, fraud in connection with or arising out of a vote or ballot cast, to be cast, or attempted to be cast by an elector in an association election commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) A person who willfully, knowingly, and fraudulently changes or attempts to change a vote or ballot cast, to be cast, or attempted to be cast by an elector in an association election to prevent such elector from voting or casting a ballot as he or she intended in such election commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4)(a) A person who willfully and knowingly aids or advises another person in committing a violation of this section shall be punished as if he or she had committed the violation.

(b) A person who willfully and knowingly agrees, conspires, combines, or confederates with another person in committing a violation of this section shall be punished as if he or she had committed the violation.

(c) A person who willfully and knowingly aids or advises a person who has committed a violation of this section in avoiding or escaping detection, arrest, trial, or punishment shall be punished as if he or she had committed the violation. This

paragraph does not prohibit a member of The Florida Bar from giving legal advice to a client.

Section 5. Subsection (5) is added to section 718.3025, Florida Statutes, to read:

718.3025 Agreements for operation, maintenance, or management of condominiums; specific requirements.—

(5) A party contracting to provide maintenance or management services to an association managing a residential condominium after transfer of control of the association, as provided in s. 718.301, which is not a timeshare condominium association, or an officer or board member of such party, may not purchase a unit at a foreclosure sale resulting from the association's foreclosure of association lien for unpaid assessments or take a deed in lieu of foreclosure. If 50 percent or more of the units in the condominium are owned by a party contracting to provide maintenance or management services to an association managing a residential condominium after transfer of control of the association, as provided in s. 718.301, which is not a timeshare condominium association, or by an officer or board member of such party, the contract with the party providing maintenance or management services may be cancelled by a majority vote of the unit owners other than the contracting party or an officer or board member of such party.

Section 6. Section 718.3027, Florida Statutes, is created to read:

718.3027 Conflicts of interest.—

(1) Directors and officers of a board of an association that is not a timeshare condominium association, and the relatives of such directors and officers, must disclose to the

board any activity that may reasonably be construed to be a conflict of interest. A rebuttable presumption of a conflict of interest exists if any of the following occurs without prior notice, as required in subsection (4):

(a) Any director, officer, or relative of any director or officer enters into a contract for goods or services with the association.

(b) Any director, officer, or relative of any director or officer holds an interest in a corporation, limited liability corporation, partnership, limited liability partnership, or other business entity that conducts business with the association or proposes to enter into a contract or other transaction with the association.

(2) If any director, officer, or relative of any director or officer proposes to engage in an activity that is a conflict of interest, as described in subsection (1), the proposed activity must be listed on, and all contracts and transactional documents related to the proposed activity must be attached to, the meeting agenda. If the board votes against the proposed activity, the director, officer, or relative must notify the board in writing of his or her intention not to pursue the proposed activity, or the director or officer shall withdraw from office. If the board finds that any officer or director has violated this subsection, the officer or director shall be deemed removed from office. The vacancy shall be filled according to general law.

(3) Any director, officer, or relative of any director or officer who is a party to, or has an interest in, an activity that is a possible conflict of interest, as described in

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subsection (1), may attend the meeting at which the activity is considered by the board, and is authorized to make a presentation to the board regarding the activity. After the presentation, the director, officer, or relative must leave the meeting during the discussion of, and the vote on, the activity. Any director or officer who is a party to, or has an interest in, the activity must recuse himself or herself from the vote.

(4) The board must provide notice to unit owners of a possible conflict of interest, as described in subsection (1), in accordance with the procedures in s. 718.112(2)(c). All contracts and transactional documents related to the possible conflict of interest must be attached to, and made available with, the meeting agenda.

(5) Any contract entered into between any director, officer, or relative of any director or officer and the association which has not been properly disclosed as a conflict of interest or potential conflict of interest as required by s. 718.111(12)(g) is voidable and terminates upon the filing of a written notice terminating the contract with the board of directors which contains the consent of at least 20 percent of the voting interests of the association.

Section 7. Subsection (5) of section 718.303, Florida Statutes, is amended, and subsection (8) is added to that section, to read:

718.303 Obligations of owners and occupants; remedies.—

(5) An association may suspend the voting rights of a unit owner or member due to nonpayment of any fee, fine, or other monetary obligation due to the association which is more than $1,000 and more than 90 days delinquent. Proof of such

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

obligation must be provided to the unit owner or member 30 days before such suspension takes effect. A voting interest or consent right allocated to a unit owner or member which has been suspended by the association shall be subtracted from the total number of voting interests in the association, which shall be reduced by the number of suspended voting interests when calculating the total percentage or number of all voting interests available to take or approve any action, and the suspended voting interests shall not be considered for any purpose, including, but not limited to, the percentage or number of voting interests necessary to constitute a quorum, the percentage or number of voting interests required to conduct an election, or the percentage or number of voting interests required to approve an action under this chapter or pursuant to the declaration, articles of incorporation, or bylaws. The suspension ends upon full payment of all obligations currently due or overdue the association. The notice and hearing requirements under subsection (3) do not apply to a suspension imposed under this subsection.

(8) A receiver may not exercise voting rights of any unit owner whose unit is placed in receivership for the benefit of the association pursuant to this chapter.

Section 8. Subsection (5) of section 718.5012, Florida Statutes, is amended to read:

718.5012 Ombudsman; powers and duties.—The ombudsman shall have the powers that are necessary to carry out the duties of his or her office, including the following specific powers:

(5) To monitor and review procedures and disputes concerning condominium elections or meetings, including, but not

limited to, recommending that the division pursue enforcement action in any manner where there is reasonable cause to believe that election misconduct has occurred and reviewing secret ballots cast at a vote of the association.

Section 9. Section 718.71, Florida Statutes, is created to read:

718.71 Financial reporting.—An association shall provide an annual report to the department containing the names of all of the financial institutions with which it maintains accounts, and a copy of such report may be obtained from the department upon written request of any association member.

Section 10. This act shall take effect July 1, 2017.

The Florida Senate

State Senator René García

36th District

Please reply to:

District Office:

1490 West 68 Street
Suite # 201
Hialeah, FL. 33014
Phone# (305) 364-3100

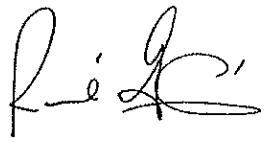
April 5th, 2017

The Honorable Lizbeth Benacquisto
Chair, Committee on Rules
402 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear Senator Benacquisto,

Please have this letter serve as my formal request to have **SB 1682: Condominiums** be heard during the next scheduled Rules Committee Meeting. Should you have any questions or concerns, please do not hesitate to contact my office.

Sincerely,



State Senator René García
District 36

CC: John B. Phelps
Cynthia Futch

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/2017
Meeting Date

1682
Bill Number (if applicable)

902636
Amendment Barcode (if applicable)

Topic Condominiums

Name Melanie Bostick

Job Title Vice President

Address 113 E. College Ave
Street

Tallahassee FL 32301
City *State* *Zip*

Phone (850) 891-1726

Email melanie@libertypartnersfl.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Institute of CPAs

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-25-2017
Meeting Date

1682
Bill Number (if applicable)

421264
Amendment Barcode (if applicable)

Topic Condominiums

Name Peter Dunbar

Job Title

Address 215 S. Monroe - Suite 805
Street

Tallahassee FL 32301
City *State* *Zip*

Phone 999-4100

Email pdunbar@dunbarlaw.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-25-17
Meeting Date

1682
Bill Number (if applicable)

#421264
Amendment Barcode (if applicable)

Topic _____

Name Richard Pinsky

Job Title _____

Address 106 E College Ave
Street

Tallahassee FL
City *State* *Zip*

Phone _____

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Cyber Citizens

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

4-25-17
Meeting Date

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

1682
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name JESS McCARTY

Job Title ASS'T COUNTY ATTORNEY

Address 111 NW 1ST ST 2810
Street
MIAMI FL 33128
City *State* *Zip*

Phone 305-979-7110

Email JESS.MCCARTY@MIAMIDADE.GOV

Speaking: ☐ For ☐ Against ☐ Information

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

Representing MIAMI-DADE COUNTY

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/SB 1678
INTRODUCER:	Transportation Committee and Senator Garcia
SUBJECT:	Motor Vehicle Applicants, Licensees, and Dealers
DATE:	April 24, 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Jones	Miller	TR	**Fav/CS**
2.	Little	McKay	CM	**Favorable**
3.	Jones	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1678 addresses issues related to contracts between licensed motor vehicle manufacturers, distributors, and importers (applicants or licensees), and motor vehicle dealers. The bill:

- Prohibits an applicant or licensee from establishing or enforcing unfair, unreasonable, arbitrary, or inequitable sales or service performance measurements that have an adverse effect on a dealer;
- Provides that a dealer who completes certain sales and service facility alterations are in full compliance with the applicant's or licensee's requirements related to such alterations for the following ten-year period;
- Provides that a dealer who has completed a prior approved facility incentive program, standard, or policy during the ten-year period, who does not comply with the provisions related to a new or revised facility, sign, or image program, is not eligible for the new benefits, but is entitled to all prior benefits plus any increase in benefits between the prior and revised or new programs for the remainder of the ten-year period; and
- Reenacts ss. 320.60-320.70, F.S., to incorporate changes made by the bill.

The bill does not appear to have a significant fiscal impact to state and local government.

The bill takes effect upon becoming law.

II. Present Situation:

Florida has substantially regulated motor vehicle manufacturers and motor vehicle dealers since before 1950.[1] Initially, the Florida Legislature approached the issue by implementing only consumer protections aimed at preventing consumer abuse by dealers.[2] In 1970, the Legislature passed more comprehensive legislation, embodied in ch. 320, F.S.,[3] which regulates, in part, the contractual relationship between manufacturers and dealers,[4] requires the licensing of manufacturers, and regulates numerous aspects of the contracts between the manufacturers and dealers.

Florida Automobile Dealers Act

A manufacturer, factory branch, distributor, or importer (licensee) must be licensed under s. 320.61(1), F.S., to engage in business in Florida. Sections 320.60-320.70, F.S., the "Florida Automobile Dealers Act"[5] (act), primarily regulate the contractual business relationship between dealers and licensees. The act specifies, in part:

- The conditions and situations under which the Department of Highway Safety and Motor Vehicles (DHSMV) may deny, suspend, or revoke a regulated license;
- The process, timing, and notice requirements for licensees who wish to discontinue, cancel, modify, or otherwise replace a franchise agreement with a dealer, and the conditions under which the DHSMV may deny such a request;
- The procedures a licensee must follow to add a dealership in an area already served by a franchised dealer, the protest process, and the DHSMV's role in these circumstances;
- The damages that can be assessed against a licensee who is in violation of Florida Statutes; and
- The DHSMV's authority to adopt rules to implement these sections of law.

Applicability

Section 320.6992, F.S., provides that the act shall apply to all presently existing or future systems of distribution of motor vehicles in Florida, except to the extent that such application would impair valid contractual agreements in violation of the State Constitution or Federal Constitution. Generally, all agreements that are renewed, amended, or entered into subsequent to October 1, 1988, are governed by the act, including amendments to the act, unless the amendment specifically provides otherwise.

In 2009, the DHSMV held in an administrative proceeding that amendments to the act do not apply to dealers whose franchise agreements were signed prior to the effective date of various

[1] Chapter 9157, Laws of Fla. (1923); Chapter 20236, Laws of Fla. (1941).
[2] Walter E. Forehand and John W. Forehand, *Motor Vehicle Dealer and Motor Vehicle Manufacturers: Florida Reacts to Pressures in the Marketplace*, 29 Fla. St. Univ. Law Rev. 1058, 1064 (2002), http://ir.law.fsu.edu/cgi/viewcontent.cgi?article=1632&context=lr (last visited April 13, 2017).
[3] Chapter 70-424, Laws of Fla.
[4] *See* s. 320.60(11), F.S.
[5] Walter E. Forehand, *supra* note 2 at 1065.

amendments to the act.[6] The DHSMV has indicated that it will apply the *Motorsports* holding to every amendment to the act. This may result in different protections accruing to dealers, depending on when they signed their franchise agreements.

Grounds for Denial, Suspension, or Revocation of a License

Section 320.64, F.S., currently includes 40 different subsections listing criteria that may cause the DHSMV to deny, suspend, or revoke the licensee's license. A licensee is prohibited from committing the following acts toward dealers:

- Being unable to carry out contractual obligations with motor vehicle dealers;
- Coercing or attempting to coerce dealers into accepting motor vehicles, parts, or accessories the dealer did not order;
- Coercing the dealer into any agreement with the licensee;
- Threatening to discontinue, cancel, or not renew a franchise agreement with a dealer in violation of s. 320.641, F.S., regarding the process for discontinuing, canceling, nonrenewing, modifying, or replacing franchise agreements;
- Threatening to, or replacing or modifying a franchise agreement in a way that would adversely alter the rights or obligations of the dealer, or which substantially impairs sales, service obligations, or investment of the dealer;
- Attempting to enter or entering into a franchise agreement with a dealer who does not have the proper facilities to provide services necessary to provide for new vehicle warranties;
- Requiring a dealer to make substantial changes to the dealer's sales or services facilities that are not considered reasonable or justified, except when offering, to its same line-make[7] dealers a similar incentive for similar improvements, a written commitment to supply additional vehicles, a loan, or grant money;
- Coercing a dealer to provide installment financing for the dealer's purchasers using a specified financial institution;
- Preventing or refusing to accept the succession to any interest in a franchise agreement by any legal heir or devisee, as long as they meet the licensee's written, reasonable, and uniformly applied minimal standard qualifications for dealer applicants;
- Establishing or implementing a system of vehicle allocation or distribution which alters or reduces allocations or supplies of new motor vehicles to dealers in a way that is unfair, inequitable, unreasonably discriminatory, or not supported by reason and good cause;
- Delaying, refusing, or failing to provide a supply of vehicles by series in reasonable quantities without good and fair cause;
- Threatening to require a dealer to prospectively assent to a release, assignment, novation, waiver, or estoppel intended to relieve any person from liability or obligation under this act;

[6] *See Motorsports of Delray, LLC v. Yamaha Motor Corp., U.S.A.*, Case No. 09-0935 (Fla. DOAH Dec. 9, 2009). The DHSMV ruled that a 2006 amendment to the Florida Automobile Dealers Act does not apply to a dealer terminated in 2008 because the dealer's franchise agreement was entered into prior to the effective date of the amendment. This Final Order was initially appealed but was later voluntarily dismissed. *See also*, *In re Am. Suzuki Motor Corp*., 494 B.R. 466, 480 (Bankr. C.D. Cal. 2013).

[7] Section 320.60(14), F.S., defines "Line-make vehicles" as motor vehicles offered for sale, lease, or distribution under a common name, trademark, service mark, or brand name of the manufacturer of same. However, motor vehicles sold or leased under multiple brand names or marks constitute a single line-make when they are included in a single franchise agreement and every dealer in this state authorized to sell or lease such vehicles has been offered the right to sell or lease the multiple brand names covered by a single franchise agreement.

- Threatening or coercing a dealer toward action whereby the dealer foregoes its right to protest the establishment or relocation of a dealer in the community;
- Refusing to deliver, in reasonable quantities and within a reasonable time, motor vehicles or parts to any dealer who has an agreement for the retail sale of such new vehicles or parts.[8]
- Performing audits on dealers outside of the required time-frames authorized in statute;
- Taking action against a dealer who sold or leased a vehicle that the customer then exported or resold, providing the dealer did not know the customer's intention;
- Making available dealer's confidential financial information without the dealer's consent;
- Failing to reimburse a dealer for the reasonable cost of providing a loaner vehicle, if the dealer is required by the licensee to provide a loaner;
- Offering a dealer a franchise agreement that:
  - Requires the dealer to bring administrative actions, legal actions, arbitration, or mediation in a venue outside of the state; or
  - Requires that a law of another state be applied to legal proceedings between the licensee and dealer;
- Including in any franchise agreement with a dealer, a mandatory obligation of the dealer to purchase, sell, lease, or offer any quantity of used motor vehicles;
- Refusing to sell vehicles to a dealer because the dealer has not purchased, sold, leased, or certified a certain quantity of used vehicles prescribed by the licensee;
- Failing to pay a dealer as required;
- Refusing to allow, limiting, or restricting dealers from acquiring or adding service or sale operations for another line-make of vehicles, without demonstrating justification for such refusal, limit, or restriction;
- Failing or refusing to offer an incentive or benefit, in whole or in part, to all its same line-make dealers, unless the program in this state is reasonably supported by substantially different economic or marketing considerations; and
- Requiring or coercing a dealer to purchase goods or services from a vendor selected by the licensee without making available to the dealer the option to obtain substantially similar goods or services from a vendor chosen by the dealer. This does not include:
  - Materials subject to the licensee's intellectual property rights;
  - Special tools or training required by the licensee;
  - Parts used in repairs under warranty obligations of the licensee;
  - Any goods or services paid for entirely by the licensee; or
  - Any licensee's design or architectural review service.

Procedure for Administrative Hearings and Adjudications

A dealer who is directly and adversely affected by the action or conduct of a licensee that is alleged to be in violation of the act may seek a declaration and adjudication of its rights by either filing a request with the DHSMV for a proceeding and administrative hearing, or filing a written objection or notice of protest with the DHSMV.[9]

[8] Exceptions are provided for acts of God, work stoppage, delays due to a strike or labor difficulty, a freight embargo, product shortage, or other cause, that the licensee cannot control. Additionally, the licensee can reasonably require the dealer to purchase special tools to service such vehicles or service person training related to the vehicle.
[9] Section 320.699(1), F.S.

Hearings are held no sooner than 180 days nor later than 240 days from the date a written objection or notice of protest is filed, unless extended with good cause by the administrative law judge.[10]

Civil Damages

A motor vehicle dealer who can demonstrate that a violation or failure to comply with any of these provisions by an applicant or licensee will or can adversely and pecuniarily affect the dealer may pursue an injunction against the licensee, treble damages, and attorney's fees.[11] The licensee has the burden to prove that such violation did not occur upon a prima facie showing by the person bringing the action.[12]

III. Effect of Proposed Changes:

Section 1 amends s. 320.64, F.S., relating to acts an applicant or licensee is prohibited from committing. A violation is grounds for the DHSMV to deny, suspend, or revoke the license. The bill provides that:

- A dealer who completes any licensee-approved program related to facility construction, improvements, renovations, expansion, remodeling, or alterations or installation of signs or other image elements is in full compliance with the licensee's requirements related to the new, remodeled, improved, renovated, expanded, replaced, or altered facilities, signs, and image elements for a ten-year period following such completion; and
- A dealer who has completed a prior approved facility incentive program, standard, or policy during the ten-year period but does not comply with the provisions related to facility, sign, or image under a revised or new incentive program is not eligible for the revised or new benefits, but is entitled to all prior benefits plus any increase in benefits between the prior program and the revised or new programs during the remainder of the ten-year period.

The bill also prohibits an applicant or licensee from establishing, implementing, or enforcing criteria for measuring sales or service performance of franchised dealers which have a negative material or adverse effect on any dealer and are unfair, unreasonable, arbitrary, or inequitable, or which do not include all applicable local and regional criteria, data, and facts. A licensee, common entity, or affiliate thereof that seeks to establish, implement, or enforce such performance measurements must, upon request of the dealer, describe in writing how the performance measurement criteria were designed, calculated, established, and uniformly applied.

Section 2 reenacts s. 320.6992, F.S., concerning applicability of amendments made to the Florida Automobile Dealers Act.

Section 3 reenacts the remaining sections of the Florida Automobile Dealers Act (ss. 320.60-320.70, F.S.) to incorporate the amendments made by the bill.

Section 4 provides that the bill takes effect upon becoming law.

[10] Section 320.699(2), F.S.
[11] *See* ss. 320.64, 320.694, and 320.697, F.S.
[12] Section 320.697, F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

To the extent the agreements between licensees and dealers change, the parties could experience a positive or negative impact.

C. Government Sector Impact:

The bill does not appear to have a significant fiscal impact on the government sector.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The United States Constitution and the Florida Constitution prohibit the state from passing any law impairing the obligation of contracts.[13] "[T]he first inquiry must be whether the state law has, in fact, operated as a substantial impairment of a contractual relationship. The severity of the impairment measures the height of the hurdle the state legislation must clear."[14] If a law does impair contracts, the courts will assess whether the law is deemed reasonable and necessary to serve an important public purpose.[15] The factors that a court will consider when balancing the impairment of contracts with the public purpose include whether the law:

- Was enacted to deal with a broad, generalized economic or social problem;

[13] U.S. Const. Article I, s. 10; Art. I, s. 10, Fla. Const.
[14] *Pomponio v. Claridge of Pompano Condominium, Inc.*, 378 So. 2d 774, 779 (Fla. 1979) (quoting *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 244-45 (1978)). *See also, General Motors Corp. v. Romein*, 503 U.S. 181 (1992).
[15] *Park Benziger & Co. v. Southern Wine & Spirits, Inc.*, 391 So. 2d 681, 683 (Fla. 1980); *Yellow Cab Co. of Dade County v. Dade County*, 412 So. 2d 395, 397 (Fla. 3d DCA 1982) (citing *United States Trust Co. v. New Jersey*, 431 U.S. 1 (1977)).

- Operates in an area that was already subject to state regulation at the time the parties undertook their contractual obligations, or whether it invades an area never before subject to regulation; and
- Results in a temporary alteration of the contractual relationships of those within its scope, or whether it permanently and immediately changes those contractual relationships, irrevocably and retroactively.[16]

Some state laws regulating contracts between automobile manufacturers and dealers have been found to violate the constitution, while other laws have been upheld as constitutional.[17]

VIII. Statutes Affected:

This bill substantially amends section 320.64 of the Florida Statutes.

This bill reenacts the following sections of the Florida Statutes: 320.60, 320.605, 320.61, 320.615, 320.62, 320.63, 320.6403, 320.6405, 320.641, 320.6412, 320.6415, 320.642, 320.643, 320.644, 320.645, 320.646, 320.664, 320.67, 320.68, 320.69, 320.695, 320.696, 320.697, 320.6975, 320.698, 320.699, 320.69915, 320.6992, and 320.70.

IX. Additional Information:

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

CS by Transportation on April 4, 2017:
The CS removes provisions of the original bill, and reenacts ss. 320.60-320.70, F.S. Specifically, the CS:

- Removes language added to 320.64, F.S., authorizing the DHSMV to deny, suspend, or revoke an applicant or licensee's license for not "acting in good faith or dealing fairly" with franchise dealers;
- Removes the creation of s. 320.648, F.S., prohibiting licensees from committing discriminatory practices against dealers; and
- Removes language added to s. 320.699, F.S., allowing dealers to file with any court of competent jurisdiction when seeking a declaration and adjudication against a licensee.

B. Amendments:

None.

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

[16] *See supra*, note 28; *see also, Vesta Fire Ins. Corp. v. State of Fla.*, 141 F. 3d 1427, 1433 (11th Cir. 1998).
[17] *See Alliance of Auto. Mfrs., Inc. v. Currey*, 984 F. Supp. 2d 32 (D. Conn. 2013) (upholding state law that revised statutory method for calculating reasonable compensation for vehicle warranty work and prohibited manufacturers from recovering any additional cost of the new method from the dealers); *Arapahoe Motors, Inc. v. Gen. Motors Corp.*, No. CIV. A. 99 N 1985, 2001 WL 36400171, at 13 (D. Colo. Mar. 28, 2001) (the retroactive application of state law would be unconstitutional as it would create a new obligation or impose a new duty upon General Motors).

By the Committee on Transportation; and Senator Garcia

596-03406-17 20171678c1

A bill to be entitled

An act relating to motor vehicle applicants, licensees, and dealers; amending s. 320.64, F.S.; providing that a motor vehicle dealer who constructs or alters sales or service facilities in reliance upon a program or incentive offered by an applicant or licensee is deemed to be in compliance with certain requirements for a specified period; specifying eligibility for benefits under a revised or new program, standard, policy, bonus, incentive, rebate, or other benefit; providing construction; authorizing denial, suspension, or revocation of the license of an applicant or licensee who establishes certain performance measurement criteria that have a material or adverse effect on motor vehicle dealers; requiring an applicant, licensee, or common entity, or an affiliate thereof, under certain circumstances and upon the request of the motor vehicle dealer, to describe in writing to the motor vehicle dealer how certain performance measurement criteria were designed, calculated, established, and uniformly applied; reenacting s. 320.6992, F.S., relating to provisions that apply to all systems of distribution of motor vehicles in this state, to incorporate the amendment made to s. 320.64, F.S., in references thereto; reenacting ss. 320.60, 320.605, 320.61, 320.615, 320.62, 320.63, 320.6403, 320.6405, 320.641, 320.6412, 320.6415, 320.642, 320.643, 320.644, 320.645, 320.646, 320.664, 320.67, 320.68, 320.69,

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

596-03406-17 20171678c1

320.695, 320.696, 320.697, 320.6975, 320.698, 320.699, 320.69915, and 320.70, F.S., to incorporate the amendment made to s. 320.64, F.S.; providing an effective date.

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

Section 1. Section 320.64, Florida Statutes, is amended to read:

320.64 Denial, suspension, or revocation of license; grounds.—A license of a licensee under s. 320.61 may be denied, suspended, or revoked within the entire state or at any specific location or locations within the state at which the applicant or licensee engages or proposes to engage in business, upon proof that the section was violated with sufficient frequency to establish a pattern of wrongdoing, and a licensee or applicant shall be liable for claims and remedies provided in ss. 320.695 and 320.697 for any violation of any of the following provisions. A licensee is prohibited from committing the following acts:

(1) The applicant or licensee is determined to be unable to carry out contractual obligations with its motor vehicle dealers.

(2) The applicant or licensee has knowingly made a material misstatement in its application for a license.

(3) The applicant or licensee willfully has failed to comply with significant provisions of ss. 320.60-320.70 or with any lawful rule or regulation adopted or promulgated by the department.

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

(4) The applicant or licensee has indulged in any illegal act relating to his or her business.

(5) The applicant or licensee has coerced or attempted to coerce any motor vehicle dealer into accepting delivery of any motor vehicle or vehicles or parts or accessories therefor or any other commodities which have not been ordered by the dealer.

(6) The applicant or licensee has coerced or attempted to coerce any motor vehicle dealer to enter into any agreement with the licensee.

(7) The applicant or licensee has threatened to discontinue, cancel, or not to renew a franchise agreement of a licensed motor vehicle dealer, where the threatened discontinuation, cancellation, or nonrenewal, if implemented, would be in violation of any of the provisions of s. 320.641.

(8) The applicant or licensee discontinued, canceled, or failed to renew, a franchise agreement of a licensed motor vehicle dealer in violation of any of the provisions of s. 320.641.

(9) The applicant or licensee has threatened to modify or replace, or has modified or replaced, a franchise agreement with a succeeding franchise agreement which would adversely alter the rights or obligations of a motor vehicle dealer under an existing franchise agreement or which substantially impairs the sales, service obligations, or investment of the motor vehicle dealer.

(10)(a) The applicant or licensee has attempted to enter, or has entered, into a franchise agreement with a motor vehicle dealer who does not, at the time of the franchise agreement, have proper facilities to provide the services to his or her

purchasers of new motor vehicles which are covered by the new motor vehicle warranty issued by the applicant or licensee.

(b) Notwithstanding any provision of a franchise, a licensee may not require a motor vehicle dealer, by agreement, program, policy, standard, or otherwise, to make substantial changes, alterations, or remodeling to, or to replace a motor vehicle dealer's sales or service facilities unless the licensee's requirements are reasonable and justifiable in light of the current and reasonably foreseeable projections of economic conditions, financial expectations, and the motor vehicle dealer's market for the licensee's motor vehicles.

(c) A licensee may, however, consistent with the licensee's allocation obligations at law and to its other same line-make motor vehicle dealers, provide to a motor vehicle dealer a commitment to supply additional vehicles or provide a loan or grant of money as an inducement for the motor vehicle dealer to expand, improve, remodel, alter, or renovate its facilities if the provisions of the commitment are contained in a writing voluntarily agreed to by the dealer and are made available, on substantially similar terms, to any of the licensee's other same line-make dealers in this state who voluntarily agree to make a substantially similar facility expansion, improvement, remodeling, alteration, or renovation.

(d) Except as provided in paragraph (c), subsection (36), or as otherwise provided by law, this subsection does not require a licensee to provide financial support for, or contribution to, the purchase or sale of the assets of or equity in a motor vehicle dealer or a relocation of a motor vehicle dealer because such support has been provided to other

purchases, sales, or relocations.

(e) A licensee or its common entity may not take or threaten to take any action that is unfair or adverse to a dealer who does not enter into an agreement with the licensee pursuant to paragraph (c).

(f) This subsection does not affect any contract between a licensee and any of its dealers regarding relocation, expansion, improvement, remodeling, renovation, or alteration which exists on the effective date of this act.

(g) A licensee may set and uniformly apply reasonable standards for a motor vehicle dealer's sales and service facilities which are related to upkeep, repair, and cleanliness.

(h) A violation of paragraphs (b) through (g) is not a violation of s. 320.70 and does not subject any licensee to any criminal penalty under s. 320.70.

(i)1. If an applicant or licensee establishes a program, standard, or policy or in any manner offers a bonus, incentive, rebate, or other benefit to a motor vehicle dealer which is based, in whole or in part, on the construction of new sales or service facilities or the remodeling, improvement, renovation, expansion, replacement, or other alteration of the motor vehicle dealer's existing sales or service facilities, including installation of signs or other image elements, a motor vehicle dealer who completes such construction, alteration, or installation in reliance upon such program, standard, policy, bonus, incentive, rebate, or other benefit is deemed to be in full compliance with the applicant's or licensee's requirements related to the new, remodeled, improved, renovated, expanded, replaced, or altered facilities, signs, and image elements for

10 years after such completion.

2. If, during such 10-year period, the applicant or licensee revises an existing, or establishes a new, program, standard, policy, bonus, incentive, rebate, or other benefit described in subparagraph 1., a motor vehicle dealer who completed a facility in reliance upon a prior program, standard, policy, bonus, incentive, rebate, or other benefit and elects not to comply with the applicant's or licensee's requirements for facilities, signs, or image elements under the revised or new program, standard, policy, bonus, incentive, rebate, or other benefit will not be eligible for any benefit under the revised or new program but shall remain entitled to all benefits under the prior program, plus any increase in benefits between the prior and revised or new programs, during the remainder of the 10-year period.

This paragraph does not obviate, affect, alter, or diminish the provisions of subsection (38).

(11) The applicant or licensee has coerced a motor vehicle dealer to provide installment financing for the motor vehicle dealer's purchasers with a specified financial institution.

(12) The applicant or licensee has advertised, printed, displayed, published, distributed, broadcast, or televised, or caused or permitted to be advertised, printed, displayed, published, distributed, broadcast, or televised, in any manner whatsoever, any statement or representation with regard to the sale or financing of motor vehicles which is false, deceptive, or misleading.

(13) The applicant or licensee has sold, exchanged, or

rented a motorcycle which produces in excess of 5 brake horsepower, knowing the use thereof to be by, or intended for, the holder of a restricted Florida driver license.

(14) The applicant or licensee has engaged in previous conduct which would have been a ground for revocation or suspension of a license if the applicant or licensee had been licensed.

(15) The applicant or licensee, directly or indirectly, through the actions of any parent of the licensee, subsidiary of the licensee, or common entity causes a termination, cancellation, or nonrenewal of a franchise agreement by a present or previous distributor or importer unless, by the effective date of such action, the applicant or licensee offers the motor vehicle dealer whose franchise agreement is terminated, canceled, or not renewed a franchise agreement containing substantially the same provisions contained in the previous franchise agreement or files an affidavit with the department acknowledging its undertaking to assume and fulfill the rights, duties, and obligations of its predecessor distributor or importer under the terminated, canceled, or nonrenewed franchise agreement and the same is reinstated.

(16) Notwithstanding the terms of any franchise agreement, the applicant or licensee prevents or refuses to accept the succession to any interest in a franchise agreement by any legal heir or devisee under the will of a motor vehicle dealer or under the laws of descent and distribution of this state; provided, the applicant or licensee is not required to accept a succession where such heir or devisee does not meet licensee's written, reasonable, and uniformly applied minimal standard

qualifications for dealer applicants or which, after notice and administrative hearing pursuant to chapter 120, is demonstrated to be detrimental to the public interest or to the representation of the applicant or licensee. Nothing contained herein, however, shall prevent a motor vehicle dealer, during his or her lifetime, from designating any person as his or her successor in interest by written instrument filed with and accepted by the applicant or licensee. A licensee who rejects the successor transferee under this subsection shall have the burden of establishing in any proceeding where such rejection is in issue that the rejection of the successor transferee complies with this subsection.

(17) The applicant or licensee has included in any franchise agreement with a motor vehicle dealer terms or provisions that are contrary to, prohibited by, or otherwise inconsistent with the provisions contained in ss. 320.60-320.70, or has failed to include in such franchise agreement a provision conforming to the requirements of s. 320.63(3).

(18) The applicant or licensee has established a system of motor vehicle allocation or distribution or has implemented a system of allocation or distribution of motor vehicles to one or more of its franchised motor vehicle dealers which reduces or alters allocations or supplies of new motor vehicles to the dealer to achieve, directly or indirectly, a purpose that is prohibited by ss. 320.60-320.70, or which otherwise is unfair, inequitable, unreasonably discriminatory, or not supportable by reason and good cause after considering the equities of the affected motor vehicles dealer or dealers. An applicant or licensee shall maintain for 3 years records that describe its

methods or formula of allocation and distribution of its motor vehicles and records of its actual allocation and distribution of motor vehicles to its motor vehicle dealers in this state. As used in this subsection, "unfair" includes, without limitation, the refusal or failure to offer to any dealer an equitable supply of new vehicles under its franchise, by model, mix, or colors as the licensee offers or allocates to its other same line-make dealers in the state.

(19) The applicant or licensee, without good and fair cause, has delayed, refused, or failed to provide a supply of motor vehicles by series in reasonable quantities, including the models publicly advertised by the applicant or licensee as being available, or has delayed, refused, or failed to deliver motor vehicle parts and accessories within a reasonable time after receipt of an order by a franchised dealer. However, this subsection is not violated if such failure is caused by acts or causes beyond the control of the applicant or licensee.

(20) The applicant or licensee has required, or threatened to require, a motor vehicle dealer to prospectively assent to a release, assignment, novation, waiver, or estoppel, which instrument or document operates, or is intended by the applicant or licensee to operate, to relieve any person from any liability or obligation under the provisions of ss. 320.60-320.70.

(21) The applicant or licensee has threatened or coerced a motor vehicle dealer toward conduct or action whereby the dealer would waive or forego its right to protest the establishment or relocation of a motor vehicle dealer in the community or territory serviced by the threatened or coerced dealer.

(22) The applicant or licensee has refused to deliver, in

reasonable quantities and within a reasonable time, to any duly licensed motor vehicle dealer who has an agreement with such applicant or licensee for the retail sale of new motor vehicles and parts for motor vehicles sold or distributed by the applicant or licensee, any such motor vehicles or parts as are covered by such agreement. Such refusal includes the failure to offer to its same line-make franchised motor vehicle dealers all models manufactured for that line-make, or requiring a dealer to pay any extra fee, require a dealer to execute a separate franchise agreement, purchase unreasonable advertising displays or other materials, or relocate, expand, improve, remodel, renovate, recondition, or alter the dealer's existing facilities, or provide exclusive facilities as a prerequisite to receiving a model or series of vehicles. However, the failure to deliver any motor vehicle or part will not be considered a violation of this section if the failure is due to an act of God, work stoppage, or delay due to a strike or labor difficulty, a freight embargo, product shortage, or other cause over which the applicant or licensee has no control. An applicant or licensee may impose reasonable requirements on the motor vehicle dealer, other than the items listed above, including, but not limited to, the purchase of special tools required to properly service a motor vehicle and the undertaking of sales person or service person training related to the motor vehicle.

(23) The applicant or licensee has competed or is competing with respect to any activity covered by the franchise agreement with a motor vehicle dealer of the same line-make located in this state with whom the applicant or licensee has entered into

a franchise agreement, except as permitted in s. 320.645.

(24) The applicant or licensee has sold a motor vehicle to any retail consumer in the state except through a motor vehicle dealer holding a franchise agreement for the line-make that includes the motor vehicle. This section does not apply to sales by the applicant or licensee of motor vehicles to its current employees, employees of companies affiliated by common ownership, charitable not-for-profit-organizations, and the federal government.

(25) The applicant or licensee has undertaken or engaged in an audit of warranty, maintenance, and other service-related payments or incentive payments, including payments to a motor vehicle dealer under any licensee-issued program, policy, or other benefit, which were previously paid to a motor vehicle dealer in violation of this section or has failed to comply with any of its obligations under s. 320.696. An applicant or licensee may reasonably and periodically audit a motor vehicle dealer to determine the validity of paid claims as provided in s. 320.696. Audits of warranty, maintenance, and other service-related payments shall be performed by an applicant or licensee only during the 12-month period immediately following the date the claim was paid. Audits of incentive payments shall be performed only during the 12-month period immediately following the date the incentive was paid. As used in this section, the term "incentive" includes any bonus, incentive, or other monetary or nonmonetary consideration. After such time periods have elapsed, all warranty, maintenance, and other service-related payments and incentive payments shall be deemed final and incontrovertible for any reason notwithstanding any

otherwise applicable law, and the motor vehicle dealer shall not be subject to any chargeback or repayment. An applicant or licensee may deny a claim or, as a result of a timely conducted audit, impose a chargeback against a motor vehicle dealer for warranty, maintenance, or other service-related payments or incentive payments only if the applicant or licensee can show that the warranty, maintenance, or other service-related claim or incentive claim was false or fraudulent or that the motor vehicle dealer failed to substantially comply with the reasonable written and uniformly applied procedures of the applicant or licensee for such repairs or incentives, but only for that portion of the claim so shown. Notwithstanding the terms of any franchise agreement, guideline, program, policy, or procedure, an applicant or licensee may deny or charge back only that portion of a warranty, maintenance, or other service-related claim or incentive claim which the applicant or licensee has proven to be false or fraudulent or for which the dealer failed to substantially comply with the reasonable written and uniformly applied procedures of the applicant or licensee for such repairs or incentives, as set forth in this subsection. An applicant or licensee may not charge back a motor vehicle dealer subsequent to the payment of a warranty, maintenance, or service-related claim or incentive claim unless, within 30 days after a timely conducted audit, a representative of the applicant or licensee first meets in person, by telephone, or by video teleconference with an officer or employee of the dealer designated by the motor vehicle dealer. At such meeting the applicant or licensee must provide a detailed explanation, with supporting documentation, as to the basis for each of the claims

for which the applicant or licensee proposed a chargeback to the dealer and a written statement containing the basis upon which the motor vehicle dealer was selected for audit or review. Thereafter, the applicant or licensee must provide the motor vehicle dealer's representative a reasonable period after the meeting within which to respond to the proposed chargebacks, with such period to be commensurate with the volume of claims under consideration, but in no case less than 45 days after the meeting. The applicant or licensee is prohibited from changing or altering the basis for each of the proposed chargebacks as presented to the motor vehicle dealer's representative following the conclusion of the audit unless the applicant or licensee receives new information affecting the basis for one or more chargebacks and that new information is received within 30 days after the conclusion of the timely conducted audit. If the applicant or licensee claims the existence of new information, the dealer must be given the same right to a meeting and right to respond as when the chargeback was originally presented. After all internal dispute resolution processes provided through the applicant or licensee have been completed, the applicant or licensee shall give written notice to the motor vehicle dealer of the final amount of its proposed chargeback. If the dealer disputes that amount, the dealer may file a protest with the department within 30 days after receipt of the notice. If a protest is timely filed, the department shall notify the applicant or licensee of the filing of the protest, and the applicant or licensee may not take any action to recover the amount of the proposed chargeback until the department renders a final determination, which is not subject to further appeal,

that the chargeback is in compliance with the provisions of this section. In any hearing pursuant to this subsection, the applicant or licensee has the burden of proof that its audit and resulting chargeback are in compliance with this subsection.

(26) Notwithstanding the terms of any franchise agreement, including any licensee's program, policy, or procedure, the applicant or licensee has refused to allocate, sell, or deliver motor vehicles; charged back or withheld payments or other things of value for which the dealer is otherwise eligible under a sales promotion, program, or contest; prevented a motor vehicle dealer from participating in any promotion, program, or contest; or has taken or threatened to take any adverse action against a dealer, including chargebacks, reducing vehicle allocations, or terminating or threatening to terminate a franchise because the dealer sold or leased a motor vehicle to a customer who exported the vehicle to a foreign country or who resold the vehicle, unless the licensee proves that the dealer knew or reasonably should have known that the customer intended to export or resell the motor vehicle. There is a rebuttable presumption that the dealer neither knew nor reasonably should have known of its customer's intent to export or resell the vehicle if the vehicle is titled or registered in any state in this country. A licensee may not take any action against a motor vehicle dealer, including reducing its allocations or supply of motor vehicles to the dealer or charging back to a dealer any incentive payment previously paid, unless the licensee first meets in person, by telephone, or video conference with an officer or other designated employee of the dealer. At such meeting, the licensee must provide a detailed explanation, with

supporting documentation, as to the basis for its claim that the dealer knew or reasonably should have known of the customer's intent to export or resell the motor vehicle. Thereafter, the motor vehicle dealer shall have a reasonable period, commensurate with the number of motor vehicles at issue, but not less than 15 days, to respond to the licensee's claims. If, following the dealer's response and completion of all internal dispute resolution processes provided through the applicant or licensee, the dispute remains unresolved, the dealer may file a protest with the department within 30 days after receipt of a written notice from the licensee that it still intends to take adverse action against the dealer with respect to the motor vehicles still at issue. If a protest is timely filed, the department shall notify the applicant or licensee of the filing of the protest, and the applicant or licensee may not take any action adverse to the dealer until the department renders a final determination, which is not subject to further appeal, that the licensee's proposed action is in compliance with the provisions of this subsection. In any hearing pursuant to this subsection, the applicant or licensee has the burden of proof on all issues raised by this subsection. An applicant or licensee may not take any adverse action against a motor vehicle dealer because the dealer sold or leased a motor vehicle to a customer who exported the vehicle to a foreign country or who resold the vehicle unless the applicant or licensee provides written notification to the motor vehicle dealer of such resale or export within 12 months after the date the dealer sold or leased the vehicle to the customer.

(27) Notwithstanding the terms of any franchise agreement,

the applicant or licensee has failed or refused to indemnify and hold harmless any motor vehicle dealer against any judgment for damages, or settlements agreed to by the applicant or licensee, including, without limitation, court costs and reasonable attorney ~~attorneys~~ fees, arising out of complaints, claims, or lawsuits, including, without limitation, strict liability, negligence, misrepresentation, express or implied warranty, or revocation or rescission of acceptance of the sale of a motor vehicle, to the extent the judgment or settlement relates to the alleged negligent manufacture, design, or assembly of motor vehicles, parts, or accessories. Nothing herein shall obviate the licensee's obligations pursuant to chapter 681.

(28) The applicant or licensee has published, disclosed, or otherwise made available in any form information provided by a motor vehicle dealer with respect to sales prices of motor vehicles or profit per motor vehicle sold. Other confidential financial information provided by motor vehicle dealers shall not be published, disclosed, or otherwise made publicly available except in composite form. However, this information may be disclosed with the written consent of the dealer or in response to a subpoena or order of the department, a court or a lawful tribunal, or introduced into evidence in such a proceeding, after timely notice to an affected dealer.

(29) The applicant or licensee has failed to reimburse a motor vehicle dealer in full for the reasonable cost of providing a loaner vehicle to any customer who is having a vehicle serviced at the motor vehicle dealer, if a loaner is required by the applicant or licensee, or a loaner is expressly part of an applicant or licensee's customer satisfaction index

or computation.

(30) The applicant or licensee has conducted or threatened to conduct any audit of a motor vehicle dealer in order to coerce or attempt to coerce the dealer to forego any rights granted to the dealer under ss. 320.60-320.70 or under the agreement between the licensee and the motor vehicle dealer. Nothing in this section shall prohibit an applicant or licensee from reasonably and periodically auditing a dealer to determine the validity of paid claims, as permitted under this chapter, if the licensee complies with the provisions of ss. 320.60-320.70 applicable to such audits.

(31) From and after the effective date of enactment of this provision, the applicant or licensee has offered to any motor vehicle dealer a franchise agreement that:

(a) Requires that a motor vehicle dealer bring an administrative or legal action in a venue outside of this state;

(b) Requires that any arbitration, mediation, or other legal proceeding be conducted outside of this state; or

(c) Requires that a law of a state other than Florida be applied to any legal proceeding between a motor vehicle dealer and a licensee.

(32) Notwithstanding the terms of any franchise agreement, the applicant or licensee has rejected or withheld approval of any proposed transfer in violation of s. 320.643 or a proposed change of executive management in violation of s. 320.644.

(33) The applicant or licensee has attempted to sell or lease, or has sold or leased, used motor vehicles at retail of a line-make that is the subject of any franchise agreement with a motor vehicle dealer in this state, other than trucks with a net

weight of more than 8,000 pounds.

(34) The applicant or licensee, after the effective date of this subsection, has included in any franchise agreement with a motor vehicle dealer a mandatory obligation or requirement of the motor vehicle dealer to purchase, sell, or lease, or offer for purchase, sale, or lease, any quantity of used motor vehicles.

(35) The applicant or licensee has refused to assign allocation earned by a motor vehicle dealer, or has refused to sell motor vehicles to a motor vehicle dealer, because the motor vehicle dealer has failed or refused to purchase, sell, lease, or certify a certain quantity of used motor vehicles prescribed by the licensee.

(36)(a) Notwithstanding the terms of any franchise agreement, in addition to any other statutory or contractual rights of recovery after the voluntary or involuntary termination, cancellation, or nonrenewal of a franchise, failing to pay the motor vehicle dealer, as provided in paragraph (d), the following amounts:

1. The net cost paid by the dealer for each new car or truck in the dealer's inventory with mileage of 2,000 miles or less, or a motorcycle with mileage of 100 miles or less, exclusive of mileage placed on the vehicle before it was delivered to the dealer.

2. The current price charged for each new, unused, undamaged, or unsold part or accessory that:

a. Is in the current parts catalogue and is still in the original, resalable merchandising package and in an unbroken lot, except that sheet metal may be in a comparable substitute

for the original package; and

b. Was purchased by the dealer directly from the manufacturer or distributor or from an outgoing authorized dealer as a part of the dealer's initial inventory.

3. The fair market value of each undamaged sign owned by the dealer which bears a trademark or trade name used or claimed by the applicant or licensee or its representative which was purchased from or at the request of the applicant or licensee or its representative.

4. The fair market value of all special tools, data processing equipment, and automotive service equipment owned by the dealer which:

a. Were recommended in writing by the applicant or licensee or its representative and designated as special tools and equipment;

b. Were purchased from or at the request of the applicant or licensee or its representative; and

c. Are in usable and good condition except for reasonable wear and tear.

5. The cost of transporting, handling, packing, storing, and loading any property subject to repurchase under this section.

(b) If the termination, cancellation, or nonrenewal of the dealer's franchise is the result of the bankruptcy or reorganization of a licensee or its common entity, or the result of a licensee's plan, scheme, or policy, whether or not publicly declared, which is intended to or has the effect of decreasing the number of, or eliminating, the licensee's franchised motor vehicle dealers of a line-make in this state, or the result of a

termination, elimination, or cessation of manufacture or reorganization of a licensee or its common entity, or the result of a termination, elimination, or cessation of manufacture or distribution of a line-make, in addition to the above payments to the dealer, the licensee or its common entity, shall be liable to and shall pay the motor vehicle dealer for an amount at least equal to the fair market value of the franchise for the line-make, which shall be the greater of the value determined as of the day the licensee announces the action that results in the termination, cancellation, or nonrenewal, or the value determined on the day that is 12 months before that date. Fair market value of the franchise for the line-make includes only the goodwill value of the dealer's franchise for that line-make in the dealer's community or territory.

(c) This subsection does not apply to a termination, cancellation, or nonrenewal that is implemented as a result of the sale of the assets or corporate stock or other ownership interests of the dealer.

(d) The dealer shall return the property listed in this subsection to the licensee within 90 days after the effective date of the termination, cancellation, or nonrenewal. The licensee shall supply the dealer with reasonable instructions regarding the method by which the dealer must return the property. Absent shipping instructions and prepayment of shipping costs from the licensee or its common entity, the dealer shall tender the inventory and other items to be returned at the dealer's facility. The compensation for the property shall be paid by the licensee or its common entity simultaneously with the tender of inventory and other items,

provided that, if the dealer does not have clear title to the inventory and other items and is not in a position to convey that title to the licensee, payment for the property being returned may be made jointly to the dealer and the holder of any security interest.

(37) Notwithstanding the terms of any franchise agreement, the applicant or licensee has refused to allow or has limited or restricted a motor vehicle dealer from acquiring or adding a sales or service operation for another line-make of motor vehicles at the same or expanded facility at which the motor vehicle dealer currently operates a dealership unless the applicant or licensee can demonstrate that such refusal, limitation, or restriction is justified by consideration of reasonable facility and financial requirements and the dealer's performance for the existing line-make.

(38) The applicant or licensee has failed or refused to offer a bonus, incentive, or other benefit program, in whole or in part, to a dealer or dealers in this state which it offers to all of its other same line-make dealers nationally or to all of its other same line-make dealers in the licensee's designated zone, region, or other licensee-designated area of which this state is a part, unless the failure or refusal to offer the program in this state is reasonably supported by substantially different economic or marketing considerations than are applicable to the licensee's same line-make dealers in this state. For purposes of this chapter, a licensee may not establish this state alone as a designated zone, region, or area or any other designation for a specified territory. A licensee may offer a bonus, rebate, incentive, or other benefit program

to its dealers in this state which is calculated or paid on a per vehicle basis and is related in part to a dealer's facility or the expansion, improvement, remodeling, alteration, or renovation of a dealer's facility. Any dealer who does not comply with the facility criteria or eligibility requirements of such program is entitled to receive a reasonable percentage of the bonus, incentive, rebate, or other benefit offered by the licensee under that program by complying with the criteria or eligibility requirements unrelated to the dealer's facility under that program. For purposes of the previous sentence, the percentage unrelated to the facility criteria or requirements is presumed to be "reasonable" if it is not less than 80 percent of the total of the per vehicle bonus, incentive, rebate, or other benefits offered under the program.

(39) Notwithstanding any agreement, program, incentive, bonus, policy, or rule, an applicant or licensee may not fail to make any payment pursuant to any agreement, program, incentive, bonus, policy, or rule for any temporary replacement motor vehicle loaned, rented, or provided by a motor vehicle dealer to or for its service or repair customers, even if the temporary replacement motor vehicle has been leased, rented, titled, or registered to the motor vehicle dealer's rental or leasing division or an entity that is owned or controlled by the motor vehicle dealer, provided that the motor vehicle dealer or its rental or leasing division or entity complies with the written and uniformly enforced vehicle eligibility, use, and reporting requirements specified by the applicant or licensee in its agreement, program, policy, bonus, incentive, or rule relating to loaner vehicles.

(40) Notwithstanding the terms of any franchise agreement, the applicant or licensee may not require or coerce, or attempt to require or coerce, a motor vehicle dealer to purchase goods or services from a vendor selected, identified, or designated by the applicant or licensee, or one of its parents, subsidiaries, divisions, or affiliates, by agreement, standard, policy, program, incentive provision, or otherwise, without making available to the motor vehicle dealer the option to obtain the goods or services of substantially similar design and quality from a vendor chosen by the motor vehicle dealer. If the motor vehicle dealer exercises such option, the dealer must provide written notice of its desire to use the alternative goods or services to the applicant or licensee, along with samples or clear descriptions of the alternative goods or services that the dealer desires to use. The licensee or applicant shall have the opportunity to evaluate the alternative goods or services for up to 30 days to determine whether it will provide a written approval to the motor vehicle dealer to use said alternative goods or services. Approval may not be unreasonably withheld by the applicant or licensee. If the motor vehicle dealer does not receive a response from the applicant or licensee within 30 days, approval to use the alternative goods or services is deemed granted. If a dealer using alternative goods or services complies with this subsection and has received approval from the licensee or applicant, the dealer is not ineligible for all benefits described in the agreement, standard, policy, program, incentive provision, or otherwise solely for having used such alternative goods or services. As used in this subsection, the term "goods or services" is limited to such goods and services

used to construct or renovate dealership facilities or furniture and fixtures at the dealership facilities. The term does not include:

(a) Any materials subject to the applicant's or licensee's intellectual property rights, including copyright, trademark, or trade dress rights;

(b) Any special tool and training as required by the applicant or licensee;

(c) Any part to be used in repairs under warranty obligations of an applicant or licensee;

(d) Any good or service paid for entirely by the applicant or licensee; or

(e) Any applicant's or licensee's design or architectural review service.

(41)(a) The applicant or licensee has established, implemented, or enforced criteria for measuring the sales or service performance of any of its franchised motor vehicle dealers in this state which have a material or adverse effect on any motor vehicle dealer and which:

1. Are unfair, unreasonable, arbitrary, or inequitable; or

2. Do not include all relevant and material local and regional criteria, data, and facts. Relevant and material criteria, data, or facts include, but are not limited to, those of motor vehicle dealerships of comparable size in comparable markets. If such performance measurement criteria are based, in whole or in part, on a survey, such survey must be based on a statistically significant and valid random sample.

(b) An applicant, licensee, or common entity, or an affiliate thereof, which enforces against any motor vehicle

dealer any such performance measurement criteria shall, upon the request of the motor vehicle dealer, describe in writing to the motor vehicle dealer, in detail, how the performance measurement criteria were designed, calculated, established, and uniformly applied.

A motor vehicle dealer who can demonstrate that a violation of, or failure to comply with, any of the preceding provisions by an applicant or licensee will or may ~~can~~ adversely and pecuniarily affect the complaining dealer, shall be entitled to pursue all of the remedies, procedures, and rights of recovery available under ss. 320.695 and 320.697.

Section 2. For the purpose of incorporating the amendment made by this act to section 320.64, Florida Statutes, in references thereto, section 320.6992, Florida Statutes, is reenacted to read:

320.6992 Application.—Sections 320.60-320.70, including amendments to ss. 320.60-320.70, apply to all presently existing or hereafter established systems of distribution of motor vehicles in this state, except to the extent that such application would impair valid contractual agreements in violation of the State Constitution or Federal Constitution. Sections 320.60-320.70 do not apply to any judicial or administrative proceeding pending as of October 1, 1988. All agreements renewed, amended, or entered into subsequent to October 1, 1988, shall be governed by ss. 320.60-320.70, including any amendments to ss. 320.60-320.70 which have been or may be from time to time adopted, unless the amendment specifically provides otherwise, and except to the extent that

such application would impair valid contractual agreements in violation of the State Constitution or Federal Constitution.

Section 3. Sections 320.60, 320.605, 320.61, 320.615, 320.62, 320.63, 320.6403, 320.6405, 320.641, 320.6412, 320.6415, 320.642, 320.643, 320.644, 320.645, 320.646, 320.664, 320.67, 320.68, 320.69, 320.695, 320.696, 320.697, 320.6975, 320.698, 320.699, 320.69915, and 320.70, Florida Statutes, are reenacted for the purpose of incorporating the amendment made by this act to s. 320.64, Florida Statutes.

Section 4. This act shall take effect upon becoming a law.

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/17
Meeting Date

1678
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name DAVID LEIBOWITZ

Job Title GENERAL COUNSEL

Address 2060 BISCAYNE BLVD.
Street

Phone 305-576-1889

MIAMI FL 33143
City *State* *Zip*

Email _____

Speaking: ☑ For ☐ Against ☐ Information

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

Representing BRAMAN MANAGEMENT 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)

Rules 4-6

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/17
Meeting Date

1678
Bill Number (if applicable)

Topic Motor Vehicle Dealers

Amendment Barcode (if applicable)

Name Brewster Bevis

Job Title Senior Vice President

Address 516 N. Adams St
Street

Phone 224-7173

Tallahassee FL 32301
City *State* *Zip*

Email bbevis@aif.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Associated Industries of Florida

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/17
Meeting Date

1678
Bill Number (if applicable)

Topic Auto Franchise

Amendment Barcode (if applicable)

Name Gary Hunter

Job Title Attorney

Address 119 S. Monroe St Suite 300
Street

Tallahassee FL 32301
City *State* *Zip*

Phone 850-222-7500

Email garyh@hgslaw.com

Speaking: ☐ For ☑ Against ☐ Information

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

Representing Alliance of Automobile Mfgs.

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons 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 7020
INTRODUCER:	Rules Committee and Children, Families, and Elder Affairs Committee
SUBJECT:	Ratification of a Departments of Elder Affairs Health Rules
DATE:	April 27, 2017 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Crosier	Hendon		**Submitted as Comm. Bill/Fav**
1.	Crosier	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 7020 ratifies Rule 58M-2.009, F.A.C., adopted by the Department of Elder Affairs (DOEA). The adopted rule establishes standards of practice to provide a level of accountability for professional guardians while avoiding the imposition of unnecessary regulations on the industry.

The bill also ratifies Rule 64B8-9.009, F.A.C., adopted by the Department of Health (DOH) and the Board of Medicine (board) for the Standard of Care for Office Surgery. This adopted rule requires two additional drugs be maintained in the office when performing Level I office surgery. Level I office surgery includes minor procedures with minimal sedation or topical or local anesthesia where the chances of complication requiring hospitalization are remote.

The Statement of Estimated Regulatory Costs (SERC) developed by each department determined that the proposed rules will likely increase regulatory costs by more than $1 million in the aggregate over the next five years. Accordingly, the rule must be ratified by the Legislature before it may go into effect.

This act takes effect upon becoming law.

II. Present Situation:

A rule is an agency statement of general applicability that interprets, implements, or prescribes law or policy.[1] Rulemaking authority is delegated by the Legislature to an agency in law, 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 (F.A.R.).[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;
- A summary of the agency's SERC, if one is prepared; and
- Whether legislative ratification is required.[6]

SERC Requirements

Agencies must prepare a SERC for a rule that has an adverse impact on small businesses or that increases regulatory costs more than $200,000 in the aggregate within 1 year after implementation of the rule.[7]

A SERC must include estimates of:

- The number of people and entities effected by the proposed rule;
- The cost to the agency and other governmental entities to implement and enforce the proposed rule;
- Transactional costs likely to be incurred by people, entities, and governmental agencies for compliance; and
- An analysis of the proposed rule's impact on small businesses, counties, and cities.[8]

The SERC must also include an economic analysis on the likelihood that the proposed rule will have an adverse impact in excess of $1 million within the first 5 years of implementation on:

- Economic growth, private-sector job creation or employment, or private-sector investment;

[1] Section 120.52(16), F.S.
[2] Section 120.52(17), F.S.
[3] *See* ss. 120.52(8) and 120.536(1), 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] Section 120.54(3)(a)2., F.S.
[6] Section 120.54(3)(a)1., F.S.
[7] Sections 120.54(3)(b) and 120.541(1)(b), F.S.
[8] Section 120.541(2)(b)-(e), F.S. A small city has an unincarcerated population of 10,000 or less. A small county has an unincarcerated population of 75,000 or less. A small business employs less than 200 people, and has a net worth of $5 million or less. *See* ss. 120.52(18), (19), and 288.703(6), respectively.

- Business competitiveness,[9] productivity, or innovation; or
- Regulatory costs, including any transactional costs.[10,11]

If the economic analysis results in an adverse impact or regulatory costs in excess of $1 million within 5 years after implementation of the rule, then the rule must be ratified by the Legislature in order to take effect.[12]

Professional Guardianship Office

In 2016, the Legislature passed and the Governor signed CS/SB 232 by Senator Detert. The bill directed that the Statewide Public Guardianship Office be renamed the Office of Public and Professional Guardians. The DOEA was directed to establish, by rule, standards of practice for professional guardians.

Level I Office Surgery Rule

The Board of Medicine is created within the DOH to ensure that every physician practicing in the state meets minimum requirements for safe practice.[13] The practice of medicine is regulated under ch. 458, F.S., and the board has authority to adopt rules to implement the provisions of that chapter.[14]

More specifically, the board may establish by rule standards of practice and standards of care for particular practice settings, including but not limited to:

- Education and training,
- Equipment and supplies,
- Medications including anesthetics,
- Assistance of and delegation to other personnel,
- Transfer agreements,
- Sterilization,
- Records,
- Performance of complex or multiple procedures,
- Informed consent, and
- Policy and procedure manuals.[15]

[9] Business competitiveness includes the ability of those doing business in Florida to compete with those doing business in other states or domestic markets.

[10] Transactional costs are direct costs that are readily ascertainable based upon standard business practices. They include filing fees, the cost of obtaining a license, the cost of equipment required to be installed or used, procedures required to by employed to comply with the rule, additional operating costs, the cost of monitoring and reporting, and any other costs necessary to comply with the rules.

[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] Sections 458.307(1) and 458.301, F.S.

[14] Section 458.309(1), F.S.

[15] Section 458.331(1)(v), F.S.

The rule relating to the standard of care for office surgery was initially adopted in February 1994, and has been amended numerous times.[16] Under this rule there are general standards relating to all office surgery[17] as well as specific standards for each of three levels of office surgery.[18] The levels of office surgery are differentiated primarily according to the level of sedation and anesthesia required for the procedure and patient risk.

The general standards require the surgeon to examine the patient prior to the surgery to evaluate the patient for any risks from anesthesia and the surgical procedure to be performed. The surgeon must also maintain records of the surgical procedure, including a written informed consent from the patient if required for the particular procedure. Additional general standards regulate liposuction procedures, limit the duration of certain procedures, set the standards for anesthetic monitoring, require a current policy and procedure manual, and require a risk management program. All physicians must be qualified by education, training, and experience to perform any procedure in the office surgery setting.[19]

Specific standards for the levels of office surgery pertain to sedation and anesthesia; transfer agreements to, or staff privileges at, nearby hospitals; the physician's training; required equipment and supplies, including medications; assistance of other personnel; and emergency policies and procedures.

Level I office surgery includes the following:

- Minor procedures such as excision of skin lesions, moles, warts, cysts, lipomas and repair of lacerations or surgery limited to the skin and subcutaneous tissue performed under topical or local anesthesia not involving drug-induced alteration of consciousness other than minimal pre-operative tranquilization of the patient.
- Liposuction involving the removal of less than 4000cc supernatant fat.
- Incision and drainage of superficial abscesses, limited endoscopies, skin biopsies, arthrocentesis, thoracentesis, paracentesis, dilation of urethra, cysto-scopic procedures, and closed reduction of simple fractures or small joint dislocations.
- Anesthesia is limited to minimal sedation. The patient's level of sedation is that of minimal sedation and anxiolysis and the chances of complications requiring hospitalization are remote. Minimal sedation and anxiolysis is a drug-induced state during which patients respond normally to verbal commands. Although cognitive function and physical coordination may be impaired, airway reflexes, and ventilator and cardiovascular functions

[16] *See* the Florida Administrative Code history note for Rule 64B8-9.009, *available at:* https://www.flrules.org/gateway/ruleNo.asp?id=64B8-9.009 (last visited Feb. 14, 2017).
[17] Office surgery is defined in the rule as surgery which is performed outside of any facility licensed under ch. 390, F.S., (an abortion clinic) or ch. 395, F.S., (a hospital or ambulatory surgical center). *See* Rule 64B8-9.009(1)(d), F.A.C.
[18] Level I includes minor procedures with minimal sedation or topical or local anesthesia where the chances of complication requiring hospitalization are remote. Level II involves moderate sedation and analgesia or conscious sedation. The physician, or the facility where the procedure is being performed, must have a transfer agreement with a nearby hospital unless the physician has staff privileges at a nearby hospital to perform the same procedure on an out-patient basis. Level III involves surgery in which the patient's level of sedation is that of deep sedation and analgesia or general anesthesia and requires a more rigorous evaluation of the patient as a suitable candidate for Level III office surgery. The surgeon must have staff privileges at a hospital to perform the same procedure or meet other comparable background, training, and experience criteria in order to perform these procedures in an office setting.
[19] Rule 64B8-9.009(2), F.A.C.

are unaffected. Controlled substances[20] are limited to oral administration in doses appropriate for the unsupervised treatment of insomnia, anxiety, or pain.[21]
- Chances of complication requiring hospitalization are remote.

Under Level I, the surgeon's continuing medical education must include subjects relating to regional anesthetic drugs and the surgeon must hold current certification in Advanced Cardiac Life Support. At least one assistant must hold current certification in Basic Life Support. The physician's office must have available intravenous access supplies, oxygen, oral airways, and a positive pressure ventilation device. The current rule further requires the following medications in the office: atropine, diphenhydramine, epinephrine, and hydrocortisone.

Amendment to Department of Health Rule 64B8-9.009, F.A.C.

The board filed an amendment to Rule 648-9.009, F.A.C., for adoption with the Department of State on June 15, 2016. This amendment clarifies language pertaining to Level I office surgery and added two drugs to the list of medications that must be available for Level I office surgery. A physician's office that performs Level I office surgery is required to have Flumazenil if a benzodiazepine is administered and Naloxone if an opiate is administered. Flumazenil is used for reversing drowsiness, sedation, and other effects caused by benzodiazepines.[22] Naloxone blocks or reverses the effects of opioid[23] medication, including extreme drowsiness, slowed breathing, or loss of consciousness. These newly listed medications may be administered, if needed, to reverse the effects of other medications administered for the surgical procedure.

The DOH prepared a SERC in accordance with state rulemaking requirements.[24] The estimated cost to each physician's office performing Level I office surgeries is $29.98 for the required quantity of Flumazenil and $55.96 for the required quantity of Naloxone for a total of $85.96.[25] According to the board, the actual number of physician offices is unknown but the board assumes that approximately 20,468 physicians' offices in private practice would perform a minor procedure defined in the rule as Level I office surgery. The aggregate regulatory costs for initial compliance with the proposed rule is $1,759,429.[26] As a result, the proposed rule amendment requires ratification by the Legislature prior to taking effect.

[20] Refers to controlled substances as defined in ss. 893.02 and 893.03, F.S.
[21] This bullet is text from the adopted rule under consideration for ratification. This text is intended to clarify the rule currently in effect.
[22] Benzodiazepines include drugs such as Valium, Versed, and Xanax. Among other uses, they may be used before surgery to induce relaxation and amnesia (memory loss). *See* https://www.drugs.com/drug-class/benzodiazepines.html (last visited Feb. 15, 2017).
[23] Opioids reduce the sending of pain messages to the brain and reduce feelings of pain. *See* http://www.webmd.com/painmanagement/guide/narcotic-pain-medications#1 (last visited Feb. 15, 2017).
[24] *Supra* note 7. A copy of the SERC is available in the Senate Health Policy Committee.
[25] The SERC states that the shelf life of these drugs is at or exceed 5 years, therefore no replacement costs are included in the fiscal analysis.
[26] The SERC indicates that the rule increases regulatory costs by $1,937,500.88 over the first 5 years of implementation. However, the cost of a medication that is currently required by rule, was inadvertently included in that calculation. [27] Section 120.54(3)(e)6., F.S.

III. Effect of Proposed Changes:

Section 1 ratifies Rule 58M-2.009, F.A.C., Standards of Practice for Professional Guardians solely to meet the condition for effectiveness of the rule imposed by s. 120.541(3), F.S.

Section 2 ratifies Rule 64B8-9.009, F.A.C., Standard of Care for Office Surgery solely to meet the condition for effectiveness of the rule imposed by s. 120.541(3), F.S.

The bill also:

- Directs that the act shall not be codified in the F.S.;
- Requires that after the act becomes law, its enactment and effective date shall be noted in the Florida Administrative Code, the F.A.R., or both, as appropriate;
- Provides that the act does not alter rulemaking authority or constitute a legislative preemption of, or exception to, any other provision of law regarding adoption or enforcement of the rule and is intended to preserve the status of the rule; and
- Does not cure any rulemaking defect or preempt any challenge based on a lack of authority or a violation of requirements governing adoption of the rule.

The act is effective upon becoming a law. At that time, the rule becomes effective.[27]

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 proposed bill enables a rule to go into effect that would impose requirements on professional guardians. However, any additional costs necessary to meet the proposed requirements would be passed on to the wards.

[27] Section 120.54(3)(e)6., F.S.

Additionally, the proposed bill enables a rule to go into effect that will impose a requirement on physicians who perform Level I office surgery to maintain specified drugs in the office. The estimated cost per physician's office is $85.96 over a 5 year period.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates an undesignated section of Florida law.

IX. Additional Information:

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

CS by Rules on April 25, 2017:

- Ratifies a rule adopted by the Board of Medicine that requires two additional drugs to be maintained in the physician's office when performing level I office surgery.

B. Amendments:

None.

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

847080

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/25/2017	.	
	.	
	.	
	.	

The Committee on Rules (Latvala) recommended the following:

Senate Amendment (with title amendment)

Delete line 20
and insert:
(2) The following rule is ratified for the sole and exclusive purpose of satisfying any condition on effectiveness imposed under s. 120.541(3), Florida Statutes: Rule 64B8-9.009, Florida Administrative Code, titled "Standard of Care for Office Surgery" as filed for adoption with the Department of State pursuant to the certification package dated June 15, 2016.
(3) This act serves no other purpose and may not be

847080

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

And the title is amended as follows:

Delete lines 3 - 4

and insert:

Elder Affairs rule and a Department of Health rule; ratifying a specific rule relating to the practice for professional guardians; ratifying a specific rule adopted by the Board of Medicine relating to the standard of care for office surgery for the

By the Committee on Children, Families, and Elder Affairs

586-02134-17 20177020__

A bill to be entitled

An act relating to the ratification of a Department of Elder Affairs rule; ratifying a specific rule relating to the practice for Professional Guardians for the sole and exclusive purpose of satisfying any condition on effectiveness pursuant to s. 120.541(3), F.S., which requires ratification of any rule exceeding the specified thresholds for likely adverse impact or increase in regulatory costs; providing applicability; providing an effective date.

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

Section 1. (1) The following rule is ratified for the sole and exclusive purpose of satisfying any condition on effectiveness imposed under s. 120.541(3), Florida Statutes: Rule 58M-2.009, Florida Administrative Code, as filed for adoption with the Department of State pursuant to the certification package dated February 9, 2017.

(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

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

586-02134-17 20177020__

rulemaking defect or preempt any challenge based on a lack of authority or a violation of the legal requirements governing the adoption of any rule cited.

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/17
Meeting Date

7020
Bill Number (if applicable)

847080
Amendment Barcode (if applicable)

Topic _____

Name Chris Niland

Job Title _____

Address 1000 Riverside Ave #240
Street
Jacksonville FL 32204
City *State* *Zip*

Phone 904-233-3051

Email cniland1ave@aol.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Florida Chapter, American College of Surgeons

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/17
Meeting Date

SB 7020
Bill Number (if applicable)

847080
Amendment Barcode (if applicable)

Topic _____

Name Mary Thomas

Job Title _____

Address 1430 Piedmont Dr. E
Street

Tallahassee FL 32308
City *State* *Zip*

Phone 850 224-6496

Email mthomas@flmedical.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Medical Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/17
Meeting Date

SB 7020
Bill Number (if applicable)

Topic SB 7020

Amendment Barcode (if applicable)

Name JON CONLEY

Job Title DIRECTOR OF LEGISLATIVE AFFAIRS

Address 4040 ESPLANADE WAY
Street
TALLAHASSEE FL 32312
City *State* *Zip*

Phone 850 245-2155

Email conleyJ@elderaffairs.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing DEPARTMENT OF ELDER AFFAIRS

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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 1526
INTRODUCER:	Rules Committee and Senator Bracy
SUBJECT:	Public Records/Health Information/Department of Corrections
DATE:	April 25, 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sumner	Hrdlicka	CJ	**Favorable**
2.	Kim	Ferrin	GO	**Favorable**
3.	Sumner	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1526 amends s. 945.10, F.S., to include protected health information of inmates and information related to HIV testing held by the Department of Corrections as records that are confidential and exempt from public disclosure in accordance with the federal Health Insurance Portability and Accountability Act (HIPAA).

The bill aligns Florida law with the exemptions established in the HIPAA Privacy Rule by authorizing the release of protected health information and mental health, medical, and substance abuse records to other agencies, including law enforcement agencies, for legitimate state purposes.

The bill provides that the exemptions for protected health information of an inmate and identity of an inmate upon whom an HIV test has been performed are subject to the Open Government Sunset Review Act and stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill provides a statement of public necessity as required by the Florida Constitution.

The 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 public record exemptions; thus, it requires a two-thirds vote for final passage.

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

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[1] FLA. CONST., art. I, s. 24(a).
[2] *Id*.
[3] The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature's records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislatures are primarily located in s. 11.0431(2)-(3), F.S.
[4] Public records laws are found throughout the Florida Statutes.
[5] Section 119.01(1), F.S.
[6] Section 119.011(12), F.S., defines "public record" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."
[7] *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc*., 379 So. 2d 633, 640 (Fla. 1980).
[8] Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.
[9] FLA. CONST., art. I, s. 24(c).
[10] *Id.*
[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.

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[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]

The Health Insurance Portability and Accountability Act (HIPAA) and the Privacy Rule

HIPAA was enacted on August 21, 1996, to publicize standards for the electronic exchange, privacy, and security of health information.[24] The Privacy Rule (rule) adopted by the U.S. Department of Health and Human Services (HHS) was required by the HIPAA[25] to address the use and disclosure of personal health information. The requirements of the rule apply to individual and group health plans that provide or pay the cost of medical care, every health care provider that electronically transmits health information in connection with certain transactions, and health care clearinghouses that process nonstandard information received from another entity into a standard format or that process standard information into a nonstandard format. Under the rule, all "individually identifiable health information" is protected. Such information includes demographic data such as an individual's name, address, date of birth, and social security number; the individual's past, present, or future physical or mental health condition; the provision of health care to such individual; and payments made or to be made for the provision of health care to the individual. Unless for the purposes authorized by the rule, protected health information may not be disclosed without the written authorization of the protected individual.

Department of Corrections and HIPAA

The Florida Department of Corrections (department) is a covered entity for purposes of the rule. The department provides comprehensive health care for inmates, including medical, nursing, pharmacy, mental health, and dental.[26]

"Within [a correctional] system, inmates' health information may originate from or reside in many locations, including booking notes (e.g., infectious or chronic disease status), sick-call triage systems, physician notes, and other departments such as housing and work details (e.g., mobility or injury status)."[27] The rule protects the health information of inmates, but also recognizes that correctional facilities have legitimate needs to use and share the information

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] United States Department of Health and Human Services, *Summary of the HIPAA Privacy Rule*, Last Revised May 2003.
[25] 45 CFR Parts 160, 162, and 164.
[26] Department of Corrections, *Health Care Facts*, available at http://www.dc.state.fl.us/oth/hlthfact.html (last visited March 16, 2017).
[27] Melissa M. Goldstein, JD, *Health Information Privacy and Health Information Technology in the US Correctional Setting*, AM J Public Health, 2014 May, 104(5): 803-809, available at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3987588/ (last visited March 16, 2017).

without authorization by the inmate. Thus, the rule includes provisions regarding permissible uses and disclosures of inmates' health information in the correctional context.

> Covered entities may disclose the PHI [personal health information] of inmates without their authorization to correctional institutions or law enforcement officials who have lawful custody of an inmate for the purpose of providing health care to the inmate or for the health and safety of the inmate, other inmates, the officers and employees of the institution and others at the facility, and those responsible for inmate transfer. Covered entities may also disclose the PHI of inmates without authorization for law enforcement purposes on the premises of an institution and for the administration and maintenance of the safety, security, and good order of the institution. These provisions apply only to the release of the PHI of current inmates. When inmates are released, they have the same privacy rights under HIPAA as all other individuals.[28]

The department states that it is "unable to share inmate or offender protected health information and medical and mental health records for legitimate governmental functions in the absence of consent, a subpoena, or other court involvement."[29]

Confidential Information

Section 945.10, F.S., makes confidential and exempts from Florida public record laws the following department records:

- Mental health, medical, or substance abuse records of an inmate or an offender;
- Preplea, pretrial intervention, and presentence or postsentence investigative records;
- Information regarding a person in the federal witness protection program;
- Florida Commission on Offender Review records which are confidential or exempt from public disclosure by law;
- Information which if released would jeopardize a person's safety;
- Information concerning a victim's statement and identity;
- Information which identifies an executioner, or any person prescribing, preparing, compounding, dispensing, or administering a lethal injection; and
- Records that are otherwise confidential or exempt from public disclosure by law.

Currently, the only permitted statutory disclosure of mental health, medical, or substance abuse records of an inmate or offender is to the Department of Health and the county health department where an inmate plans to reside if he or she has tested positive for the presence of the antibody or antigen to human immunodeficiency virus infection (HIV).[30] The identity of a person upon whom a test has been performed and the test results are generally confidential and exempt from public records pursuant to s. 381.004(2), F.S.

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[28] *Id*.
[29] Department of Corrections, *Agency Bill Analysis: SB 1526*, (March 10, 2017) (on file with the Senate Committee on Criminal Justice).
[30] Section 945.10(1)(a), F.S.

Section 456.057, F.S., which also governs medical and mental health records maintained by the department, also contains limited record sharing. Most of the allowed disclosures deal with issues such as insurance, billing, investigations of medical malpractice, or medical research, which do not "contemplate the unique needs" of the department.[31]

III. Effect of Proposed Changes:

Confidential Information

The bill amends s. 945.10(1), F.S., to classify the following department records and information as confidential and exempt from Florida's public record law:

- "Protected health information"[32] of an inmate or an offender;
- HIV tests[33] of an inmate or offender; and
- HIV test results[34] received on an inmate or offender.

The identity of a person upon whom a test has been performed and the test results are also currently confidential and exempt from public records pursuant to s. 381.004(2), F.S.

These additions to the department's confidential and exempt information are 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.

Release of protected health information and mental health, medical, or substance abuse records

The bill aligns Florida law with the exemptions established in the HIPAA Privacy Rule by authorizing the release of protected health information and mental health, medical, and substance abuse records. The bill allows the department's protected health information and mental health, medical, or substance abuse records of an inmate[35] to be released to:

- The Executive Office of the Governor, the Correctional Medical Authority, and the Department of Health for health care oversight activities authorized by state or federal law, including audits; civil, administrative, or criminal investigations; or inspections relating to the provision of health services;[36]

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[31] Department of Corrections, *Agency Bill Analysis: SB 1526*, (March 10, 2017).
[32] "Protected health information" means individually identifiable health information that is: transmitted by electronic media; maintained in electronic media; or transmitted or maintained in any other form or medium. (45 C.F.R. s. 160.103). It excludes identifiable health information: in education records covered by the Family Educational Rights and Privacy Act; in records described at 20 U.S.C. 1232g(a)(4)(B)(iv)(education records on a student who is eighteen years of age or older, or is attending an institution of postsecondary education, which are made or maintained by physician, psychiatrist, psychologist); in employment records held by a covered entity in its role as employer; and regarding a person who has been deceased for more than 50 years.
[33] "HIV test" means a test ordered after July 6, 1988, to determine the presence of the antibody or antigen to human immunodeficiency virus or the presence of human immunodeficiency virus infection. (Section 381.004, F.S.).
[34] "HIV test result" means a laboratory report of a human immunodeficiency virus test result entered into a medical record on or after July 6, 1988, or any report or notation in a medical record of a laboratory report of a human immunodeficiency virus test. The term does not include test results reported to a health care provider by a patient. (Section 381.004, F.S.).
[35] Section 945.10(1)(a), F.S.
[36] 45 C.F.R. 164.512(d).

- A state attorney, a state court, or a law enforcement agency conducting an ongoing criminal investigation if the inmate agrees to the disclosure and provides written consent. If the inmate refuses to provide written consent, in response to a court order, a subpoena, investigative, or administrative subpoena, a court-ordered warrant, or a statutorily authorized investigative demand or other process[37] the records can be released to such persons provided that:
  - The protected health information and records sought are relevant and material to a legitimate law enforcement inquiry;
  - There is a clear connection between the investigated incident and the inmate's protected health information;
  - The request is specific and limited in scope to the extent reasonably practicable; and
  - De-identified information could not be reasonably used.[38]
- A state attorney or a law enforcement agency if an inmate is or is suspected of being a victim of a crime if the inmate agrees to the disclosure and provides written consent. If the inmate is unable to agree because of incapacity or other emergency circumstances[39] provided that:
  - The information is needed to determine whether a violation of law by a person other than the inmate has occurred;
  - The information is not intended to be used against the inmate victim;
  - The immediate law enforcement activity would be materially and adversely affected by waiting until the inmate victim is able to agree to the disclosure; and
  - The disclosure is in the best interests of the inmate victim, as determined by the department.[40]
- A state attorney or a law enforcement agency if the department believes in good faith that the information and records constitute evidence of criminal conduct that occurred in a correctional institution or facility provided that:
  - The protected information and records are specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information or records are sought;
  - There is a clear connection between the criminal conduct and the inmate whose protected health information and records are sought; and
  - De-identified information could not reasonably be used.[41]
- The Division of Risk Management of the Department of Financial Services upon certification by the Division that the information is necessary to investigate and provide legal representation for a claim against the department.[42]
- The Department of Legal Affairs or an attorney retained to represent the department if the inmate is bringing a legal action against the department.[43]
- Another correctional institution or law enforcement official having lawful custody of the inmate if the protected health information or records are necessary for:
  - The provision of health care to the inmate;
  - The health and safety of the inmate or other inmates;

[37] All orders, subpoenas, warrants, or other statutorily authorized demand must be in accordance with 45 C.F.R 164, part E, governing security and privacy of health information.
[38] 45 C.F.R. 164.512(f)(1).
[39] The circumstances must be in accordance with 45 C.F.R. 164, part E, governing security and privacy of health information.
[40] 45 C.F.R. 164.512(f)(3).
[41] 45 C.F.R. 164.512(f)(5).
[42] 45 C.F.R. 164.508(a)(2)(C).
[43] *Id*.

  - The health and safety of the officers, employees, or others at the correctional institution or facility;
  - The health and safety of the individuals or officers responsible for transporting the inmate from one correctional institution, facility, or setting to another;
  - Law enforcement on the premises of the correctional institution or facility; or
  - The administration and maintenance of the safety, security, and good order of the correctional institution or facility.[44]
- The Department of Children and Families and the Florida Commission on Offender Review if the inmate received mental health treatment while in the custody of the department and becomes eligible for release under supervision or upon the end of his or her sentence.[45]

The bill also allows the department's protected health information and mental health, medical, or substance abuse records of an inmate be released to persons acting on behalf of a deceased inmate or offender only for the purpose of requesting access to the information if:[46]

- The person is appointed by a court to act as the personal representative, executor, administrator, curator, or temporary administrator of the deceased inmate's or offender's estate;
- A court has not made a judicial appointment, but the person was designated as a personal representative in a last will and testament; or
- A court has not made a judicial appointment and the inmate or offender has not designated a person in a self-proved last will. In such case, persons include surviving spouses, adult children, and parents of the inmate or offender.

All requests for access to a deceased inmate or offender's protected health information are required to be in writing and accompanied by the following:

- If a person appointed by the court is acting as a personal representative, a copy of the letter of administration and a copy of the court order appointing the personal representative.
- If made by a person designated by the inmate as the personal representative in a last will and testament, a copy of the self-proved last will designating the person as the inmate's or offender's representative.
- If made by a surviving spouses, adult children, and parents of the inmate or offender, a letter from the person's attorney verifying the person's relationship to the inmate or offender and the absence of a court-appointed representative and self-proved last will.

Public Necessity

The bill provides that the Legislature finds that it is a public necessity that an inmate's or offender's protected health information and HIV testing information held by the department remain confidential and exempt from public disclosure.

The bill will take effect on the same date that SB 1604 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension becomes law.

[44] 45 C.F.R. 164.512(f)(5).
[45] 45 C.F.R. 164.512(d)(2) or (6).
[46] 45 C.F.R. 164.512(g).

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

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:

None.

VII. Related Issues:

SB 1604 (2017) amends s. 943.04, F.S., to authorize the Florida Department of Law Enforcement, when conducting an investigation or assisting in the investigation of an injury to or death of an inmate under the custody or control of the DOC, to serve a demand for production of the inmate's protected health information, medical records, or mental health records on the DOC. The records disclosed remain confidential and exempt from public records laws.

VIII. Statutes Affected:

This bill substantially amends section 945.10 of the Florida Statutes.

IX. Additional Information:

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

CS by Rules on April 25, 2017:
The committee substitute:

- Changes the effective date from July 1, 2017, to be the on same date as SB 1604 or when similar legislation takes effect.

B. Amendments:

None.

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

524838

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/25/2017	.	
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	.	
	.	

The Committee on Rules (Bracy) recommended the following:

Senate Amendment

Delete line 265
and insert:
Section 3. This act shall take effect on the same date that SB 1604 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

By Senator Bracy

11-01217B-17 20171526__

A bill to be entitled

An act relating to public records; amending s. 945.10, F.S.; providing that certain protected health information held by the Department of Corrections is confidential and exempt from public records requirements; authorizing the release of protected health information and other records of an inmate to certain entities, subject to specified conditions and under certain circumstances; providing a statement of public necessity; providing an effective date.

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

Section 1. Paragraph (a) of subsection (1) of section 945.10, Florida Statutes, is amended, present paragraph (h) of that subsection is redesignated as paragraph (i), a new paragraph (h) is added to that subsection, subsection (2) of that section is amended, and subsection (6) is added to that section, to read:

945.10 Confidential information.—

(1) Except as otherwise provided by law or in this section, the following records and information held by the Department of Corrections are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

(a)1. Mental health, medical, or substance abuse records of an inmate or an offender; and

2. Protected health information of an inmate or an offender. Protected health information, as used in this section, has the same meaning as provided in 45 C.F.R. s. 160.103. This

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11-01217B-17 20171526__

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.

(h) The identity of any inmate or offender upon whom an HIV test has been performed and the inmate's or offender's test results, in accordance with s. 381.004. The term "HIV test" has the same meaning as provided in s. 381.004. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

(2) The records and information specified in paragraphs (1)(a)-(i) ~~(1)(a)-(h)~~ may be released as follows unless expressly prohibited by federal law:

(a) Information specified in paragraphs (1)(b), (d), and (f) to the Executive Office of the Governor, the Legislature, the Florida Commission on Offender Review, the Department of Children and Families, a private correctional facility or program that operates under a contract, the Department of Legal Affairs, a state attorney, the court, or a law enforcement agency. A request for records or information pursuant to this paragraph need not be in writing.

(b) Information specified in paragraphs (1)(c), (e), and (i) ~~(h)~~ to the Executive Office of the Governor, the Legislature, the Florida Commission on Offender Review, the Department of Children and Families, a private correctional facility or program that operates under contract, the Department of Legal Affairs, a state attorney, the court, or a law

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enforcement agency. A request for records or information pursuant to this paragraph must be in writing and a statement provided demonstrating a need for the records or information.

(c) Information specified in paragraph (1)(b) to an attorney representing an inmate under sentence of death, except those portions of the records containing a victim's statement or address, or the statement or address of a relative of the victim. A request for records of information pursuant to this paragraph must be in writing and a statement provided demonstrating a need for the records or information.

(d) Information specified in paragraph (1)(b) to a public defender representing a defendant, except those portions of the records containing a victim's statement or address, or the statement or address of a relative of the victim. A request for records or information pursuant to this paragraph need not be in writing.

(e) Information specified in paragraph (1)(b) to state or local governmental agencies. A request for records or information pursuant to this paragraph must be in writing and a statement provided demonstrating a need for the records or information.

(f) Information specified in paragraph (1)(b) to a person conducting legitimate research. A request for records and information pursuant to this paragraph must be in writing, the person requesting the records or information must sign a confidentiality agreement, and the department must approve the request in writing.

(g) Protected health information and records specified in paragraphs ~~paragraph~~ (1)(a) and (h) to the Department of Health

and the county health department where an inmate plans to reside if he or she has tested positive for the presence of the antibody or antigen to human immunodeficiency virus infection or as authorized in s. 381.004.

(h) Protected health information and mental health, medical, or substance abuse records specified in paragraph (1)(a) to the Executive Office of the Governor, the Correctional Medical Authority, and the Department of Health for health care oversight activities authorized by state or federal law, including audits; civil, administrative, or criminal investigations; or inspections relating to the provision of health services, in accordance with 45 C.F.R. part 164, subpart E.

(i) Protected health information and mental health, medical, or substance abuse records specified in paragraph (1)(a) to a state attorney, a state court, or a law enforcement agency conducting an ongoing criminal investigation, if the inmate agrees to the disclosure and provides written consent or, if the inmate refuses to provide written consent, in response to an order of a court of competent jurisdiction, a subpoena, including a grand jury, investigative, or administrative subpoena, a court-ordered warrant, or a statutorily authorized investigative demand or other process as authorized by law, in accordance with 45 C.F.R. part 164, subpart E, provided that:

1. The protected health information and records sought are relevant and material to a legitimate law enforcement inquiry;

2. There is a clear connection between the investigated incident and the inmate whose protected health information and records are sought;

3. The request is specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information or records are sought; and

4. De-identified information could not reasonably be used.

(j) Protected health information and mental health, medical, or substance abuse records specified in paragraph (1)(a) of an inmate who is or is suspected of being the victim of a crime, to a state attorney or a law enforcement agency if the inmate agrees to the disclosure and provides written consent or, if the inmate is unable to agree because of incapacity or other emergency circumstance, in accordance with 45 C.F.R. part 164, subpart E, provided that:

1. Such protected health information and records are needed to determine whether a violation of law by a person other than the inmate victim has occurred;

2. Such protected health information or records are not intended to be used against the inmate victim;

3. The immediate law enforcement activity that depends upon the disclosure would be materially and adversely affected by waiting until the inmate victim is able to agree to the disclosure; and

4. The disclosure is in the best interests of the inmate victim, as determined by the department.

(k) Protected health information and mental health, medical, or substance abuse records specified in paragraph (1)(a) to a state attorney or a law enforcement agency if the department believes in good faith that the information and records constitute evidence of criminal conduct that occurred in a correctional institution or facility, in accordance with 45

C.F.R. part 164, subpart E, provided that:

1. The protected health information and records disclosed are specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information or records are sought;

2. There is a clear connection between the criminal conduct and the inmate whose protected health information and records are sought; and

3. De-identified information could not reasonably be used.

(l) Protected health information and mental health, medical, or substance abuse records specified in paragraph (1)(a) to the Division of Risk Management of the Department of Financial Services, in accordance with 45 C.F.R. part 164, subpart E, upon certification by the Division of Risk Management that such information and records are necessary to investigate and provide legal representation for a claim against the Department of Corrections.

(m) Protected health information and mental health, medical, or substance abuse records specified in paragraph (1)(a) of an inmate who is bringing a legal action against the department, to the Department of Legal Affairs or to an attorney retained to represent the department in a legal proceeding, in accordance with 45 C.F.R. part 164, subpart E.

(n) Protected health information and mental health, medical, or substance abuse records of an inmate as specified in paragraph (1)(a) to another correctional institution or facility or law enforcement official having lawful custody of the inmate, in accordance with 45 C.F.R. part 164, subpart E, if the protected health information or records are necessary for:

1. The provision of health care to the inmate;

2. The health and safety of the inmate or other inmates;

3. The health and safety of the officers, employees, or others at the correctional institution or facility;

4. The health and safety of the individuals or officers responsible for transporting the inmate from one correctional institution, facility, or setting to another;

5. Law enforcement on the premises of the correctional institution or facility; or

6. The administration and maintenance of the safety, security, and good order of the correctional institution or facility.

(o) Protected health information and mental health, medical, or substance abuse records of an inmate as specified in paragraph (1)(a) to the Department of Children and Families and the Florida Commission on Offender Review, in accordance with 45 C.F.R. part 164, subpart E, if the inmate received mental health treatment while in the custody of the Department of Corrections and becomes eligible for release under supervision or upon the end of his or her sentence.

(p) Notwithstanding s. 456.057 and in accordance with 45 C.F.R. part 164, subpart E, protected health information and mental health, medical, or substance abuse records specified in paragraph (1)(a) of a deceased inmate or offender to an individual with authority to act on behalf of the deceased inmate or offender, upon the individual's request. For purposes of this section, the following individuals have authority to act on behalf of a deceased inmate or offender only for the purpose of requesting access to such protected health information and

records:

1. A person appointed by a court to act as the personal representative, executor, administrator, curator, or temporary administrator of the deceased inmate's or offender's estate;

2. If a court has not made a judicial appointment under subparagraph 1., a person designated by the inmate or offender to act as his or her personal representative in a last will that is self-proved under s. 732.503; or

3. If a court has not made a judicial appointment under subparagraph 1. or if the inmate or offender has not designated a person in a self-proved last will as provided in subparagraph 2., only the following individuals:

a. A surviving spouse.

b. If there is no surviving spouse, a surviving adult child of the inmate or offender.

c. If there is no surviving spouse or adult child, a parent of the inmate or offender.

(q) All requests for access to a deceased inmate's or offender's protected health information or mental health, medical, or substance abuse records specified in paragraph (1)(a) must be in writing and must be accompanied by the following:

1. If made by a person authorized under subparagraph (p)1., a copy of the letter of administration and a copy of the court order appointing such person as the representative of the inmate's or offender's estate.

2. If made by a person authorized under subparagraph (p)2., a copy of the self-proved last will designating the person as the inmate's or offender's representative.

3. If made by a person authorized under subparagraph (p)3., a letter from the person's attorney verifying the person's relationship to the inmate or offender and the absence of a court-appointed representative and self-proved last will.

Records and information released under this subsection remain confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution when held by the receiving person or entity.

(6) This section does not limit any right to obtain records by subpoena or other court process.

Section 2. The Legislature finds that it is a public necessity that an inmate's or offender's protected health information and HIV testing information held by the Department of Corrections pursuant to s. 945.10, Florida Statutes, remain confidential and exempt from public disclosure as the Legislature envisioned in this statute and as provided in department rules. Allowing protected health information to be publicly disclosed would in some cases cause a conflict with existing federal law and would be a violation of an inmate's or offender's privacy under the State Constitution. Maintaining the confidentiality of an inmate's or offender's HIV testing information is essential to his or her participation in such testing. Thus, the harm from disclosure would outweigh any public benefit derived therefrom. Appropriate records and protected health information are available, however, to various governmental entities in order for them to perform their duties. It is mandatory that prisons function as effectively, efficiently, and nonviolently as possible. To release such

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information to the public would severely impede that function and would jeopardize the health and safety of those within and outside the prison system.

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

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2017 Legislative Priority

SB 1526 Public Records/DOC/Health Information

Sponsored by Senator Bracy

- ***Major Component of the Bill:***
  - Authorizes the Florida Department of Corrections (FDC) to share limited inmate and offender medical and mental health records or protected health information to other governmental agencies for legitimate state purposes.
  - This would allow FDC to share this type of information with other governmental agencies like the Florida Department of Law Enforcement when they are conducting official state business.
  - The legislation is consistent with the Federal HIPAA Privacy Regulations and the Florida Constitutional Privacy Rights of individuals and does not exempt additional information that is not already exempt under Federal law.
  - It will enhance governmental efficiency and promote transparency between agencies to allow for authorized communication needs for legitimate law enforcement purposes as well as continuity of medical and mental health services for inmates transitioning into the community.

- ***Detailed Background:***
  - There are many exemptions that are established in the Federal HIPAA Privacy Rule that are not presently codified in Florida law. Some of these exemptions relate directly to the Florida correctional environment. See e.g. 45 C.F.R. § 164.512(k)(5).
  - This legislation contains enhanced procedural safeguards to prevent unauthorized access to inmate/offender medical/mental health records and protected health information and is narrowly-tailored to accomplish tasks specific to the correctional environment.
  - This legislation also contains administrative safeguards that are consistent with the individual inmates' Florida constitutional privacy interests articulated in Florida case law.

THE FLORIDA SENATE

APPEARANCE RECORD

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

25 Apr 17
Meeting Date

1526
Bill Number (if applicable)

Topic Public Records - Dept. of Corrections

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title Pres & CEO

Address 204 S. Monroe
Street

Phone

Tall — FL — 32301
City — *State* — *Zip*

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Fla. Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/2017
Meeting Date

SB 1526
Bill Number (if applicable)

Topic SB 1526 - Public Records/Health Information/Department of Corrections

Amendment Barcode (if applicable)

Name Jared Torres

Job Title Legislative Affairs Director

Address 501 South Calhoun Street
Street

Phone 850-488-7436

Tallahassee — Florida — 32399
City — *State* — *Zip*

Email Jared.Torres@fdc.myflorida.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Department of Corrections

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/17
Meeting Date

1526
Bill Number (if applicable)

Topic DOC

Amendment Barcode (if applicable)

Name JASON JONES

Job Title GENERAL COUNSEL

Address P. O. BOX 1489
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Phone 850 410-7676

TALLAHASSEE FL 32302
City *State* *Zip*

Email JASONJONES@FDLE.STATE.FL.US

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FDLE

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
302 Senate Office Building

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

DATE	COMM	ACTION
2/28/17	SM	Fav/1 amendment
3/30/17	JU	**Fav/CS**
4/18/17	CA	**Favorable**
4/25/17	RC	**Favorable**

February 28, 2017

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

Re: **CS/SB 40** – Judiciary Committee and Senator Bill Galvano
HB 6503 – Representative Sean Shaw
Relief of Sean McNamee by the School Board of Hillsborough County

SPECIAL MASTER'S FINAL REPORT

This is an uncontested excess judgment claim for local funds in the amount of 1.7 million against the school board of Hillsborough County for damages caused to Sean McNamee after he struck his head on a field striper that was negligently left on a football field during football practice.

FINDINGS OF FACT:

On October 9, 2013, on or around 3:20 p.m., Sean McNamee began participating in football practice with the Wharton High School football team in Hillsborough County, Florida. The players were running passing drills with their lower uniforms on but without shoulder pads or helmets. At approximately 3:45 p.m., while participating in a passing drill, Sean lost his balance after colliding with another player and struck his head on a field striper left on the field by the Wharton High school Head Football Coach David Mitchell. Sean's friend, Daniel, saw the collision and noticed that Sean was acting strangely. Daniel alerted Coach Mitchell who directed Daniel to take Sean to the locker room to be seen by the athletic trainer, Timothy Koecher. Daniel took Sean to the school, but did not escort Sean inside or speak to the trainer.

Trainer Koecher stayed with Sean intermittently in the locker room and in the training room. The extent of any examination

that Trainer Koecher conducted on Sean is not clear. The student injury report submitted to the school by Trainer Koecher states that Sean suffered from a bruise and that ice was applied. Trainer Koecher's written statement, taken a year after the incident and submitted as an addendum after the special master hearing, indicates that there was no laceration or visible bleeding in the injured area and that normal protocol was followed when assessing Sean's injury. However, the joint submission presented by both parties states that Trainer Koecher failed to adhere to proper protocol to evaluate Sean's condition and obtain appropriate medical intervention.

On several occasions, Trainer Koecher left Sean alone. Most of these occasions were for approximately 10 minutes, but on one occasion Sean was left alone for approximately 30 minutes. At approximately 4:22 p.m., during the 30-minute period alone, Sean left campus and drove himself home despite being told by the trainer on several occasions not to drive. Sean has little to no memory of driving himself home. On at least one of the occasions, trainer Koecher left Sean to get cell reception to contact Sean's mother, Jody McNamee. When Trainer Koecher contacted her, Jody McNamee was in Brandon, Florida, and she immediately headed to the school to pick up Sean.

After Sean arrived home, he was met by his younger sister who was an elementary student at the time. Upset by Sean's incoherent condition, his sister called their parents and their father, Todd McNamee, returned home and took Sean to the emergency room. Sean was initially seen at Florida Hospital, Tampa, at 6:01 p.m., approximately two and a half hours after first sustaining his injury. Sean's parents stated in the hearing that the hospital could not see him in the emergency room immediately because he was transported to the hospital by his father and not by ambulance.

A CT scan revealed that Sean suffered from a large left acute temporal convexity epidural hemorrhage measuring 5.3 x 3.2 centimeters. After consulting with a radiologist, Dr. Yoav Ritter, the treating surgeon, rushed Sean to surgery where he removed a portion of Sean's skull to relieve the cranial pressure caused by internal bleeding and swelling. Sean was placed in an induced coma while he recovered and he

emerged from his coma on October 18, 2013. He was discharged from the hospital on October 31, 2013.

Sean had a second surgery in December, 2013, to replace the portion of his skull with a titanium plate. In January, 2015, Sean began to suffer from seizures that would occur approximately every one to two months. In April, 2016, Sean suffered from a significant seizure that required an extended period of hospitalization. Testimony at the hearing placed his last known seizure on or around June or July, 2016. Sean's drivers license has been revoked due to his seizures. At the time of the settlement, total health care costs for Sean's injuries totaled approximately $500,000.

In April, 2015, Sean and his parents filed suit against the School Board of Hillsborough County. On January 7, 2016, as a result of court-ordered mediation, the parties entered into a stipulated judgement against the School Board in the amount of $2 million. Of the $2 million, $300,000 has been paid,[1] with Sean receiving $200,000 and Todd and Jody McNamee receiving $50,000 each. Less attorney's fees, costs, and medical liens, Sean has received approximately $109,000 and each parent has received approximately $36,000. Currently, there are outstanding medical liens in the amounts of $150,874 owed to Aetna and $13,831 owed to Florida Blue. The school board is self-insured for the total amount of the judgment.

In addition to the seizures, Sean suffers from ongoing mental impairment. A psychological evaluation of Sean, based on examinations performed on January 10 and 28, 2014, revealed significant changes in cognitive functions from his severe traumatic brain injury (TBI) that would have an adverse impact on school functioning. The evaluation also found that Sean will need extra help with organizational skills at home and at school and that continued parental involvement in managing his affairs and decisions clearly will be needed. However, the evaluation did not reveal deficits that would interfere with employability with accommodations made under the Americans with Disabilities Act.

Currently, Sean lives with his brother in an apartment they rent together. He is unemployed and is not enrolled in school. An

[1] Pursuant to s. 768.28, F.S.

irrevocable trust was established for Sean's medical and living expenses on April 11, 2016.

CONCLUSIONS OF LAW:

Florida schools have a special relationship with their students which creates a duty to reasonably supervise the students during all activities that are subject to the control of the school.[2] Specific to student athletes, and as pertinent to the facts of this case, Wharton High School had the duty to ensure that Sean McNamee was adequately supervised when participating in football practice and to ensure that appropriate measures were taken after he was injured to prevent aggravation of the injury.[3]

Duty to Supervise:

The school breached its duty to adequately supervise its student athletes when Coach Mitchell negligently left the field striper on the field within the practice area. By leaving the striper on the field and by having the players conduct warm up activities in the area where the striper was left, Coach Mitchell created a hazard that was the cause of Sean McNamee's injury. Additionally, although TBI is an injury that may be expected while playing football, being injured on a piece of equipment that was negligently left on the practice field is not an injury inherent to playing football.

Duty to Prevent Aggravation of the Injury:

The school breached its duty to ensure that appropriate measures were taken after Sean's injury to prevent aggravation of the injury. The joint submission of both parties indicates that Trainer Koecher failed to adhere to proper protocol to evaluate Sean's condition and obtain appropriate medical intervention.[4] As a result, there was a significant delay in Sean receiving the necessary medical treatment for his TBI. It is probable that the delay in treatment aggravated Sean's injury and may have caused some of the long-term changes in his cognitive functions that are present today.

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[2] *Limones v. Sch. Dist.*, 161 So. 3d 384, 390 (Fla. 2015).

[3] *Id*.

[4] Although Trainer Kocher in his written statement indicated that he followed protocol when examining Sean McNamee, there are several reasons to disregard this statement. First, the statement was made a full year after the events. Second, the submission stating that Trainer Koecher was negligent was a joint submission with agreed upon facts by both parties. Third, the statement itself was not presented at or before the hearing and, as such, the plaintiffs did not have the opportunity to respond to the statement in the hearing.

Damages:

As can be seen through the established facts, Sean suffers from both acute and chronic effects caused by the TBI he suffered on October 9, 2013. These effects include several hospitalizations and surgeries that accrued nearly $500,000 in medical expenses, ongoing seizures, loss of his ability to maintain a driver's license, and cognitive changes that will likely affect his ability to succeed in school and to live on his own. The TBI Sean suffered due to Coach Mitchell's negligence and the likely aggravation of his injury he suffered due to Trainer Koecher's negligence in obtaining proper medical care in a timely manner were the direct causes of both the acute and ongoing damages.

ATTORNEYS FEES: Senate Bill 40 restricts the total amount paid for attorney fees, lobbying fees, costs, and similar expenses relating to this claim to 25 percent of the amount awarded. As such, total attorney and lobbyist fees will be $425,000 of the $1.7 million awarded under the bill. However, the limits on lobbying fees, costs, and other expenses should be removed to conform to a recent opinion of the Florida Supreme Court. See *Searcy, Denney, Scarola, Barnhart & Shipley v. State*, 42 Fla. L. Weekly S92 (Fla. 2016).

SPECIAL NEEDS TRUST: The undersigned recommends that Senate Bill 40 be amended to direct all payment of funds into the Sean R. McNamee Irrevocable Trust, after the deduction of costs and liens. This change will protect Sean's eligibility for means tested government benefits.

RECOMMENDATIONS: The undersigned recommends that Senate Bill 40 (2017) be reported FAVORABLY, AS AMENDED.

Respectfully submitted,

Daniel Looke
Senate Special Master

cc: Secretary of the Senate

CS by Judiciary:
The committee substitute provides for the proceeds of the claim bill to be paid into a trust for the benefit of the disabled claimant. The amendment also eliminates references to caps on lobbying fees, costs, and other expenses, consistent with a recent Supreme Court Opinion.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on Higher Education, *Chair*
Appropriations
Education
Governmental Oversight and Accountability
Rules

JOINT COMMITTEE:
Joint Legislative Budget Commission

SENATOR BILL GALVANO
21st District

April 18, 2017

Senator Lizbeth Benacquisto
Committee on Rules
402 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

Dear Chair Benacquisto:

I respectfully request that SB 40 Relief of Sean McNamee by the School Board of Hillsborough County be scheduled for a hearing in the Committee on Rules, at your earliest convenience.

If I can provide additional documentation to you on this, please do not hesitate to contact me. Thank you for your consideration of this matter.

Sincerely,

Bill Galvano

cc: John B Phelps
Cynthia Futch

REPLY TO:
☐ 1023 Manatee Avenue West, Suite 201, Bradenton, Florida 34205 (941) 741-3401
☐ 420 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5021

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

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is 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 1252
INTRODUCER:	Senator Galvano
SUBJECT:	Education
DATE:	April 24, 2017
REVISED:	

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

I. Summary:

SB 1252 removes an obsolete date regarding the electronic individual education plan (IEP), and revises the membership of the Higher Educational Coordinating Council (HECC) and the date by which the Board of Governors of the State University System (BOG or board) must submit an annual accountability report. Specifically, the bill:

- Deletes the July 1, 2007, deadline for the Florida Department of Education to develop and operate an electronic IEP.
- Adds the Chancellor of Career and Adult Education to the HECC membership.
- Codifies March 15 as the deadline for the BOG to submit the board's annual accountability report.

The bill has no impact on state funds.

The bill takes effect on July 1, 2017.

II. Present Situation:

The Florida Legislature has enacted laws to make information related to a child's education available to his or her parent, and established mechanisms to improve the K-20 education accountability system.

Individual Education Plans

Federal law requires states to make a free appropriate public education[1] available to all children with disabilities residing in the state between the ages of 3 and 21, including children with

[1] "Free appropriate public education" means services that are provided at public expense, under public supervision and direction, and without charge; meet the standards of the state education agency; include an appropriate

disabilities who have been suspended or expelled from school.[2] As the state educational agency, the Florida Department of Education (DOE) must exercise general supervision over all educational programs for children with disabilities in the state, including all programs administered by other state or local agencies, and ensure that the programs meet the educational standards of the state educational agency.[3]

For each eligible child with a disability served by a school district, or other state agency that provides special education and related services directly, by contract, or through other arrangements, an individual education plan (IEP) or individualized family support plan[4] must be developed, reviewed, and revised.[5] In developing an IEP, the IEP team is required to consider a child's strengths, concerns of the parents for enhancing education, results of the initial evaluation or most recent evaluation of the child, and the academic, developmental, and functional needs of the child, as well as special factors.[6]

States receiving Individuals with Disabilities Education Act funds must comply with detailed procedural requirements, including identifying, evaluating, and making placements for students with disabilities and for developing an individualized education program for each student.[7] States must also provide students with disabilities and their parents with certain procedural safeguards, including:

- Notice of any proposal or refusal to change the student's identification, evaluation, or educational placement;
- The opportunity to present a complaint and to have an impartial due process hearing; and
- The right to keep the student in his or her current educational placement pending administrative or judicial review proceedings.[8]

A student with a disability and his or her parents also have the right to bring a civil action in state court, if they are aggrieved by the decision of the state administrative hearing officer relating to a due process hearing or alternative placement.[9]

In 2006,[10] the Legislature enacted legislation to require the DOE to develop and have an operating electronic IEP in place for potential statewide use by July 1, 2007. The law required

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preschool, elementary school, or secondary school education in the state; and are provided in conformity with an individualized education program. 20 U.S.C. s. 1401(9).

[2] 20 U.S.C. s. 1412(a).

[3] 34 C.F.R. s. 300.149.

[4] An Individualized Family Support Plan is a written plan identifying the specific concerns and priorities of a family related to enhancing their child's development and the resources to provide early intervention services to children with disabilities ages birth through two (2) years or special education and related services to children with disabilities ages three (3) through five (5). Rule 6A-6.03029, F.A.C.

[5] Rule 6A-6.03028(3), F.A.C.

[6] 20 U.S.C. s. 1414(d)(3)(A) and (B).

[7] 20 U.S.C. s. 1412(a).

[8] 20 U.S.C. s. 1415(b), (c), (d), (e), (f), and (j). There is an exception to keeping a student in his or her current placement if it involves an alternative educational setting.

[9] 20 U.S.C. s. 1415(i)(2).

[10] Section 31, ch. 2006-74, L.O.F.

the statewide system to be developed collaboratively with school districts and include input from school districts at that time developing or operating electronic IEP systems.[11]

Higher Education Coordinating Council

The Legislature created the Higher Education Coordinating Council (HECC or council) in 2010[12] to identify unmet needs; facilitate solutions to disputes regarding the creation of new degree programs and the establishment of new institutes, campuses, or centers; and facilitate solutions to data issues identified by the Articulation Coordination Committee to improve the K-20 education performance accountability system.[13] The HECC includes the following members:[14]

- One member of the Board of Governors (BOG), appointed by the chair of the BOG.
- The Chancellor of the State University System.
- The Chancellor of the Florida College System.
- One member of the State Board of Education (SBE), appointed by the chair of the SBE.
- The Executive Director of the Florida Association of Postsecondary Schools and Colleges.
- The president of the Independent Colleges and Universities of Florida.
- The president of CareerSource Florida, Inc., or his or her designee.
- The president of Enterprise Florida, Inc., or a designated member of the Stakeholders Council appointed by the president.
- Three representatives of the business community, one appointed by the President of the Senate, one appointed by the Speaker of the House of Representatives, and one appointed by the Governor, who are committed to developing and enhancing world class workforce infrastructure necessary for Florida's citizens to compete and prosper in the ever-changing economy of the 21st century.

The appointed members serve 2-year terms and the chair of the HECC is elected annually by a majority of the council members.[15]

State University System Accountability Process

The Legislature has established a state university accountability process to provide for the systematic, ongoing evaluation of quality and effectiveness of state universities.[16] The accountability process is intended to monitor performance at the system level in each of the major areas of instruction, research, and public service.[17] Additionally, the accountability process is required to provide for the adoption of systemwide performance standards and performance goals through a collaborative effort involving state universities, the BOG, the Legislature, and the Governor's Office.[18]

[11] Section 1003.576, F.S.
[12] Section 12, ch. 2010-78, L.O.F.
[13] Section 1004.015(1), F.S.
[14] *Id.* at (2), F.S.
[15] *Id.*
[16] Section 1008.46, F.S.
[17] *Id.*
[18] *Id.*

By March 15[19] of each year, the BOG must submit an annual accountability report[20] providing information on the implementation of performance standards, actions taken to improve university achievement of performance goals, the achievement of performance goals during the prior year, and initiatives to be undertaken during the next year.[21]

III. Effect of Proposed Changes:

SB 1252 removes an obsolete date regarding the electronic individual education plan (IEP), and revises the membership of the Higher Educational Coordinating Council (HECC) and the date by which the Board of Governors of the State University System (BOG or board) must submit an annual accountability report.

Individual Education Plans

The bill deletes the July 1, 2007, deadline for the Florida Department of Education to develop and operate an electronic IEP.

Higher Education Coordinating Council

The bill adds the Chancellor of Career and Adult Education to the membership of the Higher Education Coordinating Council (HECC). This addition will likely strengthen representation of workforce education delivered by technical centers on the HECC, and improve coordination among various postsecondary education delivery systems.

State University System Accountability Process

The bill codifies March 15 as the deadline for the BOG to submit the board's annual accountability report.

The state university annual accountability report relies on data reported by state universities to the BOG's State University Database System, [22] and follow a reporting calendar. The March 15 deadline for submission of the annual accountability report would allow the BOG to include data for the preceding fall term regarding enrollment, degrees awarded, and retention, because such data are reported by the state universities to the BOG in January and February.[23] As such, the annual accountability report submitted by December 31 would not include the most recent fall term data for the specified indicators, which the state universities report to the BOG after

[19] Consistent with the implementing bill for the 2015-2016 General Appropriations Act (GAA) (s. 12, ch. 2015-222, L.O.F.), the implementing bill for the 2016-2017 GAA (s. 10, ch. 2016-62, L.O.F.) modified the deadline for the Board of Governors to submit the annual accountability report from December 31 to March 15. This provision expires July 1, 2017, at which time the statutory deadline will revert to December 31.
[20] The 2014-2015 Annual Accountability Report was approved on March 17, 2016. Board of Governors *2014-2015 Annual Accountability Report, available at* http://www.flbog.edu/resources/_doc/accountability/ar_2014-15/2014_15_System_Accountability_Report_Summary_FINAL_2016-04-28.pdf.
[21] Section 1008.46(1), F.S.
[22] Email, Florida Board of Governors (March 16, 2017).
[23] *Id.*

December.[24] The change in the report submission deadline may result in the BOG's ability to submit the most recent available data to the Legislature and Governor.

The bill takes effect on July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 1003.576, 1004.015, and 1008.46.

[24] Email, Florida Board of Governors (March 16, 2017).

IX. Additional Information:

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

None.

B. Amendments:

None.

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

By Senator Galvano

21-00785A-17 20171252__

A bill to be entitled

An act relating to education; amending s. 1003.576, F.S.; deleting obsolete provisions relating to a requirement that the Department of Education have an operating electronic individual education plan system in place for potential statewide use; amending s. 1004.015, F.S.; revising the membership of the Higher Education Coordinating Council; amending s. 1008.46, F.S.; revising the date by which the Board of Governors of the State University System must annually submit an accountability report; providing an effective date.

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

Section 1. Section 1003.576, Florida Statutes, is amended to read:

1003.576 Individual education plans for exceptional students.—The Department of Education must develop and have an operating electronic IEP system in place for ~~potential~~ statewide use ~~no later than July 1, 2007~~. The statewide system shall be developed collaboratively with school districts and must include input from school districts currently developing or operating electronic IEP systems.

Section 2. Present paragraphs (d) through (i) of subsection (2) of section 1004.015, Florida Statutes, are redesignated as paragraphs (e) through (j), respectively, and a new paragraph (d) is added to that subsection, to read:

1004.015 Higher Education Coordinating Council.—

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

21-00785A-17 20171252__

(2) Members of the council shall include:

(d) The Chancellor of Career and Adult Education.

Section 3. Upon the expiration and reversion of the amendment to section 1008.46, Florida Statutes, pursuant to section 11 of chapter 2016-62, Laws of Florida, subsection (1) of section 1008.46, Florida Statutes, is amended to read:

1008.46 State university accountability process.—It is the intent of the Legislature that an accountability process be implemented that provides for the systematic, ongoing evaluation of quality and effectiveness of state universities. It is further the intent of the Legislature that this accountability process monitor performance at the system level in each of the major areas of instruction, research, and public service, while recognizing the differing missions of each of the state universities. The accountability process shall provide for the adoption of systemwide performance standards and performance goals for each standard identified through a collaborative effort involving state universities, the Board of Governors, the Legislature, and the Governor's Office, consistent with requirements specified in s. 1001.706. These standards and goals shall be consistent with s. 216.011(1) to maintain congruity with the performance-based budgeting process. This process requires that university accountability reports reflect measures defined through performance-based budgeting. The performance-based budgeting measures must also reflect the elements of teaching, research, and service inherent in the missions of the state universities.

(1) By March 15 ~~December 31~~ of each year, the Board of Governors shall submit an annual accountability report providing

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

information on the implementation of performance standards, actions taken to improve university achievement of performance goals, the achievement of performance goals during the prior year, and initiatives to be undertaken during the next year. The accountability reports shall be designed in consultation with the Governor's Office, the Office of Program Policy Analysis and Government Accountability, and the Legislature.

Section 4. This act shall take effect July 1, 2017.

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

THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
302 Senate Office Building

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

DATE	COMM	ACTION
2/1/17	SM	**Favorable**
2/22/17	JU	**Fav/CS**
4/3/17	CA	**Favorable**
4/25/17	RC	**Favorable**

February 1, 2017

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

Re: **CS/SB 42** – Judiciary Committee and Senator Bill Montford
HB 6507 – Representative Halsey Beshears
Relief of Angela Sanford

SPECIAL MASTER'S FINAL REPORT

THIS IS A CONTESTED CLAIM IN THE AMOUNT OF $1.15 MILLION AGAINST LEON COUNTY FOR INJURIES AND DAMAGES SUFFERED BY ANGELA SANFORD WHEN THE VEHICLE SHE WAS TRAVELING IN WAS STRUCK BY A LEON COUNTY AMBLUANCE ON SEPTEMBER 5, 2013.

FINDINGS OF FACT:

This matter arises out of a motor vehicle crash that occurred on September 5, 2013, in Tallahassee, Florida, at the intersection of North Martin Luther King Jr. Boulevard (MLK Blvd.) and West Tharpe Street. The intersection of North MLK Blvd. and West Tharpe Street is four-way intersection controlled by an overhead traffic signal. Both North MLK Blvd. and West Tharpe Street are four-lane highways. On the southeast corner of the intersection there are several trees that could obstruct the view of westbound traffic on West Tharpe Street from the northbound traffic on North MLK Blvd. At the time of the accident, there was also at least one advertisement sign hung on the fence leading up the intersection that could obstruct the view of northbound traffic on North MLK Blvd. of any westbound traffic on West Tharpe Street.

The Accident

At approximately 11:28 pm, Patrick Sanford was driving north on North MLK Blvd in a 2011 Buick Enclave. Mr. Sanford's wife, Angela Sanford, was in the front passenger seat and friend, Daniel McNair, was behind Mrs. Sanford, in the rear passenger seat. The posted speed limit on North MLK Blvd. was 30 mph. At the time of the crash, Mr. Sanford was traveling at 42 mph. The light at North MLK Blvd. was green for Mr. Sanford as he approached the intersection of North MLK Blvd. and West Tharpe Street when he entered the intersection and when the crash occurred.

Also at approximately 11:28 pm a Leon County Emergency Medical Services (LCEMS) Ambulance, owned by Leon County, was traveling westbound on West Tharpe Street. Benjamin Hunter was working for LCEMS that night and driving the ambulance. Christina Wagner was also working for LCEMS that night and was the front seat passenger. The posted speed limit on West Tharpe Street was 35 mph.

The camera on the ambulance recorded what occurred before, during, and after the crash. The ambulance was first traveling at approximately 29 mph down West Tharpe Street with only its emergency lights activated. Approximately 4 seconds before the crash, and 277 feet from entering the intersection, the ambulance's siren was activated. At this time, the ambulance was traveling at approximately 40 mph. When the crash occurred the ambulance was traveling at approximately 44 mph. The video footage shows that the ambulance had a red light as it approached the intersection, when the ambulance entered the intersection and when the crash occurred.

The computer system in Mr. Sanford's Buick noted that the brake was engaged two seconds before the crash. Mr. Sanford admits that he did not hear or see the ambulance's lights or sirens before the collision. However, he recalls seeing the ambulance once he had already entered the intersection.

The ambulance hit the front right passenger side of the Buick. As a result, the Buick spun and collided with a concrete pole at on the northwest corner of the intersection.

The crash was witnessed by a number of individuals. The first witness, Ms. Nix, was traveling south on MLK Blvd., the

opposite direction of Mr. Sanford. Ms. Nix heard the sirens from the ambulance and stopped at the intersection of MLK Blvd. and West Tharpe Street because she did not know where the sirens were coming from. Ms. Nix then saw the ambulance traveling west down West Tharpe Street and the Buick traveling north on North MLK Blvd. Ms. Nix said that neither the Buick nor the ambulance stopped before entering the intersection. Ms. Nix acknowledged that she had a green light at time she reached the intersection of MLK Blvd. and West Tharpe Street but stopped because she heard the sirens.

Another witness, Mr. Fernbach, was traveling behind Mr. Sanford's Buick on North MLK Blvd. Mr. Fernbach also confirmed that the light was green as he and the Buick approached the intersection of North MLK Blvd. and West Tharpe Street. Mr. Fernbach acknowledged hearing the sirens before reaching the intersection; however, he was unable to determine where the sirens were coming from.

Ms. Wagner, the passenger of the ambulance, stated that the ambulance was headed to an accident with injuries on West Tharpe Street with only its emergency lights on. Prior to reaching the intersection of North MLK Blvd. and West Tharpe Street, she and Mr. Hunter were advised to upgrade, meaning turn on both the lights and sirens, as they traveled to the accident. Mr. Hunter then turned on the sirens of the ambulance. As Ms. Wagner was attempting to look up the report of the call they were traveling to, the crash occurred.

Mrs. Sanford and Mr. McNair do not have any memory of the crash.

All occupants of both vehicles were restrained in safety belts.

Injuries

After the crash Mr. Hunter and Ms. Wagner were able to exit the ambulance and render aid to occupants of the Buick. Mr. Hunter and Ms. Wagner were not injured in the crash.

All of the occupants of the Buick, Mr. Sanford, Mrs. Sanford, and Mr. McNair were injured. Mr. Sanford sustained a bulging disc to disc # 4 in his back and disc #5 in his back was blown. Mr. Sanford underwent surgery to repair his back injuries.

Mr. McNair suffered a cut to his right hand, a broken bone to his left, and a bone chip in his left wrist.

Mrs. Sanford sustained the most severe injuries from the crash. When she arrived at Tallahassee Memorial Hospital, she was in a coma. The totality of her injuries include:

- A traumatic brain injury (subdural and intracranial bleeding);
- A collapsed lung;
- A ruptured bladder (requiring two surgical repairs);
- A lacerated liver;
- 13 fractured ribs;
- Four lumbar spine fractures;
- Two cervical spine fractures;
- A fractured clavicle;
- A fractured sternum;
- A fractured fibula;
- A fractured knee;
- A fractured scapula (requiring surgical hardware insertion);
- A fractured pelvis (requiring surgical hardware insertion);
- A fractured hip sockets (requiring surgical hardware insertions);
- A fractured sacroiliac joints (requiring surgical hardware insertions);
- A fracture femur (requiring surgical hardware insertion);
- Double vision from an injured cranial nerve;
- Drop foot from an injured peroneal nerve;
- Bursitis and pain from the injured hip; and
- Cognitive and problem-solving deficits due to the brain injury.

Mrs. Sanford spent 25 days in the intensive care unit, and during the first two weeks in the hospital she was kept in a medically induced coma. Afterwards, she was transferred to inpatient rehabilitation in Jacksonville, Florida where she spent 31 days. Mrs. Sanford then continued her rehabilitation back in Tallahassee.

Before the accident, Mrs. Sanford was an active stay-at-home mother of three. She was considering returning to work as a

teacher when her youngest child was old enough to attend school.

Since the accident, Mrs. Sanford has made a remarkable recovery and is now able to drive during the day. She can care for her kids and her house. However, Mrs. Sanford still has some ongoing effects from the accident. She is experiencing foot drop in her right foot and double vision when she looks down. Because of the injuries sustained in the collision, Mrs. Sanford will likely need a hip replacement in the future, have issues with posttraumatic arthritis, and possibly experience further cognitive issues as a result of her traumatic brain injury.

Before the Accident

In the 24-hour period before the crash Mr. and Mrs. Sanford and Mr. McNair, the occupants of the Buick, attended a concert at the Leon County Civic Center. The day before the crash, Mr. Sanford worked the evening of September 4, 2013, and returned home at an unknown hour on September 5, 2013. Mr. Sanford believes he had only 3 hours of sleep after coming home from work on September 5, 2013.

Before the concert, Mr. Sanford had one beer at the house with Mr. McNair. Mr. Sanford admits to bringing and finishing the beer in the car on the way to the restaurant. An empty Bud Light Lime Beer bottle was found in the Buick after the collision. Mr. Sanford also admits to having one beer at the restaurant where he also ate some appetizers while waiting for the food to arrive. The food never came and they all left the restaurant without eating dinner. Once arriving at the concert, Mr. Sanford had another beer and some food because he hadn't eaten dinner at the restaurant.

In the 24-hour period before the crash Mr. Hunter worked on the evening of September 4, 2013. Mr. Hunter got home from work in the morning of September 5, 2013, and went to sleep for approximately 8.5 hours. Mr. Hunter then ate at home before reporting to work at 5 pm on September 5, 2013.

After the Accident

After the crash Mr. Sanford went to Tallahassee Memorial Hospital to be with his injured wife. While at the hospital Deputy McCarthy from the Leon County Sheriff's Office spoke with Mr. Sanford in two different locations. He first spoke to

Mr. Sanford in the hospital garage where Deputy McCarthy smelled a slight odor of an alcoholic beverage but was unable to determine if it was coming from Mr. Sanford or some other person in the garage. Deputy McCarthy then spoke with Mr. Sanford again in a private emergency room and did not smell an odor of an alcoholic beverage. Mr. Sanford was asked to consent to a blood sample since he was driving the Buick and was involved in a collision involving serious bodily injury. Mr. Sanford refused to give a blood sample for testing.

Officer Mordica of the Tallahassee Police Department was one of the first officers on the scene of the crash and noticed that Mr. Sanford was wearing a green wrist band and she smelled the odor of an alcoholic beverage, but did not notice any other signs of impairment. Mr. Sanford stated that he was given the wrist band when he purchased the beer at the concert.

A blood sample was requested from Mr. Hunter because he was operating the ambulance that was involved in a crash involving serious bodily injury. Mr. Hunter agreed to the blood sample being taken and was transported Tallahassee Memorial Hospital for the blood draw. No drugs or alcohol were found in Mr. Hunter's blood.

The Leon County's Sheriff's Department found Mr. Hunter at fault for the crash; however, the State Attorney's Office recommended that no citations should be issued. Therefore, a citation was not issued against Mr. Hunter.

LCEMS disciplined Mr. Hunter, and he was suspended without pay for three 12-hour shifts.

CLAIMANT'S ARGUMENTS: Mrs. Sanford argues that Leon County is liable for the negligence of its employee, Mr. Hunter, when he failed to stop at the red light at the intersection of North MLK Blvd. and West Tharpe Street, violating s. 316.072(5)(b)2., F.S., and the LCEMS Standard Operating Guidelines.

RESPONDENT'S ARGUMENTS: Leon County argues that the claim bill should be denied and the statutory caps enforced. Leon County believes that the statutory limits set forth in s. 768.28, F.S., serve a valuable purpose and the County is entitled to the full protections of the statute. Leon County argues that if the statutory caps are to have meaning or effect, they should be enforced.

CONCLUSIONS OF LAW:

Leon County owned the ambulance driven by Mr. Hunter on September 5, 2013, and is covered by the provisions of s. 768.28, F.S. Section 768.28, F.S., generally allows injured parties to sue the state or local governments for damages caused by their negligence or the negligence of their employees by waiving the government's sovereign immunity from tort action. However, the statute limits the amount of damages that a plaintiff can collect from a judgment against or settlement with a government entity to $200,000 per person and $300,000 for all claims or judgments arising out of the same incident. Funds can be paid in excess of these limits only upon the approval of a claim bill by the Legislature. Thus, Mrs. Sanford will not receive the full benefit of the settlement agreement with Leon County unless the Legislature approves a claim bill authorizing the additional payment.

In a negligence action a plaintiff, bears the burden of proof to establish the four elements of negligence. These elements are duty, breach, causation, and damage. *Charron v. Birge*, 37 So.3d 292, 296 (Fla. 5th DCA 2010).

Section 768.81, F.S., Florida's comparative fault statute, allows damages in negligence cases to be apportioned against each liable party. The Florida Supreme Court has found that "in determining noneconomic damages fault must be apportioned among all responsible entitles who contribute to an accident even though not all of them have been joined at defendants." *Nash v. Wells Fargo Guard Servs.*, 678 So.2d 1262, 1263 (Fla. 1996).

The driver of a motor vehicle has a duty to use reasonable care, in light of the attendant circumstances, to prevent injuring persons within the vehicle's path. *Gowdy v. Bell*, 993 So.2d 585, 586 (Fla. 1st DCA 2008). Reasonable care is the degree of care a reasonably careful person would have used under like circumstances. *Foster v. State*, 603 So.2d 1312, 1316 (Fla. 1st DCA 1992).

Mr. Hunter's Negligence

Section 316.072(5)(b)2., F.S., allows a driver of an ambulance, when responding to an emergency call, to proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation. Section 316.072(5)(c), F.S., reiterates that the driver of an

ambulance has a duty to drive with due regard for the safety of all persons and does not protect the driver from the consequences of his or her reckless disregard for the safety of others.

Mr. Hunter beached his duty to operate the ambulance with reasonable care and violated s. 316.072(5)(b)2., F.S., when he did not slow down at the red light at the intersection of North MLK Blvd. and West Tharpe Street on September 5, 2013. Mr. Hunter's negligence and breach of duty of care was a cause of the accident and the damages suffered by Mrs. Sanford.

Leon County, as the employer of Mr. Hunter, is liable for his negligent act. The long-standing doctrine of *respondeat* superior provides that an employer is liable for an employee's acts committed within the course and scope of employment. *City of Boynton Beach v. Weiss*, 120 So.3d 606, 611 (Fla. 4th DCA 2013). Florida's dangerous instrumentality imposes "vicarious liability upon the owner of a motor vehicle who voluntarily entrusts that motor vehicle to an individual whose negligent operation causes damage to another." *Aurbach v. Gallina*, 753 So.2d 60, 62 (Fla. 2000). Motor vehicles have been considered dangerous instrumentalities under Florida law for over a century. *See Anderson v. S. Cotton Oil Co.*, 74 So. 975, 978 (Fla.1917).

Florida law also provides that an employer's safety rules and procedures governing the conduct of its employees is relevant evidence of the standard of care required. *Mayo v. Publix*, 686 So.2d. 801, 802 (Fla. 4th DCA 1997). LCEMS has Standard Operating Guidelines for the safe operation of its vehicles. Specifically, the guidelines require all ambulance drivers when driving to an emergency to come to a full and complete stop at all red lights and stop signs. Once the driver determines that all other traffic has yielded to the emergency vehicle, the ambulance may proceed through the intersection with due regard for the safety of others.

Mr. Hunter violated LCEMS Standard Operating Guidelines when he did not stop at the red light at the intersection of North MLK Blvd. and West Tharpe Street.

On September 5, 2013, Mr. Hunter, an employee of LCEMS, drove an ambulance owned by Leon County during the

course of his normal workday. Therefore, Leon County is liable for the negligence of Mr. Hunter and the damages caused to Mrs. Sanford.

Mr. Sanford's Negligence

As the driver of the Buick, Mr. Sanford also had a duty to use reasonable care. Section 316.126(1)(a), F.S. provides:

Upon the immediate approach of an authorized emergency vehicle, while en route to meet an existing emergency, the driver of every other vehicle shall, when such emergency vehicle is giving audible signals by siren … or visible signals by the use of displayed blue or red lights, yield the right-of way to the emergency vehicle and shall immediately proceed to a position of parallel to, and as close as reasonable to the closest edge of the curb of the roadway, clear of any intersection and shall stop and remain in position until the authorized emergency vehicle has passed, unless otherwise directed by a law enforcement officer.

On the day of the accident, the trees and signs could have obstructed Mr. Sanford's view of the ambulance, which was traveling westbound on West Tharpe Street. The ambulance's siren was activated 4 seconds before the collision which likely did not afford Mr. Sanford adequate time react and avoid the collision. Moreover, the evidence presented was insufficient to show that the three beers Mr. Sanford consumed in the hours before the accident or his lack of sleep contributed to the accident.

However, Mr. Sanford was traveling at 42 mph down at the time of the crash, 12 mph faster than the posted speed limit of 30 mph. Mr. Sanford breached his duty to drive with reasonable care by failing to stop for the ambulance because of his excessive speed. Despite the fact that he had a green light at the intersection, Mr. Sanford is partially at fault for the accident.

Section 316.126(5), F.S., specifies that s. 316.126, F.S., which Mr. Sanford violated, does not relieve the Mr. Hunter of the duty to drive with due regard for the safety of all persons using the highway, which he did failed to do.

Conclusion

Florida's comparative fault statute, s. 768.81, F.S., applies to this case because Mr. Hunter and Mr. Sanford were both at fault in the accident.

Mr. Hunter is at fault for:

- Failing to operate the ambulance with reasonable care;
- Violating s. 316.072(5)(b)2., F.S., when he did not slow down at the red light; and
- Violating LCEMS Standard Operating Guidelines when he did not stop at the red light at the intersection.

Mr. Sanford is at fault for:

- Violating s. 316.126(1)(a), F.S., by failing to stop for the ambulance because of his excessive speed.

While both Mr. Hunter and Mr. Sanford were partially at fault in this matter, Mr. Hunter's negligence far outweighs Mr. Sanford's negligence.

Mrs. Sanford suffered substantial injuries as a result of Mr. Hunter's negligence and has outstanding medical bills because of these injuries. Mrs. Sanford has made a remarkable recovery but still has some ongoing effects from the accident. Mrs. Sanford experiences foot drop in her right foot and double vision when she looks down. Because of the injuries sustained in the collision, Mrs. Sanford will likely need a hip replacement in the future, have issues with posttraumatic arthritis, and possibly experience further cognitive issues as a result of her traumatic brain injury. Mrs. Sanford may have a reduced future earning capacity because of her ongoing physical impairments. She will likely have future medical expenses as a direct result of the accident. Therefore, the undersigned finds that the damages of $1.15 million sought by Mrs. Sanford are reasonable and justly apportionable to Leon County as a result of Mr. Hunter's negligence.

The parties participated in mediation and reached a Mediation Settlement Agreement for $1.15 million, the same amount as the claim bill. A Final Judgment in favor of Mrs. Sanford for the $1.15 million was signed and entered into the circuit court's record on April 13, 2015. The Mediation

Settlement Agreement afforded Mrs. Sanford the right to pursue a claim bill from the legislature for $1.15 million and also allowed Leon County the right to contest any filed claim bill.

At the Special Master Hearing attorneys for both parties agreed that all evidence and arguments presented at the hearing were also taken into consideration at mediation. The attorneys also agreed that no new evidence was presented to the undersigned at the hearing.

The undersigned finds that at mediation the parties presented all of the facts and arguments described above. The parties also took into account the fault of Mr. Hunter and Mr. Sanford as well as Mrs. Sanford's recovery and her future medical needs. Therefore, the undersigned finds that the Mediation Settlement Agreement was both reasonable and responsible.

LEGISLATIVE HISTORY: A claim bill for the relief of Angela Sanford was first filed for the 2016 Legislative Session. The Senate Bill, SB 22 (2016) died on the Calendar, and the House companion HB 3511 (2016) was not heard by a committee.

FISCAL IMPACT: Leon County is insured and has received no indication from its insurer that the entire amount of the claim bill, if passed, will not be paid.

RECOMMENDATIONS: For the reasons set forth above, the undersigned recommends that Senate Bill 42 (2017) be reported FAVORABLY.

Respectfully submitted,

Lauren Jones
Senate Special Master

cc: Secretary of the Senate

CS by Judiciary:
The committee substitute, in conformity with a recent opinion of the Florida Supreme Court, does not include the limits on costs, lobbying fees, and other similar expenses, which were included in the original bill.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

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

SENATOR BILL MONTFORD
3rd District

April 17, 2017

Senator Lizbeth Benacquisto, Chair
Senate Committee on Rules
402 Senate Office Building
Tallahassee Florida 32399-1100

Dear Senator Benacquisto:

I respectfully request that the following Bills be placed on the next agenda for the Senate Rules Committee Meeting:

CS/SB 46 – Relief of Mary Mifflin-Gee by the City of Miami
CS/SB 42 – Relief for Angela Sanford
CS/SB 1206 – Patients' Rights and Responsibilities

I would greatly appreciate your consideration.

Sincerely,

Bill Montford

William "Bill" Montford
Senate District 3

WM/md

Cc: John Phelps, Staff Director
Cynthia Futch, Administrative Assistant

REPLY TO:
☐ 410 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5003
☐ 20 East Washington Street, Suite D, Quincy, Florida 32351 (850) 627-9100

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

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
302 Senate Office Building

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

DATE	COMM	ACTION
3/23/17	SM	Favorable
3/28/17	JU	**Fav/CS**
4/18/17	CA	**Favorable**
4/25/17	RC	**Favorable**

March 23, 2017

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

Re: **CS/SB 46** – Judiciary Committee and Senator Bill Montford
HB 6521 – Representative Evan Jenne
Relief of MARY MIFFLIN-GEE, an Incapacitated person, by and through MARILYN JELKS, as Guardian of the Person and Property of MARY MIFFLIN-GEE.

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM BASED ON A SETTLEMENT AGREEMENT WITH THE CITY OF MIAMI FOR $2,500,000 FOR PERMANENT INJURIES SUSTAINED BY MARY MIFFLIN-GEE DUE TO THE NEGLIGENT TRANSPORTATION OF MS. MIFFLIN-GEE BY CITY OF MIAMI, DEPARTMENT OF FIRE-RESCUE EMPLOYEES. THIS IS A LOCAL BILL WHICH REQUESTS $2,300,000 TO BE PAID TO MARILYN JELKS, AS LEGAL GUARDIAN OF MARY MIFFLIN-GEE.

FINDINGS OF FACT:

On October 25, 2012, at approximately 11:00 a.m., Ms. Mifflin-Gee was found in a vehicle, in a parking lot in Miami, Florida, unconscious, slumped over the steering wheel, and foaming from the mouth. A witness called 911 and the City of Miami, Department of Fire-Rescue, responded to assist Ms. Mifflin-Gee.

The City of Miami, Department of Fire-Rescue, records[1] reveal that paramedics/EMTs Eric Hough, Marc Alexandre, and Lt. Steve Mason responded to the call. Hough was driving, Mason was the officer in charge, and Alexandre was crew. They arrived at the scene at 11:15 a.m., and to Ms. Mifflin-Gee at 11:16 a.m.

Mason reached Ms. Mifflin-Gee first. He found her sitting in a vehicle, phone in her lap, eyes open, foaming at the mouth, and unconscious. He assessed her level of consciousness as a Glasgow Coma Scale of three.[2] She was not responsive to painful stimuli, her pupils were non-reactive, but her airway was open with shallow breath sounds.

At 11:20 a.m. Mason instructed Alexandre to check Ms. Mifflin-Gee's blood sugar, which was 196. At 11:22 a.m. Alexandre took her vital signs which were: Systolic Blood Pressure 240, Respirations 10, Pulse 126, and a SpO2 92%. Mason then made the decision to extricate Ms. Mifflin-Gee from the vehicle, and Hough brought the gurney from the Fire-Rescue truck.

Mason and Hough lowered the gurney to the low position, about 12 inches off the ground. Alexandre and Hough extricated Ms. Mifflin-Gee from the vehicle. Hough took Ms. Mifflin-Gee's torso by putting his arms under her armpits, and Alexandre took Ms. Mifflin-Gee's knees and feet. Hough and Alexandre then lifted Ms. Mifflin-Gee onto the gurney, put the head of the gurney up to a 45° angle, and put the side rails up.

None of the paramedics/EMTs remembered buckling the gurney lap belt prior to transporting Ms. Mifflin-Gee to the Fire-Rescue truck. All testified that it was standard practice for paramedics/EMTs to secure a patient with a lap belt before beginning to transport a patient on a gurney.

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[1]The City of Miami, Department of Fire and Rescue, reports for the events of October 25, 2012, include the Ambulance Report and the Incident Report. However, they are almost identical in content and are read in *pari materia*.

[2] The *Glasgow Coma Scale* is the most widely used neurological scale designed to give a reliable and objective way of recording the state of consciousness of a person. A score of 3 indicates the person does not open their eyes even in response to painful stimuli, does not verbally respond to commands or stimuli, and does not move in response to pressure stimuli. **Teasdale, Sir Graham**, *Forty years on: updating the Glasgow Coma Scale*, Nursing Times, October 15, 2014, Available at: https://www.nursingtimes.net/Journals/2014/10/10/n/p/l/141015Forty-years-on-updating-the-Glasgow-coma-scale.pdf, (last visited Feb. 22, 2017).

Alexandre and Hough rolled Ms. Mifflin-Gee toward the Fire-Rescue truck. They put the gurney in the high position, approximately 3 to 3-1/2 feet off the ground. Mason was at the back of Ms. Mifflin-Gee's vehicle taking witnesses' statements.

While at the foot of the gurney at the Fire-Rescue truck, Alexandre prepared to unlock the gurney to put the loading wheels onto the truck. Hough prepared to put Ms. Mifflin-Gee's head down in the low position. At this point Alexandre felt the angle of the gurney change, and Ms. Mifflin-Gee, while still with her head elevated to a 45 degree angle, came over the top of the side rail, rolled off the gurney, and hit her head on the ground. The gurney lap belt was not buckled. All three paramedics/EMTs confirm that Ms. Mifflin-Gee's head hit the ground, and that there was now an abrasion on her forehead, which was not present at the initial evaluation.

Hough and Alexandre then lifted Ms. Mifflin-Gee back on to the gurney in the flat position, and Mason buckled the lap belt. Ms. Mifflin-Gee was then lifted into the Fire-Rescue truck. According to the paramedic/EMT records, the transport to the Fire-Rescue truck and Ms. Mifflin-Gee's fall took place in the span of five minutes.

At 11:27 a.m., Ms. Mifflin-Gee was in the Fire-Rescue truck and Alexandre and Mason began to re-assess her condition. Her systolic blood presser had increased to 246 and pulse was up to 146, and SpO2 was down to 82%. At 11:28 a.m., an EKG was performed by Hough which showed a sinus tachycardia of 146.[3] Alexandre started an IV at 11:31 a.m. in an attempt to stabilize Ms. Mifflin-Gee's condition, but the fluids failed to produce any change to her condition.

At 11:31 a.m., the City of Miami Fire-Rescue truck left the scene, headed for Jackson Memorial Hospital in Miami, Florida. While in route at 11:32 a.m., Ms. Mifflin-Gee remained unconscious and respirations were insufficient. Alexandre administered Versed[4], and at 11:33 a.m., Mason attempted to intubate Ms. Mifflin-Gee. The records indicate that the

[3] Sinus tachycardia is a heart rate of greater than 100 beats per minute in an average adult. The normal resting heart rate is of the average adult is 60 to 100 beats per minute.
[4] Versed is the trade name for midazolam hydrochloride which is a sedative used for minor medical procedures. Versed (2010). In *Physicians' Desk Reference* (65th ed.), Montvale, NJ: PDR Network.

endotracheal tube was confirmed by Mason to have been successfully placed in the trachea.

Ms. Mifflin-Gee was admitted to the Jackson Memorial emergency room at 12:05 p.m. On admission, her blood pressure was 240/126 and blood sugar was 196. She was unresponsive and comatose. A small contusion and right frontal swelling were noted by emergency room personnel. Her pupils were fixed and dilated.

It was also noted by the emergency room physician that Ms. Mifflin-Gee had a distended abdomen and that her endotracheal tube had been improperly placed in her esophagus. The paramedics efforts to ventilate Ms. Mifflin-Gee during transport between 11:33 a.m. and 12:05 p.m. had actually been putting air in her stomach, not her lungs. The ER physician removed the endotracheal tube and properly placed a new one in the trachea. The abdomen was then decompressed with the placement of an NG tube.

An EKG, CT scan of the brain, lab work, and a neurosurgical consult were immediately ordered. All tests contained abnormal findings. The CT showed a brain midline shift to the right and a large left sided holohemispheric subdural hematoma and extension subarachnoid hemorrhage.

At 12:20 p.m., Ms. Mifflin-Gee was transitioned to the neurosurgery medical service and the care of Dr. M. Ross Bullock, M.D. At 12:40 p.m., Ms. Mifflin-Gee was taken for emergency neurosurgery. She underwent a lift frontal-parietal craniotomy to remove a large subdural hematoma and the placement of a ventriculostomy.

Ms. Mifflin-Gee was taken from surgery to the neuroscience intensive care in a deep coma and with the endotracheal tube still in place. Ms. Mifflin-Gee remained at Jackson Memorial Hospital in a near vegetative state until February 12, 2013. During that time, her endotracheal tube was replaced with a permanent tracheotomy tube (T-piece). A feeding tube (PEG tube) was inserted. She developed post-operative hydrocephalus and underwent the placement of a right occipital ventricular-peritoneal shunt which required a revision for blockage and she underwent a cranioplasty to cover her brain where the bone had been removed.

February 12, 2013, Ms. Mifflin-Gee was transferred to Jackson Memorial Long Term Care Facility in a persistent vegetative state, with a tracheostomy, a feeding tube, and was totally unresponsive to her external environment.

On March 19, 2013, Ms. Mifflin-Gee's sister, Marilyn Jelks, was appointed guardian of Ms. Mifflin-Gee's person and property. Ms. Mifflin-Gee was not married and had no children.

On April 29, 2013, Ms. Mifflin-Gee returned to Jackson Memorial Hospital with a urinary tract infection, acute renal failure, bedsores and subsequent respiratory distress. She was treated aggressively with antibiotics and fluids, but developed respiratory failure and was placed on a ventilator. She also developed significant rectal and gastric bleeding, and a deep venous thrombosis (DVT) for which they inserted an inferior vena cava filter.

On May 28, 2013, Ms. Mifflin-Gee returned to the Jackson Memorial Long Term Care Facility, and remains there in a persistent vegetative state with a feeding tube, tracheostomy, chronic respiratory failure, and with periodic skin breakdowns. Her family resides in Georgia and wishes to transport her to a facility near them but Claimant's dependency on the tracheostomy has complicated any such plans.

The record evidence shows that at no time has Ms. Mifflin-Gee ever regained conscious from the time she was found in the vehicle to the present.

No expert testimony was presented on the issue of whether it was a breach of duty, or the standard of care, for the paramedics/EMTs not to have buckled, the gurney's lap belt, prior to beginning to transport Ms. Mifflin-Gee to the Fire-Rescue truck. However, Hough, Mason and Alexandre, all trained paramedics/EMTs, testified that it was their understanding that buckling the gurney belt was part of proper procedure in transporting an unconscious patient and that it should have been done.

The record evidence also shows that Mason did not correctly insert Ms. Mifflin-Gee's endotracheal tube in the Fire-Rescue truck on the way to the hospital. This evidence does not require expert testimony to establish it as yet another breach

of the standard of care by City of Miami, Department of Fire-Rescue employees. It is within the realm of common knowledge and experience for one to know that if you are trained to perform a professional task, and you do it incorrectly without recognizing the error, you have breached the standard of care. This breach of the standard of care resulted in inadequate ventilation of Ms. Mifflin-Gee for at least 32 minutes during transport to the hospital. This inadequate ventilation more likely than not aggravated Ms. Mifflin-Gee's already compromised physical condition.

The affidavit of M. Ross Bullock, M.D., neurosurgeon, indicates that it is his opinion that Ms. Mifflin-Gee's large subdural hematoma was the result of trauma from her three-foot fall off the gurney, as there was no other history of prior trauma. He further concluded that her persistent vegetative state was caused by her traumatic subdural hematoma.

The report of Craig H. Lichtblau, M.D., a board certified physical medicine and rehabilitation specialist, was submitted as an expert opinion on the issues of Ms. Mifflin-Gee's life expectancy and future medical needs.[5] Dr. Lichtblau's report is based on his evaluation of Ms. Mifflin-Gee on November 16, 2014, and a review of her social and medical history reported by her sister, a review her medical records, and research on costs of long-term institutional care in Florida.

It is Dr. Lichtblau's opinion, within a reasonable degree of medical certainty, that Ms. Mifflin-Gee is in a persistent vegetative state[6] and that she will survive in that state for seven to 12 years. At the time of Ms. Mifflin-Gee's injury, she was a 64 years old, Afro-American, single, retired, with no prior history of debilitating health issues, and had a life expectancy of 21.0 years.[7] Dr. Lichtblau further included with

[5] There are no issues of pain and suffering or lost wages. Ms. Mifflin-Gee was unemployed at the time of her injury, and persons in a persistent vegetative state do not feel pain. *See footnote 6.*

[6] Dr. Lichtblau describes a persistent vegetative state as a clinical condition of complete unawareness of self in the environment, accompanied by sleep/awake cycles, along with either complete or partial preservation of the hypothalamic and brain stem autonomic functions. Patients in a persistent vegetative state do not feel pain and have a substantially reduced life expectancy. For most patients in this condition, life expectancy ranges from 2 to 5 years. Survival beyond 10 years is unusual. He cites as authority, The New England Journal of Medicine, *Medical Aspects of the Persistent Vegetative State*, Vol. 330, No. 22, pp. 1572 - 1579, published June 2, 1994, *available at* http://www.nejm.org/toc/nejm/330/22, (last visited March 1, 2017).

[7] U.S. Department of Health and Human Services, Center for Disease Control and Prevention, National Center for Health Statistics, National Vital Statistics System, *National Vital Statistics Report, United States Live Tables, 2012*, Vol. 65, No.8,

his report two cost estimates for Ms. Mifflin-Gee's future care in a long term institutional setting. Based on his comprehensive medical evaluation of Ms. Mifflin-Gee, both institutions concluded that to provide Ms. Mifflin-Gee with room, board, appropriate therapies, and case management would cost $1,500 per day. Based on Dr. Lichtblau's life expectancy range for Ms. Mifflin-Gee, it is reasonable to calculate her future medical expenses as between $3,960,250.00 and $6,789,000.00.

August 13, 2013, a civil complaint for negligence was filed against the City of Miami, Department of Fire-Rescue by Marilyn Jelks, as Custodian of the person and property of Mary Mifflin-Gee, an incapacitated person.

A settlement was reached for $2,500,000, and the Settlement Agreement was signed December 21, 2016. The City of Miami requests the approval of a claim bill for $2,300,000, and Lloyds of London, the City of Miami's excess insurance company, will reimburse the City of Miami $2,000,000.

Ms. Mifflin-Gee's past medical expenses paid by Medicaid were $374,388.50, which were reduced to $128,164.37, and the Medicaid lien has been satisfied.

LEGISLATIVE HISTORY:

SB 46 by Senator Montford is the first time this claim has been introduced to the Legislature.

CONCLUSIONS OF LAW:

The claim bill hearing was a *de novo* proceeding to determine whether the City of Miami is liable for the negligence of its employees, acting within the course and scope of their employment, as paramedics/EMTs with the City of Miami's Department of Fire-Rescue; and if so, whether the amount of the claim is reasonable. This report is based on the record evidence presented to the Special Master prior to, during, and after the hearing at the request of the Special Master.

To prevail in a negligence case, a plaintiff must establish by a preponderance of the evidence that there was a standard of care or duty owed by a defendant to the plaintiff, that the defendant breached that duty or standard of care, and that the

page 27, Published November 28, 2016, by Elizabeth Arias, Ph.D., Melonie Heron, Ph.D., and Jiaquan Xu, M.D., Division of Vital Statistics, *located at* https://www.cdc.gov/nchs/data/nvsr/nvsr65/nvsr65_08.pdf, (last viewed Mar. 1, 2017).

breach was the cause of both the plaintiff's injuries and damages. The plaintiff must introduce evidence which affords a reasonable basis for the conclusion that, more likely than not, the conduct of the defendant was a substantial factor in bringing about the injury and damages.[8]

The terms of the settlement agreement between the City of Miami and Ms. Mifflin-Gee's guardian, establish that paramedics/EMTs Eric Hough, Marc Alexandre, and Lt. Steve Mason were employees of the City of Miami and were acting within the course and scope of their employment as Department of Fire-Rescue paramedics/EMTs, at the time they responded to the 911 call for Ms. Mifflin-Gee.

Ms. Mifflin-Gee's representatives presented no expert testimony on what duty or standard of care was required by the paramedics/EMTs when transporting an unconscious patient. However, all three paramedics/EMTs testified that, although they put the gurney's side rails up, it was part of the routine transport procedure to buckle the lap belt before transporting a patient in Ms. Mifflin-Gee's condition.

Section 70.702, F.S., qualifies a witness as an expert by knowledge, skill, experience, training, or education. Their testimony thus established their duty and standard of care required. The gurney's lap belt should have been buckled before attempting to transport Ms. Mifflin-Gee to their Fire-Rescue truck. That duty was clearly breached in this case,

As a result of the paramedics/EMTs breach of their duty to apply the gurney lap belt when transporting Ms., Mifflin-Gee, when the "angle of the gurney changed," the side rails alone were insufficient to hold Ms. Mifflin-Gee to the gurney. Without the lap belt properly buckled, securing Ms. Mifflin-Gee to the gurney, she rolled off, fell to the ground and struck her head.

The affidavit of Dr. Bullock provides an expert opinion on the cause of Ms. Mifflin-Gee's large subdural hematoma. He clearly states that it was the result of trauma from her three-foot fall off the gurney. He further concludes that her persistent vegetative state was caused by her traumatic subdural hematoma from the fall.

[8] *Gooding v. University Hospital Bldg., Inc*., 445 So. 2d 1015, 1984 Fla. LEXIS 2545 (Fla. 1984).

The report of Dr. Lichtblau's provides, within a reasonable degree of medical certainty, evidence of Ms. Mifflin-Gee's life expectancy and estimated cost of her future medical care. It is Dr. Lichtblau's expert opinion that Ms. Mifflin-Gee, with reasonable medical certainty, has a life expectancy of seven to 12 years and that medical costs that will result are between $3,960,250 and $6,789,000. This clearly makes the settlement amount of $2,500,000 a reasonable compromise given the risks and cost of a jury trial.

After considering all of the facts in this case, I conclude that the defendant's employees had a duty to Ms. Mifflin-Gee to buckle the gurney lap belt before attempting to transport her, that they breached that duty, and that the breach caused her injuries and damages. The amount of the claim bill is reasonable and appropriate.

ATTORNEYS FEES:

Senate Bill 46 restricts the total amount of attorney fees, related to the claim to a maximum of 25 percent of the total amount awarded. The total attorney fees will be $625,000 of the $2.5 million dollar settlement.[9] The claimant's attorney has not retained a lobbyist, and outstanding costs total $17,110.39.

RECOMMENDATIONS:

The undersign recommends that Senate Bill 46 be amended to direct the Guardian for Mary Mifflin-Gee, Marilyn Jelks, establish a Special Needs Trust for the benefit of Mary Mifflin-Gee and that all payments of funds, after the deduction of attorney's fees, and costs, be made to the Mary Mifflin-Gee Special Needs Trust. Otherwise, the undersigned recommends that Senate Bill 46 (2017) be reported FAVORABLY.

[9] See affidavit of Attorney Jason D. Weissner, dated November 17, 2016; and Searcy, Denney, Scarola, Barnhart, &Shipley, v State of Florida, 194 So. 3d 349 (Fla. 2017).

Respectfully submitted,

Tari Rossitto-Van Winkle, R.N., J.D.
Senate Special Master

cc: Secretary of the Senate

CS by Judiciary:
The CS provides for the proceeds of the claim bill to be placed in a special needs trust, which will protect Ms. Miffin-Gee's eligibility for means-tested government benefits. The CS also no longer includes references to the City's insurer, corrects an error in the whereas clauses, and revises the limit on fees to conform to a recent Supreme Court opinion.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

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

SENATOR BILL MONTFORD
3rd District

April 17, 2017

Senator Lizbeth Benacquisto, Chair
Senate Committee on Rules
402 Senate Office Building
Tallahassee Florida 32399-1100

Dear Senator Benacquisto:

I respectfully request that the following Bills be placed on the next agenda for the Senate Rules Committee Meeting:

- CS/SB 46 – Relief of Mary Mifflin-Gee by the City of Miami
  CS/SB 42 – Relief for Angela Sanford
  CS/SB 1206 – Patients' Rights and Responsibilities

I would greatly appreciate your consideration.

Sincerely,

William "Bill" Montford
Senate District 3

WM/md

Cc: John Phelps, Staff Director
Cynthia Futch, Administrative Assistant

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

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/SB 1206
INTRODUCER:	Health Policy Committee and Senator Montford
SUBJECT:	Rights and Responsibilities of Patients
DATE:	April 24, 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Stovall	HP	**Fav/CS**
2.	Brown	Cibula	JU	**Favorable**
3.	Looke	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1206 amends the Florida Patient's Bill of Rights to add as a right the right of a patient to bring a person of his or her choice to the patient-accessible areas of a health care facility or provider's office while the patient receives inpatient or outpatient treatment or consults with his or her health care provider unless:

- The health of the patient, other patients, or staff of the facility or office would be at risk.
- The facility or provider cannot reasonably accommodate the other person being present.

The right of a patient to bring another patient with him or her must be included in the summary of rights and responsibilities provided by health care providers to patients.

II. Present Situation:

Florida Patient's Bill of Rights and Responsibilities

The Patient's Bill of Rights and Responsibilities[1] (Bill of Rights) establishes a list of rights that each patient has when seeking health care in specified settings. The Bill of Rights requires health care facilities[2] and providers[3] to ensure:

[1] Section 381.026(4), F.S.
[2] Defined as hospitals and ambulatory surgical centers licensed under ch. 395, F.S., in s. 381.026(2)(b), F.S.
[3] Defined as physicians licensed under chs. 458, 459, and 461, F.S., in s. 381.026(2)(c), F.S.

- The patient's dignity is respected through protecting the patient has the right to privacy, with some exceptions; the right to a prompt and reasonable response to a question; and the right to retain and use personal clothing and possessions as space permits.
- The patient has access to pertinent information including, but not limited to, information on services offered by the provider; the patient's diagnosis, planned course of treatment, alternatives, risks, and prognosis with some exceptions; and the right to express grievances with the healthcare provider; and information on facility rules and regulations.
- The patient has access to financial information including, but not limited to, information on financial resources for the patient's healthcare, a reasonable estimate of charges, and a link to financial information disseminated by the Agency for Health Care Administration.[4]
- The patient has access to health care including impartial access to medical treatment regardless of race, national origin, religion, handicap, or source of payment; treatment for any emergency medical condition that will deteriorate from failure to provide such treatment; and access to any mode of treatment that is, in the patient's judgement and the judgement of his or her health care practitioner, in the best interests of the patient.
- That the patient knows whether the treatment he or she is receiving is for purposes of experimental research.

The Bill of Rights requires health care providers and health care facilities to provide patients with a written summary of the Florida Patient's Bill of Rights. Included in the summary along with a listing of a patient's rights are a patient's responsibilities. Each patient must respect the health care provider's and health care facility's right to expect behavior that is reasonable and responsible. Additionally, a patient is responsible for:

- Providing to the health care provider, to the best of his or her knowledge, accurate and complete information about present complaints, past illnesses, hospitalizations, medications, and other matters relating to his or her health.
- Reporting unexpected changes in his or her condition to the health care provider.
- Reporting to the health care provider whether he or she comprehends a contemplated course of action and what is expected of him or her.
- Following the treatment plan recommended by the health care provider.
- Keeping appointments and, when unable to do so, notifying the health care provider or health care facility.
- Accepting the consequences if he or she refuses treatment or does not follow the health care provider's instructions.
- Assuring that the financial obligations of his or her health care are fulfilled as promptly as possible.
- Following health care facility rules and regulations affecting patient care and conduct.[5]

III. Effect of Proposed Changes:

CS/SB 1206 amends the Florida Patient's Bill of Rights to add as a right the right of a patient to bring a person of his or her choice to the patient-accessible areas of a health care facility or provider's office while the patient receives inpatient or outpatient treatment or consults with his or her health care provider unless:

[4] Pursuant to s. 408.05(3), F.S.
[5] Section 381.026(5) and (6), F.S.

- The health of the patient, other patients, or staff of the facility or office would be at risk; or
- The facility or provider cannot reasonably accommodate the other person being present.

The right of a patient to bring another patient with him or her must be included in the summary of rights and responsibilities provided by health care providers to patients.

A potential effect of the bill may be to resolve a statutory restriction on discussing a patient's condition with others present in the room, addressed in s. 456.057(7)(a) and (c), F.S., related to the ownership and control of patient records. This section of law prohibits a health care practitioner from discussing the medical condition of a patient with any person other than the patient, the patient's legal representative, or other health care practitioners and providers involved in the patient's care or treatment, except upon written authorization from the patient. This restriction may be more restrictive than that provided in the federal Health Insurance Portability and Accountability Act (HIPAA), which allows a provider to share or discuss information if the patient is present and does not object.[6] The new right established in this bill appears to clarify that the physician may discuss the patient's condition and treatment while a person of the patient's choosing is in the room.

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.

[6] Department of Health and Human Services, *Summary of the HIPAA Privacy Rule, Permitted Uses and Disclosures* (pg. 5); available at: https://www.hhs.gov/hipaa/for-professionals/privacy/laws-regulations (last visited Mar. 30, 2017).

VI. Technical Deficiencies:

None.

VII. Related Issues:

The term "patient-accessible areas" is not defined in the bill. As the bill does not include rulemaking authority clarifying the meaning of the term may be difficult.

VIII. Statutes Affected:

This bill substantially amends section 381.026, Florida Statutes.

IX. Additional Information:

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

CS by Health Policy on March 26, 2017:
The CS clarifies that a patient does not have the right to bring a person with him or her to a consultation or in-patient or out-patient surgery if doing so would risk the health and safety of the patient, other patients, or facility or office staff or if the health care facility or provider cannot reasonably accommodate the person. Additionally, the amendment removes language restricting any person or entity with a fiduciary interest in the patient's treatment from attending the patient's consultations or attempting to change the course of the patient's treatment.

B. Amendments:

None.

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

By the Committee on Health Policy; and Senator Montford

588-02951-17 20171206c1

A bill to be entitled

An act relating to the rights and responsibilities of patients; amending s. 381.026, F.S.; requiring health care facilities and providers to authorize patients to bring in any person of the patients' choosing to specified areas of the facilities or providers' offices under certain circumstances; requiring health care facilities and providers to include such authorization as an additional patient standard in the statement of rights and responsibilities made available to patients by health care providers; providing an effective date.

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

Section 1. Paragraph (a) of subsection (4) and subsection (6) of section 381.026, Florida Statutes, are amended to read:

381.026 Florida Patient's Bill of Rights and Responsibilities.—

(4) RIGHTS OF PATIENTS.—Each health care facility or provider shall observe the following standards:

(a) *Individual dignity.*—

1. The individual dignity of a patient must be respected at all times and upon all occasions.

2. Every patient who is provided health care services retains certain rights to privacy, which must be respected without regard to the patient's economic status or source of payment for his or her care. The patient's rights to privacy must be respected to the extent consistent with providing

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

588-02951-17 20171206c1

adequate medical care to the patient and with the efficient administration of the health care facility or provider's office. However, this subparagraph does not preclude necessary and discreet discussion of a patient's case or examination by appropriate medical personnel.

3. A patient has the right to a prompt and reasonable response to a question or request. A health care facility shall respond in a reasonable manner to the request of a patient's health care provider for medical services to the patient. The health care facility shall also respond in a reasonable manner to the patient's request for other services customarily rendered by the health care facility to the extent such services do not require the approval of the patient's health care provider or are not inconsistent with the patient's treatment.

4. A patient in a health care facility has the right to retain and use personal clothing or possessions as space permits, unless for him or her to do so would infringe upon the right of another patient or is medically or programmatically contraindicated for documented medical, safety, or programmatic reasons.

5. A patient receiving care in a health care facility or in a provider's office has the right to bring any person of his or her choosing to the patient-accessible areas of the health care facility or provider's office to accompany the patient while the patient is receiving inpatient or outpatient treatment or is consulting with his or her health care provider, unless doing so would risk the safety or health of the patient, other patients, or staff of the facility or office or cannot be reasonably accommodated by the facility or provider.

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

(6) SUMMARY OF RIGHTS AND RESPONSIBILITIES.—Any health care provider who treats a patient in an office or any health care facility licensed under chapter 395 that provides emergency services and care or outpatient services and care to a patient, or admits and treats a patient, shall adopt and make available to the patient, in writing, a statement of the rights and responsibilities of patients, including the following:

SUMMARY OF THE FLORIDA PATIENT'S BILL
OF RIGHTS AND RESPONSIBILITIES

Florida law requires that your health care provider or health care facility recognize your rights while you are receiving medical care and that you respect the health care provider's or health care facility's right to expect certain behavior on the part of patients. You may request a copy of the full text of this law from your health care provider or health care facility. A summary of your rights and responsibilities follows:

A patient has the right to be treated with courtesy and respect, with appreciation of his or her individual dignity, and with protection of his or her need for privacy.

A patient has the right to a prompt and reasonable response to questions and requests.

A patient has the right to know who is providing medical services and who is responsible for his or her care.

A patient has the right to know what patient support services are available, including whether an interpreter is available if he or she does not speak English.

A patient has the right to bring any person of his or her choosing to the patient-accessible areas of the health care facility or provider's office to accompany the patient while the patient is receiving inpatient or outpatient treatment or is consulting with his or her health care provider, unless doing so would risk the safety or health of the patient, other patients, or staff of the facility or office or cannot be reasonably accommodated by the facility or provider.

A patient has the right to know what rules and regulations apply to his or her conduct.

A patient has the right to be given by the health care provider information concerning diagnosis, planned course of treatment, alternatives, risks, and prognosis.

A patient has the right to refuse any treatment, except as otherwise provided by law.

A patient has the right to be given, upon request, full information and necessary counseling on the availability of known financial resources for his or her care.

A patient who is eligible for Medicare has the right to know, upon request and in advance of treatment, whether the health care provider or health care facility accepts the Medicare assignment rate.

A patient has the right to receive, upon request, prior to treatment, a reasonable estimate of charges for medical care.

A patient has the right to receive a copy of a reasonably clear and understandable, itemized bill and, upon request, to have the charges explained.

A patient has the right to impartial access to medical treatment or accommodations, regardless of race, national

origin, religion, handicap, or source of payment.

A patient has the right to treatment for any emergency medical condition that will deteriorate from failure to provide treatment.

A patient has the right to know if medical treatment is for purposes of experimental research and to give his or her consent or refusal to participate in such experimental research.

A patient has the right to express grievances regarding any violation of his or her rights, as stated in Florida law, through the grievance procedure of the health care provider or health care facility which served him or her and to the appropriate state licensing agency.

A patient is responsible for providing to the health care provider, to the best of his or her knowledge, accurate and complete information about present complaints, past illnesses, hospitalizations, medications, and other matters relating to his or her health.

A patient is responsible for reporting unexpected changes in his or her condition to the health care provider.

A patient is responsible for reporting to the health care provider whether he or she comprehends a contemplated course of action and what is expected of him or her.

A patient is responsible for following the treatment plan recommended by the health care provider.

A patient is responsible for keeping appointments and, when he or she is unable to do so for any reason, for notifying the health care provider or health care facility.

A patient is responsible for his or her actions if he or she refuses treatment or does not follow the health care

provider's instructions.

A patient is responsible for assuring that the financial obligations of his or her health care are fulfilled as promptly as possible.

A patient is responsible for following health care facility rules and regulations affecting patient care and conduct.

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

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

SENATOR BILL MONTFORD
3rd District

April 17, 2017

Senator Lizbeth Benacquisto, Chair
Senate Committee on Rules
402 Senate Office Building
Tallahassee Florida 32399-1100

Dear Senator Benacquisto:

I respectfully request that the following Bills be placed on the next agenda for the Senate Rules Committee Meeting:

CS/SB 46 – Relief of Mary Mifflin-Gee by the City of Miami
CS/SB 42 – Relief for Angela Sanford
CS/SB 1206 – Patients' Rights and Responsibilities

I would greatly appreciate your consideration.

Sincerely,

Bill Montford

William "Bill" Montford
Senate District 3

WM/md

Cc: John Phelps, Staff Director
Cynthia Futch, Administrative Assistant

REPLY TO:
☐ 410 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5003
☐ 20 East Washington Street, Suite D, Quincy, Florida 32351 (850) 627-9100

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

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/17
Meeting Date

1206
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Cynthia Henderson

Job Title _____

Address 108 E. Jefferson St. Suite E
Street
Tallahassee FL 32301
City *State* *Zip*

Phone 850 559 0855

Email Cyhenderson@me.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Crowne Consulting

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons 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 110
INTRODUCER:	Governmental Oversight and Accountability Committee; Education Committee and Senators Brandes and Rouson
SUBJECT:	Public Records and Public Meetings/Information Technology/Postsecondary Education Institutions
DATE:	April 24, 2017 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Benvenisty	Graf	ED	**Fav/CS**
2.	Kim	Ferrin	GO	**Fav/CS**
3.	Benvenisty	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 110 creates a new public records and meetings exemption for records of state universities and Florida College System (FCS) institutions pertaining to Information Technology (IT) security systems if the disclosure of such records would facilitate the unauthorized access to, or unauthorized modification, disclosure, or destruction of data, information, or IT resources. Specifically, the bill:

- Exempts from public records laws data or information from technology systems owned by, under contract, or maintained by a state university or FCS institution.
- Exempts from public meetings laws portions of public meetings that may reveal data or information from technology systems owned, contracted, or maintained by a state university or an FCS institution.
  - Requires an exempt portion of a public meeting to be recorded and transcribed but specifies such recording and transcript must be exempt from disclosure, unless a court determines that the meeting was not restricted to discussion of confidential and exempt data.
- Specifies the entities to whom exempt records must be provided.

The bill provides a statement of public necessity justifying the exemption as required by the Florida Constitution. Additionally, the bill provides for repeal of the public record and meeting

exemption on October 2, 2022, pursuant to the Open Government Sunset Review Acts unless reviewed and saved from repeal by the Legislature.

Article I, s. 24(c), of the Florida Constitution, requires a two-thirds vote of the members of each house of the Legislature for final passage of a bill that creates an exemption for public records or public meetings.

The bill takes effect upon becoming law.

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]

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[1] FLA. CONST., art. I, s. 24(a).
[2] *Id*.
[3] The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature's records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislatures are primarily located in s. 11.0431(2)-(3), F.S.
[4] Public records laws are found throughout the Florida Statutes.
[5] Section 119.01(1), F.S.
[6] Section 119.011(12), F.S., defines "public record" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."
[7] *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc*., 379 So. 2d 633, 640 (Fla. 1980).
[8] Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

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. 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 Meetings Law

Article I, s. 24(b), of the Florida Constitution sets forth the state's public policy regarding access to government meetings. The section requires that all meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, be open and noticed to the public.

Public policy regarding access to government meetings also is addressed in the Florida Statutes. Section 286.011, F.S., known as the "Government in the Sunshine Law" or "Sunshine Law," further requires that all meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, at which official acts are to be taken be open to the public at all times.[15] The board or commission must provide reasonable notice of all public meetings.[16] Public meetings may not be held at any location that discriminates on the basis of sex, age, race, creed, color, origin or economic status or which operates in a manner that unreasonably restricts the public's access to the facility.[17] Minutes of a public meeting must be promptly recorded and open to public inspection.[18]

[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).
[14] *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991).
[15] Section 286.011(1), F.S.
[16] *Id.*
[17] Section 286.011(6), F.S.
[18] Section 286.011(2), F.S.

Public Records and Public Meetings Exemptions

The Legislature, however, may provide by general law for the exemption of records and meetings from the requirements of Art. I, s. 24(a) and (b), of the Florida Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.[19]

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.[20] 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.[21]

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.[22] 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;[23]
- 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;[24] or
- It protects trade or business secrets.[25]

The OGSR also requires specified questions to be considered during the review process.[26] In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

[19] Art. I, s. 24(c), Fla. Const.
[20] 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.
[21] Section 119.15(3), F.S.
[22] Section 119.15(6)(b), F.S.
[23] Section 119.15(6)(b)1., F.S.
[24] Section 119.15(6)(b)2., F.S.
[25] Section 119.15(6)(b)3., F.S.
[26] 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?

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.[27] 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.[28]

State Universities and Florida College System Institutions

Records and meetings held by state universities and Florida College System (FCS) institutions regarding information security incidents, such as investigations into security breaches, security technologies, processes and practices as well as security risk assessments are currently subject to Florida public records laws.[29] Section 282.318, F.S., exempts from public records laws data and information from technology systems owned, contracted, or maintained by a state agency.[30] A "state agency" means any official, officer, commission, board, authority, council, committee, or department of the executive branch of state government; the Justice Administrative Commission; and the Public Service Commission.[31] However, state universities and university boards of trustees are specifically excluded from the definition of "state agency."[32]

Florida College System records at the state level, as part of the Department of Education, are confidential and exempt under s. 282.318, F.S., but it is unclear the extent to which the records of FCS institutions and their boards of trustees are confidential and exempt under current law.[33]

III. Effect of Proposed Changes:

The bill creates a new public records and meetings exemption for records of state universities and Florida College System (FCS) institutions pertaining to Information Technology (IT) security systems if the disclosure of such records would facilitate the unauthorized access to, or unauthorized modification, disclosure, or destruction of data, information, or IT resources.

Public Records Exemption

The bill makes confidential and exempt from public disclosure data or information from technology systems owned by, under contract, or maintained by a state university or FCS institution. Such data and information includes the following types of records and portions of documents:

- Records held by the university or college which identify detection, investigation, or response practices for suspected or confirmed information technology security incidents, including suspected or confirmed breaches, if the disclosure of such records would facilitate unauthorized access to or the unauthorized modification, disclosure, or destruction of data or information, whether physical or virtual, or information technology resources; and

[27] FLA. CONST. art. I, s. 24(c).
[28] Section 119.15(7), F.S.
[29] *See* FLA. CONST. art. I, s. 24(c), and Ch. 119, F.S.
[30] State University System of Florida, Board of Governors, *2017 Legislative Bill Analysis for SB 110* (Jan. 10, 2017), at 1.
[31] Sections 282.0041(23) and 282.318(2), F.S.
[32] Section 282.0041(23), F.S.
[33] Florida Department of Education, *2017 Legislative Bill Analysis for SB 110* (Dec. 21, 2016), at 3.

- Those portions of risk assessments, evaluations, and other reports of the university's or institution's information technology security program for its data, information, and information technology resources which are held by the university or institution. These records would be confidential and exempt if disclosure of such records would lead to the unauthorized access to or unauthorized modification, disclosure, or destruction of the data, information, or IT resources.

Public Meetings Exemption

The bill closes portions of public meetings in which confidential and exempt information is discussed. Closed portions of meetings must be recorded and transcribed. However, the bill specifies that the recording and transcript of the meeting must remain confidential and exempt from disclosure unless a court with competent jurisdiction determines the meeting was not restricted to confidential and exempt data and information. If this occurs, then the court may disclose the recordings and transcripts that do not contain confidential and exempt information.

Statement of Public Necessity

The bill provides a statement of public necessity for the proposed public record and meeting exemptions created in the bill. Specifically, the bill provides the following reasons for such exemptions:

- Records held by a state university or FCS institution that identify IT detection, investigation, or response practice for suspected or confirmed IT security incidents, including breaches, may be used in the investigation of the incident. The release of such information may interfere with and jeopardize the ongoing investigation.
- An investigation into an IT security incident, including a breach, may result in the gathering of sensitive personal information exempt from disclosure under state and federal law.[34] Release of such information may be used to commit identity theft or other crimes and subject potential victims of the security incident to further harm.[35]
- Disclosure of records such as an audit or forensic analysis of a state university or FCS institutions may reveal weaknesses in the university or institutions IT security system.
- Records held by a state university or FCS institution may contain proprietary information, the release of which would provide an unfair advantage for business competitors in the market place.
- Disclosure of records may compromise and interfere with the administration of ongoing education programs.

According to the Board of Governors of the State University System (BOG) "a state university is vulnerable to the disclosure of records or information that could potentially compromise the

[34] 20 U.S.C. s. 1232g, and ss. 1002.225 and 1006.52, F.S.

[35] Florida law specifies procedures that must be taken in the event the security of personal information maintained by a government entity is breached. A government entity must give notice to each individual in the state whose personal information was, or the government entity reasonably believes to have been, accessed because of a breach of security. Section 501.171(4), F.S. Email, State University System of Florida Board of Governors (March 7, 2017). On file with the Senate Committee on Education.

confidentiality, integrity, and availability of a state university's information technology system" which contain sensitive data.[36]

Open Government Sunset Review

The bill provides for the repeal of the exemptions created by this bill on October 2, 2022, as required by the Open Government Sunset Review Act. This timeframe for scheduled repeal appears to be consistent with the law regarding state public meeting and public record exemptions.[37]

Application

The bill provides for retroactive application of the public records exemption. As such, all prior records pertaining to the detection, investigation, and response practices for suspected or confirmed IT security incidents and related reports will become confidential and exempt from disclosure.

All records and portions of public meeting recordings and transcripts made confidential and exempt by the bill must be available to the Auditor General, the Cybercrime Office of the Department of Law Enforcement, for the state universities, the Board of Governors, and for the FCS institutions, the State Board of Education. Additionally, such records and portions of meetings may be made available to a state or federal agency for security purposes or in furtherance of the agency's official duties.

The bill takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c), of the Florida Constitution, requires a two-thirds vote of the members of each house of the Legislature for final passage of a bill that creates an exemption for public records or public meetings.

The bill creates a public record and public meeting exemption; therefore, a two-thirds vote of the members of each house of the Legislature is required for final passage of the bill.

[36] State University System of Florida, Board of Governors, *2017 Legislative Bill Analysis for SB 110* (Jan. 10, 2017) at 1. The Board of Governors (BOG) regulation prescribes a minimum standard for security of data and related information technology resources. Florida Board of Governors Regulation 3.0075. The president of each university is responsible for ensuring appropriate and auditable security controls are in place on his or her campus. *Id.* at (1).
[37] Section 119.15(2)-(3), F.S.

Public Necessity Statement

Article I, s. 24(c), of the Florida Constitution, requires that a bill creating an exemption for public records or public meetings contain a public necessity statement justifying the exemption. The bill contains statements of public necessity for the public records exemptions and the public meetings exemption. The public records exemptions and the public meetings exemption appear to be no broader than necessary to achieve the purposes set out in the public necessity statements.

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:

The bill includes court procedures for disclosure of meeting records. Most public meetings exemptions do not include such provisions.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 1004.055 of the Florida Statutes.

IX. Additional Information:

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

CS/CS by Governmental Oversight and Accountability on April 3, 2017:

- Removes a definition of external audit and removes references to internal and external audits;

- Revises the public necessity statement to conform to the "information or data from technology systems" that is the subject of the public exemption. Previously, the public necessity statement centered around the types of records, risk assessments and other documents that were subsets the "information or data" that were the subject of the exemption;
- Revises the public necessity statement for the public meetings and records exemption by reiterating what subjects are not subject to public disclosure; and,
- Makes clarifying editorial changes.

CS by Education on March 21, 2017:
The committee substitute adds the State Board of Education to the entities to who exempt records and meeting transcripts for Florida's community colleges must be made available.

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 Governmental Oversight and Accountability; and Education; and Senators Brandes and Rouson

585-03366-17 2017110c2

A bill to be entitled

An act relating to public records and public meetings; creating s. 1004.055, F.S.; creating an exemption from public records requirements for certain records held by a state university or Florida College System institution which identify detection, investigation, or response practices for suspected or confirmed information technology security incidents; creating an exemption from public records requirements for certain portions of risk assessments, evaluations, audits, and other reports of a university's or institution's information technology security program; creating an exemption from public meetings requirements for portions of public meetings which would reveal such data and information; providing an exemption from public records requirements for a specified period for the recording and transcript of a closed meeting; authorizing disclosure of confidential and exempt information to certain agencies and officers; providing retroactive application; providing for future legislative review and repeal of the exemptions; providing statements of public necessity; providing a directive to the Division of Law Revision and Information; providing an effective date.

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

Section 1. Section 1004.055, Florida Statutes, is created to read:

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

585-03366-17 2017110c2

1004.055 Security of data and information technology in state postsecondary education institutions.—

(1) All of the following data or information from technology systems owned, under contract, or maintained by a state university or a Florida College System institution are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

(a) Records held by the university or institution which identify detection, investigation, or response practices for suspected or confirmed information technology security incidents, including suspected or confirmed breaches, if the disclosure of such records would facilitate unauthorized access to or unauthorized modification, disclosure, or destruction of:

1. Data or information, whether physical or virtual; or

2. Information technology resources, which include:

a. Information relating to the security of the university's or institution's technologies, processes, and practices designed to protect networks, computers, data processing software, and data from attack, damage, or unauthorized access; or

b. Security information, whether physical or virtual, which relates to the university's or institution's existing or proposed information technology systems.

(b) Those portions of risk assessments, evaluations, audits, and other reports of the university's or institution's information technology security program for its data, information, and information technology resources which are held by the university or institution, if the disclosure of such records would facilitate unauthorized access to or the unauthorized modification, disclosure, or destruction of:

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

1. Data or information, whether physical or virtual; or

2. Information technology resources, which include:

a. Information relating to the security of the university's or institution's technologies, processes, and practices designed to protect networks, computers, data processing software, and data from attack, damage, or unauthorized access; or

b. Security information, whether physical or virtual, which relates to the university's or institution's existing or proposed information technology systems.

(2) Those portions of a public meeting as specified in s. 286.011 which would reveal data and information described in subsection (1) are exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution. No exempt portion of an exempt meeting may be off the record. All exempt portions of such a meeting must be recorded and transcribed. The recording and transcript of the meeting must remain confidential and exempt from disclosure under s. 119.07(1) and s. 24(a), Art. 1 of the State Constitution unless a court of competent jurisdiction, following an in camera review, determines that the meeting was not restricted to the discussion of data and information made confidential and exempt by this section. In the event of such a judicial determination, only that portion of the transcript which reveals nonexempt data and information may be disclosed to a third party.

(3) The records and portions of public meeting recordings and transcripts described in subsection (1) must be available to: the Auditor General; the Cybercrime Office of the Department of Law Enforcement; for a state university, the Board of Governors; and for a Florida College System institution, the

State Board of Education. Such records and portions of meetings, recordings, and transcripts may be made available to a state or federal agency for security purposes or in furtherance of the agency's official duties.

(4) The exemptions listed in this section apply to such records or portions of public meetings, recordings, and transcripts held by the university or institution before, on, or after the effective date of this act.

(5) 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. (1)(a) The Legislature finds that it is a public necessity that the following data or information from technology systems owned, under contract, or maintained by a state university or a Florida College System institution be confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution:

1. Records held by the university or institution which identify detection, investigation, or response practices for suspected or confirmed information technology security incidents, including suspected or confirmed breaches, if the disclosure of such records would facilitate unauthorized access to or unauthorized modification, disclosure, or destruction of:

a. Data or information, whether physical or virtual; or

b. Information technology resources, which include:

(I) Information relating to the security of the university's or institution's technologies, processes, and practices designed to protect networks, computers, data

processing software, and data from attack, damage, or unauthorized access; or

(II) Security information, whether physical or virtual, which relates to the university's or institution's existing or proposed information technology systems.

2. Those portions of risk assessments, evaluations, audits, and other reports of the university's or institution's information technology security program for its data, information, and information technology resources which are held by the university or institution, if the disclosure of such records would facilitate unauthorized access to or the unauthorized modification, disclosure, or destruction of:

a. Data or information, whether physical or virtual; or

b. Information technology resources, which include:

(I) Information relating to the security of the university's or institution's technologies, processes, and practices designed to protect networks, computers, data processing software, and data from attack, damage, or unauthorized access; or

(II) Security information, whether physical or virtual, which relates to the university's or institution's existing or proposed information technology systems.

(b) The Legislature also finds that those portions of a public meeting as specified in s. 286.011, Florida Statutes, which would reveal data and information described in subsection (1) are exempt from s. 286.011, Florida Statutes, and s. 24(b), Article I of the State Constitution. The recording and transcript of the meeting must remain confidential and exempt from disclosure under s. 119.07(1), Florida Statutes, and s.

24(a), Article 1 of the State Constitution unless a court of competent jurisdiction, following an in camera review, determines that the meeting was not restricted to the discussion of data and information made confidential and exempt by this section. In the event of such a judicial determination, only that portion of the transcript which reveals nonexempt data and information may be disclosed to a third party.

(c) The Legislature further finds that it is a public necessity that records held by a state university or Florida College System institution which identify detection, investigation, or response practices for suspected or confirmed information technology security incidents, including suspected or confirmed breaches, be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution if the disclosure of such records would facilitate unauthorized access to or the unauthorized modification, disclosure, or destruction of:

1. Data or information, whether physical or virtual; or

2. Information technology resources, which include:

a. Information relating to the security of the university's or institution's technologies, processes, and practices designed to protect networks, computers, data processing software, and data from attack, damage, or unauthorized access; or

b. Security information, whether physical or virtual, which relates to the university's or institution's existing or proposed information technology systems.

(d) Such records must be made confidential and exempt for the following reasons:

1. Records held by a state university or Florida College

System institution which identify information technology detection, investigation, or response practices for suspected or confirmed information technology security incidents or breaches are likely to be used in the investigations of the incidents or breaches. The release of such information could impede the investigation and impair the ability of reviewing entities to effectively and efficiently execute their investigative duties. In addition, the release of such information before an active investigation is completed could jeopardize the ongoing investigation.

2. An investigation of an information technology security incident or breach is likely to result in the gathering of sensitive personal information, including identification numbers, personal financial and health information, and educational records exempt from disclosure under the Family Educational Rights and Privacy Act, 20 U.S.C. s. 1232g, and ss. 1002.225 and 1006.52, Florida Statutes. Such information could be used to commit identity theft or other crimes. In addition, release of such information could subject possible victims of the security incident or breach to further harm.

3. Disclosure of a record, including a computer forensic analysis, or other information that would reveal weaknesses in a state university's or Florida College System institution's data security could compromise that security in the future if such information were available upon conclusion of an investigation or once an investigation ceased to be active.

4. Such records are likely to contain proprietary information about the security of the system at issue. The disclosure of such information could result in the

identification of vulnerabilities and further breaches of that system. In addition, the release of such information could give business competitors an unfair advantage and weaken the security technology supplier supplying the proprietary information in the marketplace.

5. The disclosure of such records could potentially compromise the confidentiality, integrity, and availability of state university and Florida College System institution data and information technology resources, which would significantly impair the administration of vital educational programs. It is necessary that this information be made confidential in order to protect the technology systems, resources, and data of the universities and institutions. The Legislature further finds that this public records exemption be given retroactive application because it is remedial in nature.

(2)(a) The Legislature also finds that it is a public necessity that portions of risk assessments, evaluations, audits, and other reports of a state university's or Florida College System institution's information technology security program for its data, information, and information technology resources which are held by the university or institution be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution if the disclosure of such portions of records would facilitate unauthorized access to or the unauthorized modification, disclosure, or destruction of:

1. Data or information, whether physical or virtual; or

2. Information technology resources, which include:

a. Information relating to the security of the university's

or institution's technologies, processes, and practices designed to protect networks, computers, data processing software, and data from attack, damage, or unauthorized access; or

b. Security information, whether physical or virtual, which relates to the university's or institution's existing or proposed information technology systems.

(b) The Legislature finds that it is valuable, prudent, or critical to a state university or Florida College System institution to have an independent entity conduct a risk assessment, an audit, or an evaluation or complete a report of the university's or institution's information technology program or related systems. Such documents would likely include an analysis of the university's or institution's current information technology program or systems which could clearly identify vulnerabilities or gaps in current systems or processes and propose recommendations to remedy identified vulnerabilities.

(3)(a) The Legislature further finds that it is a public necessity that those portions of a public meeting which could reveal information described in subsections (1) and (2) be made exempt from s. 286.011, Florida Statutes, and s. 24(b), Article I of the State Constitution. It is necessary that such meetings be made exempt from the open meetings requirements in order to protect institutional information technology systems, resources, and data. The information disclosed during portions of meetings would clearly identify a state university's or Florida College System institution's information technology systems and its vulnerabilities. This disclosure would jeopardize the information technology security of the institution and

compromise the integrity and availability of state university or Florida College System institution data and information technology resources, which would significantly impair the administration of educational programs.

(b) The Legislature further finds that it is a public necessity that the recording and transcript of those portions of meetings specified in paragraph (a) be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution unless a court determines that the meeting was not restricted to the discussion of data and information made confidential and exempt by this act. It is necessary that the resulting recordings and transcripts be made confidential and exempt from the public record requirements in order to protect institutional information technology systems, resources, and data. The disclosure of such recordings and transcripts would clearly identify a state university's or Florida College System institution's information technology systems and its vulnerabilities. This disclosure would jeopardize the information technology security of the institution and compromise the integrity and availability of state university or Florida College System institution data and information technology resources, which would significantly impair the administration of educational programs.

(c) The Legislature further finds that this public meeting and public records exemption must be given retroactive application because it is remedial in nature.

Section 3. The Division of Law Revision and Information is directed to replace the phrase "the effective date of this act" wherever it occurs in this act with the date this act becomes a

law.

Section 4. This act shall take effect upon becoming a law.

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

The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto
Committee on Rules

Subject: Committee Agenda Request

Date: April 3rd, 2017

I respectfully request that **Senate Bill #110**, relating to **Public Records Meetings/Information Technology/ Postsecondary Education Institutions**, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Jeff Brandes
Florida Senate, District 24

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-25-17
Meeting Date

110
Bill Number (if applicable)

Topic Pub. Rec. / Information Technology / Post Secondary

Amendment Barcode (if applicable)

Name BRIAN LOGAN

Job Title Leg. Affairs Director

Address 325 W. Gaines St.
Street

Tallahassee FL 32399
City *State* *Zip*

Phone 850-567-0588

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing BOARD OF GOVERNORS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is 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 496
INTRODUCER:	Education Committee; Health Policy Committee and Senators Brandes and Passidomo
SUBJECT:	Medical Faculty and Medical Assistant Certification
DATE:	April 25, 2017 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van Winkle	Stovall	HP	**Fav/CS**
2.	Bouck	Graf	ED	**Fav/CS**
3.	Rossitto-Van Winkle	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 496 expands the criteria under which the Department of Health (DOH) may issue a medical faculty certificate to include a medical physician who has been offered, and accepted, a full time faculty position at a specialty-licensed children's hospital, affiliated with any accredited medical school, and its affiliated clinics. Current law authorizes a medical faculty certificate to be issued to a non-Florida licensed physician to practice in conjunction with his or her faculty position at an accredited medical school in Florida and its affiliated clinical facilities or teaching hospitals. The bill corrects the name of the Mayo Clinic College of Medicine and Science in Jacksonville, Florida, and adds the Johns Hopkins All Children's Hospital (All Children's Hospital), in St. Petersburg, Florida, to the list of programs of medicine for which a medical faculty certificate may be issued to a full time faculty appointee.

The bill authorizes the DOH to process an application for a temporary certificate for a visiting physician for the limited purpose of the physician providing educational training for medical residents up to five days in a year, using a unique personal identification number if the physician does not have a social security number, but otherwise meets the credentialing criteria.

The bill requires a medical assistant to obtain a certificate from a certification program accredited by the National Commission for Certifying Agencies to be credentialed as a certified medical assistant.

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

II. Present Situation:

Medical Faculty Certificates

To become a licensed medical doctor in Florida an individual generally has two paths to licensure: licensure by examination,[1] or licensure by endorsement.[2] However, s. 458.3145, F.S., provides another limited path to practice in Florida by teaching in a program of medicine. Under s. 458.3145, F.S., the DOH is authorized to issue a medical faculty certificate to a qualified medical physician to practice in conjunction with his or her full time faculty position at a medical school, if the physician has been offered, and accepted, a full time faculty appointment to teach at the following programs in medical schools with campuses in Florida:

- University of Florida;
- University of Miami;
- University of South Florida;
- Florida State University;
- Florida International University;
- University of Central Florida;
- Mayo Medical School at the Mayo Clinic in Jacksonville, Florida; or
- The Florida Atlantic University.[3,4]

A medical faculty certificate authorizes the holder to practice medicine only in conjunction with his or her faculty position at an accredited medical school, and its affiliated clinical facilities or teaching hospitals that are registered with the Board of Medicine as sites at which certificate holders will be practicing. The medical faculty certificate is valid until the earlier of termination of the physician's relationship with the medical school, or after a period of 24 months. The

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[1] *See* s. 458.311, F.S., and Florida Board of Medicine, *Medical Doctor - Unrestricted*, available at http://flboardofmedicine.gov/licensing/medical-doctor-unrestricted (last visited March 31, 2017). Medical licensure by examination is the most frequent method of obtaining a Florida medical license. Licensure by examination requires an applicant, who has passed all parts of a national medical examination (NBME, FLEX, or USMLE), and does not hold a valid medical license in any state, to among other things, meet certain educational and training requirements, demonstrate competency in English if instruction at the medical school was not in English, have completed an approved residency program, and pass certain background screening requirements.

[2] *See* s. 458.313, F.S., and Board of Medicine, *Medical Doctor - Unrestricted*, available at http://flboardofmedicine.gov/licensing/medical-doctor-unrestricted, (last visited March 31, 2017). Medical licensure by endorsement requirements include, among other things, be a graduate from a qualifying medical school, completed certain residency requirements, have passed a qualifying examination, and is licensed in another jurisdiction to practice medicine.

[3] Section 458.3145(1)(i), F.S.

[4] Section 458.3145(1), F.S., also requires applicants for a *medical faculty certificate* to meet the following additional requirements: 1) Be a graduate of an accredited medical school or its equivalent, or a foreign medical school listed with the World Health Organization; 2) Hold a valid, current license to practice medicine in another jurisdiction; 4) Have completed the application and paid a fee; 5) Have completed an approved residency or fellowship of at least one year or has received training which has been determined by the board to be equivalent to the one-year residency requirement; 6) Are at least 21 years of age; 7) Are of good moral character; 8) Have not committed any act in this or any other jurisdiction which would constitute the basis for disciplinary action; and 9) For those applicants who graduated after October 1, 1992, to have completed before entering medical school, the equivalent of two academic years of pre-professional, postsecondary education, which includes courses in anatomy, biology, and chemistry.[4]

certificate is renewable, and may be extended for two years, if the physician provides a certification from the dean of the medical school that the physician is a distinguished medical scholar and an outstanding practicing physician. The maximum number of extended medical faculty certificate holders is limited to 30 persons per each medical school, with the exception of the Mayo medical school located at the Mayo Clinic in Jacksonville, Florida, which is limited to 10 certificate holders.[5]

A physician holding an unrestricted Florida medical license is not required to obtain a medical faculty certificate to hold a medical faculty teaching position. Additionally, an individual may teach at any Florida medical school, without a Florida medical license or medical faculty certificate, if offered a position, including the medical schools listed in s. 458.3145, F.S., if the person does not practice medicine. Practicing medicine in Florida is defined as the diagnosis, treatment, operation, or prescription for any human disease, pain, injury, deformity, or other physical or mental condition.[6]

As of the date of this analysis, there are 52 physicians holding medical faculty certificates in Florida, with 12 of those residing out-of-state.[7]

Florida Medical Schools and Graduate Medical Education Programs

Medical education programs in the U.S. are approved and recognized by the U.S. Office of Education. The U.S. Office of Education does not accredit medical educational programs; medical education programs are accredited by the Liaison Committee on Medical Education (LCME) and the World Foundation for Medical Education (WFME). LCME accreditation is a voluntary, peer-reviewed process of quality assurance that determines whether a U.S. or Canadian medical education program meets established standards.[8]

Florida has eight LCME accredited allopathic medical schools operating within its borders and they are all listed in s. 458.3145, F.S.

To obtain an unrestricted Florida allopathic medical license a medical school graduate must do, among other things, at least a one year of residency.[9] The Accreditation Council for Graduate Medical Education (ACGME) sets the standards for U.S. graduate medical education programs (internships, residencies and fellowships) and the institutions that sponsor them. ACGME accreditation provides assurance that a Sponsoring Institution or program meets the quality standards (Institutional and Program Requirements) of the specialty or subspecialty practice(s) for which it prepares its graduates. ACGME accreditation is overseen by a Review Committee made up of volunteer specialty experts from the field that set accreditation standards and provide

[5] Section 458.3145, F.S.
[6] Section 458.305(1)(d), F.S.
[7] Florida Dep't of Health, Division of Medical Quality Assurance, *Annual Report and Long Range Plan Fiscal Year 2015-2016*, p. 10, *available at* http://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/_documents/annual-report-1516.pdf, (last visited March 31, 2017).
[8] *See* U.S. Department of Education, *Overview of Accreditation in the United States* (last modified March 8, 2017) *available at* https://www2.ed.gov/admins/finaid/accred/accreditation.html, (last visited March 31, 2017).
[9] *See* footnote 1.

peer evaluation of Sponsoring Institutions and specialty and subspecialty residency and fellowship programs.[10]

A graduate of a U.S. or Canadian medical school, approved and recognized by the U.S. Office of Education, who obtains an internship, residency or house physician[11] position in a Florida ACGME approved program, and does not hold a current, active Florida medical license, will begin their graduate medical education as an unlicensed physician.[12] These unlicensed physicians must register with the DOH,[13] and after one year of residency may apply for an unrestricted Florida medical license.[14] During this first year these unlicensed physicians work under a Florida licensed supervising physician or a physician holding a medical faculty certificate who also holds a full time faculty position with a Florida medical school.[15]

According to the ACGME, during the 2016-2017 academic year, Florida had 4,186 total medical residents, in 195 medical and surgical residency programs, in 52 sponsoring institutions.[16] Eleven of the 195 ACGME accredited residency programs provided 479 approved pediatric residencies, which included 36 at All Children's Hospital.[17] Nine of the 11 ACGME accredited pediatric residency programs in Florida are affiliated with Class II Specialty Hospitals for Children, which includes All Children's Hospital.[18]

All Children's Hospital is not a Florida campus for Johns Hopkins School of Medicine, but a Florida non-profit hospital corporation that is 100 percent owned by The Johns Hopkins Health System Corporation,[19] a private, multinational non-profit corporation incorporated in Maryland. All Children's Hospital operates a pediatric residency program as a joint venture with Johns Hopkins Medicine (JHM). It is the only JMH affiliated hospital outside of the Baltimore/

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[10] Accreditation Council for Graduate Medical Education, *What We Do*, *available at* http://www.acgme.org/What-We-Do/Overview (last visited March 31, 2017).
[11] A house physician is a person who holds a degree as a medical doctor, or its equivalent, but who does not have and has never had a license to practice medicine in Florida and is employed and paid by a hospital. Chapter 64B8-6.006 (F.A.C.).
[12] An unlicensed physician is a person holding a degree as a medical doctor or its equivalent, but not licensed by the Board of Medicine. For the purpose of administering this rule chapter, such unlicensed physicians shall embrace and include resident physicians, assistant resident physicians, house physicians, interns, or fellows in fellowship training which leads to subspecialty board certification or in fellowship training in a teaching hospital in this state as defined in s. 408.07(45) or s. 395.805(2), F.S., as these terms are hereinafter defined. *See* s. 458.345, F.S., and Chapter 64B8-6 (F.A.C.).
[13] Section 458.345, F.S.
[14] Section 458.311 and 458.313, F.S.
[15] Section 458.3145, F.S.
[16] Graduate Medical Education Totals by State, Academic Year 2016-2017, *available at* https://apps.acgme.org/ads/Public/Reports/ReportRun?ReportId=13&CurrentYear=2016&AcademicYearId=2016, (last visited Mar. 2, 2017).
[17] Accreditation Council for Graduate Medical Education, Advanced Program Search, *Florida*, *Pediatrics*, available at https://apps.acgme.org/ads/Public/Programs/Search?stateId=10&specialtyId=65&city= (last visited Mar. 2, 2017).
[18] The two ACGME accredited pediatric residencies, not children's hospitals are Broward Health Medical Center, Ft. Lauderdale, and Sacred Heart Hospital, Pensacola. Florida Agency for Healthcare Administration, Florida Health Finder, *Facility Locator* http://www.floridahealthfinder.gov/facilitylocator/ListFacilities.aspx (last visited Mar. 2, 2017).
[19] The Johns Hopkins Health System Corporation was created in 1986 by the Johns Hopkins Hospital board of trustees to serve as the parent corporation for its six hospitals. In 1997 Johns Hopkins Medicine (JHM) was created through a joint venture between The Johns Hopkins Health System Corporation and The Johns Hopkins University. JHM is an $8 billion integrated global health care system. See Johns Hopkins Medicine, *About Johns Hopkins Medicine*, available at http://www.hopkinsmedicine.org/about/index.html, and *Governance and Leadership*, available at http://www.hopkinsmedicine.org/about/governance (last visited Feb. 7, 2017).

Washington D.C. metro area.[20] JHM and All Children's Hospital received approval from the ACGME to establish a pediatric residency program at All Children's Hospital July 1, 2013, and the first class of resident physicians entered the program in July 2014.[21]

Temporary Certificates for Visiting Physicians

The DOH is authorized to issue temporary certificates to physicians who are not licensed in Florida for limited privileges for educational purposes, to help teach plastic surgery or other medical or surgical procedures to residents; or residents who are part of a training program at a teaching hospital. Temporary certificates may also be issued to-out-of-state and foreign physicians for educational purposes to educate residents within this state in conjunction with a nationally sponsored educational symposium or an educational symposium held by a state medical school or teaching hospital.[22]

The DOH grants temporary certificates to physicians for up to five days per year. Each certificate expires one year after issuance and the DOH may not issue more than 12 temporary certificates for a single educational symposium.

The organization sponsoring the educational symposium must pay for any medical judgments incurred by a physician receiving a certificate pursuant to this law if the physician is not licensed to practice medicine in the U.S. The sponsoring organization may demonstrate its ability to meet this requirement by obtaining a surety bond, establishing a certificate of deposit or a guaranteed letter of credit, or providing proof that the physician is covered under a teaching hospital's or medical school's medical malpractice insurance. The amount of the bond, certificate of deposit, or guaranteed letter of credit must be at least $250,000.

Applicants for a temporary medical certificate must meet all of the following:

- Be a graduate of an LCME accredited medical school, or its equivalent, or a graduate of a foreign medical school listed with the World Health Organization;
- Hold a valid, unencumbered license to practice medicine in another state or country;

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[20] Johns Hopkins Medicine, News and Publications, *All Children's Hospital Announces New Pediatric Residency Program*, (July 31, 2012) *available at* http://www.hopkinsmedicine.org/news/media/releases/all_childrens_hospital_announces_new_pediatric_residency_program, (last visited Feb. 7, 2017). The JHM system offers patient care at the following six hospitals and other medical facilities:

- The Johns Hopkins Hospital, Baltimore, MD (including Brady Urological Institute, Johns Hopkins Children's Center, Kimmel Comprehensive Cancer Center and Wilmer Eye Institute);
- Johns Hopkins Bayview Medical Center, Inc., Baltimore, MD;
- Howard County General Hospital, Columbia, MD;
- Sibley Memorial Hospital, D.C.;
- Suburban Hospital, Bethesda, MD;
- The Johns Hopkins All Children's Hospital in St. Petersburg, FL;
- Johns Hopkins Community Physicians, MD and D.C.;
- The Johns Hopkins Home Care Group, MD and D.C.;
- Johns Hopkins Medicine International; and
- The Johns Hopkins University School of Medicine, Baltimore, MD.

See Johns Hopkins Medicine, *Patient Care Locations* http://www.hopkinsmedicine.org/patient_care/hospital_locations.html, (last visited March 31, 2017).

[21] *See* footnote 22.

[22] Section 458.3137, F.S.

- Be a recognized expert in a specific area of plastic surgery or another field of medicine or surgery, as demonstrated by peer-reviewed publications, invited lectureships, and academic affiliations;
- Have completed an application form adopted by the board and remitted an application fee;
- Have not committed an act in this or any other jurisdiction that would constitute a basis for disciplining a physician; and
- Meet the financial responsibility requirements.

Medical Assistants

A medical assistant is a professional, multi-skilled person that assists in all aspects of a medical practice under the direct supervision and responsibility of a physician.[23] There are no formal educational requirements for becoming a medical assistant in most states, including Florida.[24] However, medical assistant education programs are available from community colleges, vocational schools, technical schools, and universities and usually take about one year to complete.[25] Florida is third in the United States in the number of medical assistants employed, with 50,550.[26]

A medical assistant assists with patient care management, executes administrative and clinical procedures, and often performs managerial and supervisory functions. In Florida, a medical assistant may perform the following duties under the direct supervision of a physician:[27]

- Clinical procedures, including:
  - Performing aseptic procedures;
  - Taking vital signs;
  - Preparing patients for physician care;
  - Performing venipunctures and nonintravenous injections; and
  - Observing and reporting patients' signs and symptoms;
- Administering basic first aid;
- Assisting with patient examinations or treatments;
- Operating office medical equipment;
- Collecting routine laboratory specimens as directed by the physician;
- Administering medication as directed by the physician;
- Performing basic laboratory procedures;
- Performing office procedures including general administrative duties required by the physician; and
- Performing dialysis procedures, including home dialysis.

Medical assistants are not required to be licensed, certified, or registered to practice in Florida.[28]

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[23] Section 458.3485(1), F.S.
[24] United States Department of Labor, *Occupational Outlook Handbook: Medical Assistants,* (Dec. 17, 2015), available at https://www.bls.gov/ooh/healthcare/medical-assistants.htm#tab-4 (last visited April 4, 2017).
[25] *Id.*
[26] United States Department of Labor, Bureau Labor Statistics, *Occupational Employment and Wages, May 2016*, https://www.bls.gov/oes/current/oes319092.htm#st, last visited April 4, 2017.
[27] Section 458.3485(2), F.S.
[28] Florida Department of Health, *Licensing and Regulation*, http://www.floridahealth.gov/licensing-and-regulation/index.html (last visited April 4, 2017).

The Agency for Health Care Administration is required to prescribe minimum qualifications for multiphasic health testing center[29] (center) personnel.[30] A center may employ as a medical assistant a person who has at least one of the following qualifications:[31]

- Prior experience of not less than 6 months as a medical assistant in the office of a licensed medical doctor or osteopathic physician or in a hospital, an ambulatory surgical center, a home health agency, or a health maintenance organization.
- Certification and registration by the American Medical Technologists Association or other similar professional association approved by the agency.
- Prior employment as a medical assistant in a licensed center for at least 6 consecutive months at some time during the preceding 2 years.

III. Effect of Proposed Changes:

CS/CS/SB 496 expands the criteria under which the DOH may issue medical faculty certificates to practice medicine in Florida to include out-of-state licensed physicians who have been offered, and accepted, a full time faculty position at a specialty-licensed children's hospital affiliated with any accredited medical school, and its affiliated clinics or teaching hospitals. A medical faculty certificate, issued by DOH under current s. 458.3145, F.S., authorizes the holder to practice only in conjunction with his or her medical school faculty position at its affiliated clinics and teaching hospitals in the state.

The bill corrects the name of the Mayo Clinic College of Medicine and Science in Jacksonville, Florida, and adds to the list of Florida medical schools, a Florida hospital, Johns Hopkin All Children's Hospital in St. Petersburg, Florida, which is currently not a Florida medical school, or affiliated with a Florida medical school, but a specialty children's teaching hospital affiliated with an out-of-state accredited medical school. This bill would allow a physician to practice medicine in Florida at that hospital, without obtaining a Florida medical license, if the physician meets the criteria of s. 458.3145(1)(a)-(h), F.S., and has been offered, and accepted, a full time faculty appointment at All Children's Hospital in St. Petersburg, Florida.

The bill applies the cap of 30 medical faculty certificates that may be extended at each institution to All Children's Hospital.

The bill authorizes the DOH to process applications for temporary certificates under s. 458.3137, F.S., for visiting foreign physicians, who are recognized experts in their field, to enable them to provide educational opportunities to the state's medical residents even though the physician does not have a social security number but otherwise meets the credentialing criteria. The bill also authorizes a teaching hospital to directly sponsor the visiting physician without going through a medical school to extend the invitation and submit the application or supporting documentation to the DOH. This will improve efficiencies for the teaching hospital and medical school.

[29] A multiphasic health testing center is a fixed or mobile facility where specimens are taken from the human body for delivery to registered clinical laboratories for analysis and where certain measurements such as height and weight determinations, blood pressure determinations, limited audio and visual tests, and electrocardiograms are made. Section 483.288, F.S.
[30] Section 483.291(7), F.S.
[31] *Id.*

The bill also includes provisions related to medical assistants. Specifically, the bill:

- Requires that a medical assistant, in order to earn a credential as a certified medical assistant, must obtain certification from a certification program accredited by the National Commission for Certifying Agencies (NCCA).
- Revises qualifications for employment as a medical assistant in a multiphasic health testing center to authorize such center to employ a medical assistant who has a certificate from a certification program accredited by the NCCA and approved by the Agency for Health Care Administration (AHCA). Additionally, the bill deletes the certification and registration by the American Medical Technologists Association or other similar professional association approved by AHCA as a way to meet the minimum qualifications for medical assistants to work at a multiphasic health testing center.

The effective date of the bill is July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

All Children's Hospital may be able to enhance its medical faculty by enabling non-Florida licensed physicians, who are equally qualified to both teach and practice medicine in conjunction with a faculty position.

C. Government Sector Impact:

CS/CS/SB 496 may increase the number of medical faculty certificates and temporary certificates applied for in the state and may create an additional, although minimal, expense for the DOH.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. None. Statutes Affected:

CS/CS/SB 496 substantially amends the following sections of the Florida Statutes: 456.013, 458.3137, 458.3145, 458.3485, and 483.291.

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 Education on April 4, 2017:
The committee substitute:

- Corrects the name of the Mayo Clinic College of Medicine and Science in Jacksonville, Florida.
- Adds provisions relating to medical assistants. Specifically, the committee substitute:
  - Requires that a medical assistant, in order to earn a credential as a certified medical assistant, must obtain certification from a certification program accredited by the National Commission for Certifying Agencies (NCCA).
  - Revises qualifications for employment as a medical assistant in a multiphasic health testing center to authorize such center to employ a medical assistant who has a certificate from a certification program accredited by the NCCA and approved by the Agency for Health Care Administration.

CS by Health Policy on March 14, 2017:
The CS authorizes the DOH to process applications for temporary certificates for visiting foreign physicians, to enable them to provide educational opportunities to the state's medical residents even though they do not have a social security number but otherwise meet the credentialing criteria. It also authorizes teaching hospitals to sponsor the visiting physician directly, without going through the medical school.

B. Amendments:

None.

570454

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/25/2017	.	
	.	
	.	
	.	

The Committee on Rules (Brandes) recommended the following:

Senate Amendment

Delete line 213
and insert:
National Commission for Certifying Agencies, a state medical association, or an entity approved by the board.

324252

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/25/2017	.	
	.	
	.	
	.	

The Committee on Rules (Brandes) recommended the following:

Senate Amendment to Amendment (570454)

Delete line 5

and insert:

National Commission for Certifying Agencies, a national medical association, a state medical

By the Committees on Education; and Health Policy; and Senators Brandes and Passidomo

581-03350-17 2017496c2

A bill to be entitled

An act relating to medical faculty and medical assistant certification; amending s. 456.013, F.S.; requiring the Department of Health to process certain applications for a temporary certificate using a personal identification number in lieu of a social security number under specified circumstances; amending s. 458.3137, F.S.; revising the circumstances under which a visiting physician may be issued a temporary certificate to obtain limited medical privileges for instructional purposes; amending s. 458.3145, F.S.; revising the list of institutions at which certain faculty members are eligible to receive a medical faculty certificate; authorizing a certificateholder to practice at certain specialty-licensed children's hospitals; revising provisions to authorize the medical director of certain specialty-licensed children's hospitals to request the provision of medical care and treatment in connection with education; amending s. 458.3485, F.S.; providing a requirement to earn a certified medical assistant credential; amending s. 483.291, F.S.; revising qualifications for employment as a medical assistant in a multiphasic health testing center; providing an effective date.

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

Section 1. Subsection (1) of section 456.013, Florida

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

581-03350-17 2017496c2

Statutes, is amended to read:

456.013 Department; general licensing provisions.—

(1)(a) Any person desiring to be licensed in a profession within the jurisdiction of the department shall apply to the department in writing to take the licensure examination. The application shall be made on a form prepared and furnished by the department. The application form must be available on the World Wide Web and the department may accept electronically submitted applications beginning July 1, 2001. The application shall require the social security number of the applicant, except as provided in paragraphs ~~paragraph~~ (b) and (c). The form shall be supplemented as needed to reflect any material change in any circumstance or condition stated in the application which takes place between the initial filing of the application and the final grant or denial of the license and which might affect the decision of the department. If an application is submitted electronically, the department may require supplemental materials, including an original signature of the applicant and verification of credentials, to be submitted in a nonelectronic format. An incomplete application shall expire 1 year after initial filing. In order to further the economic development goals of the state, and notwithstanding any law to the contrary, the department may enter into an agreement with the county tax collector for the purpose of appointing the county tax collector as the department's agent to accept applications for licenses and applications for renewals of licenses. The agreement must specify the time within which the tax collector must forward any applications and accompanying application fees to the department.

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

(b) If an applicant has not been issued a social security number by the Federal Government at the time of application because the applicant is not a citizen or resident of this country, the department may process the application using a unique personal identification number. If such an applicant is otherwise eligible for licensure, the board, or the department when there is no board, may issue a temporary license to the applicant, which shall expire 30 days after issuance unless a social security number is obtained and submitted in writing to the department. Upon receipt of the applicant's social security number, the department shall issue a new license, which shall expire at the end of the current biennium.

(c) Notwithstanding any other provision of law, if an applicant for a temporary certificate as set forth in s. 458.3137 has not been issued a social security number by the Federal Government at the time of application because the applicant is not a citizen or resident of this country, the department shall process the application using a unique personal identification number. If such applicant is otherwise eligible for the temporary certificate, the board, or the department when there is no board, shall issue the temporary certificate without requiring the applicant to provide a social security number.

Section 2. Subsection (1) of section 458.3137, Florida Statutes, is amended to read:

458.3137 Temporary certificate for visiting physicians to obtain medical privileges for instructional purposes in conjunction with certain plastic surgery or other medical or surgical training programs and educational symposiums.—

(1) A physician who has been invited by:

(a) A plastic surgery or other medical or surgical training program affiliated with a medical school in this state which is accredited by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association or which is part of a teaching hospital as defined in s. 408.07; ~~or~~

(b) A teaching hospital as defined in s. 408.07; or

(c) ~~(b)~~ An educational symposium cosponsored by the American Society of Plastic Surgeons, the Plastic Surgery Educational Foundation, the American Society for Aesthetic Plastic Surgery, or any other medical or surgical society in conjunction with a medical school or teaching hospital as defined in s. 408.07, may be issued a temporary certificate for limited privileges solely for purposes of providing educational training in plastic surgery or other medical or surgical procedures, as appropriate, in accordance with the restrictions set forth in this section.

Section 3. Section 458.3145, Florida Statutes, is amended to read:

458.3145 Medical faculty certificate.—

(1) A medical faculty certificate may be issued without examination to an individual who:

(a) Is a graduate of an accredited medical school or its equivalent, or is a graduate of a foreign medical school listed with the World Health Organization;

(b) Holds a valid, current license to practice medicine in another jurisdiction;

(c) Has completed the application form and remitted a nonrefundable application fee not to exceed $500;

(d) Has completed an approved residency or fellowship of at least 1 year or has received training which has been determined

by the board to be equivalent to the 1-year residency requirement;

(e) Is at least 21 years of age;

(f) Is of good moral character;

(g) Has not committed any act in this or any other jurisdiction which would constitute the basis for disciplining a physician under s. 458.331;

(h) For any applicant who has graduated from medical school after October 1, 1992, has completed, before entering medical school, the equivalent of 2 academic years of preprofessional, postsecondary education, as determined by rule of the board, which must include, at a minimum, courses in such fields as anatomy, biology, and chemistry; and

(i) Has been offered and has accepted a full-time faculty appointment to teach in a program of medicine at:

1. The University of Florida;

2. The University of Miami;

3. The University of South Florida;

4. The Florida State University;

5. The Florida International University;

6. The University of Central Florida;

7. The Mayo Clinic College of Medicine and Science in Jacksonville, Florida; ~~or~~

8. The Florida Atlantic University; or

9. The Johns Hopkins All Children's Hospital in St. Petersburg, Florida.

(2) The certificate authorizes the holder to practice only in conjunction with his or her faculty position at an accredited medical school and its affiliated clinical facilities or

teaching hospitals that are registered with the Board of Medicine as sites at which holders of medical faculty certificates will be practicing, or a specialty-licensed children's hospital licensed under chapter 395 that is affiliated with an accredited medical school and its affiliated clinics. Such certificate automatically expires when the holder's relationship with the medical school is terminated or after a period of 24 months, whichever occurs sooner, and is renewable every 2 years by a holder who applies to the board on a form prescribed by the board and provides certification by the dean of the medical school that the holder is a distinguished medical scholar and an outstanding practicing physician.

(3) The holder of a medical faculty certificate issued under this section has all rights and responsibilities prescribed by law for the holder of a license issued under s. 458.311, except as specifically provided otherwise by law. Such responsibilities include compliance with continuing medical education requirements as set forth by rule of the board. A hospital or ambulatory surgical center licensed under chapter 395, health maintenance organization certified under chapter 641, insurer as defined in s. 624.03, multiple-employer welfare arrangement as defined in s. 624.437, or any other entity in this state, in considering and acting upon an application for staff membership, clinical privileges, or other credentials as a health care provider, may not deny the application of an otherwise qualified physician for such staff membership, clinical privileges, or other credentials solely because the applicant is a holder of a medical faculty certificate under this section.

(4) In any year, the maximum number of extended medical faculty certificateholders as provided in subsection (2) may not exceed 30 persons at each institution named in subparagraphs (1)(i)1.-6.<u>,</u> ~~and~~ 8.<u>, and 9.</u> and at the facility named in s. 1004.43 and may not exceed 10 persons at the institution named in subparagraph (1)(i)7.

(5) Annual review of all such certificate recipients will be made by the deans of the accredited 4-year medical schools <u>provided in paragraph (1)(i)</u> ~~within this state~~ and reported to the Board of Medicine.

(6) Notwithstanding subsection (1), any physician, when providing medical care or treatment in connection with the education of students, residents, or faculty at the request of the dean of an accredited medical school within this state or at the request of the medical director of a statutory teaching hospital as defined in s. 408.07 <u>or a specialty-licensed children's hospital licensed under chapter 395 that is affiliated with an accredited medical school and its affiliated clinics</u>, may do so upon registration with the board and demonstration of financial responsibility pursuant to s. 458.320(1) or (2) unless such physician is exempt under s. 458.320(5)(a). The performance of such medical care or treatment must be limited to a single period of time, which may not exceed 180 consecutive days, and must be rendered within a facility registered under subsection (2) or within a statutory teaching hospital as defined in s. 408.07. A registration fee not to exceed $300, as set by the board, is required of each physician registered under this subsection. However, no more than three physicians per year per institution may be registered under this

subsection, and an exemption under this subsection may not be granted to a physician more than once in any given 5-year period.

Section 4. Subsection (3) is added to section 458.3485, Florida Statutes, to read:

458.3485 Medical assistant.—

<u>(3) CERTIFICATION.—In order to earn a credential as a certified medical assistant, a medical assistant shall obtain certification from a certification program accredited by the National Commission for Certifying Agencies.</u>

Section 5. Paragraph (b) of subsection (7) of section 483.291, Florida Statutes, is amended to read:

483.291 Powers and duties of the agency; rules.—The agency shall adopt rules to implement this part and part II of chapter 408, which rules must include the following:

(7) PERSONNEL.—The agency shall prescribe minimum qualifications for center personnel. A center may employ as a medical assistant a person who has at least one of the following qualifications:

(b) Certification and registration <u>from a certification program accredited by the National Commission for Certifying Agencies and approved by the agency</u> ~~by the American Medical Technologists Association or other similar professional association approved by the agency~~.

Section 6. This act shall take effect July 1, 2017.

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-25-17
Meeting Date

496
Bill Number (if applicable)

Topic Medical Faculty Certificates

Amendment Barcode (if applicable)

Name Layne Smith

Job Title Gov. Relations Director

Address 4500 San Pablo Road
Street
Jacksonville FL 32224
City *State* *Zip*

Phone 904-343-3213

Email smith.layne@mayo.edu

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Mayo Clinic College of Medicine and Science

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

4/25/17

Meeting Date

THE FLORIDA SENATE

APPEARANCE RECORD

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

494

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Cynthia Henderson

Job Title _____

Address 108 E. Jefferson St. Suite E

Street

Tallahassee FL 32301

City State Zip

Phone 850 559 0855

Email CHhenderson@me.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against

(The Chair will read this information into the record.)

Representing ASCend Learning

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons 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 790
INTRODUCER:	Appropriations Committee; Criminal Justice Committee; and Senator Brandes
SUBJECT:	Probation and Community Control
DATE:	April 24, 2017 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sumner	Hrdlicka	CJ	**Fav/CS**
2.	McAuliffe	Hansen	AP	**Fav/CS**
3.	Sumner	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 790 amends s. 948.06, F.S., to address the recent court decision in *Mobley v. State*, 197 So. 3d 572 (4th DCA 2016). The court in *Mobley* held that a warrant issued under s. 901.02, F.S., does not toll an offender's supervision unless the warrant was for a new crime, not just a violation of the conditions of supervision. A probation term is not currently tolled for a technical violation under s. 948.06(1)(f), F.S. This allows the term of probation to expire prior to resolution of any technical violation. The bill removes the reference to s. 901.02, F.S., in s. 948.06(1)(f), F.S., to clarify that a warrant tolling supervision may be issued for a violation of the terms and conditions of the supervision, and that a crime need not be committed for tolling to occur.

This bill revises various sections of ch. 948, F.S., to clarify and update provisions in order to conform to current law and current practices of the Department of Corrections (department).

This bill is not expected to impact state or local government revenues or expenditures.

The bill is effective July 1, 2017, except for Section 4 of the bill, which is effective October 1, 2017 (specifies the ineligibility for administrative probation for certain offenders).

II. Present Situation:

Probation

The Department of Corrections supervises more than 168,000 adult offenders. These offenders are monitored and supervised by probation officers located in 130 probation offices throughout Florida. This includes offenders released from prison on parole, conditional release, or conditional medical release and offenders placed on court ordered supervision including probation, administrative probation, drug offender probation, sex offender probation, and community control.[1]

Issuance of Arrest Warrants

Section 901.02(1), F.S., requires a judge to sign and issue an arrest warrant if the judge decides that probable cause exists to issue the arrest warrant for any crime committed within the judge's jurisdiction.

Section 901.02(2), F.S., provides that the court may issue a warrant for the defendant's arrest when all of the following circumstances apply:

- A complaint has been filed charging the commission of a misdemeanor only.
- The summons issued to the defendant has been returned unserved.
- The judge finds that probable cause exists to issue the arrest warrant.

A judge may electronically sign[2] an arrest warrant if the judge determines that the complaint:

- Bears the affiant's signature or electronic signature if the complaint was submitted electronically.
- Is supported by an oath or affirmation administered by the judge or other person authorized by law to administer oaths.
- If submitted electronically, is submitted by reliable electronic means.

Arrest for Violation of Probation or Community Control

During probation or community control, under s. 948.06, F.S., if a person violates the terms of his or her probation or community, then any law enforcement officer or parole or probation officer can arrest the person. The arrest may be made with or without a warrant. A judge can also issue a warrant for the person's arrest, or the committing trial court judge can issue a notice to appear, depending on the type of violation.

Until the court enters a ruling, under s. 948.06(1)(f), F.S., the person's probation period is tolled upon the filing of an affidavit alleging a violation of probation or community control and following issuance of a warrant under s. 901.02, F.S., or a warrantless arrest or a notice to appear under s. 948.06, F.S.

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[1] Florida Department of Corrections, *Introduction to Community Corrections*, available at http://www.dc.state.fl.us/facilities/comcor/ (last visited March 7, 2017).

[2] Section 933.40(1)(d), F.S., defines "electronic signature" as any letters, characters, symbols, or process manifested by electronic or similar means and attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

Mobley v. State

In *Mobley v. State*, 197 So. 3d 572 (4th DCA 2016), the court held that a warrant purportedly issued under s. 901.02, F.S., does not toll an offender's supervision unless the warrant was for a new crime, not just a violation of the conditions of supervision.

Facts in the Case

In the case, Mr. Mobley had pled no contest to various charges stemming from two cases and was placed on eighteen months' probation on March 7, 2011. The probation was set to expire on September 7, 2012. On August 9, 2012, a probation officer filed affidavits in both cases alleging that Mr. Mobley violated his probation by failing to make both restitution payments and a drug testing fee payment. The same day, the trial court issued warrants to arrest him based on those affidavits.

Mr. Mobley's probation was extended by two years for the violations in the affidavits, but this occurred twenty days after his probation was scheduled to expire. After this extension, Mr. Mobley led police on a high-speed motorcycle chase and was again charged with violation of probation for various reasons including the chase.

After a hearing on his violation of probation relating to the chase, the trial court found that he violated his probation and sentenced him to 332.95 months in prison based on his original offenses from March 2011.

Mr. Mobley argued that because his probation expired on September 7, 2012, that its subsequent extension and later revocation must be reversed because the trial court lacked subject matter jurisdiction.[3]

Analysis

The court stated that s. 948.06(1)(f), F.S., is clear that a warrant under s. 901.02, F.S., is required in order for the probationary period to be tolled (except when one of the other two alternatives are applicable). The court further stated that s. 901.02, F.S., requires that the warrant be for a "crime." In this case, the warrants were for violations of probation based on the failure to make restitution payments and a payment for drug testing which are not crimes. The court found that the warrants issued under s. 901.02, F.S., were never tolled.

The court reversed and remanded the case to the trial court. The state subsequently filed a Motion to Certify Question of Great Public Importance. The Fourth District Court of Appeal granted the motion and certified the following question to the Florida Supreme Court:

> IN A SITUTATION WHERE THERE IS NO WARRANTLESS ARREST OR NOTICE TO APPEAR, CAN A WARRANT THAT DOES NOT ALLEGE A PROBATIONER COMMITTED A NEW CRIME BE

[3] This portion of the analysis is adapted from *Mobley v. State*, 197 So. 3d 572 at 573 (4th DCA 2016).

CONSIDERED A WARRANT ISSUED UNDER SECTION 901.02 OF THE FLORIDA STATUTES FOR THE PURPOSE OF TOLLING A PROBATIONARY PERIOD PURSUANT TO SECTION 948.06(1)(f)[4]

The Florida Supreme Court declined the certificate for question.[5]

III. Effect of Proposed Changes:

Issuance of Arrest Warrants

Section 9 amends s. 948.06(1)(f), F.S., to delete the reference to s. 901.02, F.S., related to the issuance of a warrant based on an affidavit alleging a violation of probation or community control. According to the department, this change will correct the statutory deficiency identified in *Mobley*. By removing the reference to s. 901.02, F.S., in s. 948.06(1)(f), F.S., it clarifies that a warrant issued for a violation of the terms and conditions of the supervision tolls the person's probation period and that a crime need not be committed for tolling to occur.

Under current law, the chief judge of a judicial circuit may direct the department to use a notification letter of a technical violation in lieu of a violation report, affidavit, and warrant when the alleged violation is not a new felony or misdemeanor offense. The bill also amends s. 948.06(1)(g), F.S., to allow the court to direct the department to use a notification letter in lieu of a notice to appear.

Administrative Probation

Administrative probation is "a form of non-contact supervision in which an offender who represents a low risk of harm to the community may be placed on non-reporting status until expiration of the term of supervision."[6]

Section 1 amends s. 948.001, F.S., to update the definition of "administrative probation" and provide a cross-reference to s. 948.013, F.S., which provides the requirements to administrative probation.

Section 4 amends s. 948.013, F.S., to specify that the current provisions of ineligibility for administrative probation for certain offenders apply to persons whose crimes were committed after July 1, 1998, but before October 1, 2017. It further provides that a person is ineligible for administrative probation if he or she is convicted of any sexual felony offense listed in ss. 775.21 and 943.0435, F.S., committed on or after July 1, 2017. This change eliminates the need to update the list when new offenses are added. This change excludes all sexual predators and offenders from being eligible for administrative probation.[7]

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[4] *Mobley v. State*, 192 So. 3d 622 (4th DCA 2016).
[5] *State v. Mobley*, SC16-936, 2016 Fla. LEXIS 1174 (Fla. 2016).
[6] Department of Corrections, *Community Supervision Definitions*, available at http://www.dc.state.fl.us/facilities/comcorinfo/definitions.html (last visited March 8, 2017).
[7] Department of Corrections, *2017 Agency Legislative Bill Analysis: SB 790*, February 12, 2017.

Uniform Order of Supervision

The department, in consultation with the Office of State Courts Administrator, developed and disseminated to the courts uniform order of supervision forms in 2009.[8] **Section 2** clarifies that the uniform order of supervision forms are *revised* each year and *made available* to the courts in s. 948.01(1)(b), F.S.

Addiction Recovery Supervision

Addiction recovery supervision is "mandatory post-prison supervision for offenders released from a state correctional facility who have a history of substance abuse or addiction or have participated in any drug treatment, and have not been convicted of a disqualifying offense."[9] **Section 3** amends s. 948.012, F.S., to include a reference to s. 944.4731(2)(b), F.S.,[10] clarifying that inmates released to addiction recovery supervision who also have probation or community control to follow release must serve the addiction recovery supervision period first.

Conditions of Probation or Community Control

Community Service

Section 6 amends s. 948.031, F.S., to change the term "public service" to the term "community service." The department states that the purpose of the change is to emphasize that the work is done as a service to the community.[11]

Residential Treatment Programs

Section 7 updates s. 948.035(3), F.S., to reflect the current process for offenders to be referred and evaluated for residential treatment programs. Under the bill, before admission to a treatment facility or center, a qualified practitioner must provide an individual assessment and recommendation on appropriate treatment.

Education and Learning

Section 8 amends s. 947.037, F.S., to grant a court discretion to order an offender without a high school diploma or equivalent, or who is illiterate, to make a good faith effort toward completion of an adult education program as a condition of probation. Currently, the law requires the court to make such an order.

[8] Chapter 2009-63, F.S. At the time, there was no statewide format for the order of supervision; the department had developed a uniform order that a majority of circuits were using. Florida Senate, *Bill Analysis SB 1722*, April 6, 2009.
[9] Florida Commission on Offender Review, *Release Types*, available at https://www.fcor.state.fl.us/postrelease.shtml (last visited March 8, 2017).
[10] "If an offender has received a term of probation or community control to be served after release from incarceration, the period of probation or community control may not be substituted for addiction-recovery supervision and shall follow the term of addiction-recovery supervision." Section 944.4731(2)(b), F.S.
[11] Department of Corrections, *2017 Agency Legislative Bill Analysis: SB 790*, February 12, 2017.

Payment for Supervision and Other Obligations

Section 10 amends s. 948.09, F.S., to:

- Revise the catch line to accurately reflect the statute's purpose.
- Remove references to specific types of supervision that are under ch. 948, F.S., to instead refer generally to supervision under ch. 948, F.S., in subsection (1).
- Simplify references to supervision in subsection (3) and updates references to the Secretary of the department to accurately reflect the responsible person or action.
- Repeal subsection (4) related to misdemeanor supervision payments. The department stated that this is obsolete.[12]

Home Confinement

Section 11 revises s. 948.10, F.S., to clarify that community control is the department's "home confinement" program.

Currently, a court or the Florida Commission on Offender Review can order an offender to community control instead of incarceration. This is limited to certain individuals:

- Probation violators charged with technical violations or misdemeanors;
- Parole violators charged with technical violations or misdemeanors; and
- Individuals convicted of felonies who, due to their backgrounds or the seriousness of the offenses, would not be placed on regular probation.

This section authorizes the use of community control for *any* new law violations, not just misdemeanors. The department states that this would give the courts an alternative to jail or prison for offenders charged with new law violations.[13]

This section also increases the community control case size ratio from an officer supervising 25 cases to an officer supervising 30 cases. The department states that this increase is due to the amount of time an officer currently requires with these types of cases in supervising the offender.[14]

This section repeals a requirement of the department to commit at least ten percent of field staff and supporting resources on the community control program. The department states that "the deletion of the listed percentage of resources is proposed because sentencing practices are not universal in all areas of the state and some courts sentence offenders to community control at different rates in each circuit." Additionally, the statutory case size ratio limits caseloads for staff and in areas with staffing shortages, these functions are completed by multiple staffing levels, not just field staff.[15]

[12] *Id*.
[13] *Id*.
[14] E-mail exchange between Department of Corrections Staff and Staff of the Criminal Justice Committee, January 4, 2017.
[15] *Id*.

This section repeals an obsolete annual report about the community control program and "the department's specific efforts to protect the public from offenders placed on community control." The department states that this is an obsolete report required by the "Howard E. Futch Community Safety Act," the provision of which was repealed in 2008.[16] It is likely that this annual report should also have been repealed at that time. The department discontinued this section of its annual report in 2008 but has put practices in place to ensure future compliance.[17]

Electronic Monitoring

Currently, s. 948.11(1), F.S., states that the department *may* electronically monitor an offender sentenced to community control when the court has imposed electronic monitoring as a condition of community control. **Section 13** corrects this provision to require the department to monitor electronically an offender as ordered by the court.

Additionally, the **section 13**:[18]

- Clarifies that electronic monitoring may be used for offenders placed under *supervision*, not just community control. The department states that it is used as a tool to enhance field supervision and surveillance.
- Allows a court to order electronic monitoring for violations of probation, as an alternative sanction.
- Clarifies that any probation officer investigates electronic monitoring alerts for offenders monitored by the department, not just community control officers.

Obsolete References

Sections 1, 5, 9, and 11 amends ss. 948.001, 948.03, 948.06, and 948.10, F.S., respectively, to update references to "parole" officers. The department states that the term is obsolete.[19]

Sections 1 and 9 also update references to probation officers to be consistent throughout the chapter by using the uniform term "probation officer" rather than "correctional probation officer" or "supervisor."

Community residential drug punishment centers were repealed in 2010.[20] The staff analysis stated that no person was ever sentenced to a center; the centers were never funded; and no centers existed.[21] The bill repeals the definition for "community residential drug treatment center" in s. 948.001, F.S., (Section 1), and similar provisions in ss. 948.03(2), 948.035(1)(b) and (3), and 948.101(2), F.S., (Sections 5, 7, and 12).

Section 14 amends s. 948.15, F.S., to remove an obsolete reference to American Correctional Association standards established in 1991 for staff qualifications and criminal background checks for staff of certain private providers.

[16] *See* ch. 2008-250, L.O.F.
[17] E-mail exchange between Department of Corrections Staff and Staff of the Criminal Justice Committee, January 4, 2017.
[18] Department of Corrections, *2017 Agency Legislative Bill Analysis: SB 790*, February 12, 2017.
[19] Department of Corrections, *2017 Agency Legislative Bill Analysis: SB 790*, February 12, 2017.
[20] Chapter 2010-113, L.O.F.
[21] Florida Senate, *Bill Analysis CS/SB 2350*, April 9, 2010, page 2.

Section 15 repeals s. 948.50, F.S., which states that "this act may be cited as the 'Community Corrections Partnership Act.'"

Reenactments

Sections 16, 17, 18, and 19 reenact ss. 921.187(1)(n), 947.1405(7)(b), 947.1747, and 948.01(3), F.S., to incorporate changes made in other sections of the bill.

The bill is effective July 1, 2017, except for Section 4 of the bill, which is effective October 1, 2017 (specifies the ineligibility for administrative probation for certain offenders).

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:

CS/CS/SB 790 is not expected to impact state or local government revenues or expenditures.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 948.001, 948.01, 948.012, 948.013, 948.03, 948.031, 948.035, 948.037, 948.06, 948.09, 948.10, 948.101, 948.11, 948.15, 948.50, 921.187, 947.1405, and 947.1747.

IX. Additional Information:

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

CS/CS by Appropriations on April 5, 2017:
The committee substitute:

- In Section 4 of the bill, changes the date on which a crime was committed from July 1, 2017, to October 1, 2017, that delineates ineligibility for administrative probation for certain offenders (those whose crimes were committed after July 1, 1998, but before October 1, 2017, and those whose crimes are committed on or after October 1, 2017).
- Makes Section 4 effective on October 1, 2017.

CS by Criminal Justice on March 13, 2017:
The CS:

- No longer amends language of s. 948.01(1)(a) and (5), F.S., that prohibits private entities from providing probationary or supervision services to misdemeanor offenders.
- Amends s. 948.013, F.S., making a person ineligible for administrative probation if he or she was convicted of any sexual felony offense listed in ss. 775.21 and 943.0435, F.S., committed on or after July 1, 2017, eliminating the need to update the list when new offenses are added. This change would exclude all sexual predators and offenders from being eligible for administrative probation.

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 Appropriations; and Criminal Justice; and Senator Brandes

576-03496-17 2017790c2

A bill to be entitled

An act relating to probation and community control; amending s. 948.001, F.S.; redefining terms and deleting a definition; amending s. 948.01, F.S.; requiring the Department of Corrections to revise and make available to the courts, rather than develop and disseminate to the courts, uniform order of supervision forms; amending s. 948.012, F.S.; adding the addiction-recovery supervision program as an exception to the immediate commencement of the period of probation upon the release of the defendant; amending s. 948.013, F.S.; revising the list of offenses that make an offender ineligible for placement on administrative probation during specified time periods; amending s. 948.03, F.S.; authorizing the court to require a probationer or offender to report to, to permit visits by, to submit to random testing as directed by, probation officers, rather than probation and parole supervisors or correctional probation officers; removing the option of incarceration in specified locations if a court withholds adjudication of guilt or imposes incarceration as a condition of probation; amending s. 948.031, F.S.; replacing the term "public service" with the term "community service"; amending s. 948.035, F.S.; removing a probation program drug punishment treatment community facility from the list of residential treatment or incarceration facilities that an offender must be restricted to under certain

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circumstances; requiring a qualified practitioner to provide, rather than a court to obtain, an assessment and recommendation on the treatment needs of an offender entering a treatment facility; amending s. 948.037, F.S.; authorizing, rather than requiring, a court to require an offender to make a good faith effort toward completion of certain skills or a specific diploma as a condition of community control, probation, or probation following incarceration; amending s. 948.06, F.S.; replacing the term "parole or probation supervisor" with the term "probation officer"; specifying that the probationary period is tolled after the issuance of a violation of probation or community control warrant, rather than an arrest warrant; authorizing a chief judge to direct the department to use a notice to appear for technical violations; amending s. 948.09, F.S.; expanding the types of supervision under which an offender must pay for the cost of supervision; conforming provisions to changes made by the act; revising the factors under which the department may exempt an offender from payments; requiring the certification of student status to be supplied to the offender's probation officer, rather than to the Secretary of Corrections; deleting duties of the secretary; deleting provisions authorizing the department to provide monthly payments to court-approved entities that provide supervision or rehabilitation for offenders under certain circumstances; deleting provisions relating to

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contract terms with, and a monthly report from, certain entities; amending s. 948.10, F.S.; requiring a community control program to focus on the provision of home confinement with limitations, rather than sanctions and consequences, commensurate with the crime committed; specifying and revising who the target population is for the community control program; revising departmental requirements for the operation of the program and caseloads; making technical changes; specifying the types of facilities used for the community control program; deleting an annual reporting requirement of the department to the Governor and the Legislature which includes certain information; amending s. 948.101, F.S.; conforming provisions to changes made by the act; amending s. 948.11, F.S.; requiring, rather than authorizing, the department to electronically monitor offenders sentenced to community control under certain circumstances; conforming terminology to changes made by the act; amending s. 948.15, F.S.; revising the required terms of the contract for a private entity providing services for the supervision of misdemeanor probationers; repealing s. 948.50, F.S., relating to a short title; reenacting s. 921.187(1)(n), F.S., relating to disposition and sentencing, alternatives, and restitution, to incorporate the amendment made to s. 948.013, F.S., in a reference thereto; reenacting s. 947.1405(7)(b), F.S., relating to the conditional release program, to incorporate the amendment made to

s. 948.09, F.S., in a reference thereto; reenacting ss. 947.1747 and 948.01(3), F.S., relating to community control as a special condition of parole and when a court may place a defendant on probation or into community control, respectively, to incorporate the amendment made to s. 948.10, F.S., in references thereto; providing effective dates.

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

Section 1. Subsection (1) and present subsections (4) and (9) of section 948.001, Florida Statutes, are amended, and present subsections (5) through (14) of that section are redesignated as subsections (4) through (13), respectively, to read:

948.001 Definitions.—As used in this chapter, the term:

(1) "Administrative probation" means a form of no contact, nonreporting ~~noncontact~~ supervision in which an offender who presents a low risk of harm to the community may, upon satisfactory completion of half the term of probation, be transferred by the Department of Corrections to this type of reduced level of supervision, as provided in s. 948.013 ~~nonreporting status until expiration of the term of supervision~~.

~~(4) "Community residential drug punishment center" means a residential drug punishment center designated by the Department of Corrections. The Department of Corrections shall adopt rules as necessary to define and operate such a center.~~

(8)~~(9)~~ "Probation" means a form of community supervision requiring specified contacts with ~~parole and~~ probation officers

and other terms and conditions as provided in s. 948.03.

Section 2. Paragraph (b) of subsection (1) of section 948.01, Florida Statutes, is amended to read:

948.01 When court may place defendant on probation or into community control.—

(1) Any state court having original jurisdiction of criminal actions may at a time to be determined by the court, with or without an adjudication of the guilt of the defendant, hear and determine the question of the probation of a defendant in a criminal case, except for an offense punishable by death, who has been found guilty by the verdict of a jury, has entered a plea of guilty or a plea of nolo contendere, or has been found guilty by the court trying the case without a jury.

(b) The department, in consultation with the Office of the State Courts Administrator, shall revise and make available ~~develop and disseminate~~ to the courts uniform order of supervision forms by July 1 of each year or as necessary. The courts shall use the uniform order of supervision forms provided by the department for all persons placed on community supervision.

Section 3. Subsection (1) of section 948.012, Florida Statutes, is amended, and subsections (4), (5), and (6) of that section are republished, to read:

948.012 Split sentence of probation or community control and imprisonment.—

(1) If punishment by imprisonment for a misdemeanor or a felony, except for a capital felony, is prescribed, the court may, at the time of sentencing, impose a split sentence whereby the defendant is to be placed on probation or, with respect to

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any such felony, into community control upon completion of any specified period of such sentence which may include a term of years or less. In such case, the court shall stay and withhold the imposition of the remainder of sentence imposed upon the defendant and direct that the defendant be placed upon probation or into community control after serving such period as may be imposed by the court. Except as provided in s. 944.4731(2)(b) and subsection (6), the period of probation or community control shall commence immediately upon the release of the defendant from incarceration, whether by parole or gain-time allowances.

(4) Effective for offenses committed on or after September 1, 2005, the court must impose a split sentence pursuant to subsection (1) for any person who is convicted of a life felony for lewd and lascivious molestation pursuant to s. 800.04(5)(b) if the court imposes a term of years in accordance with s. 775.082(3)(a)4.a.(II) rather than life imprisonment. The probation or community control portion of the split sentence imposed by the court for a defendant must extend for the duration of the defendant's natural life and include a condition that he or she be electronically monitored.

(5)(a) Effective for offenses committed on or after October 1, 2014, if the court imposes a term of years in accordance with s. 775.082 which is less than the maximum sentence for the offense, the court must impose a split sentence pursuant to subsection (1) for any person who is convicted of a violation of:

1. Section 782.04(1)(a)2.c.;

2. Section 787.01(3)(a)2. or 3.;

3. Section 787.02(3)(a)2. or 3.;

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4. Section 794.011, excluding s. 794.011(10);

5. Section 800.04;

6. Section 825.1025; or

7. Section 847.0135(5).

(b) The probation or community control portion of the split sentence imposed by the court must extend for at least 2 years. However, if the term of years imposed by the court extends to within 2 years of the maximum sentence for the offense, the probation or community control portion of the split sentence must extend for the remainder of the maximum sentence.

(6) If a defendant who has been sentenced to a split sentence pursuant to subsection (1) is transferred to the custody of the Department of Children and Families pursuant to part V of chapter 394, the period of probation or community control is tolled until such person is no longer in the custody of the Department of Children and Families. This subsection applies to all sentences of probation or community control which begin on or after October 1, 2014, regardless of the date of the underlying offense.

Section 4. Effective October 1, 2017, subsection (2) of section 948.013, Florida Statutes, is amended to read:

948.013 Administrative probation.—

(2)(a) Effective for an offense committed on or after July 1, 1998, and before October 1, 2017, a person is ineligible for placement on administrative probation if the person is sentenced to or is serving a term of probation or community control, regardless of the conviction or adjudication, for committing, or attempting, conspiring, or soliciting to commit, any of the felony offenses described in s. 787.01 or s. 787.02, where the

victim is a minor and the defendant is not the victim's parent; s. 787.025; s. 787.06(3)(g); chapter 794; former s. 796.03; s. 800.04; s. 825.1025(2)(b); s. 827.071; s. 847.0133; s. 847.0135; or s. 847.0145.

(b) Effective for an offense committed on or after October 1, 2017, a person is ineligible for placement on administrative probation if the person is sentenced to or is serving a term of probation or community control, regardless of the conviction or adjudication, for committing, or attempting, conspiring, or soliciting to commit, any of the felony offenses described in s. 775.21(4)(a)1.a. or (4)(a)1.b. or s. 943.0435(1)(h)1.a.

Section 5. Paragraphs (a), (b), (l), and (m) of subsection (1) and subsection (2) of section 948.03, Florida Statutes, are amended to read:

948.03 Terms and conditions of probation.—

(1) The court shall determine the terms and conditions of probation. Conditions specified in this section do not require oral pronouncement at the time of sentencing and may be considered standard conditions of probation. These conditions may include among them the following, that the probationer or offender in community control shall:

(a) Report to the probation officer ~~and parole supervisors~~ as directed.

(b) Permit the probation officer ~~such supervisors~~ to visit him or her at his or her home or elsewhere.

(l)1. Submit to random testing as directed by the ~~correctional~~ probation officer or the professional staff of the treatment center where he or she is receiving treatment to determine the presence or use of alcohol or controlled

substances.

2. If the offense was a controlled substance violation and the period of probation immediately follows a period of incarceration in the state correction system, the conditions must ~~shall~~ include a requirement that the offender submit to random substance abuse testing intermittently throughout the term of supervision, upon the direction of the ~~correctional~~ probation officer ~~as defined in s. 943.10(3)~~.

(m) Be prohibited from possessing, carrying, or owning any:

1. Firearm.

2. Weapon without first procuring the consent of the ~~correctional~~ probation officer.

(2) The enumeration of specific kinds of terms and conditions does ~~shall~~ not prevent the court from adding thereto such other or others as it considers proper. However, the sentencing court may only impose a condition of supervision allowing an offender convicted of s. 794.011, s. 800.04, s. 827.071, s. 847.0135(5), or s. 847.0145~~,~~ to reside in another state~~,~~ if the order stipulates that it is contingent upon the approval of the receiving state interstate compact authority. The court may rescind or modify at any time the terms and conditions theretofore imposed by it upon the probationer. However, if the court withholds adjudication of guilt or imposes a period of incarceration as a condition of probation, the period may ~~shall~~ not exceed 364 days, and incarceration shall be restricted to either a county facility, or a probation and restitution center under the jurisdiction of the Department of Corrections~~, a probation program drug punishment phase I secure residential treatment institution, or a community residential~~

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~~facility owned or operated by any entity providing such services~~.

Section 6. Section 948.031, Florida Statutes, is amended to read:

948.031 Condition of probation or community control; community ~~public~~ service.—

(1) Any person who is convicted of a felony or misdemeanor and who is placed on probation or into community control may be required as a condition of supervision to perform some type of community ~~public~~ service for a tax-supported or tax-exempt entity, with the consent of such entity. Such community ~~public~~ service shall be performed at a time other than during such person's regular hours of employment.

(2) Upon the request of the chief judge of the circuit, the Department of Corrections shall establish a community ~~public~~ service program for a county, which program may include, but is ~~shall~~ not ~~be~~ limited to, any of the following types of community ~~public~~ service:

(a) Maintenance work on any property or building owned or leased by any state, county, or municipality or any nonprofit organization or agency.

(b) Maintenance work on any state-owned, county-owned, or municipally owned road or highway.

(c) Landscaping or maintenance work in any state, county, or municipal park or recreation area.

(d) Work in any state, county, or municipal hospital or any developmental services institution or other nonprofit organization or agency.

Section 7. Subsections (1) and (3) of section 948.035,

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Florida Statutes, are amended to read:

948.035 Residential treatment as a condition of probation or community control.—

(1) If the court imposes a period of residential treatment or incarceration as a condition of probation or community control, the residential treatment or incarceration shall be restricted to the following facilities:

(a) A Department of Corrections probation and restitution center;

~~(b) A probation program drug punishment treatment community;~~

(b) ~~(c)~~ A community residential facility that ~~which~~ is owned and operated by a ~~any~~ public or private entity, excluding a community correctional center as defined in s. 944.026; or

(c) ~~(d)~~ A county-owned facility.

(3) Before ~~Prior to~~ admission to such a facility or center ~~treatment community~~, a qualified practitioner must provide ~~the court shall obtain~~ an individual assessment and recommendation on the appropriate treatment needs ~~pursuant to the Community Control Implementation Manual which shall be considered by the court in ordering such placements~~. Placement in such a facility or center may~~, or in the phase I secure residential phase of a probation program drug punishment treatment community, shall~~ not exceed 364 days. Early completion of an offender's placement shall be recommended to the court, when appropriate, by the facility or center supervisor, by the supervising probation officer, or by the program manager. The Department of Corrections is authorized to contract with appropriate agencies for provision of services.

Section 8. Subsection (1) of section 948.037, Florida Statutes, is amended to read:

948.037 Education and learning as a condition of probation or community control.—

(1) As a condition of community control, probation, or probation following incarceration, the court may ~~shall~~ require an offender who has not obtained a high school diploma or high school equivalency diploma or who lacks basic or functional literacy skills, upon acceptance by an adult education program, to make a good faith effort toward completion of such basic or functional literacy skills or high school equivalency diploma, as defined in s. 1003.435, in accordance with the assessed adult general education needs of the individual offender. The court may ~~shall~~ not revoke community control, probation, or probation following incarceration because of the offender's inability to achieve such skills or diploma but may revoke community control, probation, or probation following incarceration if the offender fails to make a good faith effort to achieve such skills or diploma. The court may grant early termination of community control, probation, or probation following incarceration upon the offender's successful completion of the approved program. As used in this subsection, "good faith effort" means the offender is enrolled in a program of instruction and is attending and making satisfactory progress toward completion of the requirements.

Section 9. Paragraphs (a), (e), (f), and (g) of subsection (1) of section 948.06, Florida Statutes, are amended to read:

948.06 Violation of probation or community control; revocation; modification; continuance; failure to pay

restitution or cost of supervision.—

(1)(a) Whenever within the period of probation or community control there are reasonable grounds to believe that a probationer or offender in community control has violated his or her probation or community control in a material respect, any law enforcement officer who is aware of the probationary or community control status of the probationer or offender in community control or any ~~parole or~~ probation officer ~~supervisor~~ may arrest or request any county or municipal law enforcement officer to arrest such probationer or offender without warrant wherever found and return him or her to the court granting such probation or community control.

(e) Any ~~parole or~~ probation officer ~~supervisor~~, any officer authorized to serve criminal process, or any peace officer of this state is authorized to serve and execute such warrant. Any ~~parole or~~ probation officer ~~supervisor~~ is authorized to serve such notice to appear.

(f) Upon the filing of an affidavit alleging a violation of probation or community control and following issuance of a warrant for such violation ~~under s. 901.02~~, a warrantless arrest under this section, or a notice to appear under this section, the probationary period is tolled until the court enters a ruling on the violation. Notwithstanding the tolling of probation, the court shall retain jurisdiction over the offender for any violation of the conditions of probation or community control that is alleged to have occurred during the tolling period. The probation officer is permitted to continue to supervise any offender who remains available to the officer for supervision until the supervision expires pursuant to the order

of probation or community control or until the court revokes or terminates the probation or community control, whichever comes first.

(g) The chief judge of each judicial circuit may direct the department to use a notification letter of a technical violation in appropriate cases in lieu of a violation report, affidavit, and warrant or a notice to appear when the alleged violation is not a new felony or misdemeanor offense. Such direction must be in writing and must specify the types of specific technical violations which are to be reported by a notification letter of a technical violation, any exceptions to those violations, and the required process for submission. At the direction of the chief judge, the department shall send the notification letter of a technical violation to the court.

Section 10. Section 948.09, Florida Statutes, is amended to read:

948.09 Payment for cost of supervision and other monetary obligations ~~rehabilitation~~.—

(1)(a)1. Any person ordered by the court, the Department of Corrections, or the Florida Commission on Offender Review to be placed under ~~on probation, drug offender probation, community control, parole, control release, provisional release supervision, addiction-recovery supervision, or conditional release~~ supervision under this chapter, chapter 944, chapter 945, chapter 947, or chapter 958, or in a pretrial intervention program, must, as a condition of any placement, pay the department a total sum of money equal to the total month or portion of a month of supervision times the court-ordered amount, but not to exceed the actual per diem cost of the

supervision. The department shall adopt rules by which an offender who pays in full and in advance of regular termination of supervision may receive a reduction in the amount due. The rules shall incorporate provisions by which the offender's ability to pay is linked to an established written payment plan. Funds collected from felony offenders may be used to offset costs of the Department of Corrections associated with community supervision programs, subject to appropriation by the Legislature.

2. In addition to any other contribution or surcharge imposed by this section, each felony offender assessed under this paragraph shall pay a $2-per-month surcharge to the department. The surcharge shall be deemed to be paid only after the full amount of any monthly payment required by the established written payment plan has been collected by the department. These funds shall be used by the department to pay for correctional probation officers' training and equipment, including radios, and firearms training, firearms, and attendant equipment necessary to train and equip officers who choose to carry a concealed firearm while on duty. This subparagraph does not limit the department's authority to determine who shall be authorized to carry a concealed firearm while on duty, or limit the right of a correctional probation officer to carry a personal firearm approved by the department.

(b) Any person placed on misdemeanor probation by a county court must contribute not less than $40 per month, as decided by the sentencing court, to the court-approved public or private entity providing misdemeanor supervision.

(2) Any person being electronically monitored by the

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department as a result of being placed on supervision shall pay the department for electronic monitoring services at a rate that may not exceed the full cost of the monitoring service in addition to the cost of supervision as directed by the sentencing court. The funds collected under this subsection shall be deposited in the General Revenue Fund. The department may exempt a person from paying all or any part of the costs of the electronic monitoring service if it finds that any of the factors listed in subsection (3) exist.

(3) Any failure to pay contribution as required under this section may constitute a ground for the revocation of supervision ~~probation~~ by the court or~~, the revocation of parole or conditional release~~ by the Florida Commission on Offender Review, the revocation of control release by the Control Release Authority, or the removal from the pretrial intervention program by the state attorney. The Department of Corrections may exempt a person from the payment of all or any part of the contribution if it finds any of the following factors ~~to exist~~:

(a) The offender has diligently attempted, but has been unable, to obtain or maintain employment that ~~which~~ provides him or her sufficient income to make such payments.

(b) The offender is a student in a school, college, university, or course of career training designed to fit the student for gainful employment. Certification of such student status shall be supplied to the offender's probation officer ~~Secretary of Corrections~~ by the educational institution in which the offender is enrolled.

(c) The offender has an employment handicap, as determined by a physical, psychological, or psychiatric examination

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~~acceptable to, or ordered by, the secretary~~.

(d) The offender's age prevents him or her from obtaining employment.

(e) The offender is responsible for the support of dependents, and the payment of such contribution constitutes an undue hardship on the offender.

(f) The offender has been transferred outside the state under an interstate compact adopted pursuant to chapter 949.

~~(g) There are other extenuating circumstances, as determined by the secretary.~~

~~(4) In addition to the contribution required under subsection (1), the department may provide a maximum payment of $10 per month for each misdemeanor probationer who is contributing $10 per month to the court-approved public or private entity which is providing him or her with misdemeanor supervision or rehabilitation. The $10 payment set forth herein shall only be for first degree misdemeanors, petty theft, and worthless checks. The department shall make such payment to the court-approved public or private entity which is providing supervision to the offender under this section. Such payment shall be implemented through a contract to be entered into by the Secretary of Corrections and the entity. Terms of the contract shall state, but are not limited to, the extent of the services to be rendered by the entity providing supervision or rehabilitation. In addition, the entity shall supply the department with a monthly report documenting the acceptance of each offender placed under its supervision by the court, documenting the payment of the required contribution by each offender under supervision or rehabilitation, and notifying the~~

~~department of all offenders for whom supervision or rehabilitation will be terminated. Supervisory records of the entity shall be open to inspection upon the request of the department or its agents.~~

(4) ~~(5)~~ As a condition of an interstate compact adopted pursuant to chapter 949, the department shall require each out-of-state probationer or parolee transferred to this state to contribute not less than $30 or more than the cost of supervision, certified by the Department of Corrections, per month to defray the cost incurred by this state as a result of providing supervision and rehabilitation during the period of supervision.

(5) ~~(6)~~ In addition to any other required contributions, the department, at its discretion, may require offenders under any form of supervision to submit to and pay for urinalysis testing to identify drug usage as part of the rehabilitation program. Any failure to make such payment, or participate, may be considered a ground for revocation by the court, the Florida Commission on Offender Review, or the Control Release Authority, or for removal from the pretrial intervention program by the state attorney. The department may exempt a person from such payment if it determines that any of the factors specified in subsection (3) exist.

(6) ~~(7)~~ The department shall establish a payment plan for all costs ordered by the courts for collection by the department and a priority order for payments, except that victim restitution payments authorized under s. 948.03(1)(f) take precedence over all other court-ordered payments. The department is not required to disburse cumulative amounts of less than $10

to individual payees established on this payment plan.

Section 11. Section 948.10, Florida Statutes, is amended to read:

948.10 Community control programs; home confinement.—

(1) The Department of Corrections shall develop and administer a community control program. This ~~complementary~~ program shall be rigidly structured and designed to accommodate offenders who, in the absence of such a program, would have been incarcerated in a jail or prison. The program shall focus on the provision of home confinement subject to an authorized level of limited freedom and special conditions that ~~sanctions and consequences which~~ are commensurate with the seriousness of the crime. The program shall offer the courts and the Florida Commission on Offender Review an alternative, community-based method to punish an offender in lieu of incarceration and shall provide intensive supervision to closely monitor compliance with restrictions and special conditions, including, but not limited to, treatment or rehabilitative programs. The targeted population for this community control program includes ~~if the offender is a member of one of the following target groups~~:

(a) Probation violators charged with technical violations or new ~~misdemeanor~~ violations of law.

(b) Parole or conditional release violators charged with technical violations or new ~~misdemeanor~~ violations of law.

(c) Individuals found guilty of felonies~~,~~ who, due to their criminal backgrounds or the seriousness of the offenses, would not be placed on regular probation.

(2) ~~The department shall commit not less than 10 percent of the parole and probation field staff and supporting resources to~~

~~the operation of the community control program.~~ Caseloads should be restricted to a maximum of 30 ~~25~~ cases per officer in order to ensure an adequate level of staffing. Community control is an individualized program in which the offender is restricted to a residential treatment facility or a nursing facility ~~noninstitutional quarters~~ or restricted to his or her approved ~~own~~ residence subject to an authorized level of limited freedom.

(3) Procedures governing violations of community control are ~~shall be~~ the same as those described in s. 948.06 with respect to probation.

(4) Upon completion of the sanctions imposed and ~~in the community control plan~~ before the expiration of the community control term ordered by the court, the department may petition the court to terminate early the supervision of ~~discharge~~ the offender from community control supervision or to return the offender to a program of regular probation supervision for the remainder of the term. In considering the petition, the court should recognize the limited staff resources committed to the community control program, the purpose of the program, and the offender's successful compliance with the conditions set forth in the order of the court.

~~(5) In its annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives under s. 20.315(5), the department shall include a detailed analysis of the community control program and the department's specific efforts to protect the public from offenders placed on community control. The analysis must include, but need not be limited to, specific information on the department's ability to meet minimum officer-to-offender contact standards, the number~~

~~of crimes committed by offenders on community control, and the level of community supervision provided.~~

Section 12. Subsection (2) of section 948.101, Florida Statutes, is amended to read:

948.101 Terms and conditions of community control.—

(2) The enumeration of specific kinds of terms and conditions does not prevent the court from adding any other terms or conditions that the court considers proper. However, the sentencing court may only impose a condition of supervision allowing an offender convicted of s. 794.011, s. 800.04, s. 827.071, s. 847.0135(5), or s. 847.0145 to reside in another state if the order stipulates that it is contingent upon the approval of the receiving state interstate compact authority. The court may rescind or modify at any time the terms and conditions theretofore imposed by it upon the offender in community control. However, if the court withholds adjudication of guilt or imposes a period of incarceration as a condition of community control, the period may not exceed 364 days, and incarceration shall be restricted to a county facility, a probation and restitution center under the jurisdiction of the Department of Corrections, or a ~~probation program drug punishment phase I secure~~ residential treatment ~~institution, or a community residential~~ facility owned or operated by any entity providing such services.

Section 13. Subsections (1), (2), and (3) of section 948.11, Florida Statutes, are amended, and subsection (5) of that section is republished, to read:

948.11 Electronic monitoring devices.—

(1) The Department of Corrections shall ~~may~~ electronically

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monitor an offender sentenced to community control when the court has imposed electronic monitoring as a condition of community control.

(2) Any offender placed under supervision ~~on community control~~ who violates the terms and conditions of supervision ~~community control~~ and is restored to supervision ~~community control~~ may be supervised by means of an electronic monitoring device or system if ordered by the court.

(3) For those offenders being electronically monitored, the Department of Corrections shall develop procedures to determine, investigate, and report the offender's noncompliance with the terms and conditions of sentence 24 hours per day. All reports of noncompliance shall be immediately investigated by a probation ~~community control~~ officer.

(5) Any person being electronically monitored by the department as a result of being placed on supervision shall pay the department for the electronic monitoring services as provided in s. 948.09(2).

Section 14. Paragraph (b) of subsection (3) of section 948.15, Florida Statutes, is amended to read:

948.15 Misdemeanor probation services.—

(3) Any private entity, including a licensed substance abuse education and intervention program, providing services for the supervision of misdemeanor probationers must contract with the county in which the services are to be rendered. In a county having a population of fewer than 70,000, the county court judge, or the administrative judge of the county court in a county that has more than one county court judge, must approve the contract. Terms of the contract must state, but are not

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

limited to:

(b) Staff qualifications and criminal record checks of staff ~~in accordance with essential standards established by the American Correctional Association as of January 1, 1991~~.

In addition, the entity shall supply the chief judge's office with a quarterly report summarizing the number of offenders supervised by the private entity, payment of the required contribution under supervision or rehabilitation, and the number of offenders for whom supervision or rehabilitation will be terminated. All records of the entity must be open to inspection upon the request of the county, the court, the Auditor General, the Office of Program Policy Analysis and Government Accountability, or agents thereof.

Section 15. Section 948.50, Florida Statutes, is repealed.

Section 16. For the purpose of incorporating the amendment made by this act to section 948.013, Florida Statutes, in a reference thereto, paragraph (n) of subsection (1) of section 921.187, Florida Statutes, is reenacted to read:

921.187 Disposition and sentencing; alternatives; restitution.—

(1) The alternatives provided in this section for the disposition of criminal cases shall be used in a manner that will best serve the needs of society, punish criminal offenders, and provide the opportunity for rehabilitation. If the offender does not receive a state prison sentence, the court may:

(n) Impose split probation whereby upon satisfactory completion of half the term of probation, the Department of Corrections may place the offender on administrative probation

pursuant to s. 948.013 for the remainder of the term of supervision.

Section 17. For the purpose of incorporating the amendment made by this act to section 948.09, Florida Statutes, in a reference thereto, paragraph (b) of subsection (7) of section 947.1405, Florida Statutes, is reenacted to read:

947.1405 Conditional release program.—

(7)

(b) For a releasee whose crime was committed on or after October 1, 1997, in violation of chapter 794, s. 800.04, s. 827.071, s. 847.0135(5), or s. 847.0145, and who is subject to conditional release supervision, in addition to any other provision of this subsection, the commission shall impose the following additional conditions of conditional release supervision:

1. As part of a treatment program, participation in a minimum of one annual polygraph examination to obtain information necessary for risk management and treatment and to reduce the sex offender's denial mechanisms. The polygraph examination must be conducted by a polygrapher who is a member of a national or state polygraph association and who is certified as a postconviction sex offender polygrapher, where available, and at the expense of the releasee. The results of the examination shall be provided to the releasee's probation officer and qualified practitioner and may not be used as evidence in a hearing to prove that a violation of supervision has occurred.

2. Maintenance of a driving log and a prohibition against driving a motor vehicle alone without the prior approval of the

supervising officer.

3. A prohibition against obtaining or using a post office box without the prior approval of the supervising officer.

4. If there was sexual contact, a submission to, at the releasee's expense, an HIV test with the results to be released to the victim or the victim's parent or guardian.

5. Electronic monitoring of any form when ordered by the commission. Any person who has been placed under supervision and is electronically monitored by the department must pay the department for the cost of the electronic monitoring service at a rate that may not exceed the full cost of the monitoring service. Funds collected under this subparagraph shall be deposited into the General Revenue Fund. The department may exempt a person from the payment of all or any part of the electronic monitoring service cost if the department finds that any of the factors listed in s. 948.09(3) exist.

Section 18. For the purpose of incorporating the amendment made by this act to section 948.10, Florida Statutes, in a reference thereto, section 947.1747, Florida Statutes, is reenacted to read:

947.1747 Community control as a special condition of parole.—Upon the establishment of an effective parole release date as provided for in ss. 947.1745 and 947.1746, the commission may, as a special condition of parole, require an inmate to be placed in the community control program of the Department of Corrections as described in s. 948.10 for a period not exceeding 6 months. In every case in which the commission decides to place an inmate on community control as a special condition of parole, the commission shall provide a written

explanation of the reasons for its decision.

Section 19. For the purpose of incorporating the amendment made by this act to section 948.10, Florida Statutes, in a reference thereto, subsection (3) of section 948.01, Florida Statutes, is reenacted to read:

948.01 When court may place defendant on probation or into community control.—

(3) If, after considering the provisions of subsection (2) and the offender's prior record or the seriousness of the offense, it appears to the court in the case of a felony disposition that probation is an unsuitable dispositional alternative to imprisonment, the court may place the offender in a community control program as provided in s. 948.10. Or, in a case of prior disposition of a felony commitment, upon motion of the offender or the department or upon its own motion, the court may, within the period of its retained jurisdiction following commitment, suspend the further execution of the disposition and place the offender in a community control program upon such terms as the court may require. The court may consult with a local offender advisory council pursuant to s. 948.90 with respect to the placement of an offender into community control. Not later than 3 working days before the hearing on the motion, the department shall forward to the court all relevant material on the offender's progress while in custody. If this sentencing alternative to incarceration is utilized, the court shall:

(a) Determine what community-based sanctions will be imposed in the community control plan. Community-based sanctions may include, but are not limited to, rehabilitative restitution in money or in kind, curfew, revocation or suspension of the

driver license, community service, deprivation of nonessential activities or privileges, or other appropriate restraints on the offender's liberty.

(b) After appropriate sanctions for the offense are determined, develop, approve, and order a plan of community control which contains rules, requirements, conditions, and programs that are designed to encourage noncriminal functional behavior and promote the rehabilitation of the offender and the protection of the community. If the offense was a controlled substance violation, the conditions shall include a requirement that the offender submit to random substance abuse testing intermittently throughout the term of supervision, upon the direction of the correctional probation officer as defined in s. 943.10(3).

Section 20. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2017.

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

The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto,
Committee on Rules

Subject: Committee Agenda Request

Date: April 14th, 2017

I respectfully request that **Senate Bill #790**, relating to **Probation and Community Control** be placed on the:

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

Senator Jeff Brandes
Florida Senate, District 24

2017 Legislative Priority

SB 790 Probation and Community Control

By Senator Brandes

Purpose: This legislation strengthens statute and improves public safety by addressing the recent court decision in Mobley v. State, 197 So.3d 572 (Fla. 4th DCA 2016) to allow all violation scenarios to be held in tolled status allowing the court to retain jurisdiction to decide on a violation of probation whenever the offender is apprehended and brought back before the court of sentence. This legislation also includes revisions to Chapter 948 that further clarifies intent and makes technical changes and deletes outdated language.

Major Components of the Bill:

- Mobley v. State, 2016
  - Addresses the Mobley court decision by allowing all violation scenarios to be in tolled status allowing the court to retain jurisdiction. Background: The recent court decision in Mobley v. State, 197 So.3d 572 (Fla. 4th DCA 2016) held that a warrant purportedly issued under section 901.02 does not toll an offender's supervision unless the warrant was for a new crime, not just a violation of the conditions of supervision. This means that the violation of probation term is not currently tolled or stopped for a technical violation under s. 948.06 1(f), F.S., which then allows the term of probation to expire prior to resolution of the technical violation. The Florida Department of Corrections and the court do not retain jurisdiction to consider the offender's supervision violations. In some cases, this may mean that private citizens and businesses already victimized by the crime are not able to collect the full amount of restitution ordered by the court or in other instances a violent offender or drug offender may terminate supervision prior to completion of their treatment, conditions, and sentence.
- Clarifies intent and technical changes.
  - Updates language in order to effectively and efficiently supervise those placed on supervision. In addition, revisions modernize sections to avoid contradictions and include processes in accordance with recent legislative updates and deletes outdated and obsolete language.

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/2017
Meeting Date

SB 790
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic SB 790 - Probation and Community Control

Name Jared Torres

Job Title Legislative Affairs Director

Address 501 South Calhoun Street
Street
Tallahassee Florida 32399
City *State* *Zip*

Phone 850-488-7436

Email Jared.Torres@fdc.myflorida.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Department of Corrections

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

25 Apr 17
Meeting Date

790
Bill Number (if applicable)

Topic Probation & Comm. Control

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title Pres & CEO

Address 204 S. Monroe
Street

Phone

Tall FL 32301
City *State* *Zip*

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Fla. Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
302 Senate Office Building

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

DATE	COMM	ACTION
3/28/17	SM	Favorable
4/5/17	JU	**Fav/CS**
4/17/17	CA	Fav/CS
4/25/17	RC	**Favorable**

March 28, 2017

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

Re: **CS/CS/SB 304** – Community Affairs Committee; Judiciary Committee and Senator Perry Thurston
HB 6531 – Representative Brad Drake
Relief of Dustin Reinhardt by the Palm Beach County School Board

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM FOR $4.7 MILLION, BASED ON A STIPULATED FINAL JUDGMENT BETWEEN DUSTIN REINHARDT, THE CLAIMANT, AND THE PALM BEACH COUNTY SCHOOL BOARD. THE BILL COMPENSATES THE CLAIMANT FOR INJURIES HE RECEIVED WHEN A TIRE EXPLODED IN HIS AUTO SHOP CLASS.

FINDINGS OF FACT:

This claim arises out of an accident that took place on September 4, 2013 in the auto shop of the Seminole Ridge Community High School in Loxahatchee, Florida. At the time of the accident, Dustin Reinhardt was 16 years old. He was taking the auto shop as a class for the third year in a row, taught by shop teacher, Raymond Craig.

On the day of the incident, a student in the auto shop class had rims to be worked on. That student and Dustin drilled holes in the truck rims, placed rubber inner tubes inside the tires, and assembled the rubber inner tube and tire on the modified rim. Mr. Craig, according to a statement he made to

a law enforcement officer investigating the incident, knew that the two students had modified the rims in this way.
After Dustin and the other student finished modifying the tires, Dustin began to fill one with air. During that time, Mr. Craig stated that he walked by Dustin and told him to sit the tire upright and not stand directly in front of the tire while filling it. A few seconds later, the tire exploded, knocking Dustin unconscious and injuring his head and brain.

A tire cage is a piece of safety equipment. Inflating a tire that has first been placed inside a tire cage provides stability during the process. However, at the time of the incident, the auto shop did not have a tire cage large enough to accommodate the large truck tire.

After the accident, a medical evacuation team airlifted Dustin to St. Mary's Hospital in West Palm Beach where doctors placed him in a medically-induced coma for a month. Doctors initially told Dustin' father, Scott Reinhardt, that they did not know if Dustin would survive. When doctors brought Dustin out of the coma and sat him up, spinal fluid leaked through his nose, necessitating placement of a shunt in his brain. Dustin underwent multiple additional surgeries, including facial and skull reconstruction. Even after the surgeries, Dustin has been left with a permanent loss of vision in his right eye, considerable facial scarring, short-term memory loss, judgment deficiencies, and severe traumatic brain injury.

On October 9, 2013, the hospital transferred Dustin to a physical rehabilitation facility at the hospital.

On October 24, 2013, the hospital discharged Dustin and he returned home to live with his father, Scott Reinhardt, and Dustin's stepmother, Joann Reinhardt. Upon returning home, Dustin began to display emotional outbursts and significant aggressive behaviors. In addition to the acting out, Dustin needed near-constant supervision to remain safe.

Because of this, Scott Reinhardt and Dustin's doctors decided to place Dustin in a supervised, residential setting. Dustin's family agreed to the placement recommended by doctors, at the Florida Institute for Neurologic Rehabilitation (FINR). Dustin entered the FINR on a residential basis on March 14, 2014. In the area of vocational development, Dustin worked his way up from an hour a day of dusting at the facility, to

going to an off-site landscape nursery and doing general grounds maintenance under supervision for several hours a day.

While at FINR, another brain-injured patient set Dustin on fire. Dustin suffered third-degree burns, necessitating additional surgery.

Dustin stayed at FINR until December 2016, at which time his father had him transported to Neuro International, a facility providing assisted living services. At the facility, the staff check on Dustin every 30 minutes during the day and every 60 minutes at night. When Dustin goes out into the community, he is under constant visual supervision.
.
Dustin has worked hard to overcome his emotional outbursts. With the assistance of educators at the facility, he also has been able to get his high school diploma. Although Dustin has progressed in various areas while in the care of these institutions, his medical providers and his father agree that Dustin is unable to advance to living independently. For example, medical doctors estimate that Dustin functions developmentally at the equivalent of a 10 to 12 year old. Therefore, a continued stay in a supervised setting such as Neuro International is recommended.

Notably, Dustin was born a triplet and the other triplets are in careers in the armed services. At the time of the accident, Dustin was enrolled in Army Junior ROTC. Additionally, he intended to pursue a career as a long-distance truck driver or truck mechanic.

Dustin's stepmother, Joanna Reinhardt, and his father, Scott Reinhardt, are Dustin's legal guardians.

FUTURE SERVICES REPORT: Both plaintiff and defense experts prepared a Life Care Plan for Dustin. Dr. Craig Lichtblau, a physiatrist, and Dr. David Williams, an economist for the plaintiff, estimate the cost of future care and loss of earnings at $15 million.

Dr. Alan Raphael, for the defense, estimates future care and loss of earnings at $4,348,675. Dr. Raphael based this total on a review of Dr. Lichtblau's report and consultations with Dr. Ronald Tolchin, an examining physiatrist.

Plaintiff Estimate: The first table provides a summary of economic damages, as estimated by Dr. Williams. As of the date of the report, June 24, 2015, Dr. Williams estimated Dustin's life expectancy at an additional 58.2 years. Medical expenses that Dustin is expected to incur include medical care; diagnostic tests; surgical procedures related to the artificial eye; therapeutic evaluations, consisting of physical therapy, occupational therapy, speech therapy, and neuropsychometric testing; outpatient therapy for physical therapy, occupational therapy, and speech therapy; medication; support care; and transportation, including costs of a cell phone. Dr. Williams identifies other possible medical complications, but does not calculate them for purposes of the anticipated costs. These complications could present as pulmonary, urological, renal seizure, hydrocephalus, and other possible issues.

Future Medical Expenses	$12,348,654
Loss of Future Earning Capacity	$ 1,800,000
Gross Past Medical Expenses	$ 1,377,129
Total Economic Damages	$15,525,783

Defense Estimate: The second table assumes a life expectancy of an additional 59.4 years, as of April 24, 2015. The anticipated medical expenses include medical care, therapy, medication, diagnostic tests, future surgery and hospitalization for a shunt revision in the brain and an artificial eye replacement, medical equipment, and costs of living at an assisted living facility. Dr. Raphael recognizes, but does not include estimates for possible expenses relating to the services of a professional guardian and plastic surgery for scar revisions. Additionally, the defense estimate deducts from future earnings typical pay as a landscape technician.

Future Medical Expenses and Care	$3,194,425
Loss of Future Earning Capacity	$891,000
Driver (If necessary to provide transport to a part-time job)	$263, 250
Total Economic Damages	$4,348,675

LITIGATION HISTORY:

On February 25, 2015, Dustin Reinhardt and Scott Reinhardt filed a Complaint for Damages against the School District of Palm Beach County and USAA General Indemnity Company in the Palm Beach County Circuit Court. The complaint alleged that the School District of Palm Beach County negligently failed to supervise and/or adequately protect Dustin Reinhardt. Due to the negligence of the School District of Palm Beach County, the complaint alleges that Dustin suffered significant physical, mental, and emotional injuries. Additionally, the complaint alleged that Scott Reinhardt incurred medical expenses needed to treat his son's injuries and the loss of his son's services.

After the plaintiffs filed the complaint, the parties engaged in discovery, exchanging interrogatories and taking depositions. Eventually, the Reinhardts and the School District of Palm Beach County entered into a Release and Settlement Agreement. Under its terms, the School District agreed to pay $300,000 up front, $100,000 of which the School District paid to Scott Reinhardt individually and $200,000 of which the School District paid to Scott Reinhardt in his capacity as guardian for Dustin. The School District disbursed the $300,000 within 20 days after the court approved the settlement agreement.

The court issued its order approving the settlement agreement on February 1, 2017.

The agreement acknowledges that the plaintiff has already received, and will continue to receive the benefit of payment for Dustin's full expenses, including medical, room and board, supervision and therapy at the FINR. These payments, which amount to approximately $350 a day, or $124,600 per year, have already been made through the School Board's Omaha Custodial Care Insurance Policy. The payouts will continue until September 2023, based on a ten-year total allowable payout.

In addition to the initial amount payment of $300,000, the agreement provided for the plaintiffs to receive a total of $4.7 million through the claim bill process. Of this total, $1,700,000 will be payable as a lump sum within 30 days after the claim bill is enacted, and $3,000,000 payable as a $1 million annual annuity, starting September 2023 or at the time of cessation of the payouts from the Custodial Care Insurance Policy.

CLAIMANT'S POSITION: To prove a claim of negligence, a plaintiff must show that a defendant owed a duty to the plaintiff, the defendant breached that duty, the defendant's action or inaction caused the plaintiff's injury, and the plaintiff incurred damages. The claimant asserts each of these elements as follows.

Mr. Craig owed a duty to Dustin to provide a safe work environment in the auto shop class and to properly supervise the students. Mr. Craig breached that duty by allowing Dustin to put air in a large tire that had been modified, an extremely dangerous activity, without the benefit of a tire cage. In instructing Dustin to sit the tire upright, Mr. Craig knew or should have known that the tire had a propensity to explode. The explosion of the tire caused irreparable and considerable injury to Dustin.

As a result of the accident, Dustin incurred and continues to incur economic and non-economic damages. Dustin permanently lost the vision in his right eye and has had numerous surgeries. He suffers from short-term memory loss and has severe traumatic brain injury, interfering with his ability to exercise sound judgment and engage in other executive level functioning. Dustin requires lifetime medical care and treatment, including future surgery and various therapies, and room and board at an assisted living facility. Dustin is unable to pursue his dream of serving in the military or otherwise pursue his intended vocation as a long-haul trucker or as a truck mechanic. Additionally, Dustin has repeatedly expressed the desire to live on his own, support himself in the future, drive, marry, have children, and own his own home. Dustin may well not realize these desires.

RESPONDENT'S POSITION: The School Board of Palm Beach County agrees not to contest the claim bill.

CONCLUSIONS OF LAW: Section 768.28, F.S., governs this matter. This statute generally allows injured parties to sue the state or local governments for damages caused by their negligence or the negligence of their employees. However, the statute limits the amount of damages which a plaintiff can collect from a judgment against or settlement with a government entity to $200,000 per person and $300,000 for all claims or judgments arising out of the same incident. Funds can be paid in excess of these limits only upon the approval of a claim bill by the

Legislature. Therefore, Dustin will not receive the full benefit of the settlement agreement with the School Board of Palm Beach County unless the Legislature approves a claim bill authorizing the additional payment.

In a negligence action, a plaintiff bears the burden of proof to establish the four elements of negligence. These elements are duty, breach, causation, and damage. *Charron v. Birge*, 37 So. 3d 292, 296 (Fla. 5th DCA 2010).

Although school boards are not strictly liable for the safety of students, well-settled law provides that a school board has a duty to properly supervise students entrusted to the care of the school.[1] In a case in which a plaintiff alleges a lack of supervision, a teacher's duty of care is defined as reasonable, prudent, and ordinary care, or the care that a person of ordinary prudence responsible for those duties would exercise given the same circumstances.[2] Providing inadequate supervision is a breach of that duty.[3]

The tire that Dustin worked on the day of the incident was not typical for the tires brought to the auto shop class. Although the plaintiff and the defense describe the tire differently, the defense concedes that the tire was a large buggy tire, incapable of placement inside a tire cage for safety while being filled with air. Mr. Craig knew that Dustin was putting air in the tire as he asked him to sit the tire upright. However, Mr. Craig kept walking after issuing the instruction, thereby providing inadequate supervision.

Mr. Craig was employed by the School Board of Palm Beach County. The long-standing doctrine of respondeat superior provides that an employer is liable for an employee's acts committed within the course and scope of employment. *City of Boynton Beach v. Weiss*, 120 So. 3d 606, 611 (Fla. 4th DCA 2013).

Due to Mr. Craig's breach of his duty of care, he caused the accident and Dustin's damages. The claimant has demonstrated significant economic damages. Dustin's medical costs are considerable and ongoing. Due to his

[1] *Benton v. School Board*, 386 So. 2d 831, 834 (Fla. 4th DCA 1980); *Comuntzis v. Pinellas County School Board*, 508 So. 2d 750, 751 (Fla. 2nd DCA 1987).
[2] *La Petite Academy v. Nassef*, 674 So. 2d 181, 182 (Fla. 2d DCA 1996).
[3] *Doe v. Escambia County School Board*, 599 So. 2d 226 (Fla. 1st DCA 1992).

inability to live on his own, he will likely require lifetime care in a supervised setting. Dustin will never be able to pursue his chosen avocation or sustain himself.

Should this case have proceeded to trial, Dustin appears by all accounts to have presented as a sympathetic plaintiff. Just 16 when the incident happened, he will never have the opportunity to live the life accessible to others. He has also demonstrated a strong commitment to making progress towards recovery.

For these reasons, the undersigned concludes that the settlement is both fair and reasonable.

COLLATERAL SOURCES:

The plaintiff has entered into a settlement agreement with various other defendant(s). The total settlement amount from sources unrelated to the claim bill, $1,373,000, comes from:

Source	Amount
Homeowner's insurance policy of the owner of the tire	$303,000
USAA uninsured motorist policy for Scott Reinhardt	$50,000
Teacher's union insurance policy of Raymond Craig, auto shop teacher	$1,000,000
Homeowner's policy of Raymond Craig, auto shop teacher	$20,000
Total	$1,373,000

FISCAL IMPACT:

The School Board of Palm Beach County is self-insured for personal injury liability claims. If approved by the Legislature, the $4.7 million will be paid from the School Board of Palm Beach County's Workers' Compensation and Liability Claims Internal Service Fund. The School Board represents that they have reserved the amount necessary to pay this claim.

ATTORNEYS FEES:

The total amount of money requested in the claim bill is $4.7 million. Should the claim bill become law, and in the amount requested, the attorney's fees, based on a 20 percent recovery, will be $940,000. Lobbyist fees, based on a 5 percent recovery, will be $235,000.

The plaintiff and defendant have already entered into a settlement agreement for the $300,000 permitted by law. Of this, Scott Reinhardt received $100,000 individually, and $200,000 as the guardian of Dustin Reinhardt. Attorney's fees for this part of the agreement are $25,000 and $50,000, respectively. These attorney's fees represent 25 percent of the total recovery.

RECOMMENDATIONS: For the reasons set forth above, the undersigned recommends that Senate Bill 304 (2017) be reported FAVORABLY.

Respectfully submitted,

Cindy M. Brown
Senate Special Master

cc: Secretary of the Senate

CS/CS by Community Affairs:
Adds the claim of CS/SB 24 to CS/SB 304 with some minor changes. The new amount to be paid to Altavious Carter by the Palm Beach County School Board is $790,000, as reflected in the settlement agreement, and specifies the payment should be made no later than 20 days after the effective date. Below is the special master's report for CS/SB 24.

THE FLORIDA SENATE
SPECIAL MASTER ON CLAIM BILLS
Location
302 Senate Office Building
Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5237

DATE	COMM	ACTION
2/28/17	SM	**Fav/1 amendment**
3/08/17	JU	**Fav/CS**
	CA	

	RC	

February 28, 2017

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

Re: **CS/SB 24** – Judiciary Committee and Senator Anitere Flores
Relief of Altavious Carter

SPECIAL MASTER'S FINAL REPORT

THIS IS A CONTESTED CLAIM FOR $1,040,864.42 BASED ON A JURY AWARD FOR ALTAVIOUS CARTER (CLAIMANT) AGAINST THE SCHOOL BOARD OF PALM BEACH COUNTY, FLORIDA, TO COMPENSATE CLAIMANT FOR DAMAGES HE SUSTAINED WHEN A SCHOOL BUS CRASHED INTO THE REAR END OF A VAN IN WHICH HE WAS A PASSENGER.

CURRENT STATUS:

On February 3, 2011, an administrative law judge from the Division of Administrative Hearings, serving as a Senate special master, held a de novo hearing on a previous version of this bill, SB 26 (2012). After the hearing, the judge issued a report containing findings of fact and conclusions of law and recommended that the bill be reported favorably with an amendment. That report is attached as an addendum to this report.

Due to the passage of time since the hearing, the Senate President reassigned the claim to me, Jason Hand. My responsibilities were to review the records relating to the claim bill, be available for questions from the members, and determine whether any changes have occurred since the hearing, which if known at the hearing, might have significantly altered the findings or recommendation in the previous report.

According to counsel for the parties, there have been no substantial changes in the facts and circumstances for the underlying claim. Accordingly, I find no cause to alter the findings and recommendations of the original report, including the recommendation in the "Other Issues" section

of the original report, which recommended that the claim bill be amended to add the August 4, 2010, Final Cost Judgment costs of $50,394.52 (in response to Plaintiff's Motion to Tax Costs).

However, it appears the claim bill inadvertently identifies the amount of the Final Cost Judgment as $46,830.11; therefore, I recommend amending the claim bill to include the correct amount of the Final Cost Judgment ($50,394.52). This change would raise the total amount of the claim bill from $1,040,864.41 to $1,044,428.82. Based on the foregoing, I recommend that SB 24 be recommended favorably, as amended.

Additionally, and except for the inclusion of the Final Cost Judgment, the prior claim bills, SB 26 (2012)(died in Special Master on Claims Bills), SB 30 (2013)(died in Judiciary Committee), SB 38 (2014)(withdrawn), and SB 72 (2015)(died in Appropriations Committee) and SB 50 (2016)(died in Appropriations Committee) are effectively identical to the claim bill filed for the 2016 Legislative Session.

Respectfully submitted,
Jason Hand
Senate Special Master
cc: Secretary of the Senate

CS by Judiciary:
The committee substitute, in conformity with a recent opinion of the Florida Supreme Court, does not include limits on the amount of lobbying fees, costs, and similar expenses that may be paid from the proceeds of the bill.

THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
402 Senate Office Building

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

DATE	COMM	ACTION
12/02/11	SM	Fav/1 amendment

December 2, 2011

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

Re: **SB 26 (2012)** – Senator Ellyn Setnor Bogdanoff
Relief of Altavious Carter

SPECIAL MASTER'S FINAL REPORT

THIS IS A CONTESTED CLAIM FOR $944,034.30 BASED ON A JURY AWARD FOR ALTAVIOUS CARTER (CLAIMANT) AGAINST THE SCHOOL BOARD OF PALM BEACH COUNTY, FLORIDA, TO COMPENSATE CLAIMANT FOR DAMAGES HE SUSTAINED WHEN A SCHOOL BUS CRASHED INTO THE REAR END OF A VAN IN WHICH HE WAS A PASSENGER.

FINDINGS OF FACT:

Following a four-day trial in the Palm Beach County Circuit Court a jury found that Claimant had sustained a permanent injury in an accident that occurred December 15, 2005, and awarded him the following damages with the amount of the award in parentheses: past medical expenses ($96,475.64); future medical expenses ($175,892.00); past pain and suffering ($478,333.33); and future pain and suffering ($343,333.33). The award of damages totaled $1,094,034.30. The verdict was dated February 12, 2010.

On February 25, 2010, Judge Thomas H. Barkdull entered final judgment for Claimant as follows: "Pursuant to the Jury Verdict rendered in this action, IT IS ADJUDGED: That [Claimant] recover from [the School Board] the sum of [$1,094,034.30] that shall bear interest annually at the

statutory rate and for which let execution issue for the first One Hundred Thousand Dollars ($100,000.00) of this judgment and that portion of the judgment that exceeds [$100,000] may be reported to the legislature, but may not be paid in part or in whole except by further act of the legislature further [sic] to 768.28."

The court retained jurisdiction to determine taxable costs as well as to determine set offs, if any. On August 4, 2010, Judge Barkdull entered a "Final Cost Judgment" in the amount of $50,394.52 with interest at the statutory rate with the following provision: "but for which execution shall not issue, but this judgment may be reported to the legislature, but may not be paid in part or in whole except by further act of the legislature pursuant to 768.28."

On April 14, 2010, the School Board paid to Claimant the sum of $100,000.00 in partial satisfaction of the Final Judgment.

At the trial and in this claims proceeding, the School Board stipulated that it is liable for Claimant's damages.

In this claims proceeding, the School Board does not contest the award for Claimant's past medical expenses or the award for Claimant's past pain and suffering. The School Board asserts that the awards for future medical expenses and future pain and suffering are excessive.

Claimant, a male, born September 7, 1991, is a basketball player who currently plays for Santa Fe College. On December 15, 2005, Claimant was being transported from basketball practice to his home in a van being driven by Vincent Merriweather, a volunteer coach for Claimant's team. Mr. Merriweather served as a mentor to Claimant.

On that date Mr. Merriweather's van was stopped at a red light in a westbound lane at the intersection of Forest Hills Boulevard and Olympia Boulevard in Palm Beach County when a school bus owned and operated by the Palm Beach County School District rear-ended the van. It was estimated that the bus was traveling in excess of 45 MPH when it hit the van, and there was no credible evidence that the driver applied his brakes at any point before the accident.

The negligence of the school bus driver was the cause of the accident and was the proximate cause of the damages suffered by Claimant.

Mr. Merriweather was also injured in the accident and suffered damages in excess of $100,000.00. Mr. Merriweather was granted compensation for his excess damages by Chapter 2009-247, Laws of Florida.

Claimant was wearing a seat belt at the time of the crash. Claimant's seat failed as a result to the force of the impact, and he was thrown into the back of the van and briefly lost consciousness. When he regained consciousness, he began yelling for Mr. Merriweather, who was unable to respond. Claimant was able to exit the van, but he immediately experienced pain in his neck. An unidentified person assisted Claimant by helping him to lie down on the pavement. A person identified as a school nurse told Claimant to be still until emergency services arrived and advised him to stay still.

Emergency responders arrived on the scene in a timely fashion, stabilized Claimant's head and neck, and transported him to Wellington Regional Hospital.

Diagnostic testing at Wellington Regional Hospital reflected that Claimant had suffered a cervical fracture in the region of the neck referred to as C6-C7. The cervical area of the neck, consisting of seven vertebrae, is immediately above the thoracic region. The designation C6-7 (or C6-C7) indicates the area where the sixth cervical vertebrae and the seventh cervical vertebrae are located. Between the two vertebrae is a disc, which serves several purposes, including acting as a shock absorber between the two vertebrae. The spinal cord runs through the vertebrae of the cervical and thoracic regions.

Due to the severity of the injury, which included a risk of paralysis, Wellington Regional Hospital transferred Claimant to the trauma center at St. Mary's Hospital.

At St. Mary's, Claimant was placed in cervical traction consisting of immobilizing hardware being screwed into his skull and being strapped to a bed where he was unable to move.

Dr. Bret Baynham, a certified pediatric orthopedic surgeon, performed the following procedures on Claimant: Open Reduction C6-7 Fracture-Dislocation; Anterior Cervical Discectomy C6-7; Anterior Cervical Decompression, C6-7; Anterior Cervical Interbody Fusion Device C6-7; and Anterior Cervical Fusion C6-7.

In layman's terms, Dr. Baynham fused Claimant's C6-C7 vertebrae. He removed the disc between C6-C7. In the area from which the disc had been removed, he inserted a hollowed metallic dowel, referred to as a cage, filled with particles of bones that were designed to allow the two vertebrae to eventually grow together. He then affixed a metal plate to stabilize C6-C7 using special bone screws. The metal plate is intended to be permanent.

Dr. Baynham provided Claimant excellent care.

Post-surgery, Claimant underwent a grueling rehabilitation. Claimant worked hard during rehabilitation and cooperated fully with his therapists and other treatment providers.

Dr. Baynham continued to follow Claimant's recovery post-surgery. On July 27, 2006, Dr. Baynham found Claimant to be pain free and gradually returning to normal activities. Dr. Baynham's office notes reflect the following recommendation: "At this point we are going to allow [Claimant] to return to full activity. Based on his clinical and radiographic findings he is found to have a stable healed injury without any evidence of any residual instability or neurologic compromise. If he should have any problems as we move forward he is to refrain from activity and contact us immediately. This would include pain recurrence or any signs or symptoms associated with spinal cord or nerve root irritation. Otherwise if he remains well we would like to have him follow up in six months for re-evaluation including radiographs if indicated."

After July 27, 2006, Claimant resumed playing basketball and became a star high school player and a full-scholarship player at Santa Fe College in Gainesville. Claimant has been cleared to play basketball without any medical restrictions attributable to the injuries he received in the 2005 accident.

At present, Claimant experiences periodic neck pain.

Adjacent disc disease (also referred to in the record as "adjacent segment disease") can be a consequence of fusing two vertebrae. When two discs are fused, greater mechanical loading or stress is placed on the vertebrae above or below the fused discs, which may or may not cause disc degeneration and require further intervention. While adjacent disc disease may be discernable by a MRI relatively soon after the fusion, symptoms from the disease typically come later in life, but may not come at all.

Claimant was seen by Dr. Baynham on follow-up on November 27, 2007. His impression was that Claimant was stable with no residual neurologic impairment, no pain in the neck, and no functional loss of motion. His recommendation was that "Based on the clinical and radiographic findings [Claimant] is found to have a stable healed injury without evidence of any residual instability or neurologic compromise. No further treatment is indicated at this time. No restrictions to athletic participation. Follow up prn."

Claimant experienced neck and back pain in 2009 and returned to Dr. Baynham in January and June of that year. In June 2009, Dr. Baynham ordered an MRI for Claimant. Dr. Baynham observed changes in C7-T1 (T1 is the first thoracic vertebrae). Dr. Baynham testified that the changes could be the delayed manifestation of injuries from the initial injury. He also testified that the changes could be the result of adjacent segment disease phenomenon. Dr. Baynham testified that the changes "are certainly consistent with not only the zone of initial injury, but also some additional changes that are probably the result of this adjacent segment disease phenomenon, as best we know."

Dr. Baynham further testified that "based on his young age and his life expectancy and based on the current state of understanding of this phenomenon of the adjacent level disc disease, I think it is probable, most probable that he will continue to experience changes there. And it will, in time, probably rise to the level of becoming clinically significant, meaning a source of pain and potentially a source requiring additional treatment."

Dr. Craig H. Lichtblau is a physiatrist who specializes in physical medicine, rehabilitation, and evaluation. Dr. Lichtblau was retained by Claimant to conduct a Comprehensive Rehabilitation Evaluation of Claimant, give an impairment rating of Claimant, and provide a Continuation of Care plan for Claimant

Dr. Lichtblau assigned Claimant a 4 percent permanent partial impairment of the whole person.

Dr. Lichtblau's Continuation of Care plan included the services that Dr. Lichtblau believed Claimant would or may need in the future. Dr. Lichtblau's plan included future epidural steroid injections and surgical intervention. Dr. Baynham testified that including epidural steroid injections is reasonable. Dr. Baynham also testified that Claimant is at an increased risk of future surgical intervention.

Bernard E. Pettingill, Jr., Ph.D. is a consulting economist who, on February 12, 2009, prepared an analysis entitled "The Present Value Analysis of the Future Medical Care Costs of [Claimant]". At the time of the analysis, Claimant's life expectancy was projected to by 53.6 years beyond the date of the report.

Claimant represented in his "Summary of Case" that the parties stipulated that Claimant's past medical expenses for purposes of trial were $96,475.64.

Dr. Pettingill used Dr. Lichtblau's Continuation of Care plan to compute the present value of Claimant's "Total Economic Loss, Period II, Future Loss, After Trial Date". Claimant presented evidence to the jury that the correct total economic loss for the post-trial period, as computed by Dr. Pettingill, was $363,487.00.

Claimant was examined by Dr. Jordan Grabel, a neurological surgeon, on July 17, 2008, at the request of the School Board. Dr. Grabel reviewed Claimant's medical records and took histories from Claimant and Claimant's mother. Dr. Grabel found that Claimant's surgery had healed and that there were no other abnormalities that could be associated with the accident. Dr. Grabel opined that there was a 50-50

chance that the onset of adjacent segment disease will be discernable by X-ray in future years. He further opined that there is no way to determine whether Claimant will become symptomatic or need future surgical treatment. Dr. Grabel was of the opinion that the Continuation of Care plan prepared by Dr. Lichtblau included non-invasive follow-up treatment that was unnecessary.

The School Board did not have a consulting economist estimate the present value of Claimant's future economic loss based on the services Dr. Grabel believed Claimant would need.

Dr. Mark Rubenstein conducted a compulsory medical examination of Claimant on August 11, 2008. Dr. Rubenstein's evaluation included a physical examination and a review of Claimant's medical records. Dr. Rubenstein's report reflects his opinion that Claimant's future medical care will be limited to physician visits on an as-needed basis and that Claimant will require future MRI studies and X-rays. Although he acknowledged the possibility of adjacent disc disease, he did not believe that intervention was medically probable. Dr. Rubenstein's report reflects the opinion that Claimant's future pain management will be limited to the use of anti-inflammatory medications.

In its position statement, the School Board represents that Dr. Rubenstein is a physiatrist retained by the School Board and that he believed that Claimant's future care not including surgery for adjacent segment disease would be approximately $25,000.00. The undersigned did not find that figure in Dr. Rubenstein's report.

CLAIMANT'S POSITION:

1. The negligence of the school bus driver was the sole and proximate cause of the injuries and damages sustained by Claimant.

2. Claimant's future damages are not speculative, and the jury's verdict is supported by the evidence.

SCHOOL BOARD'S POSITION:

1. School Board stipulated that it is liable for Claimant's damages.

2. School Board does not dispute the jury award for past medical expenses or for past pain and suffering.

3. School Board asserts that Claimant has healed and has become a star basketball player.

4. School Board contends that awards for future medical expenses and future pain and suffering are excessive and speculative.

5. School Board argues that $25,000.00 would suffice for future medical expenses and that $50,000.00 would suffice for future pain and suffering.

6. School Board is self-insured and is experiencing a bleak fiscal year with expected shortfalls of over $54,000,000.00.

CONCLUSIONS OF LAW:

The bus driver had a duty to exercise reasonable care in the operation of the bus. See generally s. 316.183(1), Fla. Stat. He breached this duty by crashing into the back of Mr. Merriweather's stopped van. See Eppler v. Tarmac America, Inc., 752 So. 2d 592 (Fla. 2000) (rear driver is presumed to be negligent in rear-end collision case absent evidence of a sudden and unexpected stop by the front driver).

The school bus driver was an employee of the School Board acting within the course and scope of his employment at the time of the accident. As a result, the driver's negligence is attributable to the School Board.

Consistent with the School Board's stipulation as to its liability, it is concluded that the bus driver's negligence was the sole and proximate cause of the injuries and damages sustained by Claimant, and that the driver's negligence is attributable to the School Board.

The jury based its verdict on competent, substantial evidence.

LEGISLATIVE HISTORY:

This is the second year that this claim has been presented to the Legislature.

ATTORNEYS FEES:

Claimant's attorney filed an affidavit stating that attorney's fees will be capped at 25 percent in accordance with s. 768.28(8), Florida Statutes. Lobbyist fees are incorporated into the attorney's fees cap.

The Legislature is free to limit those amounts as it sees fit. See Gamble v. Wells, 450 So. 2d 850 (Fla. 1984); Noel v. Schlesinger, 984 So. 2d 1265 (Fla. 4th DCA 2008). The bill provides that the total amount paid for attorney's fees, lobbying fees, costs, and other similar expenses relating to this claim may not exceed 25 percent of the total amount awarded under this act.

FISCAL IMPACT:

The School Board is self-insured and has no liability insurance applicable to this claim. The School Board expects to face a substantial budgetary shortfall and the passage of this claim bill will add to its budgetary difficulties.

OTHER ISSUES:

The bill, as filed, does not include the sum of $50,394.52, which is the amount of the "Final Cost Judgment" entered by Judge Barkdull on August 4, 2010. The bill should be amended to add costs in the sum of $50,394.52, so that the total amount of the award will be increased from the sum of $994,034.30 to the sum of $1,044,428.82.

RECOMMENDATIONS:

Based upon the foregoing, I recommend that Senate Bill 26 be reported FAVORABLY, as amended.

Respectfully submitted,

Claude B. Arrington
Senate Special Master

cc: Senator Ellyn Setnor Bogdanoff
Debbie Brown, Interim Secretary of the Senate
Counsel of Record

CS by Judiciary:
This committee substitute includes minor corrections to the facts alleged in the whereas clauses of the claim bill. More significantly, the committee substitute provides for the payments required under the claim bill to be used to fund a special needs trust for the benefit of the claimant. The committee substitute also identifies specific amounts that may be paid from the claim bill for attorney fees and lobbying fees.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is 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:	SCR 1360
INTRODUCER:	Senator Thurston
SUBJECT:	National Statuary Hall
DATE:	April 24, 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wells	Hansen	AP	**Favorable**
2.	Wells	Phelps	RC	**Favorable**

I. Summary:

SB 1360 requests the Joint Committee on the Library of Congress to approve the replacement of the statue of Confederate General Edmund Kirby Smith in the National Statuary Hall Collection with a statue of Dr. Mary McLeod Bethune.

The bill has no impact on state revenues or expenditures. The Florida Council on Arts and Culture (council) is permitted to raise funds from private sources to fund the costs associated with the replacement of the statue. The funds must be placed into the Grants and Donations Trust Fund within the Department of State and may be used only for the limited purposes associated with replacing the statue.

This bill takes effect upon becoming law.

II. Present Situation:

National Statuary Hall

In 1864, Congress created the National Statuary Hall, which permits the display of two statues from each state within the Capitol of the United States.[1] Originally located in the Old Hall of the House of Representatives, the placement of statues has expanded throughout the corridors of the Capitol.[2] Each state is permitted to provide no more than two statues of a deceased citizen of that state who were "illustrious for their historic renown or for distinguished civic or military services, such as each State may deem to be worthy of this national commemoration."[3] An

[1] Architect of the Capitol, *About the National Statuary Hall Collection*, available at http://www.aoc.gov/capitol-hill/national-statuary-hall-collection/about-national-statuary-hall-collection (last viewed January 15, 2016).
[2] *Id.*
[3] 2 U.S.C. s. 2131.

individual must have been deceased for 10 years before his or her statue may be displayed in the National Statuary Hall.[4]

Replacement of Statues

A statue must have been on display for at least a decade before it may be replaced.[5] Like all current statues, a replacement statue must be made of marble or bronze and depict a distinguished, deceased citizen of the donating state.[6]

A state may request that the United States Joint Committee on the Library of Congress approve the replacement of its statues by a resolution from the state's Legislature and the consent of the Governor.[7] The state is responsible for costs related to the replacement, including the "construction, transportation, and placement of the new statue, the removal and transportation of the statue being replaced, and any unveiling ceremony."[8]

After the Joint Committee has approved the request, ownership of the replaced statue transfers to the state and the replaced statue may only be returned to the Capitol by federal law.[9] A duly authorized state official must inform the Architect of the Capitol where the replaced statue will be displayed after it is removed from the Capitol.[10]

Florida's Statues

The Florida statues in the National Statuary Hall Collection are Dr. John Gorrie and General Edmund Kirby Smith.[11] Florida donated a statue of Dr. Gorrie to the National Statuary Hall Collection in 1914. Dr. Gorrie (1802-1855) was a physician in Apalachicola, Florida, who advocated draining swamps, the use of mosquito netting to prevent disease, and the cooling of sickrooms to reduce fever. Dr. Gorrie was granted a patent for a machine to make ice and is credited with being the father of refrigeration and air-conditioning.[12]

In 1922, Florida gave a statue of Gen. Kirby Smith to the National Statuary Hall Collection. General Edmund Kirby Smith (1824-1893) was a soldier and educator who served in the Mexican War and taught mathematics at the United States Military Academy (West Point). He resigned from the United States Army in 1861 to join the Confederate States of America. He rose to the rank of general and surrendered the last military force of the Confederacy in the Civil War.

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[4] 2 U.S.C. s. 2131a(a).
[5] 2 U.S.C. s. 2132(a)(2)(B). The Joint Committee on the Library of Congress may grant a waiver of this requirement.
[6] 2 U.S.C. s. 2132(b)(1).
[7] 2 U.S.C. s. 2132(a).
[8] 2 U.S.C. s. 2132(b)(2).
[9] 2 U.S.C. s. 2132(d).
[10] Architect of the Capitol, Office of the Curator, *Procedure and Guidelines for Replacement of Statues in the National Statuary Hall Collection*, (January 2014), available at http://www.aoc.gov/sites/default/files/statue_replacement_guidelines_2014.pdf (last viewed January 15, 2016).
[11] Architect of the Capitol, *National Statuary Hall Collection*, available at http://www.aoc.gov/the-national-statuary-hall-collection (last viewed January 15, 2016).
[12] Architect of the Capitol, *National Statuary Hall Collection, John Gorrie*, available at http://www.aoc.gov/capitol-hill/national-statuary-hall-collection/john-gorrie (last viewed January 15, 2016).

After the Civil War, he moved to Tennessee where he pursued an academic career and served as Chancellor of the University of Nashville.[13]

During the 2016 Session, CS/SB 310 was enacted to direct the Great Floridians Program within the DOS to select a prominent Florida citizen to replace the statue of General Edmund Kirby Smith in the National Statuary Hall Collection. The bill directed the council to select a sculptor.

The bill instructed the council and the DOS to estimate the costs associated with replacement of the statue, including the costs:

- To design, construct, transport, and place the new statue;
- To remove and transport the current statue; and
- Any unveiling ceremony for the new statue.

Great Floridians Program

The Great Floridians Program recognizes and records the achievements of living and deceased Floridians who have made major contributions to the progress and welfare of Florida.[14] The Division of Historical Resources of the DOS (division) nominates present or former Florida citizens who made major contributions to the progress of the United States or Florida.[15] In identifying people worthy of a nomination, the division is required seek the advice of people who are experienced in informing the public about Florida's history.[16] Annually, the division must convene an ad hoc committee composed of representatives of specified government officials. The committee must meet as least twice a year and must nominate at least two individuals to be submitted to the Secretary of State.[17] The Secretary of State then selects two individuals to be honored as 'Great Floridians.[18] The division is required to educate the public about the Great Floridians selected by the Secretary of State.[19]

The Florida Council on Arts and Culture

The Florida Council on Arts and Culture (council) is an advisory body within the DOS that promotes arts and culture throughout the state.[20] The council consists of 15 members who are appointed by the Governor, the Speaker of the House of Representatives, and the President of the Senate. The members must have a substantial history of community service in the performing or visual arts, science, history, or children's museums.[21] The council advises the Secretary of the State regarding the administration of grants pertaining to arts and culture, and reviews applications for grants related to cultural facilities.[22]

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[13] Architect of the Capitol, *National Statuary Hall Collection, Edmund Kirby Smith*, available at http://www.aoc.gov/capitol-hill/national-statuary-hall-collection/edmund-kirby-smith (last viewed January 15, 2016).
[14] Section 267.0731, F.S.
[15] Section 267.0731(1), F.S.
[16] Section 267.0731(1)(a), F.S.
[17] Section 267.0731(1)(b), F.S.
[18] Section 267.0731(1), F.S.
[19] Section 267.0731(2), F.S.
[20] Section 265.285(1)(a) and (2)(a), F.S.
[21] Section 265.285(1), F.S.
[22] Section 265.285(2)(f) and (h), F.S.

In January 2017, the Great Floridians ad hoc committee submitted three names to be submitted for consideration:

- Marjorie Stoneman Douglas, author
- Dr. Mary McLeod Bethune, educator
- George Washington Jenkins, businessman

III. Effect of Proposed Changes:

This bill recommends that a statue of Dr. Mary McLeod Bethune replace the statue of General Edmund Kirby Smith in the National Statuary Hall.

Born Mary Jane McLeod, July 10, 1875, in Mayesville, South Carolina, she studied at Scotia Seminary in North Carolina and Moody Bible Institute in Chicago with the goal of becoming a missionary. When no missionary openings were available, she became a teacher, first at the Haines Institute in Augusta, Georgia and then at the Kendall Institute in Sumpter, South Carolina, where she met and married Albertus Bethune. The dream of opening her own school took Mary McLeod Bethune to Florida first to Palatka and then to Daytona Beach, where she started the school that would become Bethune-Cookman University.[23]

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.

[23] http://www.cookman.edu/about_bcu/history/our_founder.html

C. Government Sector Impact:

The bill has no impact on state revenues or expenditures. The Florida Council on Arts and Culture is permitted to raise funds from private sources to fund the costs associated with the replacement of the statue. The funds must be placed into the Grants and Donations Trust Fund within the Department of State and may be used only for the limited purposes associated with replacing the statue.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

None.

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 Thurston

33-01441-17 20171360__

Senate Concurrent Resolution

A concurrent resolution requesting the Joint Committee on the Library of Congress to approve the replacement of the statue of Confederate General Edmund Kirby Smith in the National Statuary Hall Collection with a statue of Mary McLeod Bethune.

WHEREAS, in March 2016, the Florida Legislature passed, and the Governor signed into law, Senate Bill 310, authorizing the replacement of the statue of Confederate General Edmund Kirby Smith in the National Statuary Hall Collection with a prominent Florida citizen recommended by the ad hoc committee of the Great Floridians Program within the Division of Historical Resources of the Department of State, and

WHEREAS, one of the three prominent Florida citizens recommended by the ad hoc committee is Mary McLeod Bethune, and

WHEREAS, Mary McLeod Bethune was born on July 10, 1875, in Mayesville, South Carolina, and she was the first member of her family, including all of her 16 siblings, born free following the conclusion of the Civil War, and

WHEREAS, beginning at a young age, Mary McLeod Bethune became engaged with learning and teaching after receiving an opportunity to attend Presbyterian Mission School in her hometown, and her dedication was evidenced through attending as many classes as she could and teaching her parents and siblings what she had learned, and

WHEREAS, Mary McLeod Bethune was awarded a scholarship allowing her to enroll at the then-Scotia Seminary for Girls in Concord, North Carolina, from which she graduated in 1893, and

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

33-01441-17 20171360__

went on to continue her studies at the Moody Bible Institute in Chicago, and

WHEREAS, upon graduating from the Moody Bible Institute, Mary McLeod Bethune became a teacher and taught at schools in Georgia and South Carolina before moving to Florida to teach at the Palatka Mission School, and

WHEREAS, through observing the burgeoning black population in the area prompted by labor needed for railroad construction, Mary McLeod Bethune decided to follow through with her dream of opening her own school, and

WHEREAS, Mary McLeod Bethune bought a small cottage in Daytona Beach to allow for the opening of the Daytona Literary and Industrial Training School for Negro Girls in 1904 and through her commitment to fundraising, the school's enrollment grew from 5 to 250 students in just 2 years, and

WHEREAS, the school continued to grow, which eventually resulted in its merger with the Cookman Institute for Men in Jacksonville to form Bethune-Cookman College, where she later served as president, and

WHEREAS, Mary McLeod Bethune's advocacy continued with her founding of the National Council of Negro Women and her appointment as Director of the Division of Negro Affairs of the National Youth Administration by President Franklin Delano Roosevelt, and

WHEREAS, through her position as the highest ranking African-American woman in the Federal Government, Mary McLeod Bethune was able to assist African-American youth in finding employment and worked with the Women's Army Corps during World War II to recruit African-American female officers, and

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

WHEREAS, upon her death in 1955, Mary McLeod Bethune's inspirational leadership was praised by many, including former First Lady Eleanor Roosevelt, who lauded "her wisdom and her goodness," and

WHEREAS, in 1995, the United States National Park Service established the Mary McLeod Bethune Council House National Historic Site in Washington, D.C., which has preserved the townhouse that was once her personal residence and the first headquarters of the National Council of Negro Women, and

WHEREAS, Mary McLeod Bethune's legacy continues to be felt in Florida through the continued success of Bethune-Cookman University, whose record high enrollment is currently approaching 4,000 students, and

WHEREAS, it is appropriate to honor Mary McLeod Bethune as one of two Floridians memorialized in statues in the National Statuary Hall Collection given her significant and continuing impact on this state, NOW, THEREFORE,

Be It Resolved by the Senate of the State of Florida, the House of Representatives Concurring:

That the Legislature of the State of Florida hereby respectfully requests the Joint Committee on the Library of Congress to approve the replacement of the statue of Confederate General Edmund Kirby Smith in the National Statuary Hall Collection with a statue of Mary McLeod Bethune.

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	SB 862
INTRODUCER:	Senators Lee and Galvano
SUBJECT:	Public Records/Voters and Voter Registration
DATE:	April 24, 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Carlton	Ulrich	EE	**Favorable**
2.	Kim	Ferrin	GO	**Favorable**
3.	Carlton	Phelps	RC	**Favorable**

I. Summary:

SB 862 makes confidential and exempt from public inspection and copying requirements all information concerning 16 and 17-year-olds who preregister to vote while they are minors; once they reach the age of 18, their information will become available like any other voter registrant or voter.

The bill provides for repeal of the exemption on October 2, 2022, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

Because the bill creates a new public records exemption, it requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage.

This bill will take effect July 1, 2017, but applies retroactively to all currently pre-registered 16 and 17-year-olds.

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.

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[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 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?
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]

Public Records Exemption for Voter Registration Information

Current law provides a public records exemption for certain information held by an agency[24] for purposes of voter registration.[25] Specifically, the following information is confidential and exempt from public record requirements:

- All declinations to register to vote made pursuant to ss. 97.057 and 97.058, F.S.
- Information relating to the place where a person registered to vote or where a person updated a voter registration.
- The social security number, driver's license number, and Florida identification number of a voter registration applicant or voter.

In addition, the signature of a voter registration applicant or a voter is exempt from copying requirements.[26]

Voter Pre-Registration for Minors

An individual may register to vote in accordance with Florida law if he or she is at least 18 years old, a United States citizen, a legal resident of Florida, and a legal resident of the county in which he or she seeks to register.[27] However, individuals who are otherwise qualified to register to vote but are not yet 18 may pre-register to vote on or after the individual's 16th birthday.[28]

Publication of Voter Information

Since 1998 when the State first began compiling all 67 counties' "official" voter registration lists into a unified statewide voter registration database,[29] anyone has been able to request an electronic copy of every Florida voters' non-exempt information.[30] The rise of the Internet has

[23] Section 119.15(7), F.S.
[24] Section 119.011(2), F.S., defines "agency" to mean "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."
[25] Section 97.0585, F.S.
[26] Section 97.0585(2), F.S.
[27] Section 97.041(1)(a), F.S.
[28] Section 97.041(1)(b), F.S.
[29] Ch. 97-13, ss. 39, 56, Laws of Fla., (effective January 1, 1998).
[30] In 2001, the Legislature sought to adopt a much more restrictive public records scheme, in connection with a then-newly-authorized statewide voter registration database. Ch. 2001-40, s. 70-72, Laws of Fla. (Codified at s. 98.0979, F.S. (2002)). Three years later, a Leon County circuit court judge struck the statute down void ab initio on procedural grounds, finding that it was adopted in a general elections bill without the requisite statement of public necessity in violation of Art. I, s. 24 of the Florida Constitution —the effect being that the statute never existed or was never on the books. *See Cable News Network, et al. v. Florida Dep't of State*, Case No. 2004 CA 001259 (2nd Jud. Cir., July 1, 2004) (Final Declaratory Summary Judgment). The Legislature repealed the statute the following year. See, Ch. 2005-278, s. 55, Laws of Fla.; Ch. 2005-277, s. 77, Laws of Fla.

enabled publication of this information for literally the entire world to see at little to no cost, thereby giving rise to serious personal privacy issues.

At least one web site[31] that contains commercial or sponsored links, provides extensive details about every registered and pre-registered voter in the State — including the voter's name, date of birth, residence address, mailing address, voter ID number, when the person registered to vote, what political party the person is affiliated with, the voter's telephone number, e-mail address, race, precinct number, as well as other information about district races in which the person is eligible to vote. This information can be accessed by voter's name, birth date, or address.

III. Effect of Proposed Changes:

The bill makes confidential and exempt from public inspection and copying requirements all information concerning 16 and 17-year-olds who preregister to vote while they are minors; once they become adults, their non-exempt information will become available to the same degree as any other adult voter registrant or voter.

The bill provides for repeal of the exemption on October 2, 2022, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

This bill will take effect July 1, 2017, but applies retroactively to all currently pre-registered 16 and 17-year-olds.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

Section 24(c) of Article I of the Florida Constitution requires a two-thirds vote of the members present and voting for passage of a newly created or expanded public-records or public-meetings exemption. Therefore, this bill requires a two-thirds vote for passage.

Public Necessity Statement

Section 24(c) of Article I of the Florida Constitution requires a public necessity statement for a newly created or expanded public records or public meetings exemption. The Florida Constitution provides that an exemption must state with specificity the public necessity of the exemption.

[31] *See* http://flvoters.com/ (last visited on March 6, 2017).

This public necessity statement provides that disclosure of information concerning preregistered voter registration applicants who are 16 or 17 years of age which is held by an agency could be misused to solicit, harass, stalk, or intimidate such individuals, and without such protection, a minor may be less likely to take advantage of preregistering to vote.

Breadth of Exemption

Section 24(c) of Article I of the Florida Constitution requires a public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law.

The bill expands the public record exemption to include all information concerning preregistered voter registration applicants who are 16 or 17 years of age which is held by an agency.

Generally, the exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may adversely impact commercial web sites and businesses that profit from sharing Florida voter registration data. However, since the bill only protects the information of minors before they become age-eligible to vote, the fiscal impact, if any, is unclear.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends s. 97.0585 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

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

By Senator Lee

20-00676-17 2017862__

A bill to be entitled

An act relating to public records; amending s. 97.0585, F.S., and reenacting subsection (3), relating to a public records exemption for information regarding voters and voter registration; providing an exemption from public records requirements for information concerning preregistered voter registration applicants who are minors; providing for future legislative review and repeal; providing for retroactive application; providing a statement of public necessity; providing an effective date.

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

Section 1. Subsection (1) of section 97.0585, Florida Statutes, is amended, and subsection (3) of that section is reenacted, to read:

97.0585 Public records exemption; information regarding voters and voter registration; confidentiality.—

(1) The following information held by an agency, as defined in s. 119.011, and obtained for the purpose of voter registration is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution and may be used only for purposes of voter registration:

(a) All declinations to register to vote made pursuant to ss. 97.057 and 97.058.

(b) Information relating to the place where a person registered to vote or where a person updated a voter registration.

(c) The social security number, driver license number, and Florida identification number of a voter registration applicant or voter.

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

20-00676-17 2017862__

(d) All information concerning preregistered voter registration applicants who are 16 or 17 years of age. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

(3) This section applies to information held by an agency before, on, or after the effective date of this exemption.

Section 2. The Legislature finds that it is a public necessity that all information concerning preregistered voter registration applicants who are 16 or 17 years of age which is held by an agency, and obtained for the purpose of voter registration, be confidential and exempt from public records requirements and be used only for purposes of voter registration. Information concerning preregistered 16-year-old and 17-year-old voter registration applicants could be misused if released. Minors are more vulnerable members of society, and the widespread release of information acquired through preregistration activities may be used to solicit, harass, stalk, or intimidate such individuals. Without such protection, a minor may be less likely to take advantage of preregistering to vote, thus hindering the effective and efficient administration of a program that otherwise encourages greater participation in the democratic process.

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

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

The Florida Senate

Committee Agenda Request

To: Senator Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: April 3, 2017

I respectfully request that **Senate Bill #862**, relating to Public Records/Voters and Voter Registration, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Tom Lee

Senator Tom Lee
Florida Senate, District 20

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25
Meeting Date

862
Bill Number (if applicable)

Topic Voting / public records

Amendment Barcode (if applicable)

Name Kelly Quintero

Job Title Legislative Advocate

Address 540 Bevery Ct
Street

Phone 772 204 1792

City *State* *Zip*

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing League of Women Voters of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/17
Meeting Date

SB862
Bill Number (if applicable)

Topic Protecting Pre Registered Voters

Amendment Barcode (if applicable)

Name Mark Earley

Job Title Supervisor of Elections

Address 315 S Calhoun St Ste 110
Street

Phone 606 8683

Tallahassee FL 32301
City *State* *Zip*

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Supervisor of Elections - Leon County

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/17
Meeting Date

862
Bill Number (if applicable)

Topic Voter Registration / Public Records

Amendment Barcode (if applicable)

Name RON LABASKY

Job Title

Address 225 S. ADAMS ST.
Street

Phone 850-222-7418

TALL FL 32302
City *State* *Zip*

Email

Speaking: ☑ For ☐ Against ☐ Information

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

Representing FL. STATE ASSOCIATION OF SUPERVISORS OF ELECTIONS

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/SB 1520
INTRODUCER:	Regulated Industries Committee and Senator Latvala
SUBJECT:	Termination of a Condominium Association
DATE:	April 24, 2017
REVISED:	04/20/17

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	McSwain	RI	**Fav/CS**
2.	Stallard	Cibula	JU	**Favorable**
3.	Oxamendi	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1520 revises the requirements for the optional termination of a condominium. Most of the bill's changes pertain to the optional termination of a condominium in which a bulk owner owns at least 80 percent of the total voting interests. Regarding these terminations, the bill increases consumer protections by:

- Entitling all persons whose condominium unit is their homestead to be paid at least as much as they paid for their units;
- Increasing mandatory disclosure of the identities of significant stakeholders in a condominium before a termination plan may proceed; and
- Requiring approval of a termination plan by the Department of Business and Professional Regulation.

Regarding optional terminations in general, the bill requires 80 percent of a condominium's voting interests to vote for an optional termination, regardless of what a condominium's governing documents may provide. The bill also reduces from 10 percent to 5 percent the percentage of voting interests necessary to veto a termination plan. In relation to an optional termination of a condominium created by conversion (such as from an apartment complex), the bill prohibits termination until 10 years after conversion, which is 5 years more than current law requires.

Additionally, the bill expressly states that the amendments made by the bill to s. 718.117, F.S., are intended to clarify existing law, are remedial in nature, and are intended to address the rights

and liabilities of the affected parties, and apply to all condominiums created under the Condominium Act.

II. Present Situation:

Condominiums

A condominium is a "form of ownership of real property created pursuant to ch. 718, F.S., which is comprised entirely of units that may be owned by one or more persons, and in which there is, [as part of the ownership of] to each unit, an undivided share in common [portion of the condominium property]."[1] A condominium is created by recording a declaration of condominium in the public records of the county where the condominium is located.[2] The declaration must include the condominium's bylaws, and the declaration functions as the condominium's "constitution," subject to applicable laws.[3] A condominium is administered by a board of directors referred to as a "board of administration."[4]

A declaration may include covenants and restrictions concerning the use, occupancy, and transfer of the units and may be amended as provided in the declaration.[5] If the declaration does not provide a method for amendment, it may generally be amended as to any matter by a vote of not less than two-thirds of the unit owners.[6]

Condominium "association property" is real and personal property owned or leased, or dedicated by a recorded plat to the association for the use and benefit of its members.[7] However, "condominium property" is lands, leaseholds, and personal property subjected to condominium ownership, whether or not contiguous, and all improvements thereon and all easements and rights appurtenant thereto intended for use in connection with the condominium.[8] The common elements are the portions of the condominium property not included in the units.[9]

Voting interests are the voting rights distributed to the association members as set forth in the declaration.[10] In a multicondominium association, the voting interests of the association are the voting rights distributed to the unit owners in all condominiums operated by the association. On matters related to a specific condominium in a multicondominium association, the voting interests of the condominium are the voting rights distributed to the unit owners in that condominium.[11]

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[1] Section 718.103(11), F.S.
[2] Section 718.104(2), F.S.
[3] *Neuman v. Grandview at Emerald Hills*, 861 So. 2d 494, 496-97 (Fla. 4th DCA 2003) (internal citations omitted).
[4] Section 718.103(4), F.S.
[5] Sections 718.104(5) and 718.110(1)(a), F.S.
[6] Section 718.110(1)(a), F.S. *But see*, s. 718.110(4) and (8), F.S., which provides exceptions to the subject matter and procedure for amendments to a declaration of condominium.
[7] Section 718.103(3), F.S.
[8] Section 718.103(13), F.S
[9] Section 718.103(8), F.S.
[10] Section 718.103(30), F.S. Voting rights are distributed pursuant to s. 718.104(4)(j), F.S.
[11] Section 718.103(30), F.S.

Termination of a Condominium

The termination of a condominium is authorized under two circumstances.[12] One circumstance is when the continued operation of the condominium would constitute economic waste or the ability to continue the condominium is impossible because of laws or regulations. The second circumstance is when a sufficient percentage of the voting interests of the condominium approve a plan of termination. A termination that occurs under the second circumstance is referred to as an optional termination.

Termination Due to Economic Waste or Impossibility

When the continued operation of a condominium would constitute economic waste or when the ability to continue operating a condominium is made impossible by law or regulation, a plan of termination based on economic waste or impossibility may be approved by the lesser of the lowest percentage of voting interests necessary to amend the declaration or as otherwise provided in the declaration for approval of termination. Conditions constituting economic waste or impossibility exist if:

1. The total estimated cost of construction or repairs necessary to construct the intended improvements or restore the improvements to their former condition or bring them into compliance with applicable laws or regulations exceeds the combined fair market value of the units in the condominium after completion of the construction or repairs; or
2. It becomes impossible to operate or reconstruct a condominium to its prior physical configuration because of land use laws or regulations.[13]

Optional Termination

Unless the declaration of condominium provides a lower percentage, a condominium may be terminated at any time if, in a vote on a plan of termination, at least 80 percent of the condominium's total voting interests vote for termination and less than 10 percent of the total voting interests reject the termination.[14] If 10 percent or more of the voting interests reject the plan of termination, another termination may not be considered for 18 months after the date of rejection.[15]

If a bulk owner owns 80 percent of the total voting interests of a condominium, the optional termination of the condominium is subject to additional limitations and requirements. These limitations and requirements are meant to protect the non-bulk owners.[16] A bulk owner is defined as a single holder of an association's voting interests or an owner together with a related entity or entities that would be considered an insider[17] holding these voting interests.[18]

[12] Section 718.117, F.S. This section's termination provisions apply to all condominiums in this state in existence on or after July 1, 2007.
[13] Section 718.117(2)(a), F.S. However, if the condominium contains timeshare units, a different approval percentage may apply. *See* ss. 718.117(2)(b) and (c), F.S.
[14] Section 718.117(3), F.S.
[15] Section 718.117(3)(a)2., F.S.
[16] Section 718.117(3)(c), F.S.
[17] See s. 726.102(8), F.S, for the definition of "insider."
[18] *Id*.

The plan of termination must make the following disclosures to unit owners in a sworn statement before a plan of termination may be presented for consideration:

- The identity of any person who owns or controls 50 percent or more of the condominium units or, if owned by an artificial entity, the person who owns or controls it and the person who owns or controls 20 percent of the entity that constitutes the bulk owner;
- The units acquired by the bulk owner, the date of acquisition and the price of each unit; and
- The relationship of any board member to the bulk owner.[19]

The unit owners, other than the bulk owner or owners, are entitled to elect at least one-third of the board before approval of any plan of termination.[20]

If a plan goes forward, all unit owners, other than the bulk owner, must be compensated in an amount equal to at least 100 percent of the fair market value of their units, as determined by an independent appraiser selected by the termination trustee.[21] An original purchaser from the developer who rejects the plan of termination and whose unit was granted a homestead exemption and who is current in payment of assessments, other monetary obligations to the association, and any mortgage encumbering the unit on the date of recording of the plan of termination must receive the original purchase price paid for the unit or current fair market value, whichever is greater.[22] The plan of termination must provide for the payment of a first mortgage encumbering a unit to the extent necessary to satisfy the lien.[23] The payment may not exceed the unit's share of the proceeds of termination under the plan.[24]

Additionally former unit owners are allowed to lease their units if the former condominium units are offered for lease to the public,[25] and a relocation fee must be paid to former unit owners who had a homestead exemption on their units.[26]

Number of Condominium Terminations

The Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation furnished the number of condominium terminations for the previous 5 calendar years, which are shown in the chart below:[27]

Calendar Year	Total Terminations	Optional Terminations
2012	30	28
2013	37	35
2014	38	37
2015	33	33
2016	29	26

[19] Section 718.117(3)(c)5., F.S.
[20] Section 718.117(3)(d), F.S.
[21] Section 718.117(3)(c)3., F.S.
[22] *Id.*
[23] Section 718.117(3)(c)4., F.S.
[24] *Id.*
[25] Section 718.117(3)(c)1., F.S.
[26] Section 718.117(3)(c)2. F.S.
[27] Email from Colton Madill, DBPR, March 28, 2017, on file with the Senate Committee on Regulated Industries.

Division of Florida Condominiums, Timeshares, and Mobile Homes

The Division of Florida Condominiums, Timeshares, and Mobile Homes may enforce and ensure compliance with the provisions of the condominium chapter of the Florida Statutes, as well as with the rules relating to the development, construction, sale, lease, ownership, and operation, and management of residential condominium units.[28] The Division has complete jurisdiction to investigate complaints and enforce compliance with respect to associations that are still under developer control. The Division also has the authority to investigate complaints against developers involving improper turnover or failure to turnover control to the association. After control of the condominium or cooperative is transferred from the developer to the unit owners, the Division's jurisdiction is limited to investigating complaints related to financial issues, elections, and unit owner access to association records.[29]

As part of the Division's authority to investigate complaints, the Division is authorized to subpoena witnesses, take sworn statements from witnesses, issue cease and desist orders, and impose civil penalties (fines) against developers and associations.[30]

III. Effect of Proposed Changes:

The bill amends s. 718.117(3), F.S. to revise the requirements for the optional termination of a condominium.

Optional Termination of a Condominium

Changes Applying to All Optional Terminations of Condominiums

For an optional condominium termination to proceed, the bill requires that at least 80 percent of the total voting interests of a condominium vote for termination. However, the bill prohibits a termination plan from proceeding if it is rejected by 5 percent of the condominium's voting interests, which is a smaller percentage of the condominium's voting interests than specified in current law. Under current law, a termination plan may not proceed if it is rejected by at least 10 percent of the voting interests.

Moreover, under current law, the approval percentage is a default threshold that may be supplanted by the terms of a condominium's declaration to make it easier or more difficult to terminate a condominium. The threshold in the bill, however, will supplant any approval threshold in a condominium's declaration.

The bill also increases the minimum time periods between successive votes on a termination plan. If 5 percent or more of the voting interests of a condominium reject a plan of termination, a subsequent plan may not be considered for 24 months, instead of 18 months as under current law.

[28] Section 718.501(1), F.S.
[29] Sections 718.501(1) and 719.501(1), F.S.
[30] *Id.*

Condominium Conversions

Some condominiums are created by the conversion of non-condominium property, such as apartment buildings. The bill extends the time between the date that a condominium is created by conversion and the date that the condominium association may vote for optional termination from to 10 years from 5 years.

Changes Applying to Condominiums that are At Least 80-percent-owned by Bulk Owners

Compared to other condominium terminations, current law places more restrictions on the termination of a condominium if a bulk owner owns at least 80 percent of the condominium's total voting interests.

As under current law, each unit owner other than the bulk owner must be compensated at least 100 percent of the fair market value of his or her unit. Additionally, current law requires that a unit owner receive at least the original purchase price paid for his or her unit if he or she:

- Was an original purchaser;
- Rejected the plan of termination; and
- Received a homestead exemption on the unit.

The bill, in contrast, requires only that a person's unit have been granted homestead-exemption status for the person to be guaranteed this amount of compensation.

The bill also broadens the requirement to disclose to the unit owners anyone who owns a significant portion of the condominium before a plan of termination is presented to the unit owners. Specifically, the plan must include written, sworn disclosures of the identity of any person or entity that owns or controls at least 25 percent (instead of 50 percent, as in current law) of the condominium units. Moreover, if it is an artificial entity that owns at least 25 percent of the units, then the following must also be disclosed in the same manner:

- The natural person or persons who directly or indirectly manage or control the artificial entity or entities; and
- The natural person or persons who directly or indirectly own or control 10 percent (instead of 20 percent as under current law) or more of the artificial entity or entities that constitute the bulk owner.

Lastly, the written and sworn disclosure must also include the factual circumstances that show that the plan complies with the requirements of s. 718.117, F.S.,the statute amended by the bill, and shows that the plan supports the expressed public policies of the statute.

Division Approval

The bill requires a condominium association that approves a plan for optional termination to submit the plan to the Division for review. The Division may authorize the termination to proceed after it determines that the plan complies with the procedural requirements set forth in s. 718.117, F.S., the statute amended by the bill.

Retroactive Application

The bill expressly states that the amendments made by the bill to s. 718.117, F.S., are intended to clarify existing law, are remedial in nature, and are intended to address the rights and liabilities of the affected parties, and apply to all condominiums created under the Condominium Act.

Effective Date

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.

D. Other Constitutional Issues:

CS/SB 1520 provides that the amendments to s. 718.117, F.S., are intended to clarify existing law, are remedial in nature, are intended to address the rights and liabilities of the affected parties, and apply to all condominiums created under the Condominium Act. With respect to ***existing*** condominiums, the provisions of the bill may implicate constitutional concerns relating to impairment of contract.[31]

In *Pomponio v. Claridge of Pompano Condominium, Inc.*,[32] 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. In the Court's opinion, it 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 further 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."[33]

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

[31] Article I, s. 10, U.S. Constitution and Art. I, s. 10, Fla. Const.
[32] *Pomponio v. Claridge of Pompano Condominium, Inc*., 378 So. 2d 774, 776 (Fla. 1979).
[33] *Pomponio*, 378 So. 2d at 779.

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.[34]

In *Tropicana Condominium Association, Inc. v. Tropical Condominium, L.L.C.* (*Tropicana Condominium*),[35] the Third District Court of Appeal held that the 2007 amendments to s. 718.117, F.S., dealing with termination of a condominium, could not be applied retroactively to a condominium in which the declaration of condominium did not contain language that the condominium was governed by Florida's Condominium Act "as amended from time to time." The 2007 amendment to s. 718.117, F.S., reduced from 100 percent to 80 percent the vote required to consent to termination of a condominium.[36]

Absent language that a condominium's declaration was governed by Florida's Condominium Act "as amended from time to time," the Condominium Act could not be applied retroactively to a declaration if it impairs contractual obligations. Applying the test in *Pomponio*, the court held that applying the reduced percentage required for termination in s. 718.117, F.S., would "work a severe, permanent, and immediate change" in the unit owners' safeguards against termination built into their condominium's declaration.[37]

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may require investors seeking to convert a condominium unit to apartments or to some other use to provide unit owners greater compensation. The bill also ensures that all persons whose condominium is their homestead will receive at least the price they paid for the condominium units upon the condominiums' termination.

C. Government Sector Impact:

For Fiscal Year 2017-2018, the bill appropriates $85,006 in recurring funds and $4,046 in nonrecurring funds from the trust fund to the Department of Business and Professional Regulation. The bill also authorizes one full-time equivalent position with an associated salary rate of $56,791/year to implement the bill.

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[34] *Id.*
[35] *Tropicana Condominium Association, Inc. v. Tropical Condominium, L.L.C.*, 208 So. 3d 755 (Fla. 3rd DCA 2016).
[36] *Compare*, s. 718.117(1), F.S. (2006) and s. 1, ch. 2007-226, Laws of Fla., (the amendment to s. 718.117(3), F.S.). Additionally, the Tropicana Condominium's declaration required approval of 100 percent of the unit owners to terminate the condominium. *See, Tropicana, Id*.
[37] *Id.*, *quoting Pomponio*.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 718.117 of the Florida Statutes.

This bill creates an undesignated section of Florida law.

IX. Additional Information:

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

CS by Regulated Industries on April 4, 2017:
The committee substitute:

- Revises the legislative findings in s. 718.117(1), F.S.
- Retains the requirement in current law that at least 80 percent of the total voting interests must approve the plan of termination.
- Repeals the requirement that a unit owner must have rejected the plan of termination to be compensated for the fair market value of the unit.
- Requires that the plan of termination must include factual circumstances that show that the plan complies with the requirements of s. 718.117, F.S., and that the plan supports the public policies expressed in s. 718.117, F.S.
- Requires that the plan of termination must be submitted to the division for review after the unit owners approve the plan of termination.
- Provides that plan of termination may proceed after the division determines that the plan complies with s. 718.117, F.S.
- Provides that the process in s. 718.117(2), F.S., dealing with termination of a condominium because of economic waste or impossibility, does not apply to the optional termination authorized in subsection (3) of that section.
- Transfers the language in s. 718.117(1), F.S., which provides for its application to all condominiums in Florida in existence on or after July 1, 2007, to a new subsection (21) in s. 718.117, F.S.
- Creates an undesignated section of law to provide that the amendments in the bill to s. 718.117, F.S., are intended to clarify existing law, are remedial in nature, and are intended to address the rights and liabilities of the affected parties, and apply to all condominiums created under the Condominium Act.
- Appropriates, for Fiscal Year 2017-2018, $85,006 in recurring funds and $4,046 in nonrecurring funds from the trust fund to the DBPR.
- Authorizes one full-time equivalent position at the DBPR with an associated salary rate of 56,791 to implement the provisions in the bill.

B. Amendments:

None.

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

By the Committee on Regulated Industries; and Senator Latvala

580-03441-17 20171520c1

A bill to be entitled

An act relating to termination of a condominium association; amending s. 718.117, F.S.; revising legislative findings; requiring a plan of termination to be approved by the Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation and meet specified requirements for a condominium form of ownership to be terminated for all or a portion of the condominium property under certain circumstances; revising voting requirements for the rejection of a plan of termination; increasing the amount of time before a new plan of termination may be considered after a previous rejection under certain conditions; revising the requirements to qualify for payment as a homestead owner; revising and providing notice requirements; requiring the division to examine a plan of termination and provide specified notice within a certain timeframe; providing applicability; specifying that a plan of termination is presumed to be accepted if notice is not provided within the specified timeframe; providing an appropriation and authorizing a position; providing an effective date.

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

Section 1. Subsections (1) and (3) of section 718.117, Florida Statutes, are amended, and subsection (21) is added to that section, to read:

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

580-03441-17 20171520c1

718.117 Termination of condominium.—

(1) LEGISLATIVE FINDINGS.—The Legislature finds that:

(a) Condominiums are created as authorized by statute and are subject to covenants that encumber the land and restrict the use of real property.

(b) In some circumstances, the continued enforcement of those covenants ~~that~~ may create economic waste and~~,~~ areas of disrepair which threaten the safety and welfare of the public~~,~~ or cause obsolescence of the ~~a condominium~~ property for its intended use and thereby lower property tax values, and ~~the Legislature further finds that~~ it is the public policy of this state to provide by statute a method to preserve the value of the property interests and the rights of alienation thereof that owners have in the condominium property before and after termination.

(c) ~~The Legislature further finds that~~ It is contrary to the public policy of this state to require the continued operation of a condominium when to do so constitutes economic waste or when the ability to do so is made impossible by law or regulation.

(d) It is in the best interest of the state to provide for termination of the covenants of a declaration of condominium in certain circumstances in order to:

1. Ensure the continued maintenance, management, and repair of stormwater management systems, conservation areas, and conservation easements.

2. Avoid transferring the expense of maintaining infrastructure serving the condominium property, including, but not limited to, stormwater systems and conservation areas, to

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

the general tax bases of the state and local governments.

3. Prevent covenants from impairing the continued productive use of the property.

4. Protect state residents from health and safety hazards created by derelict, damaged, obsolete, or abandoned condominium properties.

5. Provide fair treatment and just compensation for individuals and preserve property values and the local property tax base.

6. Preserve the state's long history of protecting homestead property and homestead property rights by ensuring that such protection is extended to homestead property owners in the context of a termination of the covenants of a declaration of condominium ~~This section applies to all condominiums in this state in existence on or after July 1, 2007~~.

(3) OPTIONAL TERMINATION. ~~Except as provided in subsection (2) or unless the declaration provides for a lower percentage,~~ The condominium form of ownership may be terminated for all or a portion of the condominium property pursuant to a plan of termination meeting the requirements of this section and approved by the division. Before a residential association submits a plan to the division, the plan must be approved by at least 80 percent of the total voting interests of the condominium. However, if 5 ~~10~~ percent or more of the total voting interests of the condominium have rejected the plan of termination by negative vote or by providing written objections, the plan of termination may not proceed.

(a) The termination of the condominium form of ownership is subject to the following conditions:

1. The total voting interests of the condominium must include all voting interests for the purpose of considering a plan of termination. A voting interest of the condominium may not be suspended for any reason when voting on termination pursuant to this subsection.

2. If 5 ~~10~~ percent or more of the total voting interests of the condominium reject a plan of termination, a subsequent plan of termination pursuant to this subsection may not be considered for 24 ~~18~~ months after the date of the rejection.

(b) This subsection does not apply to any condominium created pursuant to part VI of this chapter until 10 ~~5~~ years after the recording of the declaration of condominium, unless there is no objection to the plan of termination.

(c) For purposes of this subsection, the term "bulk owner" means the single holder of such voting interests or an owner together with a related entity or entities that would be considered an insider, as defined in s. 726.102, holding such voting interests. If the condominium association is a residential association proposed for termination pursuant to this section and, at the time of recording the plan of termination, at least 80 percent of the total voting interests are owned by a bulk owner, the plan of termination is subject to the following conditions and limitations:

1. If the former condominium units are offered for lease to the public after the termination, each unit owner in occupancy immediately before the date of recording of the plan of termination may lease his or her former unit and remain in possession of the unit for 12 months after the effective date of the termination on the same terms as similar unit types within

the property are being offered to the public. In order to obtain a lease and exercise the right to retain exclusive possession of the unit owner's former unit, the unit owner must make a written request to the termination trustee to rent the former unit within 90 days after the date the plan of termination is recorded. Any unit owner who fails to timely make such written request and sign a lease within 15 days after being presented with a lease is deemed to have waived his or her right to retain possession of his or her former unit and shall be required to vacate the former unit upon the effective date of the termination, unless otherwise provided in the plan of termination.

2. Any former unit owner whose unit was granted homestead exemption status by the applicable county property appraiser as of the date of the recording of the plan of termination shall be paid a relocation payment in an amount equal to 1 percent of the termination proceeds allocated to the owner's former unit. Any relocation payment payable under this subparagraph shall be paid by the single entity or related entities owning at least 80 percent of the total voting interests. Such relocation payment shall be in addition to the termination proceeds for such owner's former unit and shall be paid no later than 10 days after the former unit owner vacates his or her former unit.

3. For their respective units, all unit owners other than the bulk owner must be compensated at least 100 percent of the fair market value of their units. The fair market value shall be determined as of a date that is no earlier than 90 days before the date that the plan of termination is recorded and shall be determined by an independent appraiser selected by the

termination trustee. For a person ~~an original purchaser from the developer who rejects the plan of termination and~~ whose unit was granted homestead exemption status by the applicable county property appraiser, or was an owner-occupied operating business, as of the date that the plan of termination is recorded and who is current in payment of both assessments and other monetary obligations to the association ~~and any mortgage encumbering the unit~~ as of the date the plan of termination is recorded, the fair market value ~~for the unit owner rejecting the plan~~ shall be at least the original purchase price paid for the unit. For purposes of this subparagraph, the term "fair market value" means the price of a unit that a seller is willing to accept and a buyer is willing to pay on the open market in an arms-length transaction based on similar units sold in other condominiums, including units sold in bulk purchases but excluding units sold at wholesale or distressed prices. The purchase price of units acquired in bulk following a bankruptcy or foreclosure shall not be considered for purposes of determining fair market value.

4. The plan of termination must provide for payment of a first mortgage encumbering a unit to the extent necessary to satisfy the lien, but the payment may not exceed the unit's share of the proceeds of termination under the plan. If the unit owner is current in payment of both assessments and other monetary obligations to the association and any mortgage encumbering the unit as of the date the plan of termination is recorded, the receipt by the holder of the unit's share of the proceeds of termination under the plan or the outstanding balance of the mortgage, whichever is less, shall be deemed to have satisfied the first mortgage in full.

5. Before a plan of termination is presented to the unit owners for consideration pursuant to this paragraph, the plan must include the following written disclosures in a sworn statement:

a. The identity of any person or entity that owns or controls 25 ~~50~~ percent or more of the units in the condominium and, if the units are owned by an artificial entity or entities, a disclosure of the natural person or persons who, directly or indirectly, manage or control the entity or entities and the natural person or persons who, directly or indirectly, own or control 10 ~~20~~ percent or more of the artificial entity or entities that constitute the bulk owner.

b. The units acquired by any bulk owner, the date each unit was acquired, and the total amount of compensation paid to each prior unit owner by the bulk owner, regardless of whether attributed to the purchase price of the unit.

c. The relationship of any board member to the bulk owner or any person or entity affiliated with the bulk owner subject to disclosure pursuant to this subparagraph.

d. The factual circumstances that show that the plan complies with the requirements of this section and that the plan supports the expressed public policies of this section.

(d) If the members of the board of administration are elected by the bulk owner, unit owners other than the bulk owner may elect at least one-third of the members of the board of administration before the approval of any plan of termination.

(e) The division shall examine the plan of termination to determine its procedural sufficiency and, within 45 days after receipt of the initial filing, the division shall notify the

association by mail of any procedural deficiencies or that the filing is accepted. If the notice is not given within 45 days after the receipt of the filing, the plan of termination is presumed to be accepted. If the division determines that the conditions required by this section have been met and that the plan complies with the procedural requirements of this section, the division shall authorize the termination, and the termination may proceed pursuant to this section.

(f) Subsection (2) does not apply to optional termination pursuant to this subsection.

(21) APPLICABILITY.—This section applies to all condominiums in this state in existence on or after July 1, 2007.

Section 2. The amendments made by this act to s. 718.117, Florida Statutes, are intended to clarify existing law, are remedial in nature and intended to address the rights and liabilities of the affected parties, and apply to all condominiums created under the Condominium Act.

Section 3. For the 2017-2018 fiscal year, the sums of $85,006 in recurring funds and $4,046 in nonrecurring funds from the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund are appropriated to the Department of Business and Professional Regulation, and one full-time equivalent position with associated salary rate of 56,791 is authorized, for the purpose of implementing this act.

Section 4. This act shall take effect July 1, 2017.

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-25-2017
Meeting Date

1520
Bill Number (if applicable)

Topic Condominium Termination

Amendment Barcode (if applicable)

Name Peter Dunbar

Job Title

Address 215 S. Monroe Suite 815
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Tallahassee, FL 32301
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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:	SB 7014
INTRODUCER:	Agriculture Committee
SUBJECT:	OGSR/Nonpublished Reports or Data/Department of Citrus
DATE:	April 24, 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Akhavein	Becker		**AG Submitted as Committee Bill**
1.	Kim	Ferrin	GO	**Favorable**
2.	Akhavein	Phelps	RC	**Favorable**

I. Summary:

SB 7014 continues the public records exemption for information contained in nonpublished reports or data related to studies or research that concerns citrus fruit, citrus fruit juices, and the products and byproducts that is conducted, caused to be conducted, or funded by the Department of Citrus. The bill removes the scheduled October 2, 2017, repeal date.

Since the bill does not expand or create an exemption to public records law, the bill requires a majority vote of each chamber for passage.

The bill has an effective date of 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]

[1] FLA. CONST., art. I, s. 24(a).
[2] *Id*.

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

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[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 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?
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]

Florida Department of Citrus

The Florida Citrus Commission acts as the head of the Department of Citrus (the department).[24] The department carries out commission policy and acts as the commission's staff by conducting a wide variety of programs involving regulation, scientific, market, and economic research, advertising, merchandising, public and industry relations, and consumer promotion. The purpose of the department is to protect and enhance the quality and reputation of Florida citrus fruit and processed citrus products in both domestic and foreign markets. It also acts to protect public health and welfare and to stabilize and protect the state's citrus industry.

Current law provides that the powers of the department include the preparation and dissemination of important information to citrus growers, handlers, shippers, processors and industry-related and interested persons and organizations relating to department activities and the production, handling, shipping, processing, and marketing of citrus fruit and processed citrus products. Any such information described above that constitutes a trade secret is confidential and exempt from public records requirements and must not be disclosed.[25]

Citrus Research

Section 601.13(2), F.S., authorizes the department to:

- Conduct, or cause to be conducted, a thorough and comprehensive study of citrus fruit and citrus fruit juices;
- Provide suitable and sufficient laboratory facilities and equipment, making use of the laboratory facilities and equipment of the University of Florida, for the purpose of conducting thorough and comprehensive study and research;
- Carry on, or cause to be carried on, suitable experiments in an effort to prove the commercial value of each, and determine and develop new and further use for citrus fruit and citrus fruit juices or the products and byproducts into which the same can be converted or manufactured;
- Carry on, or cause to be carried on, suitable experiments in an effort to prove the commercial value of any and all new profitable methods and instruments of distribution of citrus fruit and citrus fruit juices and the products and byproducts into which the same can be converted or manufactured; and
- Conduct or cause to be conducted any research related to disease and crop efficiency that would advance the purposes of the state's citrus industry and commercialization related to advancing such research.

[23] Section 119.15(7), F.S.
[24] *See generally* s. 601.04, F.S.
[25] Section 601.10(8), F.S.

Department of Citrus Public Records Exemption for Nonpublished Reports or Data

The department receives guidance from the citrus industry regarding research projects and industry needs. Before the exemption, companies with brand name products were sometimes hesitant to cooperate and give access to samples of citrus fruits and citrus products.

Section 601.10(8)(b), F.S., provides that the citrus research conducted or sponsored by the department remains confidential and exempt from public disclosure until it is published.

Staff Review of the Exemptions

The Open Government Sunset Review Act requires that a public records exemption must serve an identifiable public purpose in order to be maintained. As part of the Open Government Sunset Review process to determine this, professional staff of the Senate Agriculture Committee sent a questionnaire to the department. The department recommended reenactment of the exemption without changes.[26]

If the exemption is permitted to sunset, the department would be adversely affected because premature publication of incomplete research could interfere with the

> [d]epartment's ability to conduct research paid for by the Florida citrus grower, as well impugn the credibility and veracity of the research performed… possibly resulting in research with no value to the industry who paid for it.[27]

III. Effect of Proposed Changes:

Section 1 removes the scheduled repeal date of October 2, 2017, in the public records exemption law. Effectively, the bill permits the public records exemption relating to information contained in nonpublished reports or data related to certain studies or research related to citrus fruit, citrus fruit juices, and the products and byproducts that the department is involved with to continue as it currently exists.

Section 2 provides that this act shall take effect October 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

The bill does not expand the current exemption, and therefore public necessity statements are not required. Since there is no expansion of the exemption, a simple majority vote is sufficient for passage.

[26] The survey is on file with the Senate Agriculture Committee.
[27] *Senate Agency Bill Analysis Request: SB0714* (sic), Department of Citrus

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 601.10, Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

By the Committee on Agriculture

575-01923-17 20177014__

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 601.10, F.S., relating to an exemption from public records requirements for nonpublished reports or data related to certain studies or research related to citrus fruit, citrus fruit juices, and the products and byproducts thereof which is conducted, caused to be conducted, or funded by the Department of Citrus; abrogating the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Paragraph (c) of subsection (8) of section 601.10, Florida Statutes, is amended to read:

601.10 Powers of the Department of Citrus.—The department shall have and shall exercise such general and specific powers as are delegated to it by this chapter and other statutes of the state, which powers shall include, but are not limited to, the following:

(8)

(c) Any nonpublished reports or data related to studies or research conducted, caused to be conducted, or funded by the department under s. 601.13 is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. ~~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.~~

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

575-01923-17 20177014__

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

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/SB 7018
INTRODUCER:	Rules Committee and Governmental Oversight and Accountability Committee
SUBJECT:	OGSR/Agency Personnel Information
DATE:	April 25, 2017 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Ferrin	Ferrin		**GO Submitted as Committee Bill**
1.	Kim	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 7018 is a public records exemption for multiple agency personnel that was reviewed pursuant to the Open Government Sunset Review Act (OGSR) for 2017. The agency personnel affected are:

- Law enforcement;
- Department of Children and Families personnel with certain duties;
- Department of Health personnel with certain duties;
- Department of Revenue and local government personnel who collect revenue or child support;
- Department of Financial Services personnel with certain duties;
- Firefighters;
- Justices and judges;
- State attorneys and statewide prosecutors and their assistants;
- Magistrates, administrative law judges, judges of compensation claims, child support hearing officers;
- Human resources, labor relations personnel;
- Code enforcement personnel;
- Guardian ad Litem Program personnel;
- Department of Juvenile Justice personnel;
- Public defenders, criminal conflict and civil regional counsel and their assistants;
- Department of Business and Professional Responsibility investigators; and
- County Tax Collectors.

The bill reenacts public records exemptions for governmental personnel and their families that will sunset in 2017. The bill consolidates public records exemptions and removes the sunset dates of public records exemptions that are set to repeal in 2018 and 2019. The bill expands certain public records exemptions for agency personnel and their families, and subjects some of the expanded public record to a 2022 OGSR.

In addition, the bill amends the public records exemptions for certain personnel that are not scheduled to sunset in 2017, by removing a requirement for certain personnel to make reasonable efforts to protect their personal information from being publicly accessible through other means. The personnel affected are:

- Certain Department of Health personnel;
- Consultants who evaluate impaired healthcare practitioners;
- Emergency medical technicians and paramedics; and
- Agency inspector generals or internal audit personnel.

This change makes all of the personnel exemptions more consistent.

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

This bill takes effect 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]

[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.

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. 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 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]

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[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).

[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.

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 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]

General Public Records Exemptions for Agency Personnel

There are three general public records exemptions that apply to all agency personnel: social security numbers, medical information, and personal identifying information of dependent children who are insured by an agency group insurance plan.[24]

Social security numbers of all current and former agency personnel are confidential and exempt when held by the employing agency.[25] An employing agency may only release social security numbers for the following reasons: (1) it is required by law, (2) a receiving government agency needs the social security number to perform its duties, and (3) the employee consents to

[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).
[23] Section 119.15(7), F.S.
[24] Section 119.071(4)(a) and (b), F.S.
[25] Section 119.071(4)(a)1., F.S.

disclosure of his or her social security number.[26] In addition, there is a general exemption for social security numbers which applies to the public that makes social security numbers confidential and exempt.[27] This exemption applies to any agency that holds anyone's social security number, including agency personnel's social security numbers. This exemption permits the agency to disclose social security numbers of agency personnel for the following reasons: (1) to administer health benefits, and (2) to administer retirement benefits.[28]

An agency employee's medical information is also exempt from public disclosure if the medical information could identify the employee. This exemption applies to prospective, current and former employees.[29]

The personal identifying information of a dependent child of an agency employee who is insured by an agency group insurance plan is exempt from public disclosure. This exemption applies to the children of current and former employees and is also retroactively applied.[30]

Public Records Exemptions for Enumerated Personnel

Provisions in s. 119.071(4)(d), F.S., make exempt from public disclosure the personal identification and location information of enumerated agency personnel, their spouses and their children.

The employing agency as well as the employee may assert the right to the exemption by submitting a written request to each agency which holds the employee's information.[31] Finally, all of these exemptions have retroactive application.[32]

How the Exemptions Differ

The information exempted by the various provisions of s. 119.071(4)(d)2., F.S. is similar, but not identical. All of the provisions in s. 119.071(4)(d)2., F.S., exempt from public disclosure the home addresses and telephone numbers of the enumerated personnel. Employees' dates of birth and photographs are exempt for some personnel, but not all.

Section 119.071(4)(d)2., F.S., also makes exempt from public disclosure certain types of information about employees' spouses and children. The exemptions for family members include home addresses, telephone numbers, spouses' places of employment, and the locations of children's schools. The exemptions for family members, however, are not uniform. The names, dates of birth, and photographs of families members are exempt from public disclosure, but not for all family members of all personnel.

[26] Section 119.071(4)(a)2., F.S.
[27] Section 119.071(5)(a)5., F.S.
[28] Section 119.071(5)(a)5.f. and g., F.S.
[29] Section 119.071(4)(b)1., F.S.
[30] Section 119.071(4)(b)2., F.S.
[31] Section 119.071(4)(d)3., F.S.
[32] Section 119.071(4)(d)4., F.S.

Some of the exemptions are conditional upon the actions of the employee. For example, certain personnel must make "reasonable efforts to protect" his or her information from being accessible through public means for the exemption to apply.[33]

In addition, some of the provisions exempt information from Ch. 119, F.S., but not from Article I, section 24(a), of the Florida Constitution. This means that information would be exempt if held by an executive branch agency, but may not necessarily be exempt if held by the legislative or judicial branches of government.

Finally, certain exemptions have different OGSR sunset dates. Unless otherwise noted, the following chart depicts exemptions sunsetting on October 2, 2017, pursuant to s. 119.071(4)(d)5., F.S.

[33] Section 119.071(4)(d)2.e., F.S.

Sunset Dates for Exemptions for Personnel's Identifying Information							
Category	Home Address	Phone #	SSN	Photos	DOB	Places of Employment	Requires Effort to Protect Information
Law Enforcement Personnel*	2017	2017	2017	2017	2017	-	-
DCF Personnel w/ certain duties*	2017	2017	2017	2017	2017	-	-
DOH Personnel w/certain duties*	2017	2017	2017	2017	2017	-	-
DOR Personnel w/certain duties*	2017	2017	2017	2017	2017	-	-
Firefighters	2017	2017	-	2017	2017	-	-
Justices and Judges*	2017	2017	-	-	2017	-	-
State Attorneys and Assistant State Attorneys*	2017	2017	2017	2017	2017	-	-
Statewide Prosecutors & Assistant Statewide Prosecutors*	2017	2017	2017	2017	2017	-	-
Magistrates and child support enforcement hearing	2017	2017	-	-	2017	-	2017
Judges of Compensation Claims & Administrative Law	2017	2017	-	-	2017	-	2017
Human resource, labor relations, employee relations directors, assistant directors, managers, and assistant managers*	2017	2017	-	2017	2017	-	-
Code enforcement officers*	2017	2017	-	2017	2017	-	-
Guardians ad litem*	2017	2017	-	2017	2017	2017	2017
DJJ Personnel w/ certain duties*	2017	2017	-	2017	2017	-	-
Public Defenders and Assistant Public Defenders*	2017	2017	-	2017	2017	-	-
Criminal Conflict and Civil Regional Counsel & Assistants*	2017	2017	-	2017	2017	-	
DBPR investigators and inspectors*	2017	2017	-	2017	-	-	2017
County tax collectors	2017	2017	-	-	-	-	2017

Sunset Dates for Exemptions for Personnel's Spouse and Children Identifying Information								
Category	Names	Home Address	Phone #	SSN	Photos	DOB	Places of Employment	Schools/ Daycare
Law Enforcement Personnel*	2018	2017	2017	2017	2017	2017	2017	2017
DCF Personnel w/ certain duties*	2018	2017	2017	2017	2017	2017	2017	2017
DOH Personnel w/certain duties*	2018	2017	2017	2017	2017	2017	2017	2017
DOR Personnel w/certain duties*	2018	2017	2017	2017	2017	2017	2017	2017
Firefighters	-	2017	2017	-	2017	2017	2017	2017
Justices and Judges*	-	2017	2017	-	-	2017	2017	2017
State Attorneys and Assistant State Attorneys*	2018	2017	2017	2017	2017	2017	2017	2017
Statewide Prosecutors & Assistant Statewide Prosecutors*	2018	2017	2017	2017	2017	2017	2017	2017
Magistrates & child support enforcement hearing officers	-	2017	2017	-	-	2017	2017	2017
Judges of Compensation Claims & Administrative Law	-	2017	2017	-	-	2017	2017	2017
Human resource, labor relations, employee relations directors, assistant directors, managers, and assistant managers*	2017	2017	2017	-	-	2017	2017	2017
Code enforcement officers*	2017	2017	2017	-	-	2017	2017	2017
Guardians ad litem*	2017	2017	2017	-	-	2017	2017	2017
DJJ Personnel w/ certain duties*	2017	2017	2017	-	-	2017	2017	2017
Public Defenders and Assistant Public Defenders*	2019	2017	2017	-	-	2017	2017	2017
Criminal Conflict and Civil Regional Counsel & Assistants*	2019	2017	2017	-	-	2017	2017	2017
DBPR investigators and inspectors*	2017	2017	2017	-	-	-	2017	2017
County tax collectors	2017	2017	2017	-	-	-	2017	2017

*Active or former employee; also referred to as “current or former” employee in statute.
- Indicates no exemption exists in statute.

Law Enforcement, Correctional Officers, Certain Personnel of the Department of Children and Families, the Department of Health, the Department of Revenue, and Local Governments

This exemption covers current or former personnel from several agencies with criminal or quasi-criminal duties:

- law enforcement personnel;
- correctional and correctional probation officers, but not any secretarial, clerical, or professionally trained personnel;[34]
- personnel of the Department of Children and Families whose duties include the investigation of abuse, neglect, exploitation, fraud, theft, or other criminal activities;[35]
- personnel of the Department of Health who support child abuse investigations;[36] and
- personnel of the Department of Revenue or local governments whose responsibilities include revenue collection and enforcement or child support enforcement.

In 1979, the Legislature created a public records exemption for the "home address, telephone number and photograph of law enforcement personnel" as well as for their spouses and children.[37] This exemption was part of a larger exemption created for criminal intelligence information.

In 1985, the Legislature expanded the exemption to include "active or former" law enforcement.[38]

In 1989, the exemption for active or former law enforcement was amended to include personnel of the Department of Health and Rehabilitative Services whose duties included the investigation of abuse, neglect, exploitation, fraud, theft, or other criminal activities, and also expanded to include day care facilities of the personnel's children.[39] 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.[40]

In 1995, Department of Revenue and local government personnel whose responsibilities include revenue collection and enforcement or child-support enforcement were amended into this exemption. The public necessity statement provided that releasing information about such personnel would jeopardize their safety and impede personnel from executing their jobs.[41]

In 1998, the exemption was amended to change the name of the Department of Health and Rehabilitative Services to the Department of Children and Family Services. In addition, the exemption was amended to include Department of Health personnel whose duties supported the investigation of child abuse or neglect.[42] In this case, the absence of a public necessity statement indicates that this was not an expansion of the public records exemption but a revision reflecting

[34] Section 112.531(2), F.S.
[35] Section 39.301, F.S. Also see http://www.myflfamilies.com/service-programs/public-benefits-integrity (last viewed December 7, 2016).
[36] Section 39.303, F.S. Also see http://www.floridahealth.gov/alternatesites/cms-kids/families/child_protection_safety/child_protection_teams.html (last viewed December 7, 2016).
[37] The exemption included the place of employment of the spouses and children of law enforcement personnel, as well as the names and locations of the schools of the children. Ch. 79-187, Laws of Fla.
[38] Ch. 85-301, Laws of Fla.
[39] Ch. 89-80, Laws of Fla.
[40] Public necessity statements were required for public records exemptions after 1992, when Article I, section 24, of the Florida Constitution was adopted.
[41] Ch. 1995-170, Laws of Fla.
[42] Ch. 98-137, s. 7, Laws of Fla.

the changes made during the reorganization of the Department of Health and Rehabilitative Services.

In 2012, Ch. 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. In addition, a clarification was made to indicate that both sworn and civilian law enforcement personnel were included in the exemption.

In 2013, the Legislature enacted a public records exemption for the names of the spouses and children of the above named personnel; this exemption will sunset on October 2, 2018. The public necessity statement provides:

> As a result of their duties, these sworn and civilian law enforcement personnel often come in close contact with individuals who not only may be a threat to these personnel, but who might seek to take revenge against them by harming their spouses and children. Permitting access to the names of the spouses and children of active or former sworn or civilian law enforcement personnel provides a means by which individuals who have been investigated, arrested, interrogated, or incarcerated can identify and cause physical or emotional harm to these spouses and children.[43]

Firefighters

A firefighter certified in compliance with s. 633.408, F.S., must satisfactorily complete a Minimum Standards Course, or equivalent course in another state, and passed the Minimum Standards Course examination.[44] Firefighters must also have high school degrees, meet certain criminal history requirements, have good moral character, and be physically fit.[45]

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.[46]

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.

[43] Ch. 2013-243, s. 2, Laws of Fla.
[44] Section 633.408(4), F.S.
[45] Section 633.412, F.S.
[46] Public necessity statements were required for public records exemptions after 1992, when Article I, section 24, of the Florida Constitution was adopted.

Justices and Judges

Florida's justices preside in the Supreme Court, and judges preside in Florida's five District Courts of Appeal, 20 Circuit Courts and 67 County Courts.[47] Justices and judges adjudicate legal matters as well as oversee the legal profession.

The Legislature enacted a public records exemption for current justices and judges and their families in Ch. 91-149, Laws of Fla. This public records exemption was created in 1991, so there is no public necessity statement explaining why the exemption was created.

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. In addition, the Legislature expanded the exemption to include former justices and judges as well as their families. The public necessity statement for this expansion indicated that justices and judges as well as their family members can be targets of revenge and that risk continues after justices and judges complete their public service.

State Attorneys, Assistant State Attorneys, Statewide Prosecutor and Assistant Statewide Prosecutors

A state attorney is the elected prosecuting officer of each judicial circuit. A state attorney must be a resident of the judicial circuit in which he or she is elected. He or she may also appoint assistant state attorneys.[48]

The statewide prosecutor is appointed by the attorney general and works within the Department of Legal Affairs.[49] The statewide prosecutor may designate one or more assistants.[50] The statewide prosecutor investigates and prosecutes enumerated crimes which have occurred in two or more judicial circuits or involved the internet.[51]

A public records exemption for state attorneys and their assistants as well as the statewide prosecutor and his or her assistants was enacted in Ch. 1994-176, Laws of Fla. The public necessity statement provides that identifying information should be exempt from public disclosure because these personnel and their families "could be harmed by a criminal defendant or a friend or family member of a criminal defendant."[52]

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.

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[47] FLA CONST. art V. Also see Florida Courts, http://www.flcourts.org/florida-courts (last viewed December 7, 2016).
[48] FLA CONST. art. V, s. 17.
[49] Section 16.56(2), F.S.
[50] *Id.*
[51] Section 16.56(1), F.S.
[52] Ch. 94-176, s. 2, Laws of Fla.

Chapter 2013-243, Laws of Fla., expanded the exemption to include the names of the spouses and children of state attorneys, assistant state attorneys, statewide prosecutors, and assistant statewide prosecutors. The public necessity statement provides that the enumerated attorneys prosecute dangerous and violent individuals and permitting access to the names of a prosecutor's family members "provides a means by which a criminal defendant or a friend or family member of such defendant could harm or threaten with harm these spouses and children."[53]

General Magistrates, Special Magistrates, Judges of Compensation Claims, Administrative Law Judges, and Child Support Enforcement Hearing Officers

A court may appoint a general magistrate or a special magistrate to hear cases and perform certain duties in civil court cases. General magistrates must be members of the Florida Bar and must take an oath; special magistrates are not required to be members of the Florida Bar or take an oath.[54] Magistrates are authorized to hold hearings and write reports on their findings. Judges review the reports and enter orders based on the reports.[55]

Child support enforcement hearing officers are appointed by the chief judge of each judicial circuit to hear cases and write reports regarding how much child support a parent should pay. Child support enforcement hearing officers conduct hearings and write recommended child support orders. Judges review the recommended orders and enter them.[56]

Judges of Compensation Claims are appointed by the governor to hear worker's compensation cases. They report to the chief administrative law judge of the Division of Administrative Hearings.[57] The Division of Administrative Hearings is also authorized to hire administrative law judges, who primarily hear regulatory cases.[58]

The Legislature created a public records exemption for these finders-of-fact and their families in Ch. 2008-41, Law of Fla. The public records exemption covers the same types of information as the exemption for judges, but requires the finder-of-fact to provide a written statement that they have made reasonable efforts to protect their information from being publically accessibly. The pubic necessity statement in Ch. 2008-41, s. 2, Laws of Fla. provides that "[r]elease of such identifying and location information might place such officials and their family members in danger of physical and emotional harm from disgruntled criminal defendants or litigants."

[53] Ch. 2013-243, s. 2, Laws of Fla.
[54] Fla. R. Civ. P. 1.490.
[55] Fla. R. Civ. P. 1.490(i), Fla. Fam. L. R. P. 12.490.
[56] Fla. Fam. L. R. P. 12.491.
[57] Sections 440.45 and 120.65. F.S.
[58] Section 120.65(4). F.S.

Human Resource, Labor Relations, or Employee Relations Directors, Assistant Directors, Managers, or Assistant Managers of any Local Government Agency or Water Management District

Human resources managers oversee the recruiting and hiring of staff, and serve as a liaison between management and employees.[59] Labor relations personnel "interpret and administer labor relations contracts regarding issues such as wages and salaries, healthcare, pensions, and union management practices."[60] Similarly, an employee relations "manager" is responsible for managing a range of activities related to employee/labor relations and staffing functions.[61]

The public records exemption for these personnel and their families was created in 2001. The public necessity statement found in Ch. 2001-249, s. 2, Laws of Fla., provides that the exemption is warranted because the enumerated personnel or their family members "could be harmed or threatened with harm by a current or former employee or a friend or family member of a current or former employee." The exemption was narrowed and saved from repeal in 2006.[62]

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.

Code Enforcement Officers

Chapter 162, F.S., governs county or municipal code enforcement. Code enforcement officers are responsible for the administration of a wide range of health, safety, and environmental regulations. The term "code enforcement officer" is defined as "any designated employee or agent of a county or municipality whose duty it is to enforce codes and ordinances enacted by the county or municipality."[63]

A county or municipality may designate certain employees or agents as code enforcement officers.[64] The county or municipality determines the training and qualifications of code enforcement officers.[65] Section 162.21(2), F.S., provides that the following personnel may be designated as code enforcement officers: code inspectors, law enforcement officers, animal control officers, and firesafety inspectors.

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[59] U.S. Department of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, http://www.bls.gov/ooh/management/human-resources-managers.htm (last viewed December 8, 2016).
[60] U.S. Department of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, http://www.bls.gov/ooh/business-and-financial/labor-relations-specialists.htm (last viewed December 8, 2016).
[61] Society for Human Resource Management https://www.shrm.org/resourcesandtools/tools-and-samples/job-descriptions/pages/cms_002277.aspx (last viewed December 8, 2016).
[62] Ch. 2006-211, Laws of Fla. The exemption was narrowed by removing the exemption of social security numbers and the photographs of spouses and children.
[63] Section 162.21(1), F.S.
[64] Section 162.21(2), F.S.
[65] *Id*.

The Legislature enacted a public records exemption for county and municipal code inspectors and code enforcement officers in 1994.[66] The public necessity statement contained in Ch. 1994-128, Laws of Fla., noted that "release of this information would jeopardize the safety and welfare of . . . code enforcement officers and their families."

In 2001, this exemption was amended to only include current or former code enforcement officers. The public necessity statement contained in Ch. 2001-249, s. 3, Laws of Fla., provides that the exemption is warranted because "[c]itations issued in response to violations that they encounter often lead to retribution by the offenders" and the release of identifying information "has led to threats, acts of violence, and unwarranted risk to the officers and their families."

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.

Guardians ad Litem and Guardian ad Litem Program Personnel

A guardian ad litem is someone appointed by the court to appear in a civil or criminal proceeding on behalf of a minor child.[67] The Guardian ad Litem Program operates in all 20 judicial circuits.[68] County governments provide office space to support the offices. In some counties, county-funded staff are provided to the Guardian ad Litem Program.[69] In those cases, county staff are supervised by the Guardian ad Litem Program.[70]

The Legislature enacted a public records exemption for guardians ad litem in 2005.[71] The exemption for guardians ad litem includes professional staff, contract attorneys, and support staff who work for the Guardian ad Litem Program.[72] Guardians ad litem must provide a written statement that they made reasonable efforts to protect their information from being publically accessible. The public necessity statement contained in Ch. 2005-213, s. 5, Laws of Fla., provides that the release of identifying information and location information of current and former guardians ad litem and their family members could seriously jeopardize the safety and welfare of these enumerated personnel as "[d]ifferent persons may be disgruntled with the testimony, report, or recommendation made by guardians ad litem."

In 2010, this exemption was amended to include the names and locations of schools and day care facilities attended by the children of current or former guardians ad litem. The public necessity statement contained in Ch. 2010-71, s. 2, Laws of Fla., provides that the exemption is warranted because "the children of guardians ad litem could become a potential target for acts of revenge" and "the safety and welfare of the children . . . could be seriously jeopardized."

[66] Ch. 1994-128, Laws of Fla.
[67] Section 39.820(1), and 39.822, F.S.
[68] Section 39.8296, F.S.
[69] Section 39.8297, F.S.
[70] *Id*.
[71] Ch. 2005-213, Laws of Fla.
[72] Section 39.820(1), F.S.

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.

Department of Juvenile Justice Specified Employees

The Department of Juvenile Justice (DJJ) is charged under s. 985.02, F.S., with developing and coordinating comprehensive services and programs statewide for the prevention, early intervention, control, and rehabilitative treatment of delinquent behavior.

The Legislature enacted a public records exemption for DJJ personnel and their families in 2006.[73] The public necessity statement contained in Ch. 2006-180, s. 3, Laws of Fla., provides that DJJ personnel and their family members "could be harmed or threatened with harm by a juvenile defendant or by a friend or family member of a juvenile defendant" if their information were public.

In 2011, public records exemption was revised to match the job titles of DJJ staff as they were currently used. The exemption was saved from repeal in Ch. 2011-201, Laws of Fla., by reenactment.

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.

Public Defenders, Assistant Public Defenders, Criminal Conflict and Civil Regional Counsel and Assistant Criminal Conflict and Civil Regional Counsel

There is an elected public defender for each judicial circuit in the state. A public defender must be a member in good standing of the Florida Bar, be an elector of the state and must reside within the territorial jurisdiction of the judicial circuit in which he or she serves.[74] The public defender of each judicial circuit is authorized to employ assistant public defenders and other staff.[75]

Criminal conflict and civil regional counsel are appointees of the governor and serve in five regions across the state.[76] He or she must also be a member of the Florida bar and may also hire assistants.

Public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel are appointed by the courts to represent

[73] Ch. 2006-180, Laws of Fla.
[74] Section 27.50, F.S.
[75] Section 27.53, F.S.
[76] Section 27.511, F.S.

defendants in criminal cases.[77] Criminal conflict and civil regional counsel also represent clients in child abuse and termination of parental rights cases.[78]

The Legislature enacted public records exemptions for public defenders, their assistants, and their families, as well as criminal conflict and civil regional counsel, their assistants and their families in 2010.[79] The public necessity statement contained in Ch. 2010-171, s. 2, Laws of Fla., provides that the release of identifying information and location information of the enumerated personnel or their family members "would jeopardize the safety of these attorneys and their families" because "individuals may become disgruntled by the proceedings or the outcome of a criminal or civil case, which could result in these attorneys and their families becoming targets for acts of violence."

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.

In 2014, the names of the spouses and children of current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel were added to the exemption in Ch. 2014-172, Laws of Fla. The public necessity for the expansion of the exemption was because the enumerated personnel come in close contact with people who make seek revenge by harming the personnel's spouses and children.[80]

Department of Business and Professional Regulation Investigators and Inspectors

The Department of Business and Professional Regulation (DBPR) is delegated responsibility for both professional regulation and business regulation. The DBPR's Division of Regulation monitors more than 20 professions and related businesses to ensure that those professions and businesses comply with the rules and standards set by the Legislature, professional boards, and the DBPR. In many instances the inspectors and investigators have the authority to immediately issue a citation to the offending party.[81] The DBPR not only conducts and prosecutes violations of offending agency rules and regulations, but the agency also has a duty to notify the proper prosecuting authority when there is a criminal violation of any statute related to the practice of a profession.[82]

The Legislature enacted an exemption for DBPR investigators and inspectors, as well as their families in 2012.[83] These employees are required to make reasonable efforts to protect their information from being publically accessible. The public necessity statement contained in Ch. 2012-214, s. 2, Laws of Fla., provides that the release of identifying information and location

[77] *See* s. 27.51, F.S., and s. 27.511, F.S.
[78] *See* s. 27.511(6)(a), F.S.
[79] Ch. 2010-171, Laws of Fla.
[80] Ch. 2014-172, s. 2, Laws of Fla.
[81] Section 455.224, F.S.
[82] Section 455.2277, F.S.
[83] Ch. 2012-214, Laws of Fla.

information of enumerated personnel or their family members might place them "in danger of physical or emotional harm from disgruntled individuals . . . whose business or professional practices have come under the scrutiny of the Department of Business and Professional Regulation."

County Tax Collectors

The State Constitution requires a tax collector to be elected by the electors of a county, for a term of four years, unless otherwise provided by county charter or special law.[84] The tax collector has the authority and obligation to collect all taxes as shown on the tax roll by the date of delinquency or to collect delinquent taxes, interest, and costs, by sale of tax certificates on real property and by seizure and sale of personal property.

The Legislature enacted an exemption for county tax collectors, as well as their families in in 2012.[85] These employees are required to make reasonable efforts to protect their information from being publically accessible. The public necessity statement contained in Ch. 2012-214, s. 2, Laws of Fla., provides that the release of identifying information and location information of county tax collectors or their family members might place them "in danger of physical or emotional harm from disgruntled individuals who have contentious reactions to revenue collection or . . . child support enforcement actions."

OGSR Survey Findings and Recommendations

During the 2016-2017 Interim, the Governmental Oversight and Accountability Committee professional staff conducted a review of the public records exemptions pursuant to s. 119.15, F.S., and sent surveys to agencies, water management districts, counties, cities and law enforcement agencies affected by the exemptions scheduled to sunset on October 2, 2017. The surveys covered 12 statutory exemptions and approximately 20 professions.

In all, 178 entities responded.[86] All but two of the entities that tracked such information reported that they had received public records requests for personnel information. The majority of the surveyed entities recommended that all of the exemptions be reenacted as they are.[87] Personnel safety was the most common reason cited for reenacting the exemptions.

Several of the entities stated that they had problems applying the exemptions. They suggested that all of the exemptions be made uniform so that it would be easier to redact information.

[84] FLA. CONST. art. VIII, s. 1.
[85] Ch. 2012-214, Laws of Fla.
[86] This number reflects 27 agencies, 75 cities, five water management districts, 24 counties, 20 sheriff's offices, two police departments, the Florida Police Chief's Association, 11 state attorney offices and 12 public defender offices. The survey responses are on file with the Senate Committee on Governmental Oversight and Accountability.
[87] Several entities left blanks in response to the questions of whether any of the exemptions should be permitted to sunset. Some stated that they had no opinion or no recommendation. Some entities, such as small cities or unaffected agencies, reported that they did not employ any of the professions in the survey.

Employing entities gathered large amounts of information about each of their employees, much more than is covered by the existing exemptions. Employers made several recommendations about what other types of information should be exempt. This included:

- all family members who resided with the exempt personnel (such as parents and step-children);
- vehicle information;
- people who share custody of children but are not spouses;
- personal email addresses; and
- professional or recreational licenses and permits.

Based on the results of the surveys, Committee staff recommends that the Legislature reenact the exemptions with some changes.

III. Effect of Proposed Changes:

Social Security Numbers

Currently agency personnel public records exemptions in s. 119.071(4)(d)2., F.S., state that social security numbers of certain personnel and their families are exempt from public disclosure. The bill removes the public records exemptions for social security numbers because there is a general exemption for the social security numbers of all current and former agency personnel in s. 119.071(4)(a), F.S. There is also an exemption for social security numbers in s. 119.071(5)(a)5., F.S., which is a general public records exemption for everyone. Sections 119.071(4)(a), F.S., and 119.071(5)(a)5., F.S., make social security numbers confidential and exempt from Ch. 119, F.S., as well as the State Constitution.

By removing social security numbers from the personnel exemptions in s. 119.071(4)(d)2., F.S., the conflict between public records exemptions for social security number is eliminated. In addition, the discretion of the records custodian to release social security numbers will be restricted to those conditions outlined in statute.

The Florida Constitution

It has been the practice of the Legislature to make records exempt from both s. 119.07(1), F.S., and s. 24(a), Article I of the Florida Constitution. An exemption from the Florida Constitution ensures that an exemption applies to a record when it is held by each branch of government. This bill expands exemptions to include the Florida Constitution if they do not currently do so. The bill incorporates the State Constitution into the public records exemptions for the following personnel:

- Law enforcement;
- DCF, DOH, and DOR personnel with certain duties;
- Firefighters; and
- Justices and judges.

Because of the expansions of these public records exemptions, these provisions are subject to the OGSR and will sunset on October 2, 2022, unless reenacted by the Legislature.

Names of Children and Spouses of Personnel

Existing public records exemptions for agency personnel make exempt from public disclosure the names of the personnel's children and spouses with the following exceptions:

- Justices and judges;
- Magistrates, judges of compensation claims, DOAH administrative law judges;
- Child support enforcement hearing officers; and
- Firefighters.

The bill exempts from public disclosure the names of the children and spouses of these personnel. Because the bill expands these public records exemptions, these provisions are subject to the OGSR and will sunset on October 2, 2022, unless reenacted by the Legislature.

Incorporating Information Set to Sunset in 2018 and 2019

The following information is not currently set to sunset in 2017, but is closely related to exemptions which are sunsetting this year.

Personnel whose exemption is sunsetting in 2017	Information NOT sunsetting in 2017	Year information is sunsetting
Law enforcement, DCF, DOH, DOR	Names of spouses and children	2018
State attorneys and assistants	Names of spouses and children	2018
Statewide prosecutors and assistants	Names of spouses and children	2018
Public defenders and assistants	Names of spouses and children	2019
Criminal conflict and civil regional council and assistants	Names of spouses and children	2019

The bill incorporates the names of spouses and children into the current exemptions and deletes the 2018 and 2019 sunset dates. This means that these exemptions would not have a full five-year review under the OGSR. Given that all identification and location information for the spouses and children of the named personnel are already exempt, and because this year's survey incorporated questions about information about the spouses and children, it would to be redundant to redo the review for the names of spouses and children in one or two years. Also the statutes governing the OGSR process provide some discretion on how the Legislature approaches sunset reviews.[88]

Dates of Birth of DBPR Personnel and County Tax Collectors

Most of the public records exemptions for personnel also protect the dates of birth of the personnel and their families. Inspectors and investigators of DBPR, and county tax collectors,

[88] Section 119.15(8), F.S.

however, do not have this protection. This bill expands the public records exemptions for DBPR personnel, county tax collectors, and their families by adding dates of birth to their exemptions.[89] Because the bill expands these public records exemptions, these provisions are subject to an OGSR and will sunset on October 2, 2022, unless reenacted by the Legislature.

The Requirement to Prove Protection of Ones' Information

This bill removes the requirement that personnel must prove that they have made reasonable efforts to protect their information from being accessible to the public from s. 119.071(4)(d)2., F.S.

The public record exemptions that were reviewed pursuant to the OGSR and set to sunset in 2017 were:

- Magistrates, judges of compensation claims, DOAH administrative law judges;
- Child support enforcement hearing officers;
- Guardians ad litem;
- DBPR investigators; and
- County tax collectors.

Because of this expansion of the public records exemptions, these provisions are subject to an OGSR and will sunset on October 2, 2022, unless reenacted by the Legislature.

The bill also removes the reasonable efforts requirement from the public records exemption for the following personnel:

- Department of Health personnel who determine social security benefits and personnel who prosecute regulatory violations;
- Consultants who evaluate impaired healthcare practitioners;
- EMTs and paramedics;
- Inspectors general of an agency; and,
- Internal audit personnel of agencies.

These personnel were not subject to the OGSR in 2017 and the bill does not reset their OGSR to 2022.

This language was removed for two reasons: to ease the administrative burden on personnel and their employers to weigh how much proof was needed to extend the exemption to the personnel, and because most other personnel did not have to prove they kept their information private in order to be eligible for the exemption. Agencies noted that the differences in each exemption made them difficult to implement.

[89] The public records exemptions for DBPR investigators and tax collectors passed in the same bill, HB 1089, which became Ch. 2012-214, Laws of Fla. Dates of birth were missing from both of these exemptions. During the same session, Ch. 2012-149, Laws of Fla., added a public records exemption for dates of birth to all of the other personnel public records exemptions.

Public Necessity Statement

Public necessity statements for public records exemptions are required by the State Constitution. This would apply to an expansion of an existing public records exemption. This bill includes public necessity statements for each of the expansions in this bill.

The public necessity statements provide two basic reasons for the public necessity of these exemptions. First, the expansions were necessary for the safety of the personnel and their families. The public necessity statements also reflect and supplement the public necessity statements that currently exist in the Laws of Florida. Second, the expansions were necessary to increase harmonization between the exemptions and thereby increase accuracy and efficiency when redactions are required.

The bill removes the October 2, 2017 sunset date for specified provisions.

This bill takes effect on October 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

This bill requires a two-thirds majority vote in each chamber in order to pass, pursuant to Article I, section 24(c) of the Florida Constitution because it expands public records exemptions.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate. Some government contractors will have to adjust their public records redactions procedures to accommodate the changes proposed in this bill. Companies that purchase public records for datamining could be adversely affected by having access to less information.

C. Government Sector Impact:

Indeterminate. Governmental entities will have to adjust their public records redactions procedures to accommodate the changes proposed in this bill. Presumably, creating greater uniformity between the exemptions will reduce costs associated with redacting exempt information.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The exemption for guardians' ad litem states guardians ad litem are defined by s. 39.820, F.S. The definition of guardian ad litem in s. 39.820(1), F.S., provides:

> "Guardian ad litem" as referred to in any civil or criminal proceeding includes the following: a certified guardian ad litem program, a duly certified volunteer, *a staff attorney, contract attorney,* or certified pro bono attorney *working on behalf of a guardian ad litem or the program*; *staff members of a program office*; a court-appointed attorney; or a responsible adult who is appointed by the court to represent the best interests of a child in a proceeding as provided for by law, including, but not limited to, this chapter, who is a party to any judicial proceeding as a representative of the child, and who serves until discharged by the court. (emphasis added)

Current law exempts the place of employment of current and former staff attorneys, contract attorneys, court appointed attorneys, pro bono attorneys as well staff members of the Guardian Ad Litem Program office. This is unusual because the place of employment of governmental personnel is usually public record. It is unclear why the place of employment of staff attorneys and program staff are exempt from public disclosure.

VIII. Statutes Affected:

This bill substantially amends section 119.071(4) 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 on April 25, 2017:

- Subjects seven expanded public records provisions to new OGSR sunset dates;
- Remove the requirement that certain agency personnel make protect their personal identifying information from becoming public if they want to have the exemption apply to them; and,
- Conforms the public necessity statement to the language in the exemptions.

B. Amendments:

None.

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

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/25/2017	.	
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The Committee on Rules (Galvano) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

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 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 names, 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) 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.

~~(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.~~

b.~~(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 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-subparagraph ~~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.

c.~~b.~~ The home addresses, telephone numbers, dates of birth, and photographs of 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.

d.~~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 names, 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 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.

e.~~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 names, 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, or assistant 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.~~

f.~~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 names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers; and the names and locations of schools and day care facilities attended by the children of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers 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 ~~if the general magistrate, special magistrate, judge of compensation claims, administrative law judge of the Division of~~



~~Administrative Hearings, or child support hearing officer provides a written statement that the general magistrate, special magistrate, judge of compensation claims, administrative law judge of the Division of Administrative Hearings, or child support hearing officer has made reasonable efforts to protect such information from being accessible through other means available to the public~~.

g.~~f.~~ The home addresses, telephone numbers, dates of birth, and photographs of 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 whose duties include hiring and firing employees, labor contract negotiation, administration, or other personnel-related duties; 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.

h.~~g.~~ The home addresses, telephone numbers, dates of birth, and photographs of current or former code enforcement officers; 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.

i.~~h.~~ The home addresses, telephone numbers, places of employment, dates of birth, and photographs of current or former



guardians ad litem, as defined in s. 39.820; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such persons; and the names and locations of schools and day care facilities attended by the children of such persons 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~~, if the guardian ad litem provides a written statement that the guardian ad litem has made reasonable efforts to protect such information from being accessible through other means available to the public~~.

j.~~i.~~ The home addresses, telephone numbers, dates of birth, and photographs of current or former juvenile probation officers, juvenile probation supervisors, detention superintendents, assistant detention superintendents, juvenile justice detention officers I and II, juvenile justice detention officer supervisors, juvenile justice residential officers, juvenile justice residential officer supervisors I and II, juvenile justice counselors, juvenile justice counselor supervisors, human services counselor administrators, senior human services counselor administrators, rehabilitation 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.

k.~~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 names, 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.~~

l.~~k.~~ The home addresses, telephone numbers, dates of birth, and photographs of current or former investigators or inspectors of the Department of Business and Professional Regulation; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such current or former investigators 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, 2022 ~~2017~~, unless reviewed and saved from repeal through reenactment by the Legislature.

m.~~1.~~ The home addresses, ~~and~~ telephone numbers, and dates of birth of county tax collectors; the names, home addresses, telephone numbers, dates of birth, 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, 2022 ~~2017~~, unless reviewed and saved from repeal through reenactment by the Legislature.

n.~~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 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 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.

o.~~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 sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

p.~~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.

q.~~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 ~~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



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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)(a) The Legislature finds that it is a public necessity that the following information be made exempt from s. 24(a), Article I of the State Constitution:

1. The home addresses, telephone numbers, dates of birth, and photographs of active or 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, 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;

2. The home addresses, telephone numbers, dates of birth, and photographs of firefighters certified in compliance with 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 firefighters; and the names and locations of schools and day care facilities attended by the children of such firefighters; and

3. 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.

(b) The Legislature finds that it is a public necessity to exempt this information 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 these governmental personnel and their spouses and children. These governmental personnel perform duties that can adversely affect the rights of members of the public. Adversely affected people and their families or friends may place blame on these governmental personnel for



arrests, investigations, or judicial intervention. Governmental personnel may also be threatened or harmed by victims who believe governmental personnel did not adequately perform their duties. Such governmental personnel are subject to threats and violence on and off duty, and these threats persist after such personnel leave work. The threat of danger and revenge extends to the spouses and children of these governmental personnel.

(c) Furthermore, the combination of personal identification and location information can be used as a tool to perpetuate fraud against these governmental personnel and to acquire sensitive personal, financial, medical, and familial information, the release of which could cause great financial harm to these individuals and their families. Identity theft can also harm these governmental personnel and their families' reputations. It is in the public interest to protect fully these governmental employees and their families and to ensure that their identifying and location information is exempt from public disclosure when it is held by an entity in the executive, legislative, or judicial branch of government.

(2)(a) The Legislature finds that it is a public necessity to exempt the names of the children and spouses of the following governmental personnel from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution:

1. Firefighters certified in compliance with s. 633.408, Florida Statutes;

2. Current or former justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges; and

3. General magistrates, special magistrates, judges of



compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers.

(b) Such personnel are often required to interact with members of the public who are in difficult circumstances. These personnel and their families are subject to threats by members of the public who may seek revenge against them. Allowing public access to the names of children and spouses of such personnel will make the children and spouses of these personnel easy to find and expose them to threats or acts of revenge. Threats or acts of revenge against the children and spouses of such personnel could compromise the governmental personnel's ability to perform their duties without fear of retaliation.

(3)(a) The Legislature finds that it is a public necessity to make the following information exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution, regardless of whether such individuals made reasonable efforts to protect such information from being public:

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



care facilities attended by the children of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers.

2. The home addresses, telephone numbers, places of employment, dates of birth, and photographs of current or former guardians ad litem, as defined in s. 39.820, Florida Statutes; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such persons; and the names and locations of schools and day care facilities attended by the children of such persons.

3. The home addresses, telephone numbers, dates of birth, and photographs of current or former investigators or inspectors of the Department of Business and Professional Regulation; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of current or former investigators and inspectors; and the names and locations of schools and day care facilities attended by the children of current or former investigators and inspectors.

4. The home addresses, telephone numbers, and dates of birth of county tax collectors; the names, home addresses, telephone numbers, dates of birth, 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.

5. 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 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.

6. 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.

7. The home addresses, telephone numbers, dates of birth, and photographs of current or former emergency medical technicians or paramedics certified under chapter 401, Florida Statutes; 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.

8. 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.

(b) The Legislature finds that exempting identifying and location information from public disclosure requirements protects such personnel and their spouses and children from danger of physical and emotional harm from disgruntled criminal defendants, litigants, licensees, taxpayers, and other members of the public. Such personnel may be subject to threats or acts of revenge because of the duties they perform. The spouses and children of such personnel are also endangered by people who may seek to intimidate or harm such personnel. In addition, criminals could use identification and location information for identity theft that can cause financial harm to these personnel and their spouses and children. The harm that might result from the release of exempt information outweighs any public benefit that could be derived from disclosure. For these reasons, the exemptions should be applied without requiring such personnel prove that they have not made their information public.

(c) In addition, requiring these personnel prove that they made reasonable efforts to protect their identification and location information is an added burden on these individuals as well as on agencies receiving a public records request. The extent to which these individuals must protect their information from public accessibility is unclear. It is also unclear how



much proof an agency needs in order to grant the exemption. The burden on an agency to verify whether these individuals have protected from public disclosure their identifying and location information adversely impacts the effective and efficient administration of government in establishing who is eligible for an exemption. Relatively few public record exemptions require an individual to prove that he or she made reasonable efforts to protect his or her information from being available to the public. Such inconsistencies among public record exemptions reduce accuracy and efficiency when redacting exempt information when a public records request for agency personnel information is made. It is not in the public interest for the public to receive inaccurately redacted information.

(4)(a) The Legislature finds that it is a public necessity that the dates of birth of the following people be made exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution:

1. Current or former investigators or inspectors of the Department of Business and Professional Regulation and their spouses and children; and

2. County tax collectors and their spouses and children.

(b) Dates of birth can be used as a tool to perpetuate fraud against an individual and to acquire sensitive personal, financial, medical, and familial information, the release of which could cause great financial harm to an individual and his or her family. Identity theft can also be used to harm their reputations and good name.

(5) The Legislature finds that the amendments to s. 119.071(4)(d), Florida Statutes, made by this act are necessary



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to bring greater uniformity among public record exemptions for agency personnel information because exempted information currently varies from exemption to exemption. Inconsistencies between public record exemptions for agency personnel information result in increased inaccuracy and inefficiency when information must be redacted in response to a public record request. Unnecessary complexity increases the likelihood that public record custodians may inaccurately redact information in a record. As a result, the public could receive an improperly redacted record that contains information that is not exempt or have access to exempt information that should have been redacted. It is not in the interest of the public to receive inaccurately redacted information, or to unnecessarily pay fees for staff time associated with redacting extraneous information. In addition, the accidental release of personal identifying and location information can endanger personnel or otherwise negate the purpose of the exemption.

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

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 119.071, F.S., which provides exemptions from public record requirements for certain personal identifying and location information of specified agency personnel, and the



spouses and children thereof; revising the exemptions; removing redundant exemptions for social security numbers; providing an exemption from public record requirements for the names of the spouses and children of certain agency personnel; providing an exemption from public record requirements for the dates of birth for certain agency personnel and their spouses and children; removing the scheduled repeal of certain exemptions; providing for retroactive application; providing for future legislative review and repeal of certain exemptions; providing statements of public necessity; providing an effective date.

By the Committee on Governmental Oversight and Accountability

585-01937-17 20177018__

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 119.071, F.S., which provides exemptions from public records requirements for certain personal identifying and location information of specified agency personnel, and the spouses and children thereof; revising and reorganizing the exemptions; removing redundant exemptions regarding social security numbers; providing an exemption from public records requirements for the names of the spouses and children of certified firefighters, current or former justices and judges, and certain magistrates, judges, and hearing officers; removing the requirement that specified agency personnel make reasonable efforts to protect access to personal identifying and location information in order be subject to an exemption; providing an exemption from public records requirements for the dates of birth for current or former investigators or inspectors for the Department of Business and Professional Regulation and county tax collectors, and the spouses and children thereof; removing the scheduled repeal of certain exemptions; providing for retroactive application; providing statements of public necessity; providing an effective date.

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

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

585-01937-17 20177018__

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 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 names, 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) and s. 24(a), Art. I of the State Constitution.

~~(II) The names of the spouses and children of active or former sworn or civilian law enforcement personnel and the other~~

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~~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.~~

b.~~(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 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-subparagraph ~~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.

c.~~b.~~ The home addresses, telephone numbers, dates of birth, and photographs of 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.

d.~~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 names, 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 from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

e.~~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 names, 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, or assistant 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.~~

f.~~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 names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers; and the names and locations of schools and day care facilities attended by the children of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution ~~if the general magistrate, special magistrate, judge of compensation claims, administrative law judge of the Division of Administrative Hearings, or child support hearing officer provides a written statement that the general magistrate, special magistrate, judge of compensation claims, administrative law judge of the Division of Administrative Hearings, or child support hearing officer has made reasonable efforts to protect such information from being accessible through other means available to the public~~.

g.~~f.~~ The home addresses, telephone numbers, dates of birth,

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and photographs of 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 whose duties include hiring and firing employees, labor contract negotiation, administration, or other personnel-related duties; 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.

h.~~g.~~ The home addresses, telephone numbers, dates of birth, and photographs of current or former code enforcement officers; 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.

i.~~h.~~ The home addresses, telephone numbers, places of employment, dates of birth, and photographs of current or former guardians ad litem, as defined in s. 39.820; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such persons; and the names and locations of schools and day care facilities attended by the children of such persons are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution~~, if the guardian ad litem provides a written statement that the guardian ad litem has made reasonable efforts to protect such information from~~

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~~being accessible through other means available to the public~~.

j.~~i.~~ The home addresses, telephone numbers, dates of birth, and photographs of current or former juvenile probation officers, juvenile probation supervisors, detention superintendents, assistant detention superintendents, juvenile justice detention officers I and II, juvenile justice detention officer supervisors, juvenile justice residential officers, juvenile justice residential officer supervisors I and II, juvenile justice counselors, juvenile justice counselor supervisors, human services counselor administrators, senior human services counselor administrators, rehabilitation 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.

k.~~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 names, 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~~

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~~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.~~

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

m.~~l.~~ The home addresses, ~~and~~ telephone numbers, and dates of birth of county tax collectors; the names, home addresses, telephone numbers, dates of birth, 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~~

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~~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~~.

n.~~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 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 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.

o.~~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 sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

p.~~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.

q.~~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 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)(a) The Legislature finds that it is a public necessity that the following information be exempt from s. 24(a), Article I of the State Constitution:

1. The home addresses, telephone numbers, dates of birth, and photographs of active or 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, 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;

2. The home addresses, telephone numbers, dates of birth, and photographs of firefighters certified in compliance with 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 firefighters; and the names and locations of schools and day care facilities attended by the

children of such firefighters; and

3. 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.

(b) The Legislature finds that it is a public necessity to exempt this information 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 these governmental personnel and their spouses and children. These governmental personnel perform duties that can adversely affect the rights of members of public. Members of the public can face criminal and civil liability resulting in the loss of liberty, child custody, licensure, money, and access to entitlements because of the actions taken by these governmental personnel. Adversely affected people, their families, or their friends may place blame on these governmental personnel for arrests, investigations, or judicial intervention. Governmental personnel may also be threatened or harmed by victims who believe governmental personnel did not adequately perform their duties. Such governmental personnel are subject to threats and violence on and off duty, and these threats persist after they leave their jobs. The threat of danger and revenge extend to the spouses and children of these governmental personnel.

(c) Furthermore, the combination of personal identification

and location information can be used as a tool to perpetuate fraud against these governmental personnel and to acquire sensitive personal, financial, medical, and familial information, the release of which could cause great financial harm to these individuals and their families. Identity theft can also harm these governmental personnel and their families' reputations. It is in the public interest to protect fully these governmental employees and their families and to ensure that their identifying and location information is exempt from public disclosure when it is held by an entity in the executive, legislative, or judicial branch of government.

(2)(a) The Legislature finds that it is a public necessity to exempt the names of the children and spouses of the following governmental personnel from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution:

1. Firefighters certified in compliance with s. 633.408, Florida Statutes;

2. Current or former justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges; and

3. General magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers.

(b) Such personnel are often required to interact with members of the public while they are in difficult circumstances. These personnel and their families are subject to threats by members of the public who may seek revenge against them. Allowing public access to the names of children and spouses will

make the families of these personnel easy to find and expose them to threats or acts of revenge. Threats or acts of revenge against the children and spouses of such personnel could compromise the governmental personnel's ability to perform their duties without fear of retaliation.

(3)(a) The Legislature finds that it is a public necessity to make the following information exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution, regardless of whether such individuals made reasonable efforts to protect such information from being public:

1. 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 names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers; and the names and locations of schools and day care facilities attended by the children of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers;

2. The home addresses, telephone numbers, dates of birth, and photographs of current or former guardians ad litem, as defined in s. 39.820, Florida Statutes; the names, home addresses, telephone numbers, dates of birth, and places of

employment of the spouses and children of such persons; and the names and locations of schools and day care facilities attended by the children of such persons;

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

4. The home addresses, telephone numbers, and dates of birth of county tax collectors; the names, home addresses, telephone numbers, dates of birth, 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.

(b) The Legislature finds that exempting identifying and location information from public disclosure requirements protects governmental personnel, guardians ad litem, and their family members from danger of physical and emotional harm from disgruntled criminal defendants, litigants, licensees, taxpayers, and other members of the public. These individuals may be subject to threats or acts of revenge because of the duties they perform. Their family members are also endangered by people who may seek to intimidate or harm such personnel or guardians ad litem. In addition, criminals could use identification and location information for identity theft that

can cause financial harm to these governmental personnel, guardians ad litem, and their families. The harm that might result from the release of exempt information outweighs any public benefit that could be derived from disclosure. For these reasons, the exemptions should be applied without requiring such governmental personnel or guardians ad litem prove that they have not made their information public.

(c) In addition, requiring these governmental personnel or guardians ad litem prove that they made reasonable efforts to protect their identification and location information is an added burden on these individuals as well as on agencies receiving a public records request. The extent to which these individuals must protect their information from public accessibility is unclear. It is also unclear how much proof an agency needs in order to grant the exemption. The burden on an agency to verify whether these individuals have protected from public disclosure their identifying and location information adversely impacts the effective and efficient administration of government in establishing who is eligible for an exemption. Relatively few public records exemptions require an individual to prove that he or she made reasonable efforts to protect his or her information from being available to the public. Such inconsistencies among public records exemptions reduce accuracy and efficiency when redacting exempt information when a public records request for agency personnel information is made. It is not in the public interest for the public to receive inaccurately redacted information.

(4)(a) The Legislature finds that it is a public necessity that the dates of birth of the following people be exempt from

s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution:

1. Current or former investigators or inspectors of the Department of Business and Professional Regulation and their spouses and children; and

2. County tax collectors and their spouses and children.

(b) Dates of birth can be used as a tool to perpetuate fraud against an individual and to acquire sensitive personal, financial, medical, and familial information, the release of which could cause great financial harm to an individual and his or her family. Identity theft can also be used to harm their reputations and good name.

(5) The Legislature finds that the amendments to s. 119.071(4)(d), Florida Statutes, made by this act are necessary to bring greater uniformity among public records exemptions for agency personnel information because exempted information currently varies from exemption to exemption. Inconsistencies between public records exemptions for agency personnel information result in increased inaccuracy and inefficiency when information must be redacted in response to a public records request. Unnecessary complexity increases the likelihood that public records custodians may inaccurately redact information in a record. As a result, the public could receive information that improperly redacts information that is not exempt or have access to exempt information that should have been redacted. It is not in the interest of the public to receive inaccurately redacted information, or to unnecessarily pay fees for staff time associated with redacting extraneous information. In addition, the accidental release of personal identifying and location

information can endanger personnel or otherwise negate the purpose of the exemption.

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

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	SB 7028
INTRODUCER:	Judiciary Committee
SUBJECT:	OGSR/Injunction for Protection Against Domestic Violence, Repeat Violence, Sexual Violence, and Dating Violence
DATE:	April 24, 2017 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Brown	Cibula		**JU Submitted as Committee Bill**
1.	Kim	Ferrin	GO	**Favorable**
2.	Brown	Phelps	RC	**Favorable**

I. Summary:

SB 7028 is based on an Open Government Sunset Review of public records exemptions by the staff of the Senate Judiciary Committee. The reviewed exemptions generally prohibit the disclosure of contact information for a petitioner who is granted an injunction for protection against domestic violence or repeat, sexual, or dating violence. These exemptions are scheduled for repeal on October 2, 2017.

This information protected from disclosure will be stored in a database that will send an automated notice to the petitioner within 12 hours after the respondent is served with the injunction.

Because the system has not yet been fully developed or activated, the need for the exemptions cannot be fully evaluated at this time consistent with the requirements of the Open Government Sunset Review Act. Accordingly, the bill delays the scheduled repeal of the exemptions by two years so that they may be evaluated after the automated system is in place.

This bill provides an effective date of 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

[1] FLA. CONST., art. I, s. 24(a).

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

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[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.*
[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).

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.

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[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:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

If, 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]

Injunction for Protection

A person may file a petition for an injunction for protection against domestic violence,[24] or repeat, sexual, or dating violence.[25]

Filing a petition for a protective injunction is a civil cause of action.[26]

Process for Injunction for Protection

Filing of the Petition

A person wishing to initiate an injunction for protection against domestic violence must file a sworn petition for the injunction at the clerk's office for the circuit court.[27] Clerks' offices must provide a simplified petition form for the injunction for protection, including instructions for the petitioner to follow.[28] A sample form for a petition for injunction for protection against domestic violence is provided in statute and requires: [29]

- A detailed description of the respondent;
- The residential and employment address of the respondent;
- The relationship between the respondent and the petitioner;
- A detailed description of the violence or threat of violence;
- An indication of prior or pending attempts by the petitioner to obtain an injunction;
- An indication that minor children reside with the petitioner or that the petitioner needs the exclusive use and possession of the dwelling that is shared with the respondent; and
- The address of the petitioner.

[22] FLA. CONST. art. I, s. 24(c).
[23] Section 119.15(7), F.S.
[24] Section 741.30(1), F.S., creates a cause of action for an injunction for protection against domestic violence. Section 741.30(1)(a), F.S., requires a petitioner to either be the victim of domestic violence or reasonably believe he or she is in imminent danger of becoming a victim.
[25] Section 784.046(2), F.S., creates a cause of action for an injunction for protection individually against repeat violence, dating violence, and sexual violence. Section 784.046(2)(a), F.S., requires a petitioner to either be the victim or the parent or guardian of a minor child who is a victim of repeat violence. Section 784.046(2)(b), F.S., requires a petitioner to either have reasonable cause to believe he or she is in imminent danger to another act of dating violence, whether or not he or she has previously been the victim of dating violence, or if a minor, be the parent or guardian of the minor. Section 784.046(2)(c), F.S., requires the petitioner to either be the victim of sexual violence, or a parent or legal guardian of a child victim living at home provided that the petitioner reported the sexual violence to a law enforcement agency and is cooperating in a criminal proceeding against the respondent or that the respondent was sentenced to prison for the sexual violence and the term of imprisonment has, or is about to expire within 90 days after the filing of the petition.
[26] *H.K. by & Through Colton v. Vocelle*, 667 So. 2d 892 (Fla. 4th DCA 1996).
[27] Sections 741.30(1) and 784.046(2), F.S.
[28] Sections 741.30(2)(c)2, and 784.046(3)(a), F.S.
[29] Section 741.30(3)(b), F.S.

The form addresses whether the petitioner seeks an injunction providing a temporary parenting plan, including a temporary time-sharing schedule and temporary support for minor children.[30]

The form for the petition for injunction provides language authorizing a petitioner to provide his or her address to the court in a separate confidential filing, if necessary for safety reasons.[31] The clerk of the court must, to the extent possible, ensure the petitioner's privacy while completing the form for injunction for protection against domestic violence.[32]

A similar form, though more streamlined, is authorized for a petition for injunction for protection against repeat violence, sexual violence, or dating violence.[33] A petitioner may file a separate confidential filing of his or her address, just as for petitions based on domestic violence.[34]

Service of the Petition

The clerk of the court must furnish a copy of the petition for injunction, notice of hearing, and temporary injunction, if any, to the sheriff or law enforcement agency of the county where the respondent resides or can be found.[35] The sheriff or other law enforcement agency must then personally serve the respondent the petition and other documents as soon as possible.[36]

The Court Process

Upon the filing of the petition, the court must hold a hearing as soon as possible.[37] If the court determines that an immediate and present danger of violence exists, the court may grant a temporary injunction. The temporary injunction may be granted in an ex parte hearing, pending a full hearing.[38] A temporary injunction is effective only for a period of up to 15 days, during which time the court generally must hold a full hearing.[39]

Service of the Injunction for Protection

Within 24 hours after the court issues an injunction for protection, the clerk of the court must forward a copy of the injunction to the sheriff to serve the petitioner.[40] Within 24 hours after the

[30] *Id*.
[31] *Id*.
[32] Section 741.30(2)(c)4., F.S.
[33] Section 784.046(4)(b), F.S., requires the petition to include the residential address of the respondent, a description of the violence perpetrated by the respondent, and an affirmation that the petitioner genuinely fears repeat violence by the respondent.
[34] *Id*.
[35] Sections 741.30(8)(a)1., and 784.046(8)(a)1., F.S.
[36] Section 741.30(4), F.S.
[37] Sections 741.30(4) and 784.046(5), F.S.
[38] Sections 741.30(5)(a) and 784.046(6)(a), F.S. A temporary injunction is authorized in instances in which it appears to the court that an immediate and present danger of violence exists. If so, the court, may grant a temporary injunction at an ex parte hearing. Sections 741.30(5)(a) and 784.046(6)(a), F.S.
[39] Sections 741.30(5)(c) and 784.046(5)(c), F.S.
[40] Sections 741.30(8)(c)1., and 784.046(8)(c)1., F.S. The Legislature created both a Domestic and Repeat Violence Injunction Statewide Verification System and a Domestic, Dating, Sexual and Repeat Violence Injunction Statewide System (Systems) within the Florida Department of Law Enforcement (FDLE). The Systems require the FDLE to maintain a statewide communication system to electronically transmit information on protective injunctions to and between criminal justice agencies. Sections 741.30(8)(b), and 784.046(80(b), F.S.

injunction is served on the respondent, the law enforcement officer must forward the written proof of service of process to the sheriff who has jurisdiction over the residence of the petitioner.[41]

Public Records Exemptions and Protections from Disclosure of Contact Information

Section 119.071(2)(j)1., F.S., exempts from disclosure any document that reveals the identity, home or employment telephone number, home or employment address, or personal assets of the victim of a crime. In addition to this exemption, other public records exemptions protect the contact information of a petitioner who files a petition for an injunction for protection.

Separate Confidential Filing of Address with Injunction for Protection

The exemption that protects the contact information of a petitioner seeking an injunction applies if the person, for safety reasons, submits his or her address to the court in a separate confidential filing.[42]

Address Confidentiality Program

The Legislature enacted the Address Confidentiality Program (Program) to protect a victim of domestic violence by keeping his or her address confidential.[43] The program allows

> [a]n adult person, a parent or guardian acting on behalf of a minor, or a guardian acting on behalf of a person adjudicated incapacitated [to] apply to the Attorney General to have an address designated by the Attorney General serve as the person's address or the address of the minor or incapacitated person.[44]

An application must include all of the following:

- A sworn statement by the applicant that the applicant has good reason to believe that the applicant, minor, or incapacitated person is a victim of domestic violence in fear of his or her safety.
- A designation of the Attorney General as agent for purposes of service of process and receipt of mail.
- The mailing address where the applicant can be contacted by the Attorney General and the phone number or numbers where the applicant can be called by the Attorney General.
- A statement that the new address that the applicant requests must not be disclosed as disclosure will increase the risk of domestic violence.
- The signature of the applicant and any person who assisted with the application, including the date of signature.[45]

[41] Sections 741.30(8)(c)2., and 784.046(8)(c)2., F.S.
[42] The language authorizing a petitioner to submit his or her address in a separate confidential filing is contained in the actual petition form provided in sections 741.30(3)(b) and 784.046(4)(b), F.S.
[43] Section 741.403, F.S. Victims of stalking or aggravated stalking are also eligible to receive the benefit of the Address Confidentiality Program (s. 741.4651, F.S.).
[44] Section 741.403(1), F.S.
[45] Section 741.403(1)(a) through (e), F.S.

A public records exemption for the Address Confidentiality Program makes exempt from disclosure addresses, telephone numbers, and social security numbers of program participants.[46] A limited exception authorizes disclosure of the information:

- To a law enforcement agency to assist in executing a valid arrest warrant;
- If directed by a court order, including to a person identified in the order; or
- After the exemption has been cancelled.[47]

The public records exemption under the Program also protects contact information for participants maintained by the supervisor of elections in voter registration and voting records. An exception is provided for disclosure to:

- A law enforcement agency to assist in serving an arrest warrant; or
- A person identified in a court order, if directed by the court order.[48]

The Office of the Attorney General provides training on the availability of the Address Confidentiality Program to local governments and non-profit organizations. The office estimates that it has trained individuals from approximately 100 local entities or organizations.[49]

Automated Process for the Clerk of the Court

In 2011, the Legislature required the Florida Association of Court Clerks and Comptrollers to establish, subject to available funding, an automated process to provide notice to a petitioner that the injunction for protection has been served on the respondent.[50] Once the automated process is established, the petitioner may request an automated notice that that protective injunction has been served on the respondent. The notice will be sent within 12 hours after service and will include the date, time, and location where the officer served the injunction.

In 2012, the Legislature created a public records exemption relating to the automated process to protect the petitioner's contact information listed on the request to receive an automated notice.[51] A petitioner who signs up for the automated notice process may request that his or her contact information be held exempt from public disclosure. The specific information protected from disclosure includes the petitioner's:

- Home or employment telephone number;
- Home or employment address;
- Cell phone number;

[46] Section 741.465(1), F.S.
[47] *Id*.
[48] Section 741.465(2), F.S.
[49] The Office of the Attorney General notes that 1,274 victims of domestic violence, stalking, or aggravated stalking have participated in the Program. Under the Program, participants may use a mailing address established by the office. Mail received at the office for a participant is diverted to the Office of Victim Services, which then forwards the mail to an address of the participant. Once a person qualifies to participate, based on the office finding a reasonable belief that domestic violence, stalking, or aggravated stalking has occurred, the person may receive services for up to 4 years. After that time, the person may reapply for another 4-year eligibility. Phone conference with Rob Johnson and Andrew Fay, Office of the Attorney General (Nov. 28, 2016).
[50] Chapter 2011-187, Laws of Fla., (CS/CS HB 563); Sections 741.30(8)(c)5.a., and 784.046(8)(c)5.a., F.S.
[51] Chapter 2012-154, Laws of Fla., (HB 1193).

- Electronic mail address; or
- Other electronic means of identification.[52]

The public records exemption protects the contact information from disclosure for five years.

In its statement of public necessity justifying the exemption, the Legislature explained that, if made publicly available, the contact information:

> could expose the victims of domestic violence, repeat violence, sexual violence, and dating violence to public humiliation and shame and could inhibit the victim from availing herself or himself of relief provided under state law. Additionally … it could be used by the partner or former partner of the victim of domestic violence, repeat violence, sexual violence, or dating violence to determine the location of the victim, thus placing the victim in jeopardy.[53]

In keeping with the required Open Government Sunset Review Act, the public records exemption will repeal on October 2, 2017, unless the Legislature saves the exemption through reenactment before that time.[54]

Open Government Sunset Review of the Public Records Exemption

The Senate Judiciary Committee professional staff contacted the Clerks of Court regarding the public records exemption in ss. 741.30(8)(c)5.b. and 784.046(8)(c)5.b., F.S. Because the Florida Association of Court Clerks and Comptrollers has not fully developed and implemented the automated notification system, the exemptions cannot be evaluated at this time consistent with the requirements of the Open Government Sunset Review Act.[55] Accordingly, professional staff recommends that the sunset date be extended by two years.

By extending the repeal of the exemptions for two years, the continued need for the exemptions will be reviewed again before October 2, 2019.

III. Effect of Proposed Changes:

The repeal date of the public records exemptions provided in ss. 741.30(8)(c)5.b. and 784.046(8)(c)5.b., F.S., is extended to October 2, 2019. This should give the Clerks of Court and Law Enforcement sufficient time to get necessary processes in place for the automatic notification system to fully function.

The bill takes effect October 1, 2017.

[52] Sections 741.30(8)(c)5.b., and 784.046(8)(c)5.b., F.S.
[53] Chapter 2012-154, Laws of Fla.
[54] Section 119.15(3), F.S.
[55] The Court Clerks and Comptrollers explained that the clerks applied for a federal grant to updated their shared computer systems, in the Spring of 2014. The grand was awarded in the fall of 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require counties or municipalities to spend funds or take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenues in the aggregate, or reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

This bill continues a current exemption but does not expand the scope of an existing public records exemption. Therefore, a simple majority vote of the members present and voting in each house of the Legislature is required for passage.

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:

Current law requires automated notice to be provided to a petitioner who has requested notification within 12 hours after the law enforcement officer has served the injunction upon the respondent.[56] Representatives from the Clerks of the Court and the Sheriffs Association indicate that the 12-hour requirement may be impossible to meet, given that a delay exists between the time a law enforcement officer serves a respondent and delivers a copy of the served petition to the clerk. Moreover, if a law enforcement officer serves an injunction just before the weekend, a clerk may not be able to input the information on the Comprehensive Case Information System

[56] Sections 741.30(8)(c)5.a., and 784.046(8)(c)5.a., F.S., provide, "The automated notice shall be made within 12 hours after the sheriff or other law enforcement officer serves the injunction upon the respondent."

(CCIS) until the following week. These potential causes of delays in providing notifications may be resolved with the activation of the CCIS, particularly if law enforcement agencies are granted access to the system to upload notice that an injunction has been served, which will then cause an automated notice to be sent to the petitioner. If law enforcement agencies are not given access to CCIS, the Legislature may wish to revise the 12-hour requirement after the CCIS is implemented.

VIII. Statutes Affected:

This bill amends the following sections of the Florida Statutes: 741.30 and 784.046.

IX. Additional Information:

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

None.

B. Amendments:

None.

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

By the Committee on Judiciary

590-03017-17 20177028__

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending ss. 741.30 and 784.046, F.S.; extending the repeal dates for exemptions from public records requirements for personal identifying and location information of a petitioner who requests notification of service of an injunction for protection against domestic violence, repeat violence, sexual violence, and dating violence and other court actions related to the injunction held by clerks of the court and law enforcement agencies; providing an effective date.

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

Section 1. Paragraph (c) of subsection (8) of section 741.30, Florida Statutes, is amended to read:

741.30 Domestic violence; injunction; powers and duties of court and clerk; petition; notice and hearing; temporary injunction; issuance of injunction; statewide verification system; enforcement; public records exemption.—

(8)

(c)1. Within 24 hours after the court issues an injunction for protection against domestic violence or changes, continues, extends, or vacates an injunction for protection against domestic violence, the clerk of the court must forward a certified copy of the injunction for service to the sheriff with jurisdiction over the residence of the petitioner. The injunction must be served in accordance with this subsection.

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

590-03017-17 20177028__

2. Within 24 hours after service of process of an injunction for protection against domestic violence upon a respondent, the law enforcement officer must forward the written proof of service of process to the sheriff with jurisdiction over the residence of the petitioner.

3. Within 24 hours after the sheriff receives a certified copy of the injunction for protection against domestic violence, the sheriff must make information relating to the injunction available to other law enforcement agencies by electronically transmitting such information to the department.

4. Within 24 hours after the sheriff or other law enforcement officer has made service upon the respondent and the sheriff has been so notified, the sheriff must make information relating to the service available to other law enforcement agencies by electronically transmitting such information to the department.

5.a. Subject to available funding, the Florida Association of Court Clerks and Comptrollers shall develop an automated process by which a petitioner may request notification of service of the injunction for protection against domestic violence and other court actions related to the injunction for protection. The automated notice shall be made within 12 hours after the sheriff or other law enforcement officer serves the injunction upon the respondent. The notification must include, at a minimum, the date, time, and location where the injunction for protection against domestic violence was served. When a petitioner makes a request for notification, the clerk must apprise the petitioner of her or his right to request in writing that the information specified in sub-subparagraph b. be held

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

exempt from public records requirements for 5 years. The Florida Association of Court Clerks and Comptrollers may apply for any available grants to fund the development of the automated process.

b. Upon implementation of the automated process, information held by clerks and law enforcement agencies in conjunction with the automated process developed under sub-subparagraph a. which reveals the home or employment telephone number, cellular telephone number, home or employment address, electronic mail address, or other electronic means of identification of a petitioner requesting notification of service of an injunction for protection against domestic violence and other court actions related to the injunction for protection is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, upon written request by the petitioner. Such information shall cease to be exempt 5 years after the receipt of the written request. Any state or federal agency that is authorized to have access to such documents by any provision of law shall be granted such access in the furtherance of such agency's statutory duties, notwithstanding this sub-subparagraph. 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, <u>2019</u> ~~2017~~, unless reviewed and saved from repeal through reenactment by the Legislature.

6. Within 24 hours after an injunction for protection against domestic violence is vacated, terminated, or otherwise rendered no longer effective by ruling of the court, the clerk of the court must notify the sheriff receiving original notification of the injunction as provided in subparagraph 2.

That agency shall, within 24 hours after receiving such notification from the clerk of the court, notify the department of such action of the court.

Section 2. Paragraph (c) of subsection (8) of section 784.046, Florida Statutes, is amended to read:

784.046 Action by victim of repeat violence, sexual violence, or dating violence for protective injunction; dating violence investigations, notice to victims, and reporting; pretrial release violations; public records exemption.—

(8)

(c)1. Within 24 hours after the court issues an injunction for protection against repeat violence, sexual violence, or dating violence or changes or vacates an injunction for protection against repeat violence, sexual violence, or dating violence, the clerk of the court must forward a copy of the injunction to the sheriff with jurisdiction over the residence of the petitioner.

2. Within 24 hours after service of process of an injunction for protection against repeat violence, sexual violence, or dating violence upon a respondent, the law enforcement officer must forward the written proof of service of process to the sheriff with jurisdiction over the residence of the petitioner.

3. Within 24 hours after the sheriff receives a certified copy of the injunction for protection against repeat violence, sexual violence, or dating violence, the sheriff must make information relating to the injunction available to other law enforcement agencies by electronically transmitting such information to the department.

4. Within 24 hours after the sheriff or other law enforcement officer has made service upon the respondent and the sheriff has been so notified, the sheriff must make information relating to the service available to other law enforcement agencies by electronically transmitting such information to the department.

5.a. Subject to available funding, the Florida Association of Court Clerks and Comptrollers shall develop an automated process by which a petitioner may request notification of service of the injunction for protection against repeat violence, sexual violence, or dating violence and other court actions related to the injunction for protection. The automated notice shall be made within 12 hours after the sheriff or other law enforcement officer serves the injunction upon the respondent. The notification must include, at a minimum, the date, time, and location where the injunction for protection against repeat violence, sexual violence, or dating violence was served. When a petitioner makes a request for notification, the clerk must apprise the petitioner of her or his right to request in writing that the information specified in sub-subparagraph b. be held exempt from public records requirements for 5 years. The Florida Association of Court Clerks and Comptrollers may apply for any available grants to fund the development of the automated process.

b. Upon implementation of the automated process, information held by clerks and law enforcement agencies in conjunction with the automated process developed under sub-subparagraph a. which reveals the home or employment telephone number, cellular telephone number, home or employment address,

electronic mail address, or other electronic means of identification of a petitioner requesting notification of service of an injunction for protection against repeat violence, sexual violence, or dating violence and other court actions related to the injunction for protection is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, upon written request by the petitioner. Such information shall cease to be exempt 5 years after the receipt of the written request. Any state or federal agency that is authorized to have access to such documents by any provision of law shall be granted such access in the furtherance of such agency's statutory duties, notwithstanding this sub-subparagraph. 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, 2019 ~~2017~~, unless reviewed and saved from repeal through reenactment by the Legislature.

6. Within 24 hours after an injunction for protection against repeat violence, sexual violence, or dating violence is lifted, terminated, or otherwise rendered no longer effective by ruling of the court, the clerk of the court must notify the sheriff or local law enforcement agency receiving original notification of the injunction as provided in subparagraph 2. That agency shall, within 24 hours after receiving such notification from the clerk of the court, notify the department of such action of the court.

Section 3. 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)

25 Apr 17
Meeting Date

7028
Bill Number (if applicable)

Topic OGSR / Domestic Violence

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title Pres & CEO

Address 204 S. Monroe
Street

Phone

Tall FL 32301
City *State* *Zip*

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Fla. Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

CourtSmart Tag Report

Room: EL 110 **Case No.:** **Type:**
Caption: Senate Rules Committee Part A (Roll call) **Judge:**

*** Meeting Started: 4/25/17 2:05:03 PM**
SEE PART B for remainder of recording and Tag Report

2:05:03 PM	Meeting called to order by Chair Benacquisto
2:05:05 PM	Roll call by Administrative Assistant Futch
2:05:33 PM	Quorum present
2:05:36 PM	Comments by Chair Benacquisto

CourtSmart Tag Report

Room: EL 110 **Case No.:** **Type:**
Caption: Senate Rules Committee Part B (Roll call recorded on 4/26/17) **Judge:**

*** Meeting Started: 4/25/17 2:05:03 PM**
SEE PART A for beginning of recording and Tag Report

Started: 4/25/2017 2:05:19 PM
Ends: 4/25/2017 5:00:55 PM Length: 02:55:37

2:05:19 PM	Comments by Chair Benacquisto
2:05:41 PM	CS/CS/SB 492 introduced by Chair Benacquisto
2:05:49 PM	Explanation of CS/CS/SB 492 by Senator Young
2:06:21 PM	Senator Young waives close
2:06:22 PM	Roll call CS/CS/SB 492 by Administrative Assistant Futch
2:06:54 PM	CS/CS/SB 492 is reported favorably
2:07:00 PM	CS/SB 832 introduced by Chair Benacquisto
2:07:13 PM	Explanation of CS/SB 832 by Senator Young
2:07:59 PM	Amendment Barcode No. 868984 introduced by Chair Benacquisto
2:08:37 PM	Explanation of Amendment Barcode No. 868984 by Senator Brandes
2:08:39 PM	Question by Senator Lee
2:08:54 PM	Response by Senator Brandes
2:09:06 PM	Carol Bracy on behalf of Amazon waives in support
2:09:10 PM	Justin Sayfie on behalf of Google waives in support
2:09:16 PM	Without objection, Amendment Barcode No. 868984 is adopted
2:09:28 PM	Question by Vice-Chair Thurston
2:09:58 PM	Comment by Chair Benacquisto
2:10:06 PM	Response by Senator Brandes
2:10:24 PM	David Daniel on behalf of the UAS Association of Florida waives in support
2:10:32 PM	Andy Gonzalez on behalf of Florida Realtors waives in support
2:10:35 PM	Todd Sumner on behalf of UAVSIC waives in support
2:10:41 PM	Brewster Bevis on behalf of Associated Industries of Florida waives in support
2:10:44 PM	Barney Bishop of the Florida Smart Justice Alliance waives in support
2:10:48 PM	Lance Pierce of the Florida Farm Bureau waives in support
2:10:56 PM	Senator Young waives close
2:10:59 PM	Roll call on CS/CS/SB 832 by Administrative Assistant Futch
2:11:12 PM	CS/CS/382 is reported favorably
2:11:25 PM	CS/SB 1348 introduced by Chair Benacquisto
2:11:32 PM	Explanation of CS/SB 1348 by Senator Young
2:12:01 PM	Melanie Bostick on behalf of the Florida Institute of CPAs waives in support
2:12:11 PM	Roll call on CS/SB 1348 by Administrative Assistant Futch
2:12:34 PM	CS/SB 1348 is reported favorably
2:12:39 PM	SB 1238 introduced by Chair Benacquisto
2:12:48 PM	Explanation of SB 1238 by Senator Bean
2:13:47 PM	Question by Senator Latvala
2:14:19 PM	Response by Senator Bean
2:14:26 PM	Discussion between Senators Latvala and Senator Bean
2:21:49 PM	Amendment Barcode No. 265888 introduced by Chair Benacquisto
2:21:53 PM	Explanation of Amendment Barcode No. 265888 by Senator Latvala
2:22:23 PM	Senator Latvala withdraws Amendment Barcode No. 265888
2:22:28 PM	Amendment Barcode No. 400188 introduced by Chair Benacquisto
2:22:36 PM	Substitute Amendment Barcode No. 581278 introduced by Chair Benacquisto
2:22:46 PM	Explanation of Substitute Amendment Barcode No. 581278 by Senator Latvala
2:23:23 PM	Patti Shea waives in support
2:23:28 PM	Zayne Smith on behalf of the AARP is in support
2:23:32 PM	Ken Hays is in support
2:23:36 PM	David Cullen on behalf of Sierra Club Florida is in support

2:23:43 PM Susan Colickman on behalf of the Southern Alliance for Clean Energy is in support
2:23:48 PM Gerrit VanLent on behalf of the ReThink Energry Action Fund is in support
2:23:51 PM Elizabeth Bevington on behalf of the ReThink Energy Florida and DWCF is in support
2:23:57 PM Jennifer Wilson on behalf of the Conservancy of South West Florida waives in support
2:24:01 PM Hunter Matthews on behalf of ReThink Energy Florida waives in support
2:24:05 PM Cullen White waives in support
2:24:09 PM Brian Lee on behalf of Food and Water Watch is in support
2:24:13 PM Chair Benacquisto noted a duplicate appearance cards for Zayne Smith, Patti Shea and Ken Hays
2:24:26 PM Without objection, Substitute Amendment Barcode No. 581278 is adopted
2:24:36 PM Barcode Amendment No. 246872 introduced by Chair Benacquisto
2:24:39 PM Explanation of Amendment Barcode No. 246872 by Senator Latvala
2:25:01 PM Senator Latvala withdraws Amendment Barcode No. 246872
2:25:08 PM Amendment Barcode No. 208122 introduced by Chair Benacquisto
2:25:10 PM Substitute Amendment Barcode No. 827306 introduced by Chair Benacquisto
2:25:20 PM Explanation of Substitute Amendment Barcode No. 827306 by Senator Latvala
2:25:52 PM Question by Senator Lee
2:26:39 PM Response by Senator Bean
2:26:54 PM Kim Ross on behalf of ReThink Energy Florida waives in support
2:26:58 PM Patti Shae waives in support
2:27:01 PM Susan Glickman on behalf of the Southern Alliance for Clean Energy waives in support
2:27:04 PM Hunter Matthews on behalf of ReThink Energy Florida waives in support
2:27:09 PM Ken Hays waives in support
2:27:12 PM David Cullen on behalf of the Sierra Club Florida waives in support
2:27:16 PM Gerrit VanLent on behalf of the ReThink Energy Action Fund waives in support
2:27:21 PM Elizabeth Bevington on behalf of ReThink Energy Florida waives in support
2:27:23 PM Brian Lee of the Food and Water Watch waives in support
2:27:24 PM Cullen White is in support
2:27:27 PM Zane Smith in support
2:27:34 PM Without objection, Substitute Amendment Barcode No. 827306 is adopted
2:27:44 PM Amendment Barcode No. 383720 introduced by Chair Benacquisto
2:27:47 PM Substitute Amendment Barcode No. 789608 introduced by Chair Benacquisto
2:27:49 PM Explanation of Substitute Amendment Barcode No. 789608 by Senator Latvala
2:29:45 PM Cullen White waives in support
2:29:48 PM Gerrit VanLent on behalf of the ReThink Energy Action Fund is in support
2:29:51 PM David Cullen on behalf of the Sierra Club Florida is in support
2:29:55 PM Patti Shea is in support
2:29:57 PM Zayne Smith on behalf of AARP is in support
2:29:59 PM Ken Hays is in support
2:30:00 PM Elizabeth Bevington of ReThink Energy Florida and DWCF is in support
2:30:01 PM Brian Lee on behalf of the Food and Water Watch is in support
2:30:04 PM Hunter Matthews of ReThink Energy Florida waives in support
2:30:11 PM Without objection, Substitute Amendment No. 789608 is adopted
2:30:26 PM Amendment Barcode No. 461616 introduced by Chair Benacquisto
2:30:32 PM Explanation of Amendment Barcode No. 461616 by Senator Latvala
2:30:49 PM Amendment Barcode No. 461616 is withdrawn by Senator Latvala
2:31:05 PM Question by Senator Lee
2:32:50 PM Response by Senator Bean
2:33:56 PM Comments by Chair Benacquisto
2:33:58 PM Brenda Lee Lennick on behalf of Mother Earth Rethink waives in opposition
2:34:03 PM Doug Miller on behalf of ReThink Energy is in opposition
2:34:07 PM Elizabeth Bevington of ReThink Energy FL and DWCF waives in opposition
2:34:15 PM Gerritt VanLent on behalf of ReThink Energy Action is in opposition
2:34:27 PM Gerritt VanLent of ReThink Energy Action speaks on behalf of the group in opposition
2:35:24 PM Kim Ross on behalf of ReThink Energy Florida is in opposition
2:35:30 PM Hunter Matthews on behalf of ReThink Energy FL is in opposition
2:35:36 PM Kim Ross of ReThink Energy Florida speaks in opposition
2:37:12 PM Susan Glickman on behalf of the Southern Alliance for Clean Energy speaks in opposition
2:38:19 PM John Moyle on behalf of the Florida Industrial Power Users Group speaks in opposition
2:40:27 PM Cullen White is in opposition
2:40:29 PM Kelly Quintero of the League of Women Voters of Florida waives in opposition
2:40:34 PM Cynthia S. Ebben on behalf of the Democratic Women's Club of Florida speaks in opposition
2:42:16 PM Ken Hays is in opposition

2:42:18 PM Lance Brown on behalf of the Partnership for Affordable Clean Energy (PACE) speaks in support
2:42:54 PM Melissa Ramba on behalf of the Florida Retail Federation is in opposition
2:43:02 PM Patti Shea is in opposition
2:43:09 PM Melissa Ramba of the Florida Retail Federation speaks
2:43:42 PM David Cullen on behalf of the Sierra Club Florida is in opposition
2:43:46 PM Sharon Fairbanks waives in opposition
2:43:51 PM David Cullen of the Sierra Club Florida speaks
2:44:57 PM Sharon Fairbanks speaks
2:45:00 PM Brian Lee on behalf of the Food and Water Watch is in opposition
2:45:06 PM Leslie Campbell is in opposition
2:45:17 PM Brian Lee of the Food and Water Watch speaks
2:46:13 PM Sam Forrest of FPL speaks in support
2:48:26 PM Zayne Smith of the AARP speaks in opposition
2:49:07 PM Comments by Senator Lee
2:52:46 PM Comments by Vice-Chair Thurston
2:53:19 PM Comments by Senator Brandes
2:53:28 PM Senator Bean closes on SB 1238
2:55:02 PM Roll call on CS/SB 1238 by Administrative Assistant Futch
2:55:40 PM CS/SB 1238 is reported favorably
2:55:42 PM Introduction of CS/SR 1440 by Chair Benacquisto
2:55:51 PM Explanation of CS/SR 1440 by Senator Rouson
2:56:32 PM Nancy Daniels on behalf of the Florida Public Defender Association, Inc. waives in support
2:56:43 PM Senator Rouson waives close
2:56:46 PM Roll call on CS/SR 1440 by Administrative Assistant Futch
2:57:11 PM CS/SR 1440 is reported favorably
2:57:16 PM CS/SB 1682 introduced by Chair Benacquisto
2:57:25 PM Explanation of CS/SB 1682 by Senator Garcia
2:58:54 PM Amendment Barcode No. 421264 introduced by Chair Benacquisto
2:59:00 PM Senator Garcia clarified his explanation included an explanation of Amendment Barcode No. 421264
2:59:02 PM Amendment to Amendment Barcode No. 902636 introduced by Chair Benacquisto
2:59:11 PM Explanation of Amendment to Amendment Barcode No. 902636 by Senator Garcia
2:59:42 PM Question by Senator Lee
3:00:01 PM Melanie Bostick on behalf of the Florida Institute of CPAs waives in support
3:00:03 PM Without objection, Amendment to Amendment Barcode No. 902636 is adopted
3:00:08 PM Peter Dunbar waives in support
3:00:18 PM Richard Pinsky on behalf of Cyber Citizens waives in support
3:00:23 PM Without objection, Amendment Barcode No. 421461 is adopted
3:00:31 PM Jess McCarty, Assistant County Attorney, on behalf of Miami-Dade County waives in support
3:00:40 PM Senator Garcia waives close
3:00:45 PM Roll call on CS/CS/SB 1682 by Administrative Assistant Cyndi Futch
3:01:10 PM CS/CS/SB 1682 is reported favorably
3:01:13 PM CS/SB 1678 introduced by Chair Benacquisto
3:01:20 PM Explanation of CS/SB 1678 by Senator Garcia
3:02:03 PM David Leibowitz on behalf of the Braman Management Association waives in support
3:02:09 PM Brewster Bevis on behalf of the Associated Industries of Florida waives in opposition
3:02:13 PM Gary Hunter on behalf of the Alliance of Automobile Manufacturers waives in opposition
3:02:27 PM Comments by Senator Brandes
3:02:48 PM Senator Garcia closes on CS/SB 1678
3:02:57 PM Roll call on CS/SB 1678 by Administrative Assistant Futch
3:03:20 PM CS/SB 1678 is reported favorably
3:03:25 PM SB 7020 introduced by Chair Benacquisto
3:03:28 PM Explanation of SB 7020 by Senator Garcia
3:03:46 PM Amendment Barcode No. 847080 introduced by Chair Benacquisto
3:03:48 PM Senator Lee agrees to offer up Amendment Barcode No. 847080 in Senator Latvala's absence
3:04:03 PM Senator Garcia explains Amendment Barcode No. 847080
3:04:34 PM Chris Nolan on behalf of the Florida Chapter of the American College of Surgeons waives in support
3:04:42 PM Mary Thomas on behalf of the Florida Medical Association waives in support
3:04:47 PM Without objection, Amendment Barcode No. 847080 is adopted
3:04:54 PM Jon Conley, Director of Legislative Affairs, on behalf of the Department of Elder Affairs waives in support
3:05:01 PM Senator Garcia waives close
3:05:05 PM Roll call on CS/SB 7020 by Administrative Assistant Futch
3:05:24 PM CS/SB 7020 is reported favorably

3:05:40 PM	SB 1408 introduced by Senator Broxson
3:05:43 PM	Explanation of SB 1408 by Senator Broxson
3:06:02 PM	Jon Conley, Director of Legislative Affairs, on behalf of the Department of Elder Affairs waives in support
3:06:19 PM	Senator Broxson waives close
3:06:25 PM	Roll call on SB 1408 by Administrative Assistant Futch
3:06:42 PM	SB 1408 is reported favorably
3:06:48 PM	CS/CS/SB 200 introduced by Chair Benacquisto
3:06:59 PM	Explanation of CS/CS/SB 200 by Senator Passidomo
3:07:30 PM	Amendment Barcode No. 596944 introduced by Chair Benacquisto
3:07:35 PM	Explanation of Amendment Barcode No. 596944 by Senator Passidomo
3:08:24 PM	Andrea Reid on behalf of the Florida Bar Family Law Section speaks in opposition
3:10:00 PM	Question by Vice-Chair Thurston
3:10:20 PM	Response by Ms. Reid
3:10:46 PM	Victoria Zepp on behalf of the Florida Coalition for Children speaks in support of Amendment Barcode No. 596944 and CS/CS/SB 200
3:12:20 PM	Without objection, Amendment Barcode No. 596944 is adopted
3:12:29 PM	Question by Senator Brandes
3:12:57 PM	Response by Senator Passidomo
3:13:01 PM	Question by Senator Flores
3:14:16 PM	Response by Senator Passidomo
3:14:38 PM	Follow-up question from Senator Flores
3:14:59 PM	Response by Senator Passidomo
3:15:28 PM	Additional question from Senator Flores
3:16:11 PM	Response from Senator Passidomo
3:16:18 PM	Discussion between Senators Flores and Passidomo
3:17:25 PM	(Vice Chair Thurston takes the chair)
3:17:33 PM	Megan Rose on behalf of Flourish Now speaks in support
3:20:09 PM	Alan Abramowitz on behalf of the Guardian Ad Litem Program waives in support
3:20:13 PM	Andrew Brown on behalf of Flourish Now and the Foundation for Government Accountability waives in support
3:20:20 PM	Barney Bishop is called by Chair Thurston, but is not present
3:20:35 PM	Comments by Senator Flores
3:22:06 PM	Comments by Senator Bradley
3:22:42 PM	Senator Passidomo closes on CS/CS/CS/SB 200
3:23:13 PM	Roll call on CS/CS/CS/SB 200 by Administrative Assistant Futch
3:23:37 PM	CS/CS/CS/SB 200 is reported favorably
3:23:48 PM	(Chair is returned to Senator Benacquisto)
3:23:49 PM	CS/CS/SB 206 introduced by Chair Benacquisto
3:23:55 PM	Explanation of CS/CS/SB 206 by Senator Passidomo
3:24:27 PM	Amendment Barcode No. 852238 introduced by Chair Benacquisto
3:24:37 PM	Explanation of Amendment Barcode No. 852238 by Senator Passidomo
3:25:21 PM	Greg Black on behalf of Attorneys' Title Fund Services waives in support
3:25:25 PM	Without objection, Amendment Barcode No. 852238 is adopted
3:25:33 PM	Amendment Barcode No. 733050 introduced by Chair Benacquisto
3:25:37 PM	Explanation of Amendment Barcode No. 733050 by Senator Passidomo
3:26:10 PM	Without objection, Amendment Barcode No. 733050 is adopted
3:26:23 PM	Anthony DiMarco on behalf of the Florida Bankers Association waives in support
3:26:27 PM	Zayne Smith on behalf of AARP speaks in support
3:26:56 PM	Michael McQuone on behalf of the Florida Conference of Catholic Bishops speaks for information
3:27:56 PM	Michael Delgado on behalf of Willing.com waives in support
3:28:04 PM	Shannon Miller on behalf of the Elder Law Section of the Florida Bar and the Academy of Florida Elder Law Attorneys speaks in opposition
3:31:05 PM	Sarah Butters on behalf of the Real Property Probate and Trust Law Section of the Florida Bar speaks in opposition
3:32:51 PM	Comments by Vice Chair Thurston
3:33:12 PM	Senator Passidomo waives close
3:33:16 PM	Roll call on CS/CS/CS/SB 206 by Administrative Assistant Futch
3:33:34 PM	CS/CS/CS/SB 206 is reported favorably
3:33:39 PM	CS/CS/SB 588 introduced by Chair Benacquisto
3:33:43 PM	Explanation of CS/CS/SB 588 by Senator Passidomo
3:34:05 PM	Amendment Barcode No. 452464 is introduced by Chair Benacquisto
3:34:08 PM	Explanation of Amendment Barcode No. 452464 by Senator Passidomo

3:34:18 PM Without objection, Amendment Barcode No. 452464 is adopted
3:34:29 PM Barney Bishop on behalf of the Florida Smart Justice Alliance waives in support
3:34:34 PM Lisa Hurley on behalf of the Florida Association of Counties waives in support
3:34:39 PM Jill Gran on behalf of the Florida Behavioral Health Association waives in support
3:34:45 PM Senator Passidomo waives close
3:34:52 PM Roll call on CS/CS/CS/SB 588 by Administrative Assistant Futch
3:35:09 PM CS/CS/CS/SB 588 is reported favorably
3:35:14 PM SB 1622 introduced by Chair Benacquisto
3:35:16 PM Explanation of SB 1622 by Senator Passidomo
3:35:40 PM Question by Senator Brandes
3:35:58 PM Response by Senator Passidomo
3:36:11 PM Comments by Senator Brandes
3:37:06 PM Comments by Chair Benacquisto
3:37:15 PM Senator Passidomo waives close
3:37:18 PM Roll call on SB 1622 by Administrative Assistant Futch
3:37:41 PM SB 1622 is reported favorably
3:37:47 PM CS/SB 328 introduced by Chair Benacquisto
3:37:52 PM Explanation of CS/SB 328 by Senator Grimsley
3:38:27 PM Sandra Morthem on behalf of the Florida Association of Postsecondary Schools and Colleges waives in support
3:38:35 PM Martha DeCasiro on behalf of the Florida Hospital Association waives in support
3:38:40 PM Alisa LaPolt on behalf of the Florida Nurses Association waives in support
3:38:49 PM Senator Grimsley waives close
3:38:52 PM Roll call on CS/SB 328 by Administrative Assistant Futch
3:39:16 PM CS/SB 328 is reported favorably
3:39:20 PM CS/CS/SB 474 introduced by Chair Benacquisto
3:39:23 PM Explanation of CS/CS/SB 474 by Senator Grimsley
3:40:05 PM Paul Ledford on behalf of the Florida Hospice and Palliative Care Association waives in support
3:40:12 PM Michael McQuone on behalf of the Florida Conference of Catholic Bishops waives in support
3:40:16 PM Senator Grimsley waives close
3:40:27 PM Roll call on CS/CS/SB 474 by Administrative Assistant Futch
3:40:52 PM CS/CS/SB 474 is reported favorably
3:40:55 PM CS/SB 198 introduced by Chair Benacquisto
3:41:03 PM Explanation of CS/SB 198 by Senator Stewart
3:41:34 PM Late filed Amendment Barcode No. 904886 introduced by Chair Benacquisto and is taken up without objection
3:41:44 PM Explanation of Amendment Barcode No. 904886 by Senator Stewart
3:42:01 PM Without objection, Amendment Barcode No. 904886 is adopted
3:42:08 PM Kelly Quintero on behalf of the League of Women Voters of Florida waives in support
3:42:16 PM Senator Stewart waives close
3:42:19 PM Roll call on CS/CS/SB 198 by Administrative Assistant Futch
3:42:41 PM CS/CS/SB 198 is reported favorably
3:42:50 PM CS/SB 1084 introduced by Chair Benacquisto
3:42:57 PM Explanation of CS/SB 1084 by Senator Stargel
3:43:28 PM Senator Stargel waives close
3:43:29 PM Roll call on CS/SB 1084 by Administrative Assistant Futch
3:43:52 PM CS/SB 1084 is reported favorably
3:44:00 PM SB 762 introduced by Chair Benacquisto
3:44:08 PM Explanation of SB 762 by Senator Baxley
3:44:52 PM Senator Baxley waives close
3:44:54 PM Roll call on SB 762 by Administrative Assistant Futch
3:45:16 PM SB 762 is reported favorably
3:45:18 PM CS/CS/SB 830 introduced by Chair Benacquisto
3:45:23 PM Explanation of CS/CS/SB 830 by Senator Baxley
3:45:42 PM Question by Senator Lee
3:45:45 PM Response by Senator Baxley
3:46:27 PM Anthony DiMarco on behalf of the Florida Bankers Association waives in support
3:46:35 PM Senator Baxley waives close
3:46:38 PM Roll call on CS/CS/SB 830 by Administrative Assistant Futch
3:46:58 PM CS/CS/SB 830 is reported favorably
3:47:06 PM SB 914 introduced by Chair Benacquisto
3:47:09 PM Explanation of SB 914 by Senator Baxley

3:47:46 PM Question by Senator Bradley
3:48:09 PM Response by Senator Baxley
3:48:54 PM David Cruz on behalf of the Florida League of Cities waives in support
3:49:02 PM Senator Baxley waives close
3:49:06 PM Roll call on SB 914 by Administrative Assistant Futch
3:49:28 PM SB 914 is reported favorably
3:49:36 PM SB 7018 introduced by Chair Benacquisto
3:49:43 PM Explanation of SB 7018 by Senator Baxley
3:50:12 PM Amendment Barcode No. 897282 introduced by Chair Benacquisto
3:50:32 PM Senator Galvano yields explanation of Amendment Barcode No. 897282 to Senator Baxley
3:50:36 PM Explanation of Amendment Barcode No. 897282 by Senator Baxley
3:51:16 PM Without objection, Amendment Barcode No. 897282 is adopted
3:51:30 PM Senator Baxley waives close
3:51:39 PM Roll call on CS/SB 7018 by Administrative Assistant Futch
3:51:59 PM CS/SB 7018 is reported favorably
3:52:21 PM CS/CS/SB 466 introduced by Chair Benacquisto
3:52:24 PM Explanation of CS/CS/SB 466 by Senator Hutson
3:52:56 PM Amendment Barcode No. 975552 introduced by Chair Benacquisto
3:53:03 PM Substitute Amendment Barcode No. 471244 introduced by Chair Benacquisto
3:53:11 PM Explanation of Substitute Amendment Barcode No. 471244 by Senator Hutson
3:53:53 PM Question by Senator Latvala
3:54:15 PM Response by Senator Hutson
3:54:34 PM Without objection, Substitute Amendment Barcode No. 471244 is adopted
3:54:42 PM Ron Book on behalf of AutoNation waives in support
3:54:49 PM Senator Hutson waives close
3:54:53 PM Roll call on CS/CS/CS/SB 466 by Administrative Assistant Futch
3:55:13 PM CS/CS/CS/SB 466 is reported favorably
3:55:18 PM CS/SB 726 introduced by Chair Benacquisto
3:55:25 PM Explanation of CS/SB 726 by Senator Powell
3:55:58 PM Late filed Amendment Barcode No. 844694 introduced by Chair Benacquisto and is taken up without objection
3:56:02 PM Explanation of Amendment Barcode No. 844694 by Senator Powell
3:57:02 PM Without objection, Amendment Barcode No. 844694 is adopted
3:57:10 PM Kelly Quintero on behalf of the League of Women Voters of Florida waives in support
3:57:19 PM Senator Powell waives close
3:57:23 PM Roll call on CS/CS/SB 726 by Administrative Assistant Futch
3:57:43 PM CS/CS/SB 726 is reported favorably
3:57:47 PM SB 720 introduced by Chair Benacquisto
3:57:52 PM Explanation of SB 720 by Senator Mayfield
3:58:41 PM Senator Mayfield waives close
3:58:44 PM Roll call on SB 720 by Administrative Assistant Futch
3:59:06 PM SB 720 is reported favorably
3:59:10 PM CS/SB 1002 introduced by Chair Benacquisto
3:59:15 PM Explanation of CS/SB 1002 by Senator Perry
4:00:00 PM Barney Bishop on behalf of the Florida Smart Justice Alliance waives in support
4:00:07 PM Senator Perry waives close
4:00:09 PM Roll call on CS/SB 1002 by Administrative Assistant Futch
4:00:29 PM CS/SB 1002 is reported favorably
4:00:33 PM CS/SB 1008 introduced by Chair Benacquisto
4:00:48 PM Amendment Barcode No. 357448 introduced by Chair Benacquisto
4:00:55 PM Explanation of CS/SB 1008 and Amendment Barcode No. 357448 by Senator Perry
4:01:30 PM Without objection, Amendment Barcode No. 357448 is adopted
4:01:34 PM Melissa Ramba on behalf of the Florida Retail Federation waives in support
4:01:40 PM Lance Lozano on behalf of the Florida United Businesses Association waives in support
4:01:44 PM Carolyn Johnson on behalf of the Florida Chamber of Commerce waives in support
4:01:47 PM Cam Fentriss on behalf of the Florida Roofing and Sheet Metal Contractors Association, and the Florida Refrigeration and A.C. Contractors Association waives in support
4:02:00 PM Brewster Bevis on behalf of the Associated Industries of Florida waives in support
4:02:04 PM Elizabeth Boyd, Legislative Affairs Director, on behalf of Chief Financial Officer Atwater waives in support
4:02:10 PM Senator Perry waives close
4:02:12 PM Roll call on CS/CS/SB 1008 by Administrative Assistant Futch
4:02:32 PM CS/CS/SB 1008 is reported favorably

4:02:38 PM CS/CS/SB 190 introduced by Chair Benacquisto
4:02:41 PM Explanation of CS/CS/SB 190 by Senator Perry
4:03:00 PM Amendment Barcode No. 100630 introduced by Chair Benacquisto
4:03:11 PM Explanation of Amendment Barcode No. 100630 by Senator Brandes
4:03:42 PM Without objection, Amendment Barcode No. 100630 is adopted
4:03:56 PM Jorge Chamizo on behalf of ADT waives in support
4:04:03 PM Senator Perry waives close
4:04:06 PM Roll call on CS/CS/CS/SB 190 by Administrative Assistant Futch
4:04:29 PM CS/CS/CS/SB 190 is reported favorably
4:04:37 PM SB 7014 introduced by Chair Benacquisto
4:04:41 PM Explanation of SB 7014 by Senator Perry
4:05:06 PM Senator Perry waives close
4:05:07 PM Roll call on SB 7014 by Administrative Assistant Futch
4:05:29 PM SB 7014 is reported favorably
4:05:34 PM SB 314 introduced by Chair Benacquisto
4:05:36 PM Explanation of SB 314 by Senator Farmer
4:07:06 PM Senator Farmer waives close
4:07:09 PM Roll call on SB 314 by Administrative Assistant Futch
4:07:30 PM SB 314 is reported favorably
4:07:35 PM CS/CS/SB 188 introduced by Chair Benacquisto
4:07:41 PM Explanation of CS/CS/SB 188 by Senator Steube
4:08:17 PM Question by Senator Book
4:08:45 PM Response by Senator Steube
4:09:48 PM Comments by Chair Benacquisto
4:09:56 PM Response by Senator Steube
4:10:02 PM Question by Senator Latvala
4:11:50 PM Discussion between Senators Latvala and Steube
4:11:56 PM Amendment Barcode No. 379712 introduced by Chair Benacquisto
4:12:03 PM Explanation of Amendment Barcode No. 379712 by Senator Flores
4:12:22 PM Carol Bracy on behalf of the City of Marathon waives in support
4:12:28 PM John Wayne Smith on behalf of Monroe County waives in support
4:12:41 PM Comments by Senator Brandes
4:13:29 PM Comments by Senator Latvala
4:14:38 PM Senator Flores closes on Amendment Barcode No. 379712
4:16:16 PM Voice vote on Amendment Barcode No. 379712
4:16:20 PM Without objection, Amendment Barcode No. 379712 is adopted
4:16:26 PM Amendment Barcode No. 113756 introduced by Chair Benacquisto
4:16:30 PM Explanation of Amendment Barcode No. 113756 by Senator Latvala
4:16:47 PM Question by Senator Brandes
4:17:08 PM Response by Senator Latvala
4:17:34 PM Pete Dunbar on behalf of City of Redington Beach appears in response at the request of Senator Latvala
4:18:21 PM Additional statement and question by Senator Brandes
4:18:40 PM Response by Mr. Dunbar
4:19:14 PM Additional question by Senator Brandes
4:19:19 PM Additional response by Mr. Dunbar
4:20:05 PM Benjamin Stearns on behalf of John McKibbon speaks in opposition
4:21:53 PM Question by Senator Latvala
4:22:43 PM Discussion between Senator Latvala and Mr. Stearns
4:25:48 PM Lori Killinger on behalf of the Florida Vacation Rental Managers Association speaks in opposition
4:26:54 PM Senator Latvala closes on Amendment Barcode No. 113756
4:28:03 PM Voice vote on Amendment Barcode No. 113756
4:28:10 PM Amendment Barcode No. 113756 is adopted
4:28:17 PM Kerri McNulty, Assistant City Attorney for the City of Miami, speaks for information
4:28:57 PM Travis Moore on behalf of the Community Associations Institute waives in opposition
4:29:09 PM Troy Flanagan on behalf of the American Hotel and Lodging Association waives in opposition
4:29:10 PM Jennifer Green on behalf of Home Away waives in support
4:29:15 PM Lori Kilinger on behalf of the Florida Vacation Rental Managers Association waives in support
4:29:20 PM Chris Emmanuel on behalf of the Florida Chamber of Commerce waives in support
4:29:38 PM Comments by Senator Lee
4:31:17 PM Comments by Vice-Chair Thurston
4:31:53 PM Senator Steube waives close
4:31:56 PM Roll call on CS/CS/CS/SB 188 by Administrative Assistant Futch

4:32:18 PM CS/CS/CS/SB 188 is reported favorably
4:32:26 PM SB 1470 introduced by Chair Benacquisto (Chair to Vice Chair Thurston)
4:32:28 PM (Vice-Chair Thurston takes the chair)
4:32:31 PM Explanation of SB 1470 by Senator Simmons
4:33:10 PM Jacqui Peters on behalf of the Florida Housing Finance Corporation is called, but does not appear
4:33:26 PM Senator Simmons waives close
4:33:29 PM Roll call on SB 1470 by Administrative Assistant Futch
4:33:59 PM SB 1470 is reported favorably
4:34:17 PM SB 1526 introduced by Chair Thurston
4:34:20 PM Explanation of SB 1526 by Senator Bracy
4:34:57 PM Amendment Barcode No. 524838 introduced by Chair Thurston
4:35:06 PM Explanation of Amendment Barcode No. 524838 by Senator Bracy
4:35:20 PM Senator Bracy waives close
4:35:28 PM Voice vote on Amendment Barcode No. 524838
4:35:30 PM Amendment Barcode No. 524838 is adopted
4:35:37 PM Barney Bishop on behalf of the Florida Smart Justice Alliance waives in support
4:35:44 PM Jared Torres on behalf of the Florida Department of Corrections waives in support
4:35:49 PM Jason Jones on behalf of FDLE waives in support
4:36:03 PM Senator Bracy waives close
4:36:06 PM Roll call on CS/SB 1526 by Administrative Assistant Futch
4:36:35 PM CS/SB 1526 is reported favorably
4:36:40 PM CS/SB 1520 introduced by Chair Thurston
4:36:46 PM Explanation of CS/SB 1520 by Senator Latvala
4:38:08 PM Peter Dunbar waives in support
4:38:19 PM Senator Latvala waives close
4:38:25 PM Roll call on CS/SB 1520 by Administrative Assistant Futch
4:38:52 PM CS/SB 1520 is reported favorably
4:39:04 PM CS/CS/SB 840 introduced by Chair Thurston
4:39:08 PM Explanation of CS/CS/SB 840 by Senator Clemmons
4:39:47 PM Late filed Amendment Barcode No.780884 introduced by Chair Thurston, and taken up without objection
4:39:49 PM Explanation of Amendment Barcode No. 780884 by Senator Clemens
4:40:28 PM Senator Clemens waive close on Amendment Barcode No. 780884
4:40:36 PM Voice vote on Amendment Barcode No. 780884
4:40:40 PM Amendment Barcode No. 780884 is adopted
4:40:46 PM Barney Bishop on behalf of the Florida Smart Justice Alliance is called but does not appear
4:40:56 PM Senator Clemens waives close
4:41:00 PM Roll call on CS/CS/CS/SB 840 by Administrative Assistant Futch
4:41:27 PM CS/CS/CS/SB 840 is reported favorably
4:41:37 PM (Chair is returned to Senator Benacquisto)
4:41:38 PM CS/SB 616 introduced by Chair Benacquisto
4:41:45 PM Explanation of CS/SB 616 by Senator Steube
4:42:08 PM Question by Vice Chair Thurston
4:42:19 PM Response by Senator Steube
4:42:24 PM Kelly Quintero of the League of Women Voters of Florida waives in opposition
4:42:32 PM Senator Steube waives close
4:42:41 PM Roll call on CS/SB 616 by Administrative Assistant Futch
4:42:59 PM CS/SB 616 is reported favorably
4:43:03 PM CS/SB 14 introduced by Chair Benacquisto
4:43:15 PM Explanation of CS/SB 14 by Senator Steube
4:44:00 PM Senator Steube waives close
4:44:05 PM Roll call on CS/SB 14 by Administrative Assistant Futch
4:44:10 PM CS/SB 14 is reported favorably
4:44:30 PM SB 7028 introduced by Chair Benacquisto
4:44:44 PM Judiciary Committee staff attorney Cindy Brown speaks on SB 7028
4:45:03 PM Chair Benacquisto temporarily postpones SB 7028
4:45:07 PM CS/SB 40 introduced by Chair Benacquisto
4:45:15 PM Explanation of CS/SB 40 by Senator Galvano
4:45:47 PM Senator Galvano waives close
4:45:49 PM Roll call on CS/SB 40 by Administrative Assistant Futch
4:46:00 PM CS/SB 40 is reported favorably
4:46:13 PM SB 1252 introduced by Chair Benacquisto
4:46:20 PM Explanation of SB 1252 by Senator Galvano

4:46:46 PM Senator Galvano waives close
4:46:49 PM Roll call on SB 1252 by Administrative Assistant Futch
4:47:03 PM SB 1252 is reported favorably
4:47:16 PM CS/CS/SB 110 introduced by Chair Benacquisto
4:47:20 PM Explanation of CS/CS/SB 110 by Senator Brandes
4:47:40 PM Brian Logan on behalf of the Board of Governors waives in support
4:47:47 PM Senator Brandes waives close
4:47:51 PM Roll call on CS/CS/SB 110 by Administrative Assistant Futch
4:48:11 PM CS/CS/SB 110 is reported favorably
4:48:14 PM CS/CS/SB 496 introduced by Chair Benacquisto
4:48:20 PM Explanation of CS/CS/SB 496 by Senator Brandes
4:48:43 PM Layne Smith on behalf of the Mayo Clinic College of Medicine and Science waives in support
4:48:50 PM Cynthia Henderson on behalf of Ascend Learning waives in support
4:48:55 PM Senator Brandes waives close
4:48:57 PM Roll call on CS/CS/SB 496 by Administrative Assistant Futch
4:49:20 PM CS/CS/SB 496 is reported favorably
4:49:22 PM SB 7028 reintroduced by Chair Benacquisto
4:49:31 PM Explanation of SB 7028 by Senator Steube
4:50:21 PM Barney Bishop on behalf of the Florida Smart Justice Alliance is called but did not appear; waives in support
4:50:34 PM Senator Steube waives close
4:50:38 PM Roll call on SB 7028 by Administrative Assistant Futch
4:51:00 PM SB 7028 is reported favorably
4:51:03 PM CS/CS/SB 790 introduced by Chair Benacquisto
4:51:11 PM Explanation of CS/CS/SB 790 by Senator Brandes
4:51:38 PM Jared Torres on behalf of the Florida Department of Corrections waives in support
4:51:44 PM Barney Bishop on behalf of the Florida Smart Justice Alliance is called but did not appear; waives in support
4:51:52 PM Senator Brandes waives close
4:51:55 PM Roll call on CS/CS/SB 790 by Administrative Assistant Futch
4:52:17 PM CS/CS/SB 790 is reported favorably
4:52:19 PM SB 862 introduced by Chair Benacquisto
4:52:24 PM Explanation of SB 862 by Senator Lee
4:52:52 PM Kelly Quintero on behalf of the League of Women Voters of Florida is called but did not appear; waives in support
4:53:00 PM Mark Earley, Supervisor of Elections of Leon County, waives in support
4:53:04 PM Ron Labasky on behalf of the Florida State Association of Supervisors of Elections waives in support
4:53:11 PM Senator Lee waives close
4:53:14 PM Roll call on SB 862 by Administrative Assistant Futch
4:53:36 PM SB 862 is reported favorably
4:53:41 PM CS/SB 42 introduced by Chair Benacquisto
4:53:44 PM Explanation of CS/SB 42 by Senator Montford
4:54:16 PM Senator Montford waives close
4:54:18 PM Roll call on CS/SB 42 by Administrative Assistant Futch
4:54:37 PM CS/SB 42 is reported favorably
4:54:42 PM CS/SB 46 introduced by Chair Benacquisto
4:54:48 PM Explanation of CS/SB 46 by Senator Montford
4:55:14 PM Senator Montford waives close
4:55:16 PM Roll call on CS/SB 46 by Administrative Assistant Futch
4:55:39 PM CS/SB 46 is reported favorably
4:55:40 PM CS/SB 1206 introduced by Chair Benacquisto
4:55:47 PM Explanation of CS/SB 1206 by Senator Montford
4:56:15 PM Cynthia Henderson on behalf of Crowne Consulting waives in support
4:56:21 PM Senator Montford waives close
4:56:25 PM Roll call on CS/SB 1206 by Administrative Assistant Futch
4:56:44 PM CS/SB 1206 is reported favorably
4:56:59 PM CS/CS/SB 304 introduced by Chair Benacquisto
4:57:04 PM Explanation of CS/CS/SB 304 by Vice Chair Thurston
4:57:59 PM Vice Chair Thurston waives close
4:58:01 PM Roll call on CS/CS/SB 304 by Administrative Assistant Futch
4:58:27 PM CS/CS/SB 304 is reported favorably
4:58:29 PM SCR 1360 introduced by Chair Benacquisto

4:58:37 PM	Explanation of SCR 1360 by Vice Chair Thurston
4:58:58 PM	Vice Chair Thurston waives close
4:59:00 PM	Roll call on SCR 1360 by Administrative Assistant Futch
4:59:27 PM	SCR 1360 is reported favorably
4:59:29 PM	Senator Galvano moves to have the record show his voting in favor of CS/CS/SB 492 and CS/CS/SB 726
4:59:36 PM	Motion shown as adopted
4:59:38 PM	Senator Simpson moves to have the record show his voting in favor of SB 1470 and CS/SB 1526
4:59:43 PM	Motion shown as adopted
4:59:45 PM	Senator Brandes moves to have the record show his voting in favor of CS/CS/CS/SB 466
4:59:51 PM	Motion shown as adopted
4:59:53 PM	Vice Chair Thurston moves to have the record show his voting in favor of CS/CS/CS/SB 190, SB 7014 and CS/SB 1084
5:00:04 PM	Motion shown as adopted
5:00:06 PM	Senator Braynon moves to have the record show his voting in favor of CS/CS/SB 492, CS/CS/SB 206, CS/CS/SB 588, SB 1622, and CS/SB 328
5:00:29 PM	(Vice Chair Thurston takes the Chair)
5:00:34 PM	Senator Benacquisto moves to have the record show her voting in favor of SB 1470, CS/SB 1526, and CS/SB 1520
5:00:42 PM	Motion shown as adopted
5:00:46 PM	(Chair is returned to Senator Benacquisto)
5:00:53 PM	Vice Chair Thurston moves to adjourn
5:00:55 PM	Without objection, meeting is adjourned