

|                   |                                                                                                                                                          |   |     |               |                         |                |
|-------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------|---|-----|---------------|-------------------------|----------------|
| <b>Tab 1</b>      | <b>HJR 7105 by WMC, La Rosa, Jacquet (CO-INTRODUCERS) Metz;</b> (Similar to S 01774) Increased Homestead Property Tax Exemption                          |   |     |               |                         |                |
| 507120            | A                                                                                                                                                        | S | FAV | RC, Lee       | Delete L.28 - 128:      | 04/28 12:45 PM |
| <b>Tab 2</b>      | <b>HB 7107 by WMC, La Rosa;</b> (Compare to S 01774) Homestead Exemption Implementation                                                                  |   |     |               |                         |                |
| 690150            | A                                                                                                                                                        | S | FAV | RC, Lee       | Delete L.22 - 23:       | 04/28 12:51 PM |
| <b>Tab 3</b>      | <b>CS/SB 202 by GO, Brandes;</b> (Identical to CS/H 00441) Court Records                                                                                 |   |     |               |                         |                |
| <del>882106</del> | A                                                                                                                                                        | S | WD  | RC, Lee       | btw L.26 - 27:          | 04/28 01:36 PM |
| <b>Tab 4</b>      | <b>CS/SB 204 by JU, Passidomo;</b> (Identical to CS/CS/H 00377) Limitations on Actions other than for the Recovery of Real Property                      |   |     |               |                         |                |
| <b>Tab 5</b>      | <b>SB 248 by Broxson (CO-INTRODUCERS) Passidomo;</b> (Identical to H 00243) Public Records/Office of Financial Regulation                                |   |     |               |                         |                |
| <b>Tab 6</b>      | <b>CS/SB 294 by JU, Bracy;</b> (Identical to H 06027) Condominium, Cooperative, and Homeowners' Associations                                             |   |     |               |                         |                |
| <b>Tab 7</b>      | <b>CS/CS/SB 454 by AP, BI, Brandes;</b> (Compare to CS/1ST ENG/H 00359) Regulation of Insurance Companies                                                |   |     |               |                         |                |
| <del>756086</del> | A                                                                                                                                                        | S | WD  | RC, Brandes   | btw L.240 - 241:        | 04/28 09:04 AM |
| <del>144118</del> | A                                                                                                                                                        | S | WD  | RC, Brandes   | btw L.272 - 273:        | 04/28 09:04 AM |
| 833430            | A                                                                                                                                                        | S |     | RC, Flores    | btw L.318 - 319:        | 04/28 07:44 AM |
| 673396            | SA                                                                                                                                                       | S |     | RC, Flores    | btw L.318 - 319:        | 04/28 08:54 AM |
| 169090            | A                                                                                                                                                        | S |     | RC, Flores    | btw L.351 - 352:        | 04/28 07:03 AM |
| <del>931854</del> | A                                                                                                                                                        | S | WD  | RC, Brandes   | btw L.430 - 431:        | 04/28 09:05 AM |
| <b>Tab 8</b>      | <b>CS/CS/SB 680 by BI, JU, Baxley (CO-INTRODUCERS) Garcia;</b> (Similar to CS/CS/H 00361) Bail Bonds                                                     |   |     |               |                         |                |
| <b>Tab 9</b>      | <b>CS/CS/SB 736 by AP, BI, Mayfield (CO-INTRODUCERS) Steube;</b> (Similar to CS/CS/1ST ENG/H 00435) International Financial Institutions                 |   |     |               |                         |                |
| <b>Tab 10</b>     | <b>CS/CS/CS/SB 738 by AP, GO, BI, Mayfield (CO-INTRODUCERS) Steube;</b> (Identical to CS/CS/H 00437) Public Records/International Financial Institutions |   |     |               |                         |                |
| <b>Tab 11</b>     | <b>CS/CS/SB 744 by JU, RI, Passidomo;</b> (Compare to CS/CS/CS/1ST ENG/H 00653) Community Associations                                                   |   |     |               |                         |                |
| <b>Tab 12</b>     | <b>CS/SB 802 by JU, Passidomo;</b> (Compare to CS/H 07047) Regulated Professions and Occupations                                                         |   |     |               |                         |                |
| 417800            | A                                                                                                                                                        | S | RCS | RC, Passidomo | Delete L.187 - 473.     | 04/28 02:06 PM |
| 912078            | A                                                                                                                                                        | S | RCS | RC, Passidomo | btw L.473 - 474:        | 04/28 02:06 PM |
| 641970            | A                                                                                                                                                        | S | RCS | RC, Passidomo | Delete L.686 - 709:     | 04/28 02:06 PM |
| <b>Tab 13</b>     | <b>CS/SB 850 by BI, Rouson;</b> (Similar to CS/CS/H 00421) Public Housing Authority Insurance                                                            |   |     |               |                         |                |
| <b>Tab 14</b>     | <b>CS/SB 856 by GO, Broxson;</b> (Similar to H 00373) Education                                                                                          |   |     |               |                         |                |
| <b>Tab 15</b>     | <b>CS/SB 1370 by JU, Perry;</b> (Similar to CS/CS/1ST ENG/H 00937) Warnings for Lottery Games                                                            |   |     |               |                         |                |
| 370162            | D                                                                                                                                                        | S | RCS | RC, Perry     | Delete everything after | 04/28 02:15 PM |
| 836842            | AA                                                                                                                                                       | S | RCS | RC, Perry     | Delete L.53 - 64.       | 04/28 02:15 PM |

|               |                                                                                              |
|---------------|----------------------------------------------------------------------------------------------|
| <b>Tab 16</b> | <b>CS/SB 1494</b> by <b>EE, Rader</b> ; (Identical to H 06031) Write-in Candidate Qualifying |
|---------------|----------------------------------------------------------------------------------------------|

|               |                                                          |
|---------------|----------------------------------------------------------|
| <b>Tab 17</b> | <b>CS/SB 1684</b> by <b>BI, Farmer</b> ; Insurance Rates |
|---------------|----------------------------------------------------------|

|        |    |   |             |                         |                |
|--------|----|---|-------------|-------------------------|----------------|
| 979514 | D  | S | RC, Farmer  | Delete everything after | 04/28 08:36 AM |
| 854774 | AA | S | RC, Brandes | btw L.166 - 167:        | 04/28 09:48 AM |
| 846406 | A  | S | RC, Brandes | btw L.19 - 20:          | 04/28 08:22 AM |
| 756276 | SD | S | RC, Farmer  | Delete everything after | 04/28 09:25 AM |

**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**

**RULES**

**Senator Benacquisto, Chair**  
**Senator Thurston, Vice Chair**

**MEETING DATE:** Friday, April 28, 2017

**TIME:** 10:30 a.m.—12:30 p.m.

**PLACE:** *Toni Jennings Committee Room, 110 Senate Office Building*

**MEMBERS:** Senator Benacquisto, Chair; Senator Thurston, Vice Chair; Senators Book, Bradley, Brandes, Braynon, Flores, Galvano, Latvala, Lee, Montford, and Simpson

| TAB | BILL NO. and INTRODUCER                                                                              | BILL DESCRIPTION and<br>SENATE COMMITTEE ACTIONS                                                                                                                                                                                                                                                                                                                                           | COMMITTEE ACTION                          |
|-----|------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------|
| 1   | <b>HJR 7105</b><br>Ways and Means Committee / La Rosa / Jacquet<br>(Similar SJR 1774, Linked H 7107) | Increased Homestead Property Tax Exemption; Amends the State Constitution to increase the homestead exemption by exempting the assessed valuation of homestead property greater than \$75,000 and up to \$100,000 for all levies other than school district levies. The amendment shall take effect January 1, 2019.<br><br>RC      04/28/2017 Fav/1 Amendment                             | Fav/1 Amendment (507120)<br>Yeas 9 Nays 2 |
| 2   | <b>HB 7107</b><br>Ways and Means Committee / La Rosa<br>(Compare SJR 1774, Linked HJR 7105)          | Homestead Exemption Implementation; Increases homestead exemption from all taxes other than school district taxes; specifies calculation of rolled-back rate for purposes of 2019 tax roll; requires Legislature to appropriate moneys to offset reductions in tax revenues in certain counties as result of specified constitutional amendment.<br><br>RC      04/28/2017 Fav/1 Amendment | Fav/1 Amendment (690150)<br>Yeas 8 Nays 1 |
| 3   | <b>CS/SB 202</b><br>Governmental Oversight and Accountability / Brandes<br>(Identical CS/H 441)      | Court Records; Providing an exemption from liability for the release of certain information by the clerk of court under certain circumstances, etc.<br><br>JU      02/07/2017 Favorable<br>GO      02/21/2017 Fav/CS<br>RC      04/28/2017 Favorable                                                                                                                                       | Favorable<br>Yeas 10 Nays 0               |
| 4   | <b>CS/SB 204</b><br>Judiciary / Passidomo<br>(Identical CS/CS/H 377)                                 | Limitations on Actions other than for the Recovery of Real Property; Specifying the date of completion for specified contracts, etc.<br><br>JU      03/14/2017 Fav/CS<br>RI      04/06/2017 Favorable<br>RC      04/28/2017 Favorable                                                                                                                                                      | Favorable<br>Yeas 9 Nays 1                |

**COMMITTEE MEETING EXPANDED AGENDA**

Rules

Friday, April 28, 2017, 10:30 a.m.—12:30 p.m.

| TAB | BILL NO. and INTRODUCER                                                                                  | BILL DESCRIPTION and<br>SENATE COMMITTEE ACTIONS                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | COMMITTEE ACTION            |
|-----|----------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------|
| 5   | <b>SB 248</b><br>Broxson<br>(Identical H 243)                                                            | Public Records/Office of Financial Regulation ;<br>Providing an exemption from public records<br>requirements for the personal identifying and location<br>information of certain nonsworn investigative<br>personnel of the Office of Financial Regulation and<br>the names and personal identifying and location<br>information of the spouses and children of such<br>personnel; providing for future review and repeal of<br>the exemption; providing a statement of public<br>necessity, etc.<br><br>BI 04/03/2017 Favorable<br>GO 04/17/2017 Favorable<br>RC 04/28/2017 Favorable                                                                                                                                                                                                                                                                                                                                     | Favorable<br>Yeas 9 Nays 0  |
| 6   | <b>CS/SB 294</b><br>Judiciary / Bracy<br>(Identical H 6027, Compare<br>CS/CS/CS/H 653, CS/CS/S 744)      | Condominium, Cooperative, and Homeowners'<br>Associations; Deleting exemptions for certain<br>associations from specified reporting requirements;<br>deleting provisions prohibiting certain associations<br>from waiving certain financial reporting requirements<br>for more than 3 years, etc.<br><br>RI 04/04/2017 Favorable<br>RI 04/06/2017<br>JU 04/19/2017 Fav/CS<br>RC 04/28/2017 Favorable                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Favorable<br>Yeas 12 Nays 0 |
| 7   | <b>CS/CS/SB 454</b><br>Appropriations / Banking and<br>Insurance / Brandes<br>(Compare CS/H 359, H 1259) | Regulation of Insurance Companies; Providing that a<br>specified property information report, rather than a<br>specified certification by an abstractor or a title<br>company, may be submitted as part of certain<br>information required in relation to the plat or replat of<br>a subdivision; deleting a future repeal of an<br>exemption of medical malpractice insurance<br>premiums from certain emergency assessments by<br>the State Board of Administration relating to the<br>Florida Hurricane Catastrophe Fund; revising the<br>allowable assets of insurers relating to specified<br>levied assessments; providing that an electronically<br>delivered document in an insurance policy meets<br>formatting requirements for printed documents under<br>certain conditions, etc.<br><br>BI 03/06/2017 Fav/CS<br>AGG 03/15/2017 Fav/CS<br>AP 04/05/2017 Fav/CS<br>AP 04/06/2017<br>RC 04/28/2017 Not Considered | Not Considered              |



**COMMITTEE MEETING EXPANDED AGENDA**

Rules

Friday, April 28, 2017, 10:30 a.m.—12:30 p.m.

| TAB | BILL NO. and INTRODUCER                                                                                                                                                                                           | BILL DESCRIPTION and<br>SENATE COMMITTEE ACTIONS                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | COMMITTEE ACTION            |
|-----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------|
| 8   | <b>CS/CS/SB 680</b><br>Banking and Insurance / Judiciary<br>/ Baxley<br>(Similar CS/CS/H 361)                                                                                                                     | Bail Bonds; Revising legislative intent concerning the obligations of a bail bond agent; prohibiting a person or entity that charges a fee for facilitating the release of a defendant through the posting of a cash bond from using the term “bail” in advertisements and printed materials posted in a jail; revising the circumstances under which a surety bond deposited as bail must be forfeited, etc.<br><br>JU 03/22/2017 Fav/CS<br>BI 04/03/2017 Fav/CS<br>CJ 04/17/2017 Favorable<br>RC 04/28/2017 Favorable                                                                                                                                                                       | Favorable<br>Yeas 10 Nays 0 |
| 9   | <b>CS/CS/SB 736</b><br>Appropriations / Banking and Insurance / Mayfield<br>(Similar CS/CS/H 435, Compare CS/CS/H 437, H 769, H 771, S 1080, Linked CS/CS/CS/S 738)                                               | International Financial Institutions; Redefining the term “financial institution” to include international trust entities and qualified limited service affiliates; specifying conditions under which confidential books and records of international trust entities may be disclosed to their home-country supervisors; deleting international trust companies from requirements for carrying on financial institution business; providing an after-the-fact licensure process in the event of the acquisition, merger, or consolidation of international banking corporations, etc.<br><br>BI 03/06/2017 Fav/CS<br>AGG 03/29/2017 Fav/CS<br>AP 04/13/2017 Fav/CS<br>RC 04/28/2017 Favorable | Favorable<br>Yeas 10 Nays 0 |
| 10  | <b>CS/CS/CS/SB 738</b><br>Appropriations / Governmental Oversight and Accountability / Banking and Insurance / Mayfield<br>(Identical CS/CS/H 437, Compare CS/CS/H 435, H 769, H 771, S 1080, Linked CS/CS/S 736) | Public Records/International Financial Institutions; Providing exemptions from public records requirements for certain information held by the Office of Financial Regulation relating to international trust company representative offices or qualified limited service affiliates, respectively, and relating to affiliated international trust entities; providing future legislative review and repeal of the exemptions; providing a statement of public necessity, etc.<br><br>BI 03/06/2017 Fav/CS<br>GO 03/27/2017 Fav/CS<br>AP 04/13/2017 Fav/CS<br>RC 04/28/2017 Favorable                                                                                                         | Favorable<br>Yeas 11 Nays 0 |

**COMMITTEE MEETING EXPANDED AGENDA**

## Rules

Friday, April 28, 2017, 10:30 a.m.—12:30 p.m.

| TAB | BILL NO. and INTRODUCER                                                                                                                          | BILL DESCRIPTION and<br>SENATE COMMITTEE ACTIONS                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | COMMITTEE ACTION            |
|-----|--------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------|
| 11  | <b>CS/CS/SB 744</b><br>Judiciary / Regulated Industries /<br>Passidomo<br>(Compare CS/CS/CS/H 653, H<br>6027, CS/H 7055, CS/S 294, CS/S<br>1520) | Community Associations; Requiring certain<br>condominium or cooperative associations to post<br>certain signs or symbols on buildings; revising<br>provisions relating to evidence of condominium and<br>cooperative association compliance with the fire and<br>life safety code; revising voting requirements relating<br>to alterations and additions to certain common<br>elements or association property; prohibiting a board<br>member from voting via e-mail, etc.<br><br>RI 03/28/2017 Fav/CS<br>JU 04/19/2017 Fav/CS<br>RC 04/28/2017 Favorable                                                                                                                                               | Favorable<br>Yeas 12 Nays 0 |
| 12  | <b>CS/SB 802</b><br>Judiciary / Passidomo<br>(Compare CS/H 7047, S 1396)                                                                         | Regulated Professions and Occupations; Requiring<br>an individual applicant to apply for licensure in the<br>name of the business organization that he or she<br>proposes to operate under; requiring that a license be<br>in the name of a qualifying agent rather than the<br>name of a business organization; prohibiting a<br>business organization from engaging in certain<br>practices until it is qualified by a qualifying agent;<br>requiring the board to certify an applicant to qualify<br>one or more business organizations or to operate<br>using a fictitious name under certain circumstances,<br>etc.<br><br>RI 03/08/2017 Favorable<br>JU 04/04/2017 Fav/CS<br>RC 04/28/2017 Fav/CS | Fav/CS<br>Yeas 11 Nays 0    |
| 13  | <b>CS/SB 850</b><br>Banking and Insurance / Rouson<br>(Similar CS/CS/H 421)                                                                      | Public Housing Authority Insurance; Authorizing<br>certain business entities to join, solely for a specified<br>purpose, self-insurance funds participated in by public<br>housing authorities who hold ownership interests in or<br>who participate in governing such entities; authorizing<br>reinsurance companies to issue coverage directly to<br>certain self-insuring entities organized by a public<br>housing authority under certain circumstances;<br>requiring that reinsurance contracts issued to such<br>entities receive the same tax treatment as contracts<br>issued to insurance companies, etc.<br><br>BI 03/27/2017 Fav/CS<br>CA 04/17/2017 Favorable<br>RC 04/28/2017 Favorable   | Favorable<br>Yeas 11 Nays 0 |

**COMMITTEE MEETING EXPANDED AGENDA**

Rules

Friday, April 28, 2017, 10:30 a.m.—12:30 p.m.

| TAB                             | BILL NO. and INTRODUCER                                                                       | BILL DESCRIPTION and<br>SENATE COMMITTEE ACTIONS                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | COMMITTEE ACTION             |
|---------------------------------|-----------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------|
| 14                              | <b>CS/SB 856</b><br>Governmental Oversight and<br>Accountability / Broxson<br>(Similar H 373) | Education; Prohibiting a district school board from<br>awarding an annual contract for instructional<br>personnel under certain circumstances; prohibiting a<br>district school board from altering or limiting its<br>authority to award or not award an annual contract<br>under certain circumstances, etc.<br><br>ED 04/03/2017 Favorable<br>GO 04/17/2017 Temporarily Postponed<br>GO 04/24/2017 Fav/CS<br>RC 04/28/2017 Unfavorable                                                                                                                                             | Unfavorable<br>Yeas 6 Nays 6 |
| 15                              | <b>CS/SB 1370</b><br>Judiciary / Perry<br>(Similar CS/CS/H 937)                               | Warnings for Lottery Games; Requiring contracts<br>entered into between the Department of the Lottery<br>and a vendor of lottery tickets to include a provision<br>that requires the vendor to place or print a specified<br>warning on all lottery tickets; requiring contracts<br>entered into between the department and a retailer of<br>lottery tickets to include a provision that requires the<br>retailer to prominently display a sign with a specified<br>warning at the point of sale, etc.<br><br>RI 04/04/2017 Favorable<br>JU 04/19/2017 Fav/CS<br>RC 04/28/2017 Fav/CS | Fav/CS<br>Yeas 6 Nays 5      |
| 16                              | <b>CS/SB 1494</b><br>Ethics and Elections / Rader<br>(Identical H 6031)                       | Write-in Candidate Qualifying ; Repealing a<br>requirement that all write-in candidates must reside<br>within the district represented by the office sought at<br>the time of qualification, etc.<br><br>EE 03/28/2017 Fav/CS<br>CA 04/17/2017 Favorable<br>RC 04/28/2017 Favorable                                                                                                                                                                                                                                                                                                   | Favorable<br>Yeas 11 Nays 0  |
| 17                              | <b>CS/SB 1684</b><br>Banking and Insurance / Farmer<br>(Compare CS/S 1218, S 1746)            | Insurance Rates; Providing that attorney fees paid<br>pursuant to specified provisions may not be included<br>in an insurer's base rate and may not be used to<br>justify a rate or rate change, etc.<br><br>BI 04/03/2017 Fav/CS<br>RC 04/28/2017 Not Considered                                                                                                                                                                                                                                                                                                                     | Not Considered               |
| Other Related Meeting Documents |                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                              |

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: HJR 7105

INTRODUCER: Ways and Means Committee and Representatives La Rosa, Jacquet, and Metz

SUBJECT: Increased Homestead Property Tax Exemption

DATE: April 27, 2017

REVISED: 04/28/17

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| ANALYST    | STAFF DIRECTOR | REFERENCE | ACTION                 |
|------------|----------------|-----------|------------------------|
| 1. Present | Phelps         | RC        | <b>Fav/1 amendment</b> |

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**Please see Section IX. for Additional Information:**

AMENDMENTS - Significant amendments were recommended

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**I. Summary:**

HJR 7105 proposes an amendment to the Florida Constitution to increase the homestead exemption, for all levies other than school district levies, on the assessed value greater than \$50,000 and up to \$100,000.

The joint resolution will require approval by a three-fifths vote of the membership of each house of the Legislature for passage.

The amendment will take effect January 1, 2019, if approved by the electors.

The Revenue Estimating Conference has determined that if the voters approve the constitutional amendment, non-school property tax revenues could be reduced by -\$794.9 million annually, assuming current tax rates. Revenue impacts would not begin until fiscal year 2019-20.

**II. Present Situation:**

**General Overview of Property Taxation**

The ad valorem tax or "property tax" is an annual tax levied by counties, municipalities, school districts, and some special districts. The tax is based on the taxable value of property as of

January 1 of each year.<sup>1</sup> The property appraiser annually determines the “just value”<sup>2</sup> of property within the taxing authority and then applies relevant exclusions, assessment limitations, and exemptions to determine the property’s “taxable value.”<sup>3</sup> Tax bills are mailed in November of each year based on the previous January 1 valuation and payment is due by March 31.

The Florida Constitution prohibits the state from levying ad valorem taxes<sup>4</sup> and limits the Legislature’s authority to provide for property valuations at less than just value, unless expressly authorized.<sup>5</sup>

The just valuation standard generally requires the property appraiser to consider the highest and best use of property;<sup>6</sup> however, the Florida Constitution authorizes certain types of property to be valued based on their current use (classified use assessments), which often result in lower assessments. Properties that receive classified use treatment in Florida include: agricultural land, land producing high water recharge to Florida’s aquifers, and land used exclusively for noncommercial recreational purposes;<sup>7</sup> land used for conservation purposes;<sup>8</sup> historic properties when authorized by the county or municipality;<sup>9</sup> and certain working waterfront property.<sup>10</sup>

### **Statewide Homestead Exemption**

Every person having legal and equitable title to real estate and who maintains a permanent residence on the real estate (homestead property) is eligible for a \$25,000 tax exemption applicable to all ad valorem tax levies, including levies by school districts.<sup>11</sup> An additional \$25,000 exemption applies to homestead property value between \$50,000 and \$75,000. This exemption does not apply to ad valorem taxes levied by school districts.

### **III. Effect of Proposed Changes:**

The joint resolution proposes an amendment to the Florida Constitution to increase the homestead exemption, for all levies other than school district levies, on the assessed value greater than \$50,000 and up to \$100,000.

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<sup>1</sup> Both real property and tangible personal property are subject to tax. Section 192.001(12), F.S., defines “real property” as land, buildings, fixtures, and all other improvements to land. Section 192.001(11)(d), F.S., defines “tangible personal property” as all goods, chattels, and other articles of value capable of manual possession and whose chief value is intrinsic to the article itself.

<sup>2</sup> Property must be valued at “just value” for purposes of property taxation, unless the Florida Constitution provides otherwise. FLA. CONST. art VII, s. 4. Just value has been interpreted by the courts to mean the fair market value that a willing buyer would pay a willing seller for the property in an arm’s-length transaction. See *Walter v. Shuler*, 176 So. 2d 81 (Fla. 1965); *Deltona Corp. v. Bailey*, 336 So. 2d 1163 (Fla. 1976); *Southern Bell Tel. & Tel. Co. v. Dade County*, 275 So. 2d 4 (Fla. 1973).

<sup>3</sup> See s. 192.001(2) and (16), F.S.

<sup>4</sup> FLA. CONST. art. VII, s. 1(a).

<sup>5</sup> See FLA. CONST. art. VII, s. 4.

<sup>6</sup> Section 193.011(2), F.S.

<sup>7</sup> FLA. CONST. art. VII, s. 4(a).

<sup>8</sup> FLA. CONST. art. VII, s. 4(b).

<sup>9</sup> FLA. CONST. art. VII, s. 4(e).

<sup>10</sup> FLA. CONST. art. VII, s. 4(j).

<sup>11</sup> FLA. CONST. art VII, s. 6(a).

The joint resolution will require approval by a three-fifths vote of the membership of each house of the Legislature for passage.

The amendment will take effect January 1, 2019, if approved by the electors.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

The mandate provisions in Art. VII, s. 18 of the Florida Constitution do not apply to joint resolutions

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

##### **D. Other Constitutional Issues:**

Article XI, Section 1 of the Florida Constitution authorizes the Legislature to propose amendments to the Florida Constitution by joint resolution approved by a three-fifths vote of the membership of each house. The amendment must be placed before the electorate at the next general election held more than 90 days after the proposal has been filed with the Secretary of State or at a special election held for that purpose. Article XI, Section 5(a) of the Florida Constitution and s. 101.161(1), F.S., require constitutional amendments submitted to the electors to be printed in clear and unambiguous language on the ballot. In determining whether a ballot title and summary are in compliance with the accuracy requirement, Florida courts utilize a two-prong test, asking “first, whether the ballot title and summary ‘fairly inform the voter of the chief purpose of the amendment,’ and second, ‘whether the language of the title and summary, as written, misleads the public.’”<sup>12</sup>

Article XI, Section 5(d) of the Florida Constitution requires proposed amendments or constitutional revisions to be published in a newspaper of general circulation in each county where a newspaper is published. The amendment or revision must be published once in the 10th week and again in the 6th week immediately preceding the week the election is held.

Article XI, Section 5(e) of the Florida Constitution requires approval by 60 percent of voters for a constitutional amendment to take effect. The amendment, if approved, becomes effective after the next general election or at an earlier special election specifically authorized by law for that purpose.

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<sup>12</sup> *Roberts v. Doyle*, 43 So. 3d 654, 659 (Fla. 2010), citing *Florida Dep’t of State v. Slough*, 992 So. 2d 142, 147 (Fla. 2008).

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

The Revenue Estimating Conference determined that if the voters approve the constitutional amendment, non-school property tax revenues could be reduced by -\$794.9 million annually, assuming current tax rates.

**B. Private Sector Impact:**

Taxpayers will experience lower taxes if this joint resolution is approved, and the tax burden will be shifted among taxpayers.

**C. Government Sector Impact:**

Article XI, Section 5(d) of the Florida Constitution requires proposed amendments or constitutional revisions to be published in a newspaper of general circulation in each county where a newspaper is published. The amendment or revision must be published once in the 10th week and again in the 6th week immediately preceding the week the election is held.

Local governments, excluding school districts, will receive less property tax revenue if this amendment is approved. Additionally, fiscally constrained counties as defined by s. 218.67, F.S., may be disproportionately impacted by the approval of the amendment.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This joint resolution substantially amends the following articles of the Florida Constitution: Article VII, Section 6; Article XII.

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

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

None.

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B. Amendments:

**Barcode 507120 by Rules Committee on April 28, 2017:**

Provides an additional homestead exemption, for all levies other than school district levies, on homes that have assessed values greater than \$100,000 and up to \$125,000.

The amendment removes the increase to the additional homestead exemption on homes with assessed values greater than \$50,000 and up to \$100,000, restoring the exemption to current law which limits the exemption to homes with assessed values greater than \$50,000 and up to \$75,000.

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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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507120

LEGISLATIVE ACTION

| Senate              | . | House |
|---------------------|---|-------|
| Comm: FAV           | . |       |
| 04/28/2017          | . |       |
| Floor: 1/AD/2R      | . |       |
| 04/28/2017 03:16 PM | . |       |
|                     | . |       |

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The Committee on Rules (Lee) recommended the following:

**Senate Amendment (with ballot and title amendments)**

Delete lines 28 - 128  
and insert:  
dollars and up to seventy-five thousand dollars, and on the  
assessed valuation greater than one hundred thousand dollars and  
up to one hundred twenty-five thousand dollars, upon  
establishment of right thereto in the manner prescribed by law.  
The real estate may be held by legal or equitable title, by the  
entireties, jointly, in common, as a condominium, or indirectly  
by stock ownership or membership representing the owner's or



507120

member's proprietary interest in a corporation owning a fee or a leasehold initially in excess of ninety-eight years. The exemption shall not apply with respect to any assessment roll until such roll is first determined to be in compliance with the provisions of section 4 by a state agency designated by general law. This exemption is repealed on the effective date of any amendment to this Article which provides for the assessment of homestead property at less than just value.

(b) Not more than one exemption shall be allowed any individual or family unit or with respect to any residential unit. No exemption shall exceed the value of the real estate assessable to the owner or, in case of ownership through stock or membership in a corporation, the value of the proportion which the interest in the corporation bears to the assessed value of the property.

(c) By general law and subject to conditions specified therein, the Legislature may provide to renters, who are permanent residents, ad valorem tax relief on all ad valorem tax levies. Such ad valorem tax relief shall be in the form and amount established by general law.

(d) The legislature may, by general law, allow counties or municipalities, for the purpose of their respective tax levies and subject to the provisions of general law, to grant either or both of the following additional homestead tax exemptions:

(1) An exemption not exceeding fifty thousand dollars to a person who has the legal or equitable title to real estate and maintains thereon the permanent residence of the owner, who has attained age sixty-five, and whose household income, as defined by general law, does not exceed twenty thousand dollars; or



507120

(2) An exemption equal to the assessed value of the property to a person who has the legal or equitable title to real estate with a just value less than two hundred and fifty thousand dollars, as determined in the first tax year that the owner applies and is eligible for the exemption, and who has maintained thereon the permanent residence of the owner for not less than twenty-five years, who has attained age sixty-five, and whose household income does not exceed the income limitation prescribed in paragraph (1).

The general law must allow counties and municipalities to grant these additional exemptions, within the limits prescribed in this subsection, by ordinance adopted in the manner prescribed by general law, and must provide for the periodic adjustment of the income limitation prescribed in this subsection for changes in the cost of living.

(e) Each veteran who is age 65 or older who is partially or totally permanently disabled shall receive a discount from the amount of the ad valorem tax otherwise owed on homestead property the veteran owns and resides in if the disability was combat related and the veteran was honorably discharged upon separation from military service. The discount shall be in a percentage equal to the percentage of the veteran's permanent, service-connected disability as determined by the United States Department of Veterans Affairs. To qualify for the discount granted by this subsection, an applicant must submit to the county property appraiser, by March 1, an official letter from the United States Department of Veterans Affairs stating the percentage of the veteran's service-connected disability and



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such evidence that reasonably identifies the disability as combat related and a copy of the veteran's honorable discharge. If the property appraiser denies the request for a discount, the appraiser must notify the applicant in writing of the reasons for the denial, and the veteran may reapply. The Legislature may, by general law, waive the annual application requirement in subsequent years. This subsection is self-executing and does not require implementing legislation.

(f) By general law and subject to conditions and limitations specified therein, the Legislature may provide ad valorem tax relief equal to the total amount or a portion of the ad valorem tax otherwise owed on homestead property to:

(1) The surviving spouse of a veteran who died from service-connected causes while on active duty as a member of the United States Armed Forces.

(2) The surviving spouse of a first responder who died in the line of duty.

(3) A first responder who is totally and permanently disabled as a result of an injury or injuries sustained in the line of duty. Causal connection between a disability and service in the line of duty shall not be presumed but must be determined as provided by general law. For purposes of this paragraph, the term "disability" does not include a chronic condition or chronic disease, unless the injury sustained in the line of duty was the sole cause of the chronic condition or chronic disease.

As used in this subsection and as further defined by general law, the term "first responder" means a law enforcement officer, a correctional officer, a firefighter, an emergency medical



507120

technician, or a paramedic, and the term "in the line of duty"  
means arising out of and in the actual performance of duty  
required by employment as a first responder.

ARTICLE XII

SCHEDULE

SECTION 37. Increased homestead exemption.—This section and  
the amendment to Section 6 of Article VII increasing the  
homestead exemption by exempting the assessed valuation of  
homestead property greater than \$100,000 and up to \$125,000 for

===== B A L L O T   S T A T E M E N T   A M E N D M E N T =====

And the ballot statement is amended as follows:

Delete line 139

and insert:

property greater than \$100,000 and up to \$125,000 for all levies

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

And the title is amended as follows:

Delete lines 6 - 7

and insert:

valuation of homestead property greater than \$100,000

and up to \$125,000 for all levies other than school

HJR 7105

2017

## House Joint Resolution

A joint resolution proposing an amendment to Section 6 of Article VII and the creation of Section 37 of Article XII of the State Constitution to increase the homestead exemption by exempting the assessed valuation of homestead property greater than \$75,000 and up to \$100,000 for all levies other than school district levies, and to provide an effective date.

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

That the following amendment to Section 6 of Article VII and the creation of Section 37 of Article XII of the State Constitution are agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

## ARTICLE VII

## FINANCE AND TAXATION

## SECTION 6. Homestead exemptions.—

(a) Every person who has the legal or equitable title to real estate and maintains thereon the permanent residence of the owner, or another legally or naturally dependent upon the owner, shall be exempt from taxation thereon, except assessments for special benefits, up to the assessed valuation of twenty-five

Page 1 of 6

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

hjr7105-00

HJR 7105

2017

thousand dollars and, for all levies other than school district levies, on the assessed valuation greater than fifty thousand dollars and up to one hundred ~~seventy-five~~ thousand dollars, upon establishment of right thereto in the manner prescribed by law. The real estate may be held by legal or equitable title, by the entireties, jointly, in common, as a condominium, or indirectly by stock ownership or membership representing the owner's or member's proprietary interest in a corporation owning a fee or a leasehold initially in excess of ninety-eight years. The exemption shall not apply with respect to any assessment roll until such roll is first determined to be in compliance with the provisions of section 4 by a state agency designated by general law. This exemption is repealed on the effective date of any amendment to this Article which provides for the assessment of homestead property at less than just value.

(b) Not more than one exemption shall be allowed any individual or family unit or with respect to any residential unit. No exemption shall exceed the value of the real estate assessable to the owner or, in case of ownership through stock or membership in a corporation, the value of the proportion which the interest in the corporation bears to the assessed value of the property.

(c) By general law and subject to conditions specified therein, the Legislature may provide to renters, who are permanent residents, ad valorem tax relief on all ad valorem tax

Page 2 of 6

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

hjr7105-00

HJR 7105

2017

51 levies. Such ad valorem tax relief shall be in the form and  
52 amount established by general law.

53 (d) The legislature may, by general law, allow counties or  
54 municipalities, for the purpose of their respective tax levies  
55 and subject to the provisions of general law, to grant either or  
56 both of the following additional homestead tax exemptions:

57 (1) An exemption not exceeding fifty thousand dollars to a  
58 person who has the legal or equitable title to real estate and  
59 maintains thereon the permanent residence of the owner, who has  
60 attained age sixty-five, and whose household income, as defined  
61 by general law, does not exceed twenty thousand dollars; or

62 (2) An exemption equal to the assessed value of the  
63 property to a person who has the legal or equitable title to  
64 real estate with a just value less than two hundred and fifty  
65 thousand dollars, as determined in the first tax year that the  
66 owner applies and is eligible for the exemption, and who has  
67 maintained thereon the permanent residence of the owner for not  
68 less than twenty-five years, who has attained age sixty-five,  
69 and whose household income does not exceed the income limitation  
70 prescribed in paragraph (1).

71  
72 The general law must allow counties and municipalities to grant  
73 these additional exemptions, within the limits prescribed in  
74 this subsection, by ordinance adopted in the manner prescribed  
75 by general law, and must provide for the periodic adjustment of

Page 3 of 6

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

hjr7105-00

HJR 7105

2017

76 the income limitation prescribed in this subsection for changes  
77 in the cost of living.

78 (e) Each veteran who is age 65 or older who is partially  
79 or totally permanently disabled shall receive a discount from  
80 the amount of the ad valorem tax otherwise owed on homestead  
81 property the veteran owns and resides in if the disability was  
82 combat related and the veteran was honorably discharged upon  
83 separation from military service. The discount shall be in a  
84 percentage equal to the percentage of the veteran's permanent,  
85 service-connected disability as determined by the United States  
86 Department of Veterans Affairs. To qualify for the discount  
87 granted by this subsection, an applicant must submit to the  
88 county property appraiser, by March 1, an official letter from  
89 the United States Department of Veterans Affairs stating the  
90 percentage of the veteran's service-connected disability and  
91 such evidence that reasonably identifies the disability as  
92 combat related and a copy of the veteran's honorable discharge.  
93 If the property appraiser denies the request for a discount, the  
94 appraiser must notify the applicant in writing of the reasons  
95 for the denial, and the veteran may reapply. The Legislature  
96 may, by general law, waive the annual application requirement in  
97 subsequent years. This subsection is self-executing and does not  
98 require implementing legislation.

99 (f) By general law and subject to conditions and  
100 limitations specified therein, the Legislature may provide ad

Page 4 of 6

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

hjr7105-00

HJR 7105

2017

101 | valorem tax relief equal to the total amount or a portion of the  
 102 | ad valorem tax otherwise owed on homestead property to:

103 | (1) The surviving spouse of a veteran who died from  
 104 | service-connected causes while on active duty as a member of the  
 105 | United States Armed Forces.

106 | (2) The surviving spouse of a first responder who died in  
 107 | the line of duty.

108 | (3) A first responder who is totally and permanently  
 109 | disabled as a result of an injury or injuries sustained in the  
 110 | line of duty. Causal connection between a disability and service  
 111 | in the line of duty shall not be presumed but must be determined  
 112 | as provided by general law. For purposes of this paragraph, the  
 113 | term "disability" does not include a chronic condition or  
 114 | chronic disease, unless the injury sustained in the line of duty  
 115 | was the sole cause of the chronic condition or chronic disease.

116 |  
 117 | As used in this subsection and as further defined by general  
 118 | law, the term "first responder" means a law enforcement officer,  
 119 | a correctional officer, a firefighter, an emergency medical  
 120 | technician, or a paramedic, and the term "in the line of duty"  
 121 | means arising out of and in the actual performance of duty  
 122 | required by employment as a first responder.

ARTICLE XII

SCHEDULE

Page 5 of 6

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

hjr7105-00

HJR 7105

2017

125 | SECTION 37. Increased homestead exemption.—This section  
 126 | and the amendment to Section 6 of Article VII increasing the  
 127 | homestead exemption by exempting the assessed valuation of  
 128 | homestead property greater than \$75,000 and up to \$100,000 for  
 129 | all levies other than school district levies shall take effect  
 130 | January 1, 2019.

131 | BE IT FURTHER RESOLVED that the following statement be  
 132 | placed on the ballot:

CONSTITUTIONAL AMENDMENT

ARTICLE VII, SECTION 6

ARTICLE XII, SECTION 37

136 | INCREASED HOMESTEAD PROPERTY TAX EXEMPTION.—Proposing an  
 137 | amendment to the State Constitution to increase the homestead  
 138 | exemption by exempting the assessed valuation of homestead  
 139 | property greater than \$75,000 and up to \$100,000 for all levies  
 140 | other than school district levies. The amendment shall take  
 141 | effect January 1, 2019.

Page 6 of 6

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

hjr7105-00





507120

LEGISLATIVE ACTION

|                     |   |       |
|---------------------|---|-------|
| Senate              | . | House |
| Comm: FAV           | . |       |
| 04/28/2017          | . |       |
| Floor: 1/AD/2R      | . |       |
| 04/28/2017 03:16 PM | . |       |
|                     | . |       |

---

The Committee on Rules (Lee) recommended the following:

**Senate Amendment (with ballot and title amendments)**

Delete lines 28 - 128  
and insert:  
dollars and up to seventy-five thousand dollars, and on the  
assessed valuation greater than one hundred thousand dollars and  
up to one hundred twenty-five thousand dollars, upon  
establishment of right thereto in the manner prescribed by law.  
The real estate may be held by legal or equitable title, by the  
entireties, jointly, in common, as a condominium, or indirectly  
by stock ownership or membership representing the owner's or



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member's proprietary interest in a corporation owning a fee or a leasehold initially in excess of ninety-eight years. The exemption shall not apply with respect to any assessment roll until such roll is first determined to be in compliance with the provisions of section 4 by a state agency designated by general law. This exemption is repealed on the effective date of any amendment to this Article which provides for the assessment of homestead property at less than just value.

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(c) By general law and subject to conditions specified therein, the Legislature may provide to renters, who are permanent residents, ad valorem tax relief on all ad valorem tax levies. Such ad valorem tax relief shall be in the form and amount established by general law.

(d) The legislature may, by general law, allow counties or municipalities, for the purpose of their respective tax levies and subject to the provisions of general law, to grant either or both of the following additional homestead tax exemptions:

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507120

(2) An exemption equal to the assessed value of the property to a person who has the legal or equitable title to real estate with a just value less than two hundred and fifty thousand dollars, as determined in the first tax year that the owner applies and is eligible for the exemption, and who has maintained thereon the permanent residence of the owner for not less than twenty-five years, who has attained age sixty-five, and whose household income does not exceed the income limitation prescribed in paragraph (1).

The general law must allow counties and municipalities to grant these additional exemptions, within the limits prescribed in this subsection, by ordinance adopted in the manner prescribed by general law, and must provide for the periodic adjustment of the income limitation prescribed in this subsection for changes in the cost of living.

(e) Each veteran who is age 65 or older who is partially or totally permanently disabled shall receive a discount from the amount of the ad valorem tax otherwise owed on homestead property the veteran owns and resides in if the disability was combat related and the veteran was honorably discharged upon separation from military service. The discount shall be in a percentage equal to the percentage of the veteran's permanent, service-connected disability as determined by the United States Department of Veterans Affairs. To qualify for the discount granted by this subsection, an applicant must submit to the county property appraiser, by March 1, an official letter from the United States Department of Veterans Affairs stating the percentage of the veteran's service-connected disability and



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such evidence that reasonably identifies the disability as combat related and a copy of the veteran's honorable discharge. If the property appraiser denies the request for a discount, the appraiser must notify the applicant in writing of the reasons for the denial, and the veteran may reapply. The Legislature may, by general law, waive the annual application requirement in subsequent years. This subsection is self-executing and does not require implementing legislation.

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(2) The surviving spouse of a first responder who died in the line of duty.

(3) A first responder who is totally and permanently disabled as a result of an injury or injuries sustained in the line of duty. Causal connection between a disability and service in the line of duty shall not be presumed but must be determined as provided by general law. For purposes of this paragraph, the term "disability" does not include a chronic condition or chronic disease, unless the injury sustained in the line of duty was the sole cause of the chronic condition or chronic disease.

As used in this subsection and as further defined by general law, the term "first responder" means a law enforcement officer, a correctional officer, a firefighter, an emergency medical



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technician, or a paramedic, and the term "in the line of duty" means arising out of and in the actual performance of duty required by employment as a first responder.

ARTICLE XII

SCHEDULE

SECTION 37. Increased homestead exemption.—This section and the amendment to Section 6 of Article VII increasing the homestead exemption by exempting the assessed valuation of homestead property greater than \$100,000 and up to \$125,000 for

===== B A L L O T   S T A T E M E N T   A M E N D M E N T =====

And the ballot statement is amended as follows:

Delete line 139

and insert:

property greater than \$100,000 and up to \$125,000 for all levies

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

And the title is amended as follows:

Delete lines 6 - 7

and insert:

valuation of homestead property greater than \$100,000

and up to \$125,000 for all levies other than school

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4/28/17

Meeting Date

7105

Bill Number (if applicable)

507120

Amendment Barcode (if applicable)

Topic Homestead Exemption

Name Sally Everett

Job Title Dir. Govt Relations

Address City Hall

Street

St. Petersburg

City

FL

State

33731

Zip

Phone 727-267-2111

Email sally.everett@stpete.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing City of St. Petersburg

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

4/28/17

Meeting Date

7501

Bill Number (if applicable)

507120

Amendment Barcode (if applicable)

Topic

Name Nicole Fogarty

Job Title Legislative Affairs Director

Address 2300 Virginia Ave

Street

Ft. Pierce

City

FL

State

34982

Zip

Phone 772-462-6406

Email fogartyn@stlucie.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing St. Lucie County Board of County Commissioners

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

4/28/17

Meeting Date

7501

Bill Number (if applicable)

507120

Amendment Barcode (if applicable)

Topic Homestead Tax Exemption

Name Devon West

Job Title Legislative Affairs Director

Address 2401 SE Monterey Ave.

Street

Stuart

City

FL

State

33996

Zip

Phone 321-243-2270

Email dwest@martin.fl.us

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Martin County Board of County Commissioners

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)



**APPEARANCE RECORD**

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

4/28/17  
Meeting Date7105  
Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Nicole FogartyJob Title Legislative Affairs DirectorAddress 2300 Virginia Ave

Street

Fort Pierce

City

FL

State

34982

Zip

Phone 772-462-6406Email fogarty@stlucieca.orgSpeaking: ☐ For ☐ Against ☐ InformationWaive Speaking: ☐ In Support ☒ Against

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

Representing City of Fort PierceAppearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/28/17  
Meeting Date

7105  
Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Nicole Fogarty

Job Title Legislative affairs Director

Address 2300 Virginia Ave  
Street  
Ft. Pierce FL 34982  
City State Zip

Phone 772-462-6406

Email fogartyn@stluciacounty.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing St. Lucie County Board of County Commissioners

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

4/28/17

Meeting Date

7105

Bill Number (if applicable)

Topic Homestead Tax Exemption

Amendment Barcode (if applicable)

Name Devon West

Job Title Legislative Affairs Director

Address 2401 SE Monterey Ave.

Phone 321-243-2270

Street

Stuart

City

FL

State

33996

Zip

Email dwest@martin.fl.us

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against

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

Representing Martin County Board of County Commissioners

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

4/28/17

Meeting Date

7105

Bill Number (if applicable)

Topic Additional Homestead Exemption

Amendment Barcode (if applicable)

Name Audrey Johnson

Job Title Assistant to the County Administrator

Address 301 S. Monroe St.

Phone \_\_\_\_\_

Street

Tallahassee

FL

32301

City

State

Zip

Email \_\_\_\_\_

Speaking: ☐ For ☒ Against ☐ Information

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

Representing 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

4/28/17  
Meeting Date

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

7105  
Bill Number (if applicable)

Topic Homestead

Amendment Barcode (if applicable)

Name MARK Jeffries

Job Title \_\_\_\_\_

Address 201 S. Rosalind Ave  
Street  
ORlando FL 32801  
City State Zip

Phone 407-836-5909  
Email mark.jeffries@ocfl.net

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Orange County

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/28/17  
Meeting Date

7105  
Bill Number (if applicable)

Topic Property Tax Exemption

Amendment Barcode (if applicable)

Name Graver Robinson

Job Title Escambia County Commissioner

Address 221 Palafox Pl

Phone (850) 595-4940

Street

Pensacola  
City

FL  
State

32502  
Zip

Email district4@myescambia.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Local County Governments

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

4/28/17  
Meeting Date

7105  
Bill Number (if applicable)

Topic Homestead Exemption

Amendment Barcode (if applicable)

Name Ralph Thomas

Job Title Chairman

Address 637 Hunters Trace

Phone 850-597-3858

Street

Crawfordville, FL 32327

City

State

Zip

Email rthomas@mywakulla.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Wakulla Board of County Commissioners

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)

9/28/17  
Meeting Date

7105  
Bill Number (if applicable)

Topic HOMESTEAD TAX EXEMPTION

Amendment Barcode (if applicable)

Name LISA HURLEY

Job Title \_\_\_\_\_

Address 301 E. PARK AVE  
Street  
TALLAHASSEE FL 32301  
City State Zip

Phone 850.224.5081

Email lhurley@smithbrynesmyers.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing FLAGLER COUNTY

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)



THE FLORIDA SENATE

APPEARANCE RECORD

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

3.28.18

Meeting Date

7105

Bill Number (if applicable)

Topic Homestead Exemption

Amendment Barcode (if applicable)

Name Andreina Figueron

Job Title \_\_\_\_\_

Address 8460 SW 184 St

Street

Phone \_\_\_\_\_

Miami, FL

City

State

33157

Zip

Email \_\_\_\_\_

Speaking: ☐ For ☐ Against ☐ Information

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

Representing City of Hialeah

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)

4/28/2017  
Meeting Date

7105  
Bill Number (if applicable)

Topic Increased Homestead Exemption

Amendment Barcode (if applicable)

Name Eddy Labrador

Job Title Director, Intergovt. Affairs

Address 115 S. Andrews Avenue  
Street

Phone 954-826-1155

Fort Lauderdale FL 33301  
City State Zip

Email elabrador@broward.org

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Broward County

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

## APPEARANCE RECORD

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

4/28/2017

Meeting Date

7105

Bill Number (if applicable)

507120

Amendment Barcode (if applicable)

Topic Increased Homestead ExemptionName Eddy LabradorJob Title Director, Intergovt. AffairsAddress 115 S. Andrews Avenue

Street

Fort Lauderdale FL 33301

City

State

Zip

Phone 954-826-1155  
~~954-826-1155~~Email elabrador@broward.orgSpeaking: ☐ For ☒ Against ☐ InformationWaive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)Representing Broward CountyAppearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/28/17

Meeting Date

7105

Bill Number (if applicable)

Topic Property Tax Exemption

Amendment Barcode (if applicable)

Name Karen Woodall

Job Title Exec. Director

Address 579 E. Call St

Phone 850-321-9386

Street

Tallahassee FL

City

State

32301

Zip

Email fcfep@yahoo.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Center for Fiscal & Economic Policy

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)

4/28/17  
Meeting Date

7105  
Bill Number (if applicable)

Topic @ Tax Exemption

Amendment Barcode (if applicable)

Name Rich Templin

Job Title \_\_\_\_\_

Address 135 S. Monroe  
Street  
Tallahassee FL 32301  
City State Zip

Phone 850-224-6926

Email \_\_\_\_\_

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida AFL-CIO

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)

4/28

Meeting Date

HB 7105

Bill Number (if applicable)

Topic Increased homestead Property tax

Amendment Barcode (if applicable)

Name Laura Donaldson

Job Title \_\_\_\_\_

Address 1101 W. Swann Avenue

Phone 813-554-4700

Street

Tampa,

City

FL

State

33606

Zip

Email ldonaldson@  
mansonbolves.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing North Collier Fire Control & Rescue District

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)

4/28

Meeting Date

145R 7105

Bill Number (if applicable)

Topic INCREASED HOMESTEAD PROPERTY TAX INCREASE

Amendment Barcode (if applicable)

Name TODD J. BONLARRON

Job Title ASSESSMENT COUNTY ADMINISTRATOR

Address 301 N. OLIVE AVE. SE 1101 Phone (561) 355-4019

Street

WEST PALM BEACH FL 33401 Email tboularr@pbcgov.org

City

State

Zip

Speaking: ☐ For ☒ Against ☐ Information

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

Representing PALM BEACH COUNTY

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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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)

4/28/17

Meeting Date

7105

Bill Number (if applicable)

Topic Homestead Exemption

Amendment Barcode (if applicable)

Name Sally Everett

Job Title Dir. Govt Relations

Address City Hall

Street

Phone 727-267-2111

St. Petersburg FL

City

State

33781

Zip

Email sally.everett@stpete.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing City of St. Petersburg

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)

4/28/17  
Meeting Date

HSR7105  
Bill Number (if applicable)

Topic Homestead Property Exemption

Amendment Barcode (if applicable)

Name Jim Millican

Job Title District Chief

Address 4360-55 AV N

Phone 722-481-2852

Street

ST DICK

FL

33714

City

State

Zip

Email jmillican@floridafirechefs.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Fire Chiefs Assoc.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

4/28/17

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

7105

Meeting Date

Bill Number (if applicable)

Topic Add'l Homestead Exemption

Amendment Barcode (if applicable)

Name Nick Maddy

Job Title Commissioner

Address 301 S. Monroe

Phone \_\_\_\_\_

Street

Tallahassee

FL

32301

Email \_\_\_\_\_

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Leon County Board of County Commissioners

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)

4/28/2017

7105

*Meeting Date**Bill Number (if applicable)*Topic Increased Homestead Property Tax Exemption*Amendment Barcode (if applicable)*Name Matt DunaganJob Title Deputy DirectorAddress 2617 Mahan DrivePhone 850-877-2165*Street*TallahasseeFL32308Email mdunagan@flsheriffs.org*City**State**Zip*Speaking: ☐ For ☐ Against ☐ InformationWaive Speaking: ☐ In Support ☒ Against  
(The Chair will read this information into the record.)Representing Florida Sheriffs AssociationAppearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☒ Yes ☐ No

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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)

4-28-17

Meeting Date

HSR 7105

Bill Number (if applicable)

Topic Homestead Exemption

Amendment Barcode (if applicable)

Name John Wayne Smith

Job Title Peebles & Smith

Address 301 S. Bronough St

Phone 570-7242

Street

Tallahassee

FL

32301

City

State

Zip

Email john@peebles-smith.com

Speaking: ☐ For ☒ Against ☐ Information

~~Waive Speaking:~~ ☐ In Support ☒ Against

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

Representing Marion County

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)

4-28-17

Meeting Date

7105

Bill Number (if applicable)

Topic PROPERTY TAXES

Amendment Barcode (if applicable)

Name LAURA YOUNANS

Job Title ~~DR~~ ASSOCIATE DIR. OF PUBLIC POLICY

Address 100 N. MONROE ST

Street

Phone 294-1838

TAL

City

FL

State

32301

Zip

Email LYOUNANS@FL-COUNTIES.CO

Speaking: ☐ For ☒ Against ☐ Information

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

Representing FLORIDA ASSOCIATION OF COUNTIES

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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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)

4/28/17  
Meeting Date

7105  
Bill Number (if applicable)

Topic Homeslead Tax ~~Exm~~ Exemption

Amendment Barcode (if applicable)

Name Amber Hughes

Job Title Senior Legislative Advocate

Address PO Box 9757

Phone 850-701-3621

Street

Tallahassee, FL 32302

City

State

Zip

Email ahughes@florhies.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida League of Cities

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/28/17

Meeting Date

7105

Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name Chris Lyon

Job Title

Address 315 S. Calhoun St., Ste. 830

Phone 222-5702

Street

Tallahassee

FL

32301

City

State

Zip

Email chlyon@lw-law.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Association of Special Districts

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

4/28/17

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/28/17

Meeting Date

7105

Bill Number (if applicable)

Topic Homestead Exemption

Amendment Barcode (if applicable)

Name Chris Doolin

Job Title CONSULTANT  
1118-B Thomasville Rd. Co

Address 1118-B Thomasville Rd Phone 508-5492  
Street  
City Tallahassee, FL State FL Zip 32303

Email cdoolin

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Small County Coalition

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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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)

4/28/2017

Meeting Date

Topic \_\_\_\_\_

Bill Number 7105  
(if applicable)

Name BRIAN PITTS

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705  
City State Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☐ Against ☒ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/20/11)

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: HB 7107

INTRODUCER: Ways and Means Committee and Representative La Rosa

SUBJECT: Homestead Exemption Implementation

DATE: April 27, 2017

REVISED: 04/28/17 05/01/17

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| ANALYST    | STAFF DIRECTOR | REFERENCE | ACTION                 |
|------------|----------------|-----------|------------------------|
| 1. Present | Phelps         | RC        | <b>Fav/1 amendment</b> |

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**Please see Section IX. for Additional Information:**

AMENDMENTS - Significant amendments were recommended

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**I. Summary:**

HB 7107 implements the amendment to Article VII, Section 6(a) of the State Constitution, as proposed in HJR 7105, which increases the additional homestead property tax exemption from all taxes, other than school district taxes, by up to \$25,000, by exempting assessed value greater than \$75,000 and up to \$100,000.

The bill changes statutory dollar thresholds for the additional homestead exemption in order to conform with those in the constitutional amendment. Additionally, the bill provides that the rolled back rate used by local governments in Fiscal Year 2019-2020 must be calculated as if the tax base had not been reduced by the increased homestead exemption. This provision also applies to the calculation of higher millage rates that may be levied with either a two-thirds or unanimous vote by a local governing board.

The bill also directs the Legislature to appropriate funds to offset ad valorem tax revenue losses in fiscally constrained counties, as defined in s. 218.67(1), F.S., attributable to the reduction in property tax base caused by the increased homestead exemption. There are presently 28 fiscally constrained counties within the state.

The bill takes effect on the same day that the constitutional amendment in HJR 7105 or similar legislation takes effect, which is January 1, 2019.

## II. Present Situation:

### Calculating Ad Valorem Taxes

The Florida Constitution reserves ad valorem taxation to local governments and prohibits the state from levying ad valorem taxes on real and tangible personal property.<sup>1</sup> Ad valorem taxes are annual taxes levied by counties, cities, school districts and certain special districts. These taxes are based on the “just” or fair market value of real and tangible property as determined by county property appraisers on January 1 of each year.<sup>2</sup> Fair market value is then adjusted by any applicable exceptions to the just value requirement such as the annual “Save our Homes” limitation on homestead property assessment increases.<sup>3</sup> The value arrived at after accounting for just value exceptions is known as the assessed value. Property appraisers then calculate taxable value by reducing the assessed value in accordance with any applicable exemption(s), such as the exemptions for homestead property.<sup>4</sup> Each year, local governing boards levy millage rates (i.e. tax rates) on taxable value to generate the property tax revenue contemplated in their annual budgets.

The homestead exemption is specified in Article VII, Section 6 of the Florida Constitution, which provides that every person who holds legal or equitable title to real estate and uses said real estate as a permanent residence for themselves or a legal or natural dependent is entitled to exemption from taxes on the first \$25,000 in assessed value.<sup>5</sup> In 2008, Florida voters amended this provision to include an additional \$25,000 exemption from all taxes other than school district taxes on assessed value greater than \$50,000.<sup>6</sup> The constitution also vests the Legislature with authority to enact general law establishing the manner in which individuals qualify for exemption. Accordingly, s. 196.031(1)(b), F.S., automatically grants the additional, non-school homestead exemption to every individual who qualifies for the initial homestead exemption on the first \$25,000 in assessed value.

### Calculating Millage Rates

The “rolled back rate” is the millage rate which, exclusive of new construction, additions to structures, deletions, increases in the value of improvements that have undergone a substantial rehabilitation which increased the assessed value of such improvements by at least 100 percent, property added due to geographic boundary changes, total taxable value of tangible personal property within the jurisdiction in excess of 115 percent of the previous year’s total taxable value, and any dedicated increment value, will provide the same ad valorem tax revenue for each

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<sup>1</sup> Fla. Const. art. VII, s. 1(a).

<sup>2</sup> See Fla. Const. art. VII, s. 4.

<sup>3</sup> See s. 193.155(3), F.S.

<sup>4</sup> See generally, s. 196.031, F.S.

<sup>5</sup> Fla. Const. art. VII s. 6.

<sup>6</sup> *Id.*

taxing authority as was levied during the prior year less the amount, if any, paid or applied as a consequence of an obligation measured by the dedicated increment value.<sup>7, 8</sup>

Florida law utilizes the rolled back rate as a benchmark for determining whether a proposed millage rate is considered a tax increase. Local governing boards that choose to set their annual millage rate higher than the roll back rate must advertise the new rate as a tax increase.<sup>9</sup>

Section 200.065, F.S., provides criteria for determining the maximum millage rates that may be levied by a county, municipality, special district or municipal service taxing unit. The maximum rate that may be levied by simple majority vote is the rolled back rate that would have been attained had the board levied the highest millage rate allowed in the prior year, adjusted for change in per capita Florida personal income. Local governing boards may exceed this amount by up to 10 percent with consent from two-thirds of board members, or an amount greater than 10 percent with consent from all board members. Boards who wish to exceed the rolled-back rate by any amount must provide notice and comment to affected taxpayers before taking a vote on the issue.<sup>10</sup>

### **Fiscally Constrained Counties**

Fiscally constrained counties are counties entirely within a Rural Opportunity Area or where a 1 mill levy would raise no more than \$5 million in annual tax revenue.<sup>11</sup> A rural opportunity area is a rural community<sup>12</sup> or region, that has been adversely affected by an extraordinary economic event, severe distress, natural disaster or that presents a unique economic development opportunity of regional impact, as designated by the Governor.<sup>13</sup> Florida's fiscally constrained counties are: Baker, Bradford, Calhoun, Columbia, Desoto, Dixie, Franklin, Gadsden, Gilchrist, Glades, Gulf, Hamilton, Hardee, Hendry, Highlands, Holmes, Jackson, Jefferson, Lafayette, Levy, Liberty, Madison, Okeechobee, Putnam, Suwannee, Taylor, Union, Wakulla and Washington.<sup>14</sup> Under current law, the legislature annually appropriates money to these counties

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<sup>7</sup> Pursuant to s. 200.001(h), F.S., "dedicated increment value" means the proportion of the cumulative increase in taxable value within a defined geographic area used to determine a tax increment amount to be paid to a redevelopment trust fund pursuant to s. 163.387(2)(a) or to be paid or applied pursuant to an ordinance, resolution, or agreement to fund a project or to finance essential infrastructure. Upon creating any obligation for payment to a redevelopment trust fund or otherwise pursuant to an ordinance, resolution, or agreement to fund a project or to finance essential infrastructure based on an increase in assessed value, the taxing authority shall certify to the property appraiser the boundaries of the designated geographic area and the date of the most recent assessment roll used in connection with the taxation of such property prior to creation of the obligation. If the increment amount payment is not based on a specific proportion of the cumulative increase in taxable value within a defined geographic area, such value shall be reduced by multiplying by a proportion calculated by dividing the payment in the prior year, if any, by the product of the millage rate in the prior year and the cumulative increase in taxable value within the defined geographic area in the prior year. For tax years beginning on or after January 1, 2008, information provided to the property appraiser after May 1 of any year may not be used for the current year's certification.

<sup>8</sup> Section 200.065(1), F.S.

<sup>9</sup> Section 200.065(3)(g), F.S.

<sup>10</sup> See s. 200.065,(2)-(3), F.S.

<sup>11</sup> Section 218.67(1), F.S.

<sup>12</sup> A "rural community" as the term relates to counties means a county with a population of 75,000 or fewer, or a county with a population of 125,000 or fewer which is contiguous to a county with a population of 75,000 or fewer. See s. 288.0656(1)(e), F.S.

<sup>13</sup> Section 288.0656(1)(d), F.S.

<sup>14</sup> Florida Department of Revenue, List of Fiscally Constrained Counties, <http://floridarevenue.com/dor/property/cofficials/fiscalc/pdf/fcco081210.pdf> (last visited 03/30/2017).

to offset ad valorem tax revenue reductions caused by various amendments in the Florida Constitution.<sup>15</sup> In order to receive an offset distribution, fiscally constrained counties must annually provide the Department of Revenue with an estimate of the expected reduction in ad valorem tax revenues that are directly attributable to specified revisions of Article VII of the state constitution.<sup>16</sup> This legislation is designed to prevent various constitutional amendments related to property tax from negatively impacting fiscally constrained county tax revenues.

### III. Effect of Proposed Changes:

**Section 1** amends s. 196.031, F.S., to implement the proposed constitutional amendment in HJR 7105 by increasing the additional homestead exemption amount from \$25,000 to \$50,000 on the assessed value greater than \$50,000 for all taxes other than school district taxes.

**Section 2** amends s. 200.065, F.S., to provide that taxable values used in the calculation of rolled-back rates for purposes of the 2019 tax roll shall be increased by an amount equal to the reduction in taxable value that will occur if the amendment is adopted. Consequently, rolled back rates used by local governments in their Fiscal Year 2019-2020 tax rate determinations will not automatically increase in response to the tax base reductions associated with the higher homestead exemption.

**Section 3** amends s. 218.125, F.S., to require the Legislature, beginning in Fiscal Year 2019-2020, to annually appropriate funds to fiscally constrained counties for the purpose of offsetting the decrease in ad valorem tax revenues they would otherwise experience as a result of the amendment to Article VII, Section 6(a) of the Florida Constitution. The method for applying and calculating distributions is the same as that used in s. 218.125, F.S.

**Section 4** provides that the bill shall take effect on the same date as the effective date of the amendment to the state constitution proposed by HJR 7105, which is January 1, 2019.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

The county/municipality mandates provision of Art. VII, subsection 18(b), of the Florida Constitution may apply because this bill will reduce certain statutory maximum millage rates, above which a local government may not levy property tax except by extraordinary votes of the governing board. It is unclear whether this constitutes a reduction of revenue raising authority as contemplated by subsection 18(b). If the bill does qualify as a mandate, final passage must be approved by two-thirds of the membership of each house of the Legislature.

#### B. Public Records/Open Meetings Issues:

None.

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<sup>15</sup> See generally s. 218.125, F.S.

<sup>16</sup> Section 218.125(2), F.S.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

The Revenue Estimating Conference determined that if the voters approve the constitutional amendment in HJR 7105, non-school property tax revenues could be reduced by -\$794.9 million annually, assuming current tax rates.

B. Private Sector Impact:

Taxpayers may experience lower taxes if HJR 7105 is approved, and the tax burden will be shifted among taxpayers.

C. Government Sector Impact:

If the bill becomes effective and the Legislature makes appropriations as directed by the bill, staff estimates that state expenditures sufficient to fully offset the impacts to fiscally constrained counties of the higher homestead exemption will be approximately \$15 million annually.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 196.031, 200.065, and 218.125.

**IX. Additional Information:**

A. Committee Substitute – Statement of Changes:

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

None.

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B. Amendments:

**Barcode 690150 by Rules Committee on April 28, 2017:**

Implements the exemption provided by Barcode 507120. The amendment provides an additional homestead exemption, for all levies other than school district levies, on homes that have assessed values greater than \$100,000 and up to \$125,000. The amendment removes the increase to the additional homestead exemption on homes with assessed values greater than \$50,000 and up to \$100,000, restoring the exemption to current law which limits the exemption to homes with assessed values greater than \$50,000 and up to \$75,000.

---

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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690150

LEGISLATIVE ACTION

|                     |   |       |
|---------------------|---|-------|
| Senate              | . | House |
| Comm: FAV           | . |       |
| 04/28/2017          | . |       |
| Floor: 1/AD/2R      | . |       |
| 04/28/2017 04:45 PM | . |       |
|                     | . |       |

---

The Committee on Rules (Lee) recommended the following:

**Senate Amendment**

Delete lines 22 - 23  
and insert:  
of up to \$25,000 on the assessed valuation greater than \$50,000  
and up to an additional \$25,000 on the assessed valuation  
greater than \$100,000 for all levies other than school district  
levies.



HB 7107

2017

A bill to be entitled

An act relating to homestead exemption implementation; amending s. 196.031, F.S.; increasing the homestead exemption from all taxes other than school district taxes; amending s. 200.065, F.S.; specifying calculation of the rolled-back rate for purposes of the 2019 tax roll; providing a repeal date; amending s. 218.125, F.S.; requiring the Legislature to appropriate moneys to offset reductions in tax revenues in certain fiscally constrained counties resulting from increased exemptions; providing a contingent effective date.

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

Section 1. Paragraph (b) of subsection (1) of section 196.031, Florida Statutes, is amended to read:

196.031 Exemption of homesteads.—

(1)

(b) Every person who qualifies to receive the exemption provided in paragraph (a) is entitled to an additional exemption of up to \$50,000 ~~\$25,000~~ on the assessed valuation greater than \$50,000 for all levies other than school district levies.

Section 2. Subsection (15) of section 200.065, Florida Statutes, is renumbered as subsection (16), and a new subsection

Page 1 of 5

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

hb7107-00

HB 7107

2017

(15) is added to that section to read:

200.065 Method of fixing millage.—

(15) (a) Notwithstanding the method of computing the rolled-back rate in subsection (1), the taxable value that is used in computing the rolled-back rate in subsection (1) and the maximum millage rate under subsection (5) shall be increased by an amount equal to the reduction in taxable value occurring as a result of the revision to s. 6(a) of Art. VII of the State Constitution approved in November 2018 which authorizes an additional exemption of up to \$25,000 for all levies other than school district levies. For purposes of this paragraph, the taxable value shall be based on value as of January 1, 2019, within each taxing authority.

(b) This subsection is repealed on December 31, 2019.

Section 3. Section 218.125, Florida Statutes, is amended to read:

218.125 Offset for tax loss associated with certain constitutional amendments affecting fiscally constrained counties.—

(1) (a) Beginning in the 2010-2011 fiscal year, the Legislature shall appropriate moneys to offset the reductions in ad valorem tax revenue experienced by fiscally constrained counties, as defined in s. 218.67(1), which occur as a direct result of the implementation of revisions of ss. 3(f) and 4(b) of Art. VII of the State Constitution which were approved in the

Page 2 of 5

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

hb7107-00

HB 7107

2017

51 general election held in November 2008. The moneys appropriated  
 52 for this purpose shall be distributed in January of each fiscal  
 53 year among the fiscally constrained counties based on each  
 54 county's proportion of the total reduction in ad valorem tax  
 55 revenue resulting from the implementation of the revisions.

56 (b) Beginning in the 2019-2020 fiscal year, the  
 57 Legislature shall appropriate moneys to offset reductions in ad  
 58 valorem tax revenue experienced by fiscally constrained  
 59 counties, as defined in s. 218.67(1), which occur as a direct  
 60 result of implementation of the revision to s. 6(a) of Art. VII  
 61 of the State Constitution approved in November 2018 which  
 62 authorizes an additional exemption of up to \$25,000 for all  
 63 levies other than school district levies. The moneys  
 64 appropriated for this purpose shall be distributed in January of  
 65 each fiscal year among the fiscally constrained counties based  
 66 on each county's proportion of the total reduction in ad valorem  
 67 tax revenue resulting from the implementation of the revisions.

68 (2) On or before November 15 of each year, each fiscally  
 69 constrained county shall apply to the Department of Revenue to  
 70 participate in the distribution of the appropriation and provide  
 71 documentation supporting the county's estimated reduction in ad  
 72 valorem tax revenue in the form and manner prescribed by the  
 73 department of Revenue. The documentation must include an  
 74 estimate of the reduction in taxable value directly attributable  
 75 to revisions of Art. VII of the State Constitution for all

Page 3 of 5

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

hb7107-00

HB 7107

2017

76 county taxing jurisdictions within the county and shall be  
 77 prepared by the property appraiser in each fiscally constrained  
 78 county. The documentation must also include the county millage  
 79 rates applicable in all such jurisdictions for the current year  
 80 and the prior year, rolled-back rates determined as provided in  
 81 s. 200.065 for each county taxing jurisdiction, and maximum  
 82 millage rates that could have been levied by majority vote  
 83 pursuant to s. 200.065(5).

84 (a) For purposes of paragraph (1)(a) ~~this section~~, each  
 85 fiscally constrained county's reduction in ad valorem tax  
 86 revenue shall be calculated as 95 percent of the estimated  
 87 reduction in taxable value multiplied by the lesser of the 2010  
 88 applicable millage rate or the applicable millage rate for each  
 89 county taxing jurisdiction in the current year. If a fiscally  
 90 constrained county fails to apply for the distribution, its  
 91 share shall revert to the fund from which the appropriation was  
 92 made.

93 (b) For purposes of paragraph (1)(b), each fiscally  
 94 constrained county's reduction in ad valorem tax revenue shall  
 95 be calculated as 95 percent of the estimated reduction in  
 96 taxable value multiplied by the lesser of the 2017 applicable  
 97 millage rate or the applicable millage rate for each county  
 98 taxing jurisdiction in the current year. If a fiscally  
 99 constrained county fails to apply for the distribution, its  
 100 share shall revert to the fund from which the appropriation was

Page 4 of 5

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

hb7107-00

HB 7107

2017

101 | made.  
102 |       Section 4. This act shall take effect on the effective  
103 | date of the amendment to the State Constitution proposed by HJR  
104 | 7105 or a similar joint resolution having substantially the same  
105 | specific intent and purpose, if such amendment to the State  
106 | Constitution is approved at the general election held in  
107 | November 2018 and shall apply to the 2019 tax roll.



690150

LEGISLATIVE ACTION

|                     |   |       |
|---------------------|---|-------|
| Senate              | . | House |
| Comm: FAV           | . |       |
| 04/28/2017          | . |       |
| Floor: 1/AD/2R      | . |       |
| 04/28/2017 04:45 PM | . |       |
|                     | . |       |

---

The Committee on Rules (Lee) recommended the following:

**Senate Amendment**

Delete lines 22 - 23  
and insert:  
of up to \$25,000 on the assessed valuation greater than \$50,000  
and up to an additional \$25,000 on the assessed valuation  
greater than \$100,000 for all levies other than school district  
levies.

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/28/17

Meeting Date

7107

Bill Number (if applicable)

Topic

Implementing Bill -  
Fisally Constramed Offset

Amendment Barcode (if applicable)

Name

Chris Doolin

Job Title

Consultant to SMALL COUNTY COALITION

Address

1118 B THOMASVILLE Rd.

Phone

508-5492

Street

Tall.

Fl.

32303

Email

cdoolin@netally.com

City

State

Zip

Speaking:

☐

For

☐

Against

☐

Information

Waive Speaking:

☒

In Support

☐

Against

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

Representing

SMALL COUNTY COALITION

Appearing at request of Chair:

☐

Yes

☐

No

Lobbyist registered with Legislature:

☒

Yes

☐

No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/28/17

Meeting Date

7107

Bill Number (if applicable)

Topic Implementing Bill  
Fiscally Constrained Offset

Amendment Barcode (if applicable)

Name Ralph Thomas

Job Title Commissioner, Chairman

Address 637 Hunters Trace

Street

Phone 850-597-3858

Crawfordville, FL 32327

City

State

Zip

Email rthomas@mywakulla.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Wakulla Board of County Commissioners

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

4/28/2017

7107

*Meeting Date*

*Bill Number (if applicable)*

Topic Homestead Exemption Implementation

*Amendment Barcode (if applicable)*

Name Matt Dunagan

Job Title Deputy Director

Address 2617 Mahan Drive

Phone 850-877-2165

*Street*

Tallahassee

FL

32308

Email mdunagan@flsheriffs.org

*City*

*State*

*Zip*

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Sheriffs Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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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)

4/28/17

Meeting Date

7107

Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name Chris Lyon

Job Title

Address 315 S. Calhoun St., Ste. 830

Phone 222-5702

Street

Tallahassee

FL

32301

City

State

Zip

Email clyon@llw-law.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Association of Special Districts

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)

4/28/2017  
Meeting Date

7107  
Bill Number (if applicable)

Topic Annual Honored Implementation Amendment Barcode (if applicable)

Name Eddy Labrador

Job Title Director, Intergov Affairs

Address 115 S Andrews Avenue  
Street  
Fort Lauderdale FL 33301  
City State Zip

Phone 954-826-1155  
Email elabrador@broward.org

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Broward County

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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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)

4-28-17

Meeting Date

7107

Bill Number (if applicable)

Topic PROPERTY TAXES- IMPLEMENTATION

Amendment Barcode (if applicable)

Name LAURA YOUILLANS

Job Title ASSOCIATE DIR. OF PUBLIC POLICY

Address 100 N. MONROE ST  
Street

Phone 294-1838

TAL  
City

FL  
State

32301  
Zip

Email \_\_\_\_\_

Speaking: ☐ For ☒ Against ☐ Information

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

Representing FLORIDA ASSOCIATION OF COUNTIES

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)

4-28-07  
Meeting Date

7107  
Bill Number (if applicable)

Topic Homestead Exemption Implementation

Amendment Barcode (if applicable)

Name Amber Hughes

Job Title Senior Legislative Advocate

Address PO Box 1957

Phone 701-3621

Tallahassee, FL 32303  
City State Zip

Email ahughes@flcities.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida League of Cities

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons 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 / 28 / 2017

*Meeting Date*

Topic \_\_\_\_\_

Bill Number 7107  
*(if applicable)*

Name BRIAN PITTS

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

*Street*

SAINT PETERSBURG FLORIDA 33705  
*City State Zip*

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☐ Against ☒ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/20/11)

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

---

Prepared By: The Professional Staff of the Committee on Rules

---

BILL: CS/SB 202

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Brandes

SUBJECT: Court Records

DATE: April 27, 2017      REVISED: \_\_\_\_\_

|    | ANALYST        | STAFF DIRECTOR | REFERENCE | ACTION           |
|----|----------------|----------------|-----------|------------------|
| 1. | <u>Brown</u>   | <u>Cibula</u>  | <u>JU</u> | <b>Favorable</b> |
| 2. | <u>Peacock</u> | <u>Ferrin</u>  | <u>GO</u> | <b>Fav/CS</b>    |
| 3. | <u>Brown</u>   | <u>Phelps</u>  | <u>RC</u> | <b>Favorable</b> |

---

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 202 provides immunity from liability to the clerk of court for releasing confidential information from a court record which the filer failed to disclose to the clerk. The liability protections apply to the release of any information made confidential by court rules. This information includes, among other things, records of dependency matters, a victim's address in a domestic violence action, juvenile delinquency records, medical records, adoption records and estate inventories.

Under current law, clerks are immune from liability for the inadvertent release of a few items of confidential information. Specifically, a clerk is not liable for inadvertently releasing social security, bank account, charge, debit, and credit card numbers found in official records or court records filed before January 1, 2012.

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

**II. Present Situation:**

**Public Records Law**

The Florida Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or

employee of the state, or of persons acting on their behalf.<sup>1</sup> This right to access public records includes records made or received by legislative, executive, and judicial branches of government.<sup>2</sup>

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act<sup>3</sup> guarantees every person's right to inspect and copy any state or local government public record<sup>4</sup> at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.<sup>5</sup>

Only the Legislature may create an exemption from the requirement that a public record be accessible to the public.<sup>6</sup> Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.<sup>7</sup> Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions<sup>8</sup> and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.<sup>9</sup>

### **Exemption from Public Records Law for Certain Sensitive Information**

Social security numbers held by an agency are confidential and exempt from the public access requirements of the public records law.<sup>10</sup> As justification for the exemption, the Legislature recognized that:

the social security number can be used as a tool to perpetuate fraud against an individual and to acquire sensitive personal, financial, medical, and familial

---

<sup>1</sup> FLA. CONST., art. I, s. 24(a).

<sup>2</sup> *Id.*

<sup>3</sup> Chapter 119, F.S.

<sup>4</sup> Section 119.011(12), F.S., defines "public records" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992)).

<sup>5</sup> Section 119.07(1)(a), F.S.

<sup>6</sup> FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential and exempt*. A record classified as exempt from public disclosure may be disclosed under certain circumstances (*see WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991)). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption.

<sup>7</sup> FLA. CONST., art. I, s. 24(c).

<sup>8</sup> The bill may, however, contain multiple exemptions that relate to one subject.

<sup>9</sup> FLA. CONST., art. I, s. 24(c).

<sup>10</sup> Section 119.071(5)(a)5., F.S.

information, the release of which could cause great financial or personal harm to an individual.<sup>11</sup>

Similarly, bank account numbers and debit, charge, and credit card numbers held by an agency are exempt from disclosure requirements under the public records law.<sup>12</sup>

The requirements to maintain and disclose records under the Public Records Act apply to an “agency,”<sup>13</sup> which includes executive branch agencies and local governments.<sup>14</sup> However, the exemptions for social security numbers<sup>15</sup> and bank, debit, charge, and credit card account numbers<sup>16</sup> also apply to official records and court records kept by the clerk of court.

### **Official Records**

The clerk of the court maintains official records and court records. An official record is recorded by the clerk as part of a general series called “Official Records” and includes such documents as bills of sale, mortgages, deeds, notices of levy, tax warrants, and liens.<sup>17</sup>

A person who prepares or files an official record is generally not supposed to include social security, bank account, debit, charge, and credit card numbers in the document.<sup>18</sup> However, if a person’s social security number or financial account number is included in an official record, the person or his or her attorney or legal guardian may request that the information be redacted. If the clerk does not receive a redaction request, the sensitive information may be included in the records available to the public.<sup>19</sup>

If the record containing a social security number or financial account number is in an electronic format, the clerk as county recorder<sup>20</sup> must use his or her best efforts to keep the information confidential and exempt without a request for redaction.<sup>21</sup> However, the clerk is immune from liability for an inadvertent release of this sensitive information.<sup>22</sup>

---

<sup>11</sup> Section 119.071(5)(a)1.b., F.S.

<sup>12</sup> Section 119.071(5)(b), F.S.

<sup>13</sup> Section 119.011(2), F.S., defines the term “agency” 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.

<sup>14</sup> See, i.e., *Locke v. Hawkes*, 595 So. 2d 32, 37 (1992), in which the Florida Supreme Court held that the definition of an agency in chapter 119, F.S., was intended to apply solely to executive branch agencies and officers and to local governmental entities and their officers.

<sup>15</sup> Section 119.0714(1)(i), F.S.

<sup>16</sup> Section 119.0714(1)(j), F.S.

<sup>17</sup> Section 28.222(2) and (3), F.S.

<sup>18</sup> Section 119.0714(3), F.S.

<sup>19</sup> Section 119.0714(3)(a), F.S.

<sup>20</sup> Section 28.22(1), F.S., provides that the clerk is the county recorder. “The clerk of the circuit court shall be the recorder of all instruments that he or she may be required or authorized by law to record in the county where he or she is clerk.”

<sup>21</sup> Section 119.0714(3)(a)1., F.S.

<sup>22</sup> Section 119.0714(3)(e), F.S.

### ***Court Records***

For court records filed with the clerk of court on and after January 1, 2012, the clerk must maintain any social security numbers and financial account numbers in those records as confidential and exempt from disclosure under public records law.<sup>23</sup> Clerks are not liable for inadvertently releasing social security, bank account, charge, debit, and credit card numbers found in court records that were filed before January 1, 2012.<sup>24</sup> However, a person whose social security number or financial account number is contained in an older record, or his or her attorney or legal guardian, may request that the clerk redact the numbers from the record.<sup>25</sup>

### **Rules of Court**

Rule 2.420(d)(1)(B) of the Florida Rules of Judicial Administration requires the clerk of the court to designate and maintain the confidentiality of the following records or information, which are exempt from disclosure under existing law and the Florida Rules of Criminal Procedure:

- Chapter 39, F.S., records relating to dependency matters, termination of parental rights, guardians ad litem, child abuse, neglect, and abandonment (Sections 39.0132(3) and (4)(a), F.S.).
- Adoption records (Section 63.162, F.S.).
- Social Security, bank account, charge, debit, and credit card numbers (Section 119.0714(1)(i)-(j) and (2)(a)-(e), F.S.).<sup>26</sup>
- HIV test results and the identity of any person upon whom an HIV test has been performed (Section 381.004(2)(e), F.S.).
- Records, including test results, held by the Department of Health or its authorized representatives relating to sexually transmissible diseases (Section 384.29, F.S.).
- Birth records and portions of death and fetal death records (Sections 382.008(6) and 382.025(1), F.S.).
- Information that can be used to identify a minor petitioning for a waiver of parental notice when seeking to terminate pregnancy (Section 390.01116, F.S.).
- Clinical records under the Baker Act (Section 394.4615(7), F.S.).
- Records of substance abuse service providers which pertain to the identity, diagnosis, and prognosis of and service provision to individuals (Section 397.501(8), F.S.).
- Clinical records of criminal defendants found incompetent to proceed or acquitted by reason of insanity (Section 916.107(8), F.S.).
- Estate inventories and accountings (Section 733.604(1), F.S.).

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<sup>23</sup> Section 119.0714(2)(d) and (2)(e)1., F.S. The Legislature made the public records exemption for social security numbers, bank account, debit, credit and charge card numbers in court records permanent in 2007 (ch. 2007-251, L.O.F.). At that time, the Legislature extended the period of time in which the holder would need to make a redaction request for the number to be removed from the records, from January 1, 2008 to January 1, 2011. In 2010, the Legislature extended the January 1, 2011 date by a year, to give the clerks until January 1, 2012 to have a process in place for redacting the numbers on its own, without the prompting of the holder of the number (Conference Committee Amendment for CS/HB 5401, *Summary of Conference Committee Action* (April 30, 2010)). Chapter 2010-162, L.O.F.

<sup>24</sup> Section 119.0714(2)(d), F.S.

<sup>25</sup> Section 119.0714(2)(a), F.S.

<sup>26</sup> Fla. R. Jud. Admin. 2.420(d)(1)(B)(iii) mirrors the distinction between pre-and-post January 1, 2012, records for purposes of confidentiality of social security number, bank account, charge, debit, and credit card numbers.



- The victim's address in a domestic violence action on petitioner's request (Section 741.30(3)(b), F.S.).
- Protected information regarding victims of child abuse or sexual offenses (Sections 119.071(2)(h) and 119.0714(1)(h), F.S.).
- Gestational surrogacy records (Section 742.16(9), F.S.).
- Guardianship reports, orders appointing court monitors, and orders relating to findings of no probable cause in guardianship cases (Sections 744.1076 and 744.3701, F.S.).
- Grand jury records (Sections 905.17 and 905.28(1), F.S.).
- Records acquired by courts and law enforcement regarding family services for children (Section 984.06(3)-(4), F.S.).
- Juvenile delinquency records (Sections 985.04(1) and 985.045(2), F.S.).
- Records disclosing the identity of persons subject to tuberculosis proceedings and records held by the Department of Health or its authorized representatives relating to known or suspected cases of tuberculosis or exposure to tuberculosis (Sections 392.545 and 392.65, F.S.).
- Complete presentence investigation reports (Fla. R. Crim. P. 3.712).
- Forensic behavioral health evaluations under ch. 916, F.S. (Section 916.1065, F.S.).
- Eligibility screening, substance abuse screening, behavioral health evaluations, and treatment status reports for defendants referred to or considered for referral to a drug court program (Section 397.334(10)(a), F.S.).

Additionally, a person who files a record containing any of the confidential information above must alert the clerk to the existence of the information using a form Notice of Confidential Information within Court Filing.<sup>27</sup> Once the form notice is filed, the clerk court must review filings identified as containing confidential information to determine whether the information is facially subject to confidentiality.<sup>28</sup>

Rule 2.515 of the Florida Rules of Judicial Administration requires that every document of a party represented by an attorney must be signed by at least one attorney of record. The attorney's signature constitutes a certificate by the attorney that, among other things, the document contains no confidential or sensitive information or that any such information has been protected by identifying the confidential or sensitive information in accordance with the requirements of rules 2.420 and 2.425 of the Florida Rules of Judicial Administration.

### **Florida Rules of Judicial Administration Committee Meeting**

At a meeting of the Florida Rules of Judicial Administration Committee, dated May 29, 2015, clerks raised a concern over the issue of attorneys filing documents with the clerk without disclosing the confidential nature of the documents. Specifically, the clerks were concerned that they would be liable for the inadvertent disclosure of confidential information, and they sought indemnification from liability through court rule. Committee members instructed the clerks that

<sup>27</sup> Fla. R. Jud. Admin. 2.420(2)(A).

<sup>28</sup> Fla. R. Jud. Admin. 2.420 (d)(2)(B).

this matter is appropriately within the province of the Legislature, not the court. As such, the committee advised the clerks to seek statutory immunity.<sup>29</sup>

### III. Effect of Proposed Changes:

**Section 1** of the bill amends s. 119.0714(2)(e)1., F.S., and deletes the introductory phrase “[o]n January 1, 2012, and thereafter” in this section. This language is no longer necessary as the clerks were given time to implement a process for ensuring social security numbers, and bank account, debit, charge, and credit card numbers were confidential and exempt.

This section creates s. 119.0714(2)(g), F.S., and provides that the clerk of court is not liable for the release of information that is required by the Florida Rules of Judicial Administration to be identified by the filer as confidential if the filer fails to make the required identification of the confidential information to the clerk of court.

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

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

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

#### B. Public Records/Open Meetings Issues:

None.

#### C. Trust Funds Restrictions:

None.

### V. Fiscal Impact Statement:

#### A. Tax/Fee Issues:

None.

#### B. Private Sector Impact:

The bill precludes an individual who is harmed by the release of his or her social security number, financial account number, or other confidential information from seeking damages from a clerk of court. However, the bill does not preclude the person from seeking damages from the person who filed the confidential information without properly disclosing its existence to the clerk.

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<sup>29</sup> The Florida Bar Rules of Judicial Administration Committee, *Subcommittee Action Report*, pg. 1, 9-10 (May 29, 2015) (Copy on file with the Governmental Oversight and Accountability Committee).

**C. Government Sector Impact:**

This bill may reduce risk exposure of the clerk of court, by providing immunity from liability for an inadvertent release of any information classified as confidential by the court. According to the clerks:

Clerks receive literally millions of pages of documents filed each year and in spite of the Rules of Judicial Administration, many of those pages contain confidential or sensitive information that has not been identified as required.<sup>30</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 119.0714, 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 February 21, 2017:**

CS/SB 202 differs from SB 202 in the following ways:

- Deletes the term “inadvertent” in regards to release of information made confidential by the Florida Rules of Judicial Administration if the filer failed to disclose the existence of confidential information to the clerk of the court.
- The clerk of the court is not liable for releasing information required by the Florida Rules of Judicial Administration to be identified by the filer as confidential if the filer fails to make the required identification of confidential information to the clerk of the court.

**B. Amendments:**

None.

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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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<sup>30</sup> Clerks of the Court, *Clerks Liability for Redaction Errors* (Copy on file with the Senate Committee on Judiciary).



882106

LEGISLATIVE ACTION

|            |   |       |
|------------|---|-------|
| Senate     | . | House |
| Comm: WD   | . |       |
| 04/28/2017 | . |       |
|            | . |       |
|            | . |       |
|            | . |       |

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The Committee on Rules (Lee) recommended the following:

**Senate Amendment (with title amendment)**

Between lines 26 and 27  
insert:

Section 2. Section 25.052, Florida Statutes, is created to  
read:

25.052 Annual report.—

(1) Between October 1 and October 15 of each year, the  
Supreme Court shall provide a report with data as of September  
30 of that year, to the Governor, the Attorney General, the  
President of the Senate, and the Speaker of the House of



882106

Representatives consisting of two parts.

(a) In part I of the report, the court shall provide the following information regarding each case on the court's docket as of September 30 of the current year, for which a decision or disposition has not been rendered within 180 days after oral argument was heard or after the date on which the case was submitted to the court panel for a decision without oral argument:

1. The case name and number.

2. The case type.

3. A brief description of the case.

4. The date on which the case was added to the court's docket.

5. The date of oral argument or the date the case was submitted to the court panel for decision without oral argument.

6. The number of days that have elapsed since the date the oral argument was heard or the date the case was submitted to the court panel for a decision without oral argument.

7. A detailed explanation of the court's failure to render a decision or disposition within 180 days after oral argument was heard or after the date on which the case was submitted to the court panel for a decision without oral argument.

8. The date on which, or the time period within which, the court expects to render a decision or disposition.

(b) In part II of the report, the court shall provide the following information regarding each case decided or disposed of by the court between October 1 of the prior year and September 30 of the current year, for which the decision or disposition was not rendered within 180 days after oral argument was heard



882106

or after the date on which the case was submitted to the court panel for a decision without oral argument:

1. The information required in subparagraphs (a)1.-5. and 7.

2. The date that a decision or disposition was issued.

3. The number of days that had elapsed between the date oral argument was heard or the date the case was submitted to the court panel for a decision without oral argument and the date on which a decision or disposition was issued.

(2) The report shall be submitted in an electronic spreadsheet format capable of being sorted and filtered by the following elements:

(a) The case number.

(b) The case type.

(c) The date on which the case was added to the court's docket.

(d) The date of oral argument or the date the case was submitted to the court panel for decision without oral argument.

(e) The number of days that elapsed since the date oral argument was heard or the date the case was submitted to the court panel for a decision without oral argument.

(f) The date of decision or disposition.

(3) The case type of each case reported shall include civil, criminal not seeking the death penalty, criminal seeking the death penalty, court rules, bar discipline, or judicial discipline.

Section 2. Section 25.052, Florida Statutes, created by this act, is repealed July 1, 2022, unless reviewed and reenacted by the Legislature before that date.



882106

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

And the title is amended as follows:

Delete lines 2 - 6

and insert:

An act relating to courts; amending s. 119.0714, F.S.;  
providing an exemption from liability for the release  
of certain information by the clerk of court under  
certain circumstances; deleting obsolete language;  
creating s. 25.052, F.S.; requiring the Supreme Court  
to issue an annual report regarding certain cases;  
specifying data to be included in such report;  
providing for future legislative review and repeal;  
providing an effective date.

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

585-01934-17

2017202c1

A bill to be entitled

An act relating to court records; amending s.  
119.0714, F.S.; providing an exemption from liability  
for the release of certain information by the clerk of  
court under certain circumstances; deleting obsolete  
language; providing an effective date.

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

Section 1. Paragraph (e) of subsection (2) of section  
119.0714, Florida Statutes, is amended, and paragraph (g) is  
added to that subsection, to read:

119.0714 Court files; court records; official records.—

(2) COURT RECORDS.—

(e)1. ~~On January 1, 2012, and thereafter,~~ The clerk of the  
court must keep social security numbers confidential and exempt  
as provided for in s. 119.071(5)(a), and bank account, debit,  
charge, and credit card numbers exempt as provided for in s.  
119.071(5)(b), without any person having to request redaction.

2. Section 119.071(5)(a)7. and 8. does not apply to the  
clerks of the court with respect to court records.

(g) The clerk of the court is not liable for the release of  
information that is required by the Florida Rules of Judicial  
Administration to be identified by the filer as confidential if  
the filer fails to make the required identification of the  
confidential information to the clerk of the court.

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





The Florida Senate

## Committee Agenda Request

**To:** Senator Lizbeth Benacquisto  
Committee on Rules

**Subject:** Committee Agenda Request

**Date:** March 8, 2016

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I respectfully request that **Senate Bill #202**, relating to **Court Records**, be placed on the:

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

A handwritten signature in black ink, appearing to read "Jeff Brandes", written over a horizontal line.

Senator Jeff Brandes  
Florida Senate, District 24

✓ 3/20/17

Amendment Barcode  
No. 882106

THE FLORIDA SENATE

APPEARANCE RECORD

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

4 128/2017

Meeting Date

Topic \_\_\_\_\_

Bill Number 202  
(if applicable)

Name BRIAN PITTS

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG

FLORIDA

33705

City

State

Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☐ Against ☒ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4/28  
Meeting Date

SB 202  
Bill Number (if applicable)

Topic Court Records

Amendment Barcode (if applicable)

Name Fred Baggett

Job Title \_\_\_\_\_

Address 101 E. College Ave  
Street  
Jallahagere FL 32301  
City State Zip

Phone 425 8512

Email BaggettF@GTLaw.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL Assoc. of Court Clerks

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

## APPEARANCE RECORD

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

4-28-17

Meeting Date

202

Bill Number (if applicable)

Topic Court Records

Amendment Barcode (if applicable)

Name Jon CostelloJob Title Gov. ConsultantAddress 119 S. MonroePhone 681-6788

Street

Tallahassee

City

FL

State

32301

Zip

Email Jon@ruthledge-ccer.comSpeaking: ☒ For ☐ Against ☐ InformationWaive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)Representing Courthouse News ServiceAppearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4 128/2017  
Meeting Date

Topic \_\_\_\_\_

Bill Number 202  
(if applicable)

Name BRIAN PITTS

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH  
Street

Phone 727-897-9291

SAINT PETERSBURG FLORIDA 33705  
City State Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☐ Against ☒ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/20/11)

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/SB 204

INTRODUCER: Judiciary Committee and Senator Passidomo

SUBJECT: Limitations on Actions other than for the Recovery of Real Property

DATE: April 27, 2017

REVISED: \_\_\_\_\_

| ANALYST    | STAFF DIRECTOR | REFERENCE | ACTION           |
|------------|----------------|-----------|------------------|
| 1. Cibula  | Cibula         | JU        | <b>Fav/CS</b>    |
| 2. Kraemer | McSwain        | RI        | <b>Favorable</b> |
| 3. Cibula  | Phelps         | RC        | <b>Favorable</b> |

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 204 clarifies when the completion of a construction contract occurs. This date, in some cases, determines when the applicable 4-or 10-year limitations periods begin for bringing a lawsuit for a construction defect or latent construction defect.

Under current law, the start date of the limitations periods begins when both parties to a construction contract complete their obligations. The bill provides that the limitations periods begin at the later of the date of final performance of all the contracted services or the date that final payment for those services is due., for causes of action that accrue on or after July 1, 2017.

The bill has no fiscal impact on state government. See Section V.

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

**II. Present Situation:**

Florida law establishes a number of different time periods in which a person must file a lawsuit or is precluded from doing so.<sup>1</sup> Some of these time periods are governed by a statute of limitations, which precludes a person from filing a lawsuit after a specified time period after the

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<sup>1</sup> See *e.g.*, ch. 95, F.S.

cause of action otherwise accrues.<sup>2</sup> A cause of action typically accrues when a person sustains an injury or incurs damages.

Other time periods for filing a lawsuit are governed by a statute of repose, which precludes the filing of a lawsuit after a specified time after the occurrence of an event.<sup>3</sup> The purpose for statutes of repose is to prevent a person from being subject to liability in perpetuity in a manner that is supportive of another public policy choice.<sup>4</sup>

Many of the statutes of repose, including a statute of repose for actions alleging a construction defect or latent construction defect, are set forth in s. 95.11, F.S. The statute provides a four-year statute of repose for actions alleging a construction defect based on the design, planning, or construction of an improvement to real property. A 10-year statute of repose is provided for actions alleging a latent construction defect. A latent defect is generally considered to be a hidden or concealed defect that is not discoverable by a reasonable and customary inspection, and of which the owner has no knowledge.<sup>5</sup>

In 2015, the Fifth District Court of Appeal determined in *Cypress Fairway Condominium Association v. Bergeron Construction Company, (Cypress)* when the 10-year limitations period, or statute of repose, for a lawsuit alleging a latent construction defect begins.<sup>6</sup> The statute construed by the court, s. 95.11(3)(c), F.S., provides that the statute of repose for an action alleging a construction defect begins to run on the later of several events including the “date of completion . . . of the contract.”

In *Cypress*, the construction company argued that the contract was completed and the statute of repose began to run on January 31, 2001, when the Final Application for Payment was made.<sup>7</sup> The condominium association argued that the contract was not completed until three days later, on February 2, 2001, when the final payment under the contract was made.<sup>8</sup> This 3-day difference would determine whether the association could proceed with its \$15 million lawsuit,

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<sup>2</sup> See *Kush v. Lloyd*, 616 So. 2d 415, 417-419 (Fla. 1992) (“A statute of limitation runs from the date the cause of action arises; that is, the date on which the final element (ordinarily, damages, but it may also be knowledge or notice) essential to the existence of a cause of action occurs.” (citing *Carr v. Broward County*, 505 So. 2d 568, 570 (Fla. 4th DCA 1987))).

<sup>3</sup> See *Kush*, 616 So. 2d 415, at 419. (“The period of time established by a statute of repose commences to run from the date of an event specified in the statute, such as delivery of goods, closing on a real estate sale or the performance of a surgical operation. At the end of the time period the cause of action ceases to exist.” (citing *Carr v. Broward County*, 505 So. 2d 568, at 570 (Fla. 4th DCA 1987))).

<sup>4</sup> See *Carr v. Broward County*, 541 So. 2d 92, at 95 (Fla. 1989). In *Carr*, the Supreme Court recognized the balancing of public interests that takes place when the Legislature enacts a statute of repose, stating: “[t]he legislature, in enacting this statute of repose, reasonably decided that perpetual liability places an undue burden on manufacturers, and it decided that twelve years from the date of sale is a reasonable time for exposure to liability for manufacturing of a product.” *Id.* at 95, (quoting *Pullum v. Cincinnati, Inc.*, 476 So. 2d 657, 659 (Fla. 1985)). See also *Damiano v. McDaniel*, 689 So. 2d 1059, 1061 (Fla. 1997) (stating that in a statute of repose governing medical malpractice actions, “the legislature attempted to balance the rights of injured persons against the exposure of health care providers to liability for endless periods of time.”).

<sup>5</sup> See *Alexander v. Suncoast Builders*, 837 So. 2d 1056, 1058 (Fla. 3d DCA 2002).

<sup>6</sup> *Cypress Fairway Condo. v. Bergeron Constr. Co.*, 164 So. 3d 706, 707 (Fla. 5th DCA 2015).

<sup>7</sup> *Id.* at 707.

<sup>8</sup> *Id.*

which was filed within the 10-year period that began February 2, 2001, but beyond the 10-year period that began January 31, 2001.<sup>9</sup>

The court found that the contract was not completed until the final payment was made under the contract, and explained:

Completion of the contract means completion of performance by both sides of the contract, not merely performance by the contractor. Had the legislature intended the statute to run from the time the contractor completed performance, it could have simply so stated. It is not our function to alter plain and unambiguous language under the guise of interpreting a statute.<sup>10</sup>

### **III. Effect of Proposed Changes:**

The limitations period or statute of repose for bringing an action alleging a construction defect or latent construction defect is specified in existing s. 95.11(3)(c), F.S. These 4-year and 10-year time periods begin on the date of completion of a contract between the professional engineer, registered architect, or licensed contractor and his or her employer, whichever date is latest.”

The bill clarifies when a construction contract is complete and causes the limitations periods to begin. Specifically, the applicable 4-year statute of repose for construction defects and 10-year statute of repose for latent construction defects begins on the “later of the date of final performance of all the contracted services, or the date that final payment for those services becomes due.” As a result, the duration of a contractor’s liability will not be affected by the timing of a customer’s payments under a construction contract.

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.

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<sup>9</sup> *Id.* at 707-708.

<sup>10</sup> *Id.*



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

None.

**B. Private Sector Impact:**

CS/SB 204 provides more certainty in defining the duration of a contractor's liability for a construction defect. As a result, there may be less incentive to litigate whether the statute of repose bars particular construction defect lawsuits.

**C. Government Sector Impact:**

The Office of the State Courts Administrator anticipates that the bill may result in a small reduction in judicial workload by limiting the number of disputed matters before the courts.<sup>11</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

CS/SB 204 substantially amends section 95.11, Florida Statutes.

This bill re-enacts s. 627.441, F.S., to incorporate the amendment to s. 95.11, F.S., made by the 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 Judiciary on March 14, 2017:**

The underlying bill defined the date of the completion of a construction contract as the date on which construction activities were completed, not including construction work to correct deficiencies. The committee substitute provides that the completion of a construction contract occurs on the later of the completion of construction activities or the date the final payment under the contract becomes due.

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<sup>11</sup> Office of the State Courts Administrator, *2017 Judicial Impact Statement for SB 204* (Jan. 24, 2017).

B. Amendments:

None.

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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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By the Committee on Judiciary; and Senator Passidomo

590-02434-17

2017204c1

A bill to be entitled

An act relating to limitations on actions other than for the recovery of real property; amending s. 95.11, F.S.; specifying the date of completion for specified contracts; providing applicability; reenacting s. 627.441(2), F.S., relating to commercial general liability policy coverage to contractors for completed operations, to incorporate the amendment made by the act to s. 95.11, F.S., in a reference thereto; providing an effective date.

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

Section 1. Paragraph (c) of subsection (3) of section 95.11, Florida Statutes, is amended to read:

95.11 Limitations other than for the recovery of real property.—Actions other than for recovery of real property shall be commenced as follows:

(3) WITHIN FOUR YEARS.—

(c) An action founded on the design, planning, or construction of an improvement to real property, with the time running from the date of actual possession by the owner, the date of the issuance of a certificate of occupancy, the date of abandonment of construction if not completed, or the date of completion or termination of the contract between the professional engineer, registered architect, or licensed contractor and his or her employer, whichever date is latest; except that, when the action involves a latent defect, the time runs from the time the defect is discovered or should have been

Page 1 of 2

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

590-02434-17

2017204c1

discovered with the exercise of due diligence. In any event, the action must be commenced within 10 years after the date of actual possession by the owner, the date of the issuance of a certificate of occupancy, the date of abandonment of construction if not completed, or the date of completion or termination of the contract between the professional engineer, registered architect, or licensed contractor and his or her employer, whichever date is latest. Completion of the contract means the later of the date of final performance of all the contracted services or the date that final payment for such services becomes due without regard to the date final payment is made.

Section 2. This act applies to causes of action that accrue on or after July 1, 2017.

Section 3. For the purpose of incorporating the amendment made by this act to section 95.11, Florida Statutes, in a reference thereto, subsection (2) of section 627.441, Florida Statutes, is reenacted to read:

627.441 Commercial general liability policies; coverage to contractors for completed operations.—

(2) A liability insurer must offer coverage at an appropriate additional premium for liability arising out of current or completed operations under an owner-controlled insurance program for any period beyond the period for which the program provides liability coverage, as specified in s. 255.0517(2)(b). The period of such coverage must be sufficient to protect against liability arising out of an action brought within the time limits provided in s. 95.11(3)(c).

Section 4. This act shall take effect July 1, 2017.

Page 2 of 2

**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 #204**, relating to Limitations on Actions Other Than For the Recovery of Real Property, be placed on the:

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

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

---

Senator Kathleen Passidomo  
Florida Senate, District 28

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

4/28/2017

Meeting Date

204

Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name BRIAN PITHS

Job Title Trustee

Address 1119 Newton Ave S  
Street

Phone 727/8979291

St Petersburg FL 33705  
City State Zip

Email justice2jesus@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Justice-2-Jesus

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

4/28/17

Meeting Date

204

Bill Number (if applicable)

Topic Limitations on Actions other than Real Property

Amendment Barcode (if applicable)

Name Carol Bowen

Job Title Deputy Chief Lobbyist

Address 3730 Coconut Creek Pkwy, Ste 200 Phone (954) 465-6811  
Street

Coconut Creek, FL 33066  
City State Zip

Email cbowen@abcsoastflorida.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Associated Builders & Contractors 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 248

INTRODUCER: Senators Broxson and Passidomo

SUBJECT: Public Records/Office of Financial Regulation

DATE: April 27, 2017

REVISED: \_\_\_\_\_

|    | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION           |
|----|---------|----------------|-----------|------------------|
| 1. | Matiyow | Knudson        | BI        | <b>Favorable</b> |
| 2. | Kim     | Ferrin         | GO        | <b>Favorable</b> |
| 3. | Matiyow | Phelps         | RC        | <b>Favorable</b> |

---

**I. Summary:**

SB 248 exempts from public inspection and disclosure certain personal identifying information of nonsworn investigative employees of the Office of Financial Regulation (Office). The exemption applies to all current or former employees as well as their spouses and children. The exemption also covers an employee's spouse's place of employment and his or her child's school or daycare facility.

The bill states it is a public necessity to protect such information because the employees' investigative duties can result in arrests and prosecutions for crimes up to and including first degree felony violations and can also result in the loss of commerce and property, the assessment of monetary fines, or the suspension or loss of professional licenses. The Office has documented several instances where their nonsworn investigators have been intimidated and threatened, including the brandishing of firearms.

The provisions of the bill are subject to the Open Government Sunset Review Act and will be repealed on October 2, 2022, unless reenacted by the Legislature. The bill goes into effect upon becoming law.

The bill requires a two-thirds vote of each chamber in order to pass because it creates a public records exemption.

The bill is 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.<sup>1</sup> 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.<sup>2</sup>

In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.<sup>3</sup> Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.<sup>4</sup> 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.<sup>5</sup>

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.<sup>6</sup> 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.”<sup>7</sup> A violation of the Public Records Act may result in civil or criminal liability.<sup>8</sup>

The Legislature may create an exemption to public records requirements.<sup>9</sup> An exemption must pass by a two-thirds vote of the House and the Senate.<sup>10</sup> 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.<sup>11</sup> A statutory

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<sup>1</sup> FLA. CONST., art. I, s. 24(a).

<sup>2</sup> *Id.*

<sup>3</sup> 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.

<sup>4</sup> Public records laws are found throughout the Florida Statutes.

<sup>5</sup> Section 119.01(1), F.S.

<sup>6</sup> 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.”

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

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

<sup>9</sup> FLA. CONST., art. I, s. 24(c).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*



exemption which does not meet these criteria may be unconstitutional and may not be judicially saved.<sup>12</sup>

When creating a public records exemption, the Legislature may provide that a record is “confidential and exempt” or “exempt.”<sup>13</sup> 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.<sup>14</sup>

### **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.<sup>15</sup> 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.<sup>16</sup>

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.<sup>17</sup> 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;<sup>18</sup>
- 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;<sup>19</sup> or
- It protects trade or business secrets.<sup>20</sup>

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

<sup>12</sup> *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).

<sup>13</sup> 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).

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

<sup>15</sup> 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.

<sup>16</sup> Section 119.15(3), F.S.

<sup>17</sup> Section 119.15(6)(b), F.S.

<sup>18</sup> Section 119.15(6)(b)1., F.S.

<sup>19</sup> Section 119.15(6)(b)2., F.S.

<sup>20</sup> Section 119.15(6)(b)3., F.S.

<sup>21</sup> 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.<sup>22</sup> 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.<sup>23</sup>

### **Office of Financial Regulation**

The Office provides regulatory oversight for Florida's financial services providers. The nonsworn investigators for the Office work under the Bureau of Financial Investigations (bureau). The bureau has 39 employees, 35 of which would be covered by this exemption.<sup>24</sup> The bureau's nonsworn investigators are housed in satellite offices throughout the state (Tallahassee, Tampa, Orlando, West Palm Beach, and Miami). Although the investigators are nonsworn, they work on criminal and civil cases independently and collaboratively with law enforcement and prosecutorial agencies. The nonsworn investigators also provide investigative assistance to those agencies, including testimony at trial.<sup>25</sup>

### **III. Effect of Proposed Changes:**

SB 248 amends s. 119.071, F.S., to exempt from public inspection and disclosure laws the home address, telephone numbers, dates of birth, and photographs of any current or former nonsworn investigative employee of the Office.

The bill also exempts from public inspection and disclosure the employee's spouse's and children's home address, telephone numbers, dates of birth, and photographs. A spouse's place of employment as well as the school or daycare of an employee's children are also exempt.

The bill states that it is a public necessity to protect such information because these employees and their families may be subject to revenge perpetrated by people who have been investigated. The bill states such investigations can result in arrests and prosecutions for crimes up to and including first degree felony violations and can also result in the loss of commerce and property, the assessment of monetary fines, or the suspension or loss of professional licenses. The Office has documented several instances where their nonsworn investigative personal and their families have been intimidated or threatened as a result of their work.<sup>26</sup>

- 
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?

<sup>22</sup> FLA. CONST. art. I, s. 24(c).

<sup>23</sup> Section 119.15(7), F.S.

<sup>24</sup> Office of Financial Regulation, Senate Bill 248 Bill Analysis (Jan. 9, 2017) (On file with the Senate Committee on Banking and Insurance).

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

- A person associated with an investigation appeared at an investigator's former residence, where his young children still resided. The visit put the investigator and his family at great unease.
- An investigator's name appeared on a credible hit list found by U.S. Marshals during the search of a suspect's home. Other evidence, including photos of the investigator's residence and children were also found during the search.
- Two investigators conducting surveillance of a suspected illegal banking operation were seen by suspects and were chased by vehicle through the streets of Miami and Liberty City. The suspects were observed brandishing firearms before the investigators were able to escape.
- While investigators were reviewing records obtained via subpoena, notes were found by the investigators indicating that the suspects hired private investigators to collect personal background information on the investigators working the case.
- The suspect of an investment fraud case learned of the time and location of a deposition taken by an investigator. The suspect arrived at the location and waited outside for the deposition to conclude. As the investigator emerged from the deposition room, the suspect approached and verbally confronted the investigator loudly and in a threatening way. As a result, the investigator took personal time from his job to work with his local property appraiser's office to conceal his personal information from any public search of his records.
- An investigator received verbal threats from a suspect while conducting an advance fee investigation. In one instance, the suspect told her that "if he went down, she would go down, too." In a subsequent instance, the suspect threatened that if he went to prison, "she would not be around any longer." The investigator felt endangered to the point that she reported the matter to law enforcement and purchased a firearm for her personal protection.<sup>27</sup>

The Office believes these documented instances of nonsworn investigative personal and their families being intimidated or threatened for completing their work warrants their identification and location information being exempt from public inspection and copying.

The provisions of the bill are subject to the OGSR and will be automatically repealed on October 2, 2022, unless reenacted by the Legislature.

The bill goes in to 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 present and voting in each house of the Legislature for passage of a newly-created or

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<sup>27</sup> *Id.*

expanded public records or public meetings exemption. Because this bill creates a new public records exemption, it requires a two-thirds vote for passage.

**Public Necessity Statement**

Article I, s. 24(c) of the Florida Constitution requires a public necessity statement for a newly-created or expanded public records or public meetings exemption. The public necessity statement in this bill appears to support the breadth of this public records exemption.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 119.071 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.

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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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By Senator Broxson

1-00219-17

2017248\_\_

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 the personal identifying and

location information of certain nonsworn investigative

personnel of the Office of Financial Regulation and

the names and personal identifying and location

information of the spouses and children of such

personnel; 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. 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

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neglect, and personnel of the Department of Revenue or local governments whose responsibilities include revenue collection and enforcement or child support enforcement; the home addresses, telephone numbers, social security numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1).

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

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

(IV) The home addresses, telephone numbers, dates of birth, and photographs of current or former nonsworn investigative personnel of the Department of Financial Services whose duties include the investigation of fraud, theft, workers' compensation coverage requirements and compliance, other related criminal activities, or state regulatory requirement violations; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-sub-subparagraph is subject to the Open

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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.

(V) The home addresses, telephone numbers, dates of birth, and photographs of current or former nonsworn investigative personnel of the Office of Financial Regulation's Bureau of Financial Investigations whose duties include the investigation of fraud, theft, 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-sub-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.

b. The home addresses, telephone numbers, dates of birth, and photographs of firefighters certified in compliance with s. 633.408; 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 are exempt from s. 119.07(1).

c. The home addresses, dates of birth, and telephone numbers of current or former justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges; the home addresses, telephone numbers,

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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).

d.(I) The home addresses, telephone numbers, social security numbers, dates of birth, and photographs of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors; the home addresses, telephone numbers, social security numbers, photographs, dates of birth, and places of employment of the spouses and children of current or former state attorneys, assistant state attorneys, statewide prosecutors, 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.

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

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

141 f. The home addresses, telephone numbers, dates of birth,  
 142 and photographs of current or former human resource, labor  
 143 relations, or employee relations directors, assistant directors,  
 144 managers, or assistant managers of any local government agency  
 145 or water management district whose duties include hiring and  
 146 firing employees, labor contract negotiation, administration, or  
 147 other personnel-related duties; the names, home addresses,  
 148 telephone numbers, dates of birth, and places of employment of

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149 the spouses and children of such personnel; and the names and  
 150 locations of schools and day care facilities attended by the  
 151 children of such personnel are exempt from s. 119.07(1) and s.  
 152 24(a), Art. I of the State Constitution.

153 g. The home addresses, telephone numbers, dates of birth,  
 154 and photographs of current or former code enforcement officers;  
 155 the names, home addresses, telephone numbers, dates of birth,  
 156 and places of employment of the spouses and children of such  
 157 personnel; and the names and locations of schools and day care  
 158 facilities attended by the children of such personnel are exempt  
 159 from s. 119.07(1) and s. 24(a), Art. I of the State  
 160 Constitution.

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

172 i. The home addresses, telephone numbers, dates of birth,  
 173 and photographs of current or former juvenile probation  
 174 officers, juvenile probation supervisors, detention  
 175 superintendents, assistant detention superintendents, juvenile  
 176 justice detention officers I and II, juvenile justice detention  
 177 officer supervisors, juvenile justice residential officers,

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178 juvenile justice residential officer supervisors I and II,  
 179 juvenile justice counselors, juvenile justice counselor  
 180 supervisors, human services counselor administrators, senior  
 181 human services counselor administrators, rehabilitation  
 182 therapists, and social services counselors of the Department of  
 183 Juvenile Justice; the names, home addresses, telephone numbers,  
 184 dates of birth, and places of employment of spouses and children  
 185 of such personnel; and the names and locations of schools and  
 186 day care facilities attended by the children of such personnel  
 187 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
 188 Constitution.

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

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

206 k. The home addresses, telephone numbers, and photographs

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2017248\_\_

207 of current or former investigators or inspectors of the  
 208 Department of Business and Professional Regulation; the names,  
 209 home addresses, telephone numbers, and places of employment of  
 210 the spouses and children of such current or former investigators  
 211 and inspectors; and the names and locations of schools and day  
 212 care facilities attended by the children of such current or  
 213 former investigators and inspectors are exempt from s. 119.07(1)  
 214 and s. 24(a), Art. I of the State Constitution if the  
 215 investigator or inspector has made reasonable efforts to protect  
 216 such information from being accessible through other means  
 217 available to the public. This sub-subparagraph is subject to the  
 218 Open Government Sunset Review Act in accordance with s. 119.15  
 219 and shall stand repealed on October 2, 2017, unless reviewed and  
 220 saved from repeal through reenactment by the Legislature.

221 l. The home addresses and telephone numbers of county tax  
 222 collectors; the names, home addresses, telephone numbers, and  
 223 places of employment of the spouses and children of such tax  
 224 collectors; and the names and locations of schools and day care  
 225 facilities attended by the children of such tax collectors are  
 226 exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
 227 Constitution if the county tax collector has made reasonable  
 228 efforts to protect such information from being accessible  
 229 through other means available to the public. This sub-  
 230 subparagraph is subject to the Open Government Sunset Review Act  
 231 in accordance with s. 119.15 and shall stand repealed on October  
 232 2, 2017, unless reviewed and saved from repeal through  
 233 reenactment by the Legislature.

234 m. The home addresses, telephone numbers, dates of birth,  
 235 and photographs of current or former personnel of the Department

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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 subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature.

n. The home addresses, telephone numbers, dates of birth, and photographs of current or former impaired practitioner consultants who are retained by an agency or current or former employees of an impaired practitioner consultant whose duties result in a determination of a person's skill and safety to practice a licensed profession; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such consultants or their employees; and the names and locations of schools and day care facilities attended by the children of such consultants or employees are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if a consultant or employee has made reasonable

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efforts to protect such information from being accessible through other means available to the public. This subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

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

p. The home addresses, telephone numbers, dates of birth, and photographs of current or former personnel employed in an agency's office of inspector general or internal audit department whose duties include auditing or investigating waste, fraud, abuse, theft, exploitation, or other activities that could lead to criminal prosecution or administrative discipline; the names, home addresses, telephone numbers, dates of birth,

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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. The Legislature finds that it is a public necessity to exempt from public records requirements the home addresses, telephone numbers, dates of birth, and photographs of

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current or former nonsworn investigative personnel of the Office of Financial Regulation's Bureau of Financial Investigations whose duties include the investigation of fraud, theft, 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. The efforts of such personnel can lead to arrests and prosecutions for crimes up to and including first degree felony violations and can also result in the loss of commerce and property, the assessment of monetary fines, or the suspension or loss of professional licenses. The office has documented multiple compelling instances of such personnel being threatened and fearing repercussions as a result of carrying out their duties. These threats have included weapons being brandished, verbal threats made to harm them or their family members, harassment, and intimidation. The Legislature finds that the release of such personal identifying and location information might place these nonsworn investigative personnel of the office and their family members in danger of physical and emotional harm from disgruntled individuals who have contentious reactions to actions taken by such personnel, or whose business or professional practices have come under the scrutiny of such personnel. The Legislature further finds that the harm that may result from the release of such personal identifying and location information outweighs any public benefit that may be derived from the disclosure of the information.

Section 3. 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)

4/28/17  
Meeting Date

248  
Bill Number (if applicable)

Topic Waive in Support of SB 248

Amendment Barcode (if applicable)

Name Jamie Mongiovi (MON-JOE-VEE)

Job Title Florida Office of Financial Regulation

Address 101 E Gaines St.  
Street

Phone \_\_\_\_\_

Tall, FL 32399  
City State Zip

Email \_\_\_\_\_

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Office of Financial Regulation

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

4/28/2017

Meeting Date

248

Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Brian Pitts

Job Title Justice

Address 1119 Newton Ave S  
Street

Phone 727/897-9291

St Petersburg FL 33705  
City State Zip

Email justice2jesus@yahoo.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Justice-2-Jesus

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/SB 294

INTRODUCER: Judiciary Committee and Senator Bracy

SUBJECT: Condominium, Cooperative, and Homeowners' Associations

DATE: April 27, 2017

REVISED: \_\_\_\_\_

| ANALYST     | STAFF DIRECTOR | REFERENCE | ACTION           |
|-------------|----------------|-----------|------------------|
| 1. Oxamendi | McSwain        | RI        | <b>Favorable</b> |
| 2. Parks    | Cibula         | JU        | <b>Fav/CS</b>    |
| 3. Oxamendi | Phelps         | RC        | <b>Favorable</b> |

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 294 provides substantively identical changes to the annual financial reporting requirements for condominium, cooperative, and homeowners' associations.

Under existing law, these associations must prepare annual financial statements. The complexity of these statements is based on the annual revenues of an association. Associations having larger revenues must prepare more complex financial statements. The members of these associations, however, may vote to allow the association to prepare less complex financial statements than otherwise required by law but not for more than 3 consecutive years. The bill repeals the 3-consecutive-year limit on allowing an association to prepare less complex financial statements.

The bill also repeals the provisions of law that require condominium, cooperative, and homeowners' associations having fewer than 50 units or parcels to prepare a report of cash receipts and expenditures. This change will make these smaller associations subject to other provisions of existing law which define the financial reporting requirements of an association based on its annual revenues.

**II. Present Situation:**

The Division of Florida Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business and Professional Regulation (DBPR) administers the provisions of chapters 718 and 719, F.S., for condominium and cooperative associations, respectively. The

division may investigate complaints and enforce compliance with chapters 718 and 719, F.S., with respect to associations that are still under developer control.<sup>1</sup> The division also has the authority to investigate complaints against developers involving improper turnover or failure to transfer control to the association.<sup>2</sup> After control of the condominium 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.<sup>3</sup> For cooperatives, the division's jurisdiction extends to the development, construction, sale, lease, ownership, operation, and management of residential cooperative units.<sup>4</sup>

As part of the division's authority to investigate complaints, the division may subpoena witnesses, take sworn statements from witnesses, issue cease and desist orders, and impose civil penalties against developers and associations.<sup>5</sup>

If the division has reasonable cause to believe that a violation of any provision of chapter 718, F.S., chapter 719, F.S., or related rule has occurred, the division may institute enforcement proceedings in its own name against any developer, bulk assignee, bulk buyer, association, officer, or member of the board of administration, or its assignees or agents. The division may conduct an investigation and issue an order to cease and desist from unlawful practices and to take affirmative action to carry out the purpose of the applicable chapter. In addition, the division is authorized to petition a court to appoint a receiver or conservator to implement a court order or to enforce an injunction or temporary restraining order. The division may also impose civil penalties.<sup>6</sup>

Unlike condominium and cooperative associations, homeowners' associations are not regulated by a state agency. Section 720.302(2), F.S., expresses the legislative intent regarding the regulation of homeowners' associations:

The Legislature recognizes that it is not in the best interest of homeowners' associations or the individual association members thereof to create or impose a bureau or other agency of state government to regulate the affairs of homeowners' associations. However, in accordance with s. 720.311, the Legislature finds that homeowners' associations and their individual members will benefit from an expedited alternative process for resolution of election and recall disputes and presuit mediation of other disputes involving covenant enforcement and authorizes the department to hear, administer, and determine these disputes as more fully set forth in this chapter. Further, the Legislature recognizes that certain contract rights have been created for the benefit of homeowners' associations and members thereof before the effective date of this act and that ss. 720.301-720.407 are not intended to impair such contract rights,

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<sup>1</sup> Sections 718.501(1) and 719.501(1), F.S.

<sup>2</sup> *Id.*

<sup>3</sup> Section 718.501(1), F.S.

<sup>4</sup> *Id.*

<sup>5</sup> Sections 718.501(1) and 719.501(1), F.S.

<sup>6</sup> *Id.*

including, but not limited to, the rights of the developer to complete the community as initially contemplated.

In regards to homeowners' associations, the division's authority is limited to arbitration of recall election disputes.<sup>7</sup>

### **Condominium**

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, appurtenant to each unit, an undivided share in common elements.”<sup>8</sup> A condominium is created by recording a declaration of condominium in the public records of the county where the condominium is located.<sup>9</sup> A declaration is similar to a constitution in that it:

Strictly governs the relationships among condominium unit owners and the condominium association. Under the declaration, the Board of the condominium association has broad authority to enact rules for the benefit of the community.<sup>10</sup>

A condominium is administered by a board of directors referred to as a “board of administration.”<sup>11</sup>

### **Cooperative Associations**

Section 719.103(12), F.S., defines a “cooperative” to mean:

that form of ownership of real property wherein legal title is vested in a corporation or other entity and the beneficial use is evidenced by an ownership interest in the association and a lease or other muniment of title or possession granted by the association as the owner of all the cooperative property.

A cooperative differs from a condominium because, in a cooperative, no unit is individually owned. Instead, a cooperative unit's occupants receive an exclusive right to occupy the unit. The cooperative holds the legal title to the unit and all common elements. The cooperative association may assess costs for the maintenance of common expenses.<sup>12</sup>

### **Homeowners' Associations**

Florida laws provide statutory recognition to corporations that operate residential communities in this state and procedures for operating homeowners' associations. These laws protect the rights

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<sup>7</sup> See s. 720.306(9)(c), F.S.

<sup>8</sup> Section 718.103(11), F.S.

<sup>9</sup> Section 718.104(2), F.S.

<sup>10</sup> *Neuman v. Grandview at Emerald Hills*, 861 So. 2d 494, 496-97 (Fla. 4th DCA 2003) (internal citations omitted).

<sup>11</sup> Section 718.103(4), F.S.

<sup>12</sup> See ss. 719.106(1)(g) and 719.107, F.S.



of association members without unduly impairing the ability of such associations to perform their functions.<sup>13</sup>

A “homeowners’ association” is defined as “a Florida corporation responsible for the operation of a community or a mobile home subdivision in which the voting membership is made up of parcel owners or their agents, or a combination thereof, and in which membership is a mandatory condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel.”<sup>14</sup> Unless specifically stated to the contrary, homeowners’ associations are also governed by chapter 607, F.S., relating to for-profit corporations or by chapter 617, F.S., relating to not-for-profit corporations.<sup>15</sup>

Homeowners’ associations are administered by a board of directors whose members are elected.<sup>16</sup> The powers and duties of homeowners’ associations include the powers and duties provided in chapter 720, F.S., and in the governing documents of the association, which include recorded declaration of covenants, bylaws, articles of incorporation, and duly-adopted amendments to these documents.<sup>17</sup> The officers and members of a homeowners’ association have a fiduciary relationship to the members who are served by the association.<sup>18</sup>

### **Chapters 718, 719, and 720, F.S.**

Chapter 718, F.S., relating to condominiums, chapter 719, F.S., relating to cooperatives, and chapter 720, F.S., relating to homeowners’ associations, provide for the governance of these associations. The chapters delineate requirements for notices of meetings,<sup>19</sup> recordkeeping requirements, including which records are accessible to the members of the association,<sup>20</sup> and financial reporting.<sup>21</sup> Timeshare condominiums are generally governed by chapter 721, F.S., the “Florida Vacation Plan and Timesharing Act.”

### **Official Records**

Condominium, cooperative associations, and homeowners’ associations are required to maintain the official records of an association. The provisions regarding access to records are similar for each type of association.

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<sup>13</sup> See s. 720.302(1), F.S.

<sup>14</sup> Section 720.301(9), F.S.

<sup>15</sup> Section 720.302(5), F.S.

<sup>16</sup> See ss. 720.303 and 720.307, F.S.

<sup>17</sup> See ss. 720.301 and 720.303, F.S.

<sup>18</sup> Section 720.303(1), F.S.

<sup>19</sup> See s. 718.112(2), F.S., for condominiums, s. 719.106(2)(c), F.S., for cooperatives, and s. 720.303(2), F.S., for homeowners’ associations.

<sup>20</sup> See s. 718.111(12), F.S., for condominiums, s. 719.104(2), F.S., for cooperatives, and s. 720.303(4), F.S., for homeowners’ associations.

<sup>21</sup> See s. 718.111(13), F.S., for condominiums, s. 719.104(4), F.S., for cooperatives, and s. 720.303(7), F.S., for homeowners’ associations.

Current law delineates the types of records that the association must maintain and identifies records that are and are not accessible to association members. The associations are required to maintain official records for at least 7 years.<sup>22</sup>

The official records of the association must be open to inspection by any association member or the authorized representative of such member at all reasonable times. Members of the association have the right to inspect the records, and to make copies or obtain copies, at the reasonable expense, if any, of the member.

If the association fails to provide the requested records within 10 working days after receipt of a written request from a member, there is a rebuttable presumption that the association willfully failed to comply with the access to records requirement. A member of the association is entitled to actual damages or minimum damages for the association's willful failure to comply with a records request. Minimum damages are \$50 per calendar day for up to 10 days, beginning on the 11th working day after receipt of the written request.

If a condominium or cooperative association fails to permit inspection, the person prevailing in an action to enforce the access to records requirement is entitled to recover reasonable attorney fees from the person in control of the records who, directly or indirectly, knowingly denied access to the records. Current law does not provide a right to attorney fees expressly related to failure to provide requested records, but a member of a homeowners' association, if he or she is the prevailing party in litigation against the association, is entitled to recover reasonable attorney fees and costs, and may also recover additional amounts determined by the court to be necessary to reimburse the member for his or her share of assessments levied by the association to fund the expenses of the litigation.

### **Financial Reporting**

Sections 718.11(13), 719.104(4), and 720.303(7), F.S., provide the financial reporting requirements for condominium, cooperative, and homeowners' associations, respectively. These provisions for each association type are comparable.

Within 90 days following the end of the fiscal or calendar year, or annually on such date as provided in the association's bylaws, the board must complete, or contract with a third party to complete, the financial statements. Within 21 days after the financial report is completed by the association or received from the third party, but no later than 120 days after the end of the fiscal year, the board must provide each member of the association a copy of the financial report or a notice that it is available at no charge upon a written request.

Condominium and cooperative associations may not waive the financial reporting requirements for more than 3 consecutive years.<sup>23</sup> A cooperative association may waive financial reporting for the fiscal year by a vote of a majority of the voting interests of the association present at a duly

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<sup>22</sup> See s. 718.111(13)(b), F.S., for condominiums, s. 719.104(2)(b), F.S., for cooperatives, and s. 720.303(5), F.S., for homeowners' associations.

<sup>23</sup> Sections 718.111(13) and 718.104(4)(b)4., F.S. Chapter 720, F.S., does not authorize homeowners' associations to waive financial reporting requirements.

called meeting of the association.<sup>24</sup> Chapter 718, F.S., does not provide the process for waiving financial reporting requirements in condominium associations.

The type of financial reporting that an association must perform is based on the association's total annual revenue. An association with total annual revenue of:

- Less than \$150,000 must prepare a report of cash receipts and expenditures.
- At least \$150,000 but less than \$300,000 must prepare compiled financial statements.<sup>25</sup>
- At least \$300,000 but less than \$500,000 must prepare reviewed financial statements.<sup>26</sup>
- \$500,000 or more must prepare audited financial statements.<sup>27</sup>

An association of fewer than 50 units or parcels, regardless of the association's annual revenues, must prepare a report of cash receipts and expenditures. Provisions specify the information that must be disclosed in the report of cash receipts and expenditures. Cooperative and homeowners' associations may provide otherwise in their governing documents.

If approved by a majority of voting interests present at a duly called meeting, an association may prepare or cause to be prepared:

- A report of cash receipts and expenditures in lieu of a compiled, reviewed or audited financial statement;
- A report of cash receipts and expenditures or a compiled financial statement in lieu of a reviewed or audited financial statement; or
- A report of cash receipts and expenditures, a compiled financial statement, or a reviewed financial statement in lieu of an audited financial statement.

### **III. Effect of Proposed Changes:**

Existing sections 718.11(13), 719.104(4), and 720.303(7), F.S., specify the financial reporting requirements for condominium, cooperative, and homeowners' associations, respectively. The bill provides substantively identical revisions to the financial reporting requirements for each type of association.

The bill repeals s. 718.111(13)(b)2., 719.104(4)(c)2., and 720.303(7)(b)2., F.S., the provisions that require condominium, cooperative, and homeowners' associations, respectively, having fewer than 50 units or parcels, regardless of the association's annual revenues, to prepare a report of cash receipts and expenditures. Under the bill, an association having fewer than 50 units or

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<sup>24</sup> Section 718.104(4)(b)4., F.S.

<sup>25</sup> A compiled financial statement is an accounting service based on information provided by the entity that is the subject of the financial statement. A compiled financial statement is made without the assurance of a Certified Public Accountant (CPA) that the statement conforms with Generally Accepted Accounting Principles (GAAP). Compiled financial statements must conform to the American Institute of Certified Public Accountants (AICPA) Statements on Standards for Accounting and Review Services. J.G. Siegel and J.K. Shim, *Barron's Business Guides, Dictionary of Accounting Terms*, 3rd ed. (Barron's 2000).

<sup>26</sup> A reviewed financial statement is an accounting service that provides a board of directors and interested parties some assurance as to the reliability of financial data without the CPA conducting an examination in accordance with GAAP. Reviewed financial statements must comply with AICPA auditing and review standards for public companies or the AICPA review standards for non-public businesses. *Id.*

<sup>27</sup> An audited financial statement by a CPA verifies the accuracy and completeness of the audited entities records in accordance with GAAP. *Id.*

parcels is required to prepare a compiled, reviewed, or audited financial statement if the association's total annual revenue is more than \$150,000. However, the bill does not increase the financial reporting requirements for a smaller association whose revenues do not exceed \$150,000.

The bill also amends ss. 718.111(13)(d), 719.104(c)2. and 720.303(7)(b)2., F.S., to repeal the 3-consecutive-year limit on the ability of an association to prepare less complex financial statements than otherwise required by law. Under this change, the members of an association can waive the statutory requirement for default financial statements whenever they want, regardless of how many consecutive times the waiver has already been made.

The effective date of the bill is July 1, 2017.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may cause a negative impact on condominium, cooperative and homeowners' associations operating fewer than 50 units, if an association is required to hire an accountant to complete a compiled, reviewed, or audited financial statement instead of the report of cash receipts and expenditures required under current law. However, the bill also allows the members of an association, regardless of the number of units or parcels, to vote to allow a report of cash receipts and expenditures in lieu of the default requirements for more complex financial statements.

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: 718.111, 719.104, and 720.303.

**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 19, 2017:**

The committee substitute removes the penalty for condominium, cooperative, and homeowners' associations that do not provide financial reports to unit owners. The penalty would have prohibited these associations from waiving the default statutory requirements for financial statements for 3 consecutive years. The committee substitute also deletes provisions of law that prohibit associations from waiving the default statute requirements for financial statements for more than 3 consecutive years.

**B. Amendments:**

None.

By the Committee on Judiciary; and Senator Bracy

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A bill to be entitled

An act relating to condominium, cooperative, and homeowners' associations; amending ss. 718.111, 719.104, and 720.303, F.S.; deleting exemptions for certain associations from specified reporting requirements; deleting provisions prohibiting certain associations from waiving certain financial reporting requirements for more than 3 years; providing an effective date.

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

Section 1. Subsection (13) of section 718.111, Florida Statutes, is amended to read:

718.111 The association.—

(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 financial report or a notice that a copy of the financial report will be mailed or hand delivered to the unit owner, without charge, upon receipt of a written request from the unit owner. The division shall adopt

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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.

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~~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).~~

~~2.3.~~ 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:

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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~~

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~~consecutive years.~~

Section 2. Paragraphs (b) and (c) of subsection (4) of section 719.104, Florida Statutes, are amended to read:

719.104 Cooperatives; access to units; records; financial reports; assessments; purchase of leases.—

(4) FINANCIAL REPORT.—

(b) Except as provided in paragraph (c), an association whose total annual revenues meet the criteria of this paragraph shall prepare or cause to be prepared a complete set of financial statements according to the generally accepted accounting principles adopted by the Board of Accountancy. The financial statements shall be as follows:

1. An association with total annual revenues between \$150,000 and \$299,999 shall prepare a compiled financial statement.

2. An association with total annual revenues between \$300,000 and \$499,999 shall prepare a reviewed financial statement.

3. An association with total annual revenues of \$500,000 or more shall prepare an audited financial statement.

4. The requirement to have the financial statement compiled, reviewed, or audited does not apply to an association if a majority of the voting interests of the association present at a duly called meeting of the association have voted to waive this requirement for the fiscal year. In an association in which turnover of control by the developer has not occurred, the developer may vote to waive the audit requirement for the first 2 years of operation of the association, after which time waiver of an applicable audit requirement shall be by a majority of

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voting interests other than the developer. The meeting shall be held prior to the end of the fiscal year, and the waiver shall be effective for only one fiscal year. ~~An association may not waive the financial reporting requirements of this section for more than 3 consecutive years.~~

(c)1. An association with total annual revenues of less than \$150,000 shall prepare a report of cash receipts and expenditures.

~~2. An association in a community of fewer than 50 units, regardless of the association's annual revenues, shall prepare a report of cash receipts and expenditures in lieu of the financial statements required by paragraph (b), unless the declaration or other recorded governing documents provide otherwise.~~

2.3. A report of cash receipts and expenditures must disclose the amount of receipts by accounts and receipt classifications and the amount of expenses by accounts and expense classifications, including 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, if maintained by the association.

Section 3. Paragraph (b) of subsection (7) of section 720.303, Florida Statutes, is amended to read:

720.303 Association powers and duties; meetings of board; official records; budgets; financial reporting; association funds; recalls.—



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(7) FINANCIAL REPORTING.—Within 90 days after the end of the fiscal year, or annually on the date provided in the bylaws, the association shall prepare and complete, or contract with a third party 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, within the time limits set forth in subsection (5), provide each member with a copy of the annual financial report or a written notice that a copy of the financial report is available upon request at no charge to the member. Financial reports shall be prepared as follows:

(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 in a community of fewer than 50 parcels, regardless of the association's annual revenues, may prepare a report of cash receipts and expenditures in lieu of financial statements required by paragraph (a) unless the governing documents provide otherwise.~~

~~2.3-~~ A report of cash receipts and disbursement 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

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repair; insurance costs; administration and salary expenses; and reserves if maintained by the association.

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)

4/28/2017

Meeting Date

294

Bill Number (if applicable)

Topic Condominiums, Cooperatives Homeowners Assn. Amendment Barcode (if applicable)

Name Melanie Bastick

Job Title Vice President

Address 113 E College Ave.

Phone (850) 841-1726

Tallahassee FL 32301  
City State Zip

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)

4-28-17

Meeting Date

294

Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Richard Pinsky

Job Title \_\_\_\_\_

Address 106 E College Ave. #1200

Phone \_\_\_\_\_

Street

Tallahassee

FL

City

State

Zip

Email \_\_\_\_\_

Speaking: ☐ For ☐ Against ☐ Information

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

Representing 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**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/CS/SB 454

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on General Government); Banking and Insurance Committee; and Senator Brandes

SUBJECT: Regulation of Insurance Companies

DATE: April 27, 2017

REVISED: \_\_\_\_\_

| ANALYST            | STAFF DIRECTOR | REFERENCE | ACTION                   |
|--------------------|----------------|-----------|--------------------------|
| 1. Matiyow         | Knudson        | BI        | <b>Fav/CS</b>            |
| 2. Matiyow/Sanders | Betta          | AGG       | <b>Recommend: Fav/CS</b> |
| 3. Matiyow/Sanders | Hansen         | AP        | <b>Fav/CS</b>            |
| 4. Matiyow         | Phelps         | RC        | <b>Pre-meeting</b>       |

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 454 makes several changes relating to the regulation of insurance companies. The bill:

- Deletes the future repeal of the exemption of medical malpractice insurance premiums from the Florida Hurricane Catastrophe Fund (fund) assessments. Under current law, the exemption is repealed May 31, 2019.
- Allows an insurer issuing only renter's insurance, tenant's coverage or cooperative unit owners insurance to maintain a surplus of \$10 million to do business in the state.
- Removes the requirement that all members of an audit committee for an insurer must be free of any relationships that could interfere with the member's independent judgement.
- Allows Florida Workers' Compensation Insurance Guaranty Association (FWCIGA) surcharges to be counted as insurer assets if those surcharges are paid to the Association before the surcharges are collected from the insureds.
- Removes the requirement on insurers writing certain lines of medical malpractice insurance to make a full rate filing annually; these insurers will have the option to certify their rates with the Office of Insurance Regulation (OIR).
- Renames "owners and encumbrance" reports to "property information" report and clarifies such reports are not title insurance.
- Allows electronic checks and drafts as acceptable methods of payment for specified lines of insurance and allows insurers to charge a \$15 insufficient funds fee.

- Specifies display requirements for the electronic delivery of documents.

The impact on state revenues and expenditures is indeterminate. The continued exemption from the fund assessments for medical malpractice insurance premiums most likely will not impact revenues generated by the fund. The OIR has identified a need to modify existing computer systems but the costs of such modifications can be absorbed within existing agency resources.<sup>1</sup>

The bill takes effect upon becoming a law.

## **II. Present Situation:**

### **Title Insurance**

Title insurance is: (1) insurance of owners of real property or others having an interest in real property or contractual interest derived therefrom, or liens or encumbrances on real property, against loss by encumbrance, or defective titles, or invalidity, or adverse claim to title; or (2) insurance of owners and secured parties of the existence, attachment, perfection, and priority of security interests in personal property under the Uniform Commercial Code.<sup>2</sup> Title insurance serves to indemnify the insured against financial loss caused by defects in the title arising out of events that occurred before the date of the policy.<sup>3</sup> Title insurance agents and agencies are licensed and regulated by the Department of Financial Services (DFS) while title insurance companies are licensed and regulated by the OIR.

### **Owners and Encumbrance Reports**

An owners and encumbrance report discloses certain defined documents imparting constructive notice and appearing in the official records relating to specified real property.<sup>4</sup> Such reports may not directly or indirectly set forth or imply any opinion, warranty, guarantee, insurance, or other similar assurance as to the status of title to real property.<sup>5</sup> Additionally, any ownership and encumbrance report or similar report that is relied on or intended to be relied on by a consumer must be on forms approved by the OIR, and must provide for a maximum liability for incorrect information of not more than \$1,000.<sup>6</sup>

### **The Florida Hurricane Catastrophe Fund and its assessments**

The Florida Hurricane Catastrophe Fund is a tax-exempt fund created in 1993 after Hurricane Andrew as a form of mandatory reinsurance for residential property insurers. The fund is administered by the State Board of Administration and is a tax-exempt source of reimbursement to property insurers for a selected percentage of hurricane losses above the insurer's retention. Admitted property insurers in the state are required to purchase \$17 billion in coverage from the fund. Each insurer's mandatory amount purchased is based upon the insurer's share of the actual premium paid for the contract year, multiplied by the claims paying capacity of the fund. The

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<sup>1</sup> OIR staff provided an update regarding fiscal impact via telephone on March 9, 2017.

<sup>2</sup> See s. 624.608, F.S.

<sup>3</sup> See *Lawyers Title Insurance Co. Inc. v. Novastar Mortgage, Inc.*, 862 So. 2d 793, 797 (Fla. 4<sup>th</sup> DCA 2003).

<sup>4</sup> Section 627.7843(1), F.S.

<sup>5</sup> Section 627.7843(2), F.S.

<sup>6</sup> Section 627.7843(3), F.S.

fund must charge insurers the actuarially indicated premium for the coverage provided, based on hurricane loss projection models found acceptable by the Florida Commission on Hurricane Loss Projection Methodology.

Reimbursements to insurers for losses above the current moneys in the fund are financed through bonding. When the moneys in the fund are insufficient to cover losses, the law authorizes the fund to issue revenue bonds funded by emergency assessments on property and casualty policyholders. Bonds would be funded by an emergency assessment of up to 6 percent of premium on most lines of property and casualty insurance for funding losses from a single year, and up to 10 percent of premium for funding losses from multiple years. All lines of property and casualty insurance, including surplus lines insurance, are subject to emergency assessment except for workers' compensation and medical malpractice liability insurance. The exemption for medical malpractice insurance being subject to fund assessments is scheduled to repeal on May 31, 2019.

### **Florida Insurance Guaranty Association (FIGA) and its assessments**

When a property and casualty insurance company becomes insolvent, Florida Insurance Guaranty Association (FIGA) is required by law to take over the claims of the insurer and pay the claims of the company's policyholders. This ensures policyholders who have paid premiums for insurance are not left with valid yet unpaid claims. FIGA is responsible for claims on residential and commercial property insurance, automobile insurance, and liability insurance, among others.

In order to pay claims and to maintain the operations of an insolvent insurer, FIGA has several potential funding sources. FIGA's primary funding source is from the liquidation of assets of insolvent insurance companies domiciled in Florida. FIGA also obtains funds from the liquidation of assets of insolvent insurers domiciled in other states, but having claims in Florida. In the event the insolvent insurer's assets are insufficient to pay all claims, FIGA can issue two types of post-insolvency assessments against property and casualty insurance companies to raise funds to pay claims. FIGA's assessments are computed and billed based on FIGA's immediate needs to pay claims. Currently, assessments may not exceed two percent of net direct-written premium in one year for regular assessments, and an additional emergency assessment of two percent of direct-written premium for hurricane-related insolvencies.

### **Renters Insurance**

Renter's insurance, sometimes referred to as tenant's insurance, includes three basic types of protection. The basic types of protection are for personal possessions, liability, and additional living expenses.<sup>7</sup> Standard renter's insurance policies protect personal belongings against damage from fire, smoke, lightning, vandalism, theft, explosion, windstorm, water, and other disasters listed in the policy. With respect to personal liability, standard renter's insurance policies provide liability protection against lawsuits for bodily injury or property damage that the insured or the insured's family members cause to other people. It also pays for damages caused

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<sup>7</sup> Insurance Information Institute, *Renters Insurance*, at <http://www.iii.org/article/renters-insurance> (last visited April 7, 2017).

by pets to others in the home. Finally, standard renter's insurance policies cover additional living expenses. If the tenant's home is destroyed by a disaster, which is covered by the policy, renter's insurance covers the additional costs incurred for the insured to reside elsewhere. Policies will generally reimburse the difference between additional living expenses and normal living expenses. Additional living expenses cover hotel bills, temporary rentals, restaurant meals and other expenses incurred while the home is being rebuilt.

### **Insurance Company Surplus**

Section 624.407, F.S., establishes the surplus requirement for insurers doing business in this state. The surplus requirement for a new property and casualty insurer issuing only renter's insurance policies is:

- \$15 million if not a wholly owned subsidiary of an insurer domiciled in any other state.<sup>8</sup>
- \$50 million if a wholly owned subsidiary of an insurer domiciled in any other state.<sup>9</sup>

### **Audit Committee**

In addition to each authorized insurer having to file with the OIR statements of its financial condition, transactions, and affairs<sup>10</sup>, each authorized insurer must also hire a certified public accountant to prepare an audit.<sup>11</sup> The board of the insurer is required to establish an audit committee of three or more directors of the insurer or an affiliated company. The audit committee is responsible for discussing audit findings and interacting with the certified public accountant with regard to his or her findings. The audit committee must be comprised solely of members who are free from any relationship that, in the opinion of its board of directors, would interfere with the exercise of independent judgment as a committee member. The audit committee must report to the board any findings of adverse financial conditions or significant deficiencies in internal controls that have been noted by the accountant. The insurer may request the office to waive this requirement of the audit committee membership based upon unusual hardship to the insurer.<sup>12</sup>

### **Florida Workers' Compensation Insurance Guaranty Association (FWCIGA) and its assessments**

As a condition of their authority to offer workers' compensation insurance coverage in Florida, all insurers and self-insurance funds are required to be members of the Florida Workers' Compensation Insurance Guaranty Association, Inc. (FWCIGA).<sup>13</sup> The FWCIGA is a not-for-profit corporation established pursuant to part V of ch. 631, F.S., adjunct to the Department of Financial Services (DFS). The FWCIGA assists in the detection and prevention of insurer insolvencies and provides for the payment of workers' compensation covered claims.<sup>14</sup> The

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<sup>8</sup> Section 624.407(1)(e)1., F.S.

<sup>9</sup> Section 624.407(1)(e)2., F.S.

<sup>10</sup> Section 624.424(1)(a), F.S.

<sup>11</sup> Section 624.424(8)(a), F.S.

<sup>12</sup> Section 624.424(8)(c), F.S.

<sup>13</sup> Section. 631.911, F.S. Chapter 631, F.S., governs the rehabilitation and liquidation process for insurers in Florida. In Florida, the Division of Rehabilitation and Liquidation in the Department of Financial Services is responsible for rehabilitating or liquidating insurance companies.

<sup>14</sup> Section 631.902, F.S. The term "covered claim" is defined in s. 631.904(2), F.S.

FWCIGA evaluates workers' compensation claims made by insureds against insolvent member companies or funds, and determines if such claims are covered claims subject to payment by FWCIGA. The FWCIGA is funded by distributions from the estates of insolvent insurers, investment income, and assessments of member insurers.<sup>15</sup>

The FWCIGA determines whether an assessment against member insurers is necessary to pay covered claims of an insolvent insurer or to reimburse the FWCIGA for expenses associated with administering its statutory functions. The assessments are levied by the Department of Financial Services on each insurer based upon the proportion of the insurer's net direct written premium in Florida to the total of all such insurers writing workers' compensation coverages in Florida for the preceding calendar year. The maximum assessment rate is two percent for insurers and 1.5 percent for self-insurance funds. If these assessments are insufficient to satisfy claims and administration costs, an additional assessment of 1.5 percent can be levied.<sup>16</sup>

### **Insurer Assets**

When determining the financial condition of an insurer, statutory accounting principles allow insurers to include as an asset, assessment surcharges that have yet to be collected from policyholders. Under current law assessments levied by the Florida Insurance Guaranty Association, resulting in surcharges to policyholders yet to be collected by insurers, can be counted as assets if there is a reasonable expectation by the insurer that such surcharges will be paid.<sup>17</sup>

### **Medical Malpractice Insurance**

Medical malpractice insurance is a professional liability coverage obtained by health care providers to indemnify them from damages arising out of an act of medical negligence. Florida requires licensed physicians and licensed osteopathic physicians to meet financial responsibility requirements as a condition of obtaining and maintaining state licensure to practice medicine. Insurers that issue medical malpractice insurance are required to complete a full rate filing with the OIR once every calendar year.<sup>18</sup>

### **Insufficient Funds Fee**

Current law allows up to a \$15 insufficient funds fee to be charged to a policyholder of a motor vehicle insurance contract when the policyholders payment by debit card, credit card, electronic funds transfer, or electronic check is returned or declined.<sup>19</sup>

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<sup>15</sup> Florida Workers' Compensation Insurance Guaranty Association, Inc., *Frequently Asked Questions*, <http://fwciga.org/faq> (last visited April 7, 2017).

<sup>16</sup> Section 631.914, F.S.

<sup>17</sup> Section 625.012(15)(a), F.S.

<sup>18</sup> Section. 627.062(7)(e), F.S.

<sup>19</sup> Section 627.7295(9), F.S.



### **Delivery of Insurance Policies**

Part II of s. 627, F.S., generally applies to most lines of insurance written in this state.<sup>20</sup> Under this part, every insurance policy must be mailed, delivered or electronically transmitted to the policyholder within 60 days after the insurance takes effect. An insurer may allow a policyholder of personal lines insurance to affirmatively elect delivery of the policy documents, including, but not limited to, policies, endorsements, notices, or documents, by electronic means in lieu of delivery by mail. Electronic transmission of a policy for commercial risks constitutes delivery to the insured or to the person entitled to delivery, unless the insured or the person entitled to delivery communicates to the insurer in writing or electronically that he or she does not agree to delivery by electronic means. Electronic transmission shall include a notice to the insured or to the person entitled to delivery of a policy of his or her right to receive the policy via United States mail rather than via electronic transmission. A paper copy of the policy shall be provided to the insured or to the person entitled to delivery at his or her request.<sup>21</sup>

### **III. Effect of Proposed Changes:**

**Sections 1, 2 and 3** amend ss. 177.041, 177.091, and 197.502, F.S., respectively, relating to information contained in a “property information” report. The bill strikes references to certifications by abstractors or title companies and ownership and encumbrance reports. Instead, the bill refers to such reports as property information reports. The changes conform to **Section 13** of the bill and are designed to clarify that such reports are not title insurance.

**Section 4** amends s. 215.555, F.S., to delete the scheduled repeal of the exemption from the Florida Hurricane Catastrophe Fund (fund) assessments for medical malpractice insurance. The exemption will continue beyond May 31, 2019.

**Section 5** amends s. 624.407, F.S., to allow an insurer issuing only renter’s insurance, tenant’s coverage, or cooperative unit owners insurance, or any combination of such coverages, to maintain a surplus of \$10 million, regardless if they are wholly owned subsidiary of an insurer domiciled in Florida or another state.

**Section 6** amends s. 624.424, F.S., to delete the requirement that all members of an audit committee must, in the opinion of the board, be free of any relationships that could interfere with the member’s independent judgement when conducting an audit.

**Section 7** amends s. 625.012, F.S., to allow assessments paid by the Florida Workers' Compensation Insurance Guaranty Association (FWCIGA) prior to the collection of policy surcharges from policyholders to count as assets when determining the financial condition of an insurer. This section also allows assessments paid to the (FWCIGA) to be treated the same way assessments paid to the Florida Insurance Guaranty Association (FIGA) are currently treated.

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<sup>20</sup> Section 627.401, F.S.

<sup>21</sup> Section 627.421(1), F.S.

**Sections 8 and 9** amend ss. 627.062 and 627.0645, F.S., respectively, to allow insurers, when filing rates on certain lines<sup>22</sup> of medical malpractice insurance, the option of making a full rate filing or, when no rate change is needed, certifying to the Office of Insurance Regulation (OIR) that their rates are actuarially sound and not inadequate.

**Section 10** amends s. 627.4035, F.S., to allow the use of electronic checks and drafts as acceptable methods of payment for most insurance policies.<sup>23</sup> **Section 6** also allows insurers to charge a \$15 insufficient funds fee so long as the insufficient funds were not the result of fraudulent activity of the account on file and such fraudulent activity was not attributed to the policyholder. A \$15 insufficient funds fee is currently allowed for automobile insurance policies<sup>24</sup> and is being expanded to include a broader range of policies.

**Section 11** amends s. 627.421, F.S., to specify that, with regards to any font, size, color, spacing, or other formatting requirement for printed documents, an electronically delivered document satisfies these requirements if it has reasonably similar proportions or emphasis of the characters relative to the rest of the electronic document or is otherwise displayed in a reasonably conspicuous manner.

**Section 12** amends s. 627.7295, F.S., to delete provisions that are applicable only to motor vehicle contracts because similar provisions have been set forth in section 10 of this bill that are applicable to a broader range of policies.

**Section 13** amends s. 627.7843, F.S., clarifying that a “property information” report may be completed by anyone including title insurers. The report must contain a disclosure stating that the report is not title insurance, that the maximum liability of the report’s issuer for errors or omissions is limited to the amount paid for the report, and recovery may only be made by the named recipient of the report.

The provisions of this section do not apply to a title opinion issued by an attorney.

**Section 14** provides the bill takes effect upon becoming a law.

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<sup>22</sup> The bill allows insurers to certify rates for medical malpractice insurance policies that are subject to “file and use” or “use and file” rate review under s. 627.062(2)(a) and (f), F.S. Medical malpractice insurance is subject to these requirements if it covers a facility that is not a hospital licensed under chapter 395 F.S., a nursing home licensed under part II of chapter 400 F.S., or an assisted living facility licensed under part I of chapter 429 F.S., a health care practitioner who is not a dentist licensed under chapter 466 F.S., a physician licensed under chapter 458 F.S., an osteopathic physician licensed under chapter 459 F.S., chiropractic physician licensed under chapter 460 F.S., a podiatric physician licensed under chapter 461 F.S., a pharmacist licensed under chapter 465 F.S., or a pharmacy technician registered under chapter 465 F.S. Accordingly, it is these types of medical malpractice insurance that are affected by the bill. Medical malpractice insurance covering other entities or practitioners are not subject to paragraphs (a) and (f) of s. 627.062(2), F.S., pursuant to sub-subparagraphs o. and p. of s. 627.062(3)(d)1, F.S., and thus are not affected by the bill.

<sup>23</sup> Section 627.401, F.S.

<sup>24</sup> Section 627.7295(9), 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:**

Under CS/CS/SB 454, medical malpractice insurance will continue to be exempt beyond May 31, 2019, from assessments levied by the Florida Hurricane Catastrophe Fund (fund). To the extent that assessments levied on or after June 1, 2019, do not reach the statutory maximum rate percentages, any assessments that otherwise would have been levied on medical malpractice insurance premiums will be shifted to the other lines of insurance subject to the assessments. To the extent that the assessments reach the maximum rates allowed, the fund will receive fewer revenues (based on the amount of premiums written for medical malpractice).

**B. Private Sector Impact:**

Medical malpractice insurance will continue to be exempt beyond May 31, 2019, from assessments levied by the fund.

Insurers will be allowed to count as assets expected surcharges due to assessments from the Florida Workers' Compensation Insurance Guaranty Association (FWCIGA). Insurers will have the option of certifying their rates on certain lines of medical malpractice insurance.

Policyholders on most lines of insurance will be permitted to use electronic checks and drafts as acceptable methods of payment will be subject to a \$15 insufficient funds fee, when applicable.

**C. Government Sector Impact:**

The Office of Insurance Regulation (OIR) will need to modify existing computer systems but advise the update can be absorbed within existing resources. In addition, the OIR staff may have a reduced workload to the extent an insurer certifies its rates on certain lines of medical malpractice insurance rather than submitting a full rate filing.<sup>25</sup>

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<sup>25</sup> See footnote 13.

**VI. Technical Deficiencies:**

Section 6 on line 284 strikes the word “solely” from the requirement that an audit committee must be comprised solely of members free from relationships that interfere with independent judgment in the opinion of the insurer’s board of directors. The revision is intended to comply with a National Association of Insurance Commissioners Model Act that has been adopted in Rule 69O-137.002(14), F.A.C. The elimination of “solely” from the statute does not make clear the requirements for audit committee members, and greater specificity is recommended

Line 313 should strike the word monthly as the Workers Compensation Guarantee Association issues their installments quarterly.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 177.041, 177.091, 197.502, 215.555, 624.407, 624.424, 625.012, 627.062, 627.0645, 627.4035, 627.421, 627.7295 and 627.7843.

**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:

- Allows an insurer issuing only renter’s insurance, tenant’s coverage or cooperative unit owners insurance to maintain a surplus of \$10 million, regardless if they are wholly owned subsidiary of an insurer domiciled in Florida or another state.
- Clarifies that an insufficient funds fee cannot be charged if the insufficient funds were the result of fraudulent activity of the account on file and such fraudulent activity was not attributed to the policyholder.
- Renames “owners and encumbrance” reports to “property information” report and clarifies such reports are not title insurance.
- Removes the requirement that all members of an audit committee for an insurer must be free of any relationships that could interfere with the member’s independent judgement.

**CS by Banking and Insurance on March 6, 2017:**

The CS made a technical change to clarify that monthly installments on surcharges from the Florida Workers' Compensation Insurance Guaranty Association assessments can be included in the calculation on an insurers assets. The CS also removed the section of the bill pertaining to excluded named driver.

B. Amendments:

None.

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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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756086

LEGISLATIVE ACTION

|            |   |       |
|------------|---|-------|
| Senate     | . | House |
| Comm: WD   | . |       |
| 04/28/2017 | . |       |
|            | . |       |
|            | . |       |
|            | . |       |

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The Committee on Rules (Brandes) recommended the following:

**Senate Amendment (with title amendment)**

Between lines 240 and 241  
insert:

Section 5. Subsection (2) of section 324.032, Florida  
Statutes, is amended to read:

324.032 Manner of proving financial responsibility; for-  
hire passenger transportation vehicles.—Notwithstanding the  
provisions of s. 324.031:

(2) An owner or a lessee who is required to maintain  
insurance under s. 324.021(9)(b) and who operates at least 150



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300 taxicabs, limousines, jitneys, or any other for-hire passenger transportation vehicles may provide financial responsibility by complying with the provisions of s. 324.171, such compliance to be demonstrated by maintaining at its principal place of business an audited financial statement, prepared in accordance with generally accepted accounting principles, and providing to the department a certification issued by a certified public accountant that the applicant's net worth is at least equal to the requirements of s. 324.171 as determined by the Office of Insurance Regulation of the Financial Services Commission, including claims liabilities in an amount certified as adequate by a Fellow of the Casualty Actuarial Society.

Upon request by the department, the applicant must provide the department at the applicant's principal place of business in this state access to the applicant's underlying financial information and financial statements that provide the basis of the certified public accountant's certification. The applicant shall reimburse the requesting department for all reasonable costs incurred by it in reviewing the supporting information. The maximum amount of self-insurance permissible under this subsection is \$300,000 and must be stated on a per-occurrence basis, and the applicant shall maintain adequate excess insurance issued by an authorized or eligible insurer licensed or approved by the Office of Insurance Regulation. All risks self-insured shall remain with the owner or lessee providing it, and the risks are not transferable to any other person, unless a policy complying with subsection (1) is obtained.



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

And the title is amended as follows:

Delete line 14

and insert:

Florida Hurricane Catastrophe Fund; amending s.  
324.032, F.S.; revising the minimum number of for-hire  
passenger transportation vehicles that may be operated  
by certain owners or lessees who elect to qualify as  
self-insurers to comply with certain financial  
responsibility requirements; amending s.





144118

LEGISLATIVE ACTION

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The Committee on Rules (Brandes) recommended the following:

**Senate Amendment (with title amendment)**

Between lines 272 and 273  
insert:

Section 6. Paragraphs (d) and (e) of subsection (2) of  
section 624.4085, Florida Statutes, are amended to read:

624.4085 Risk-based capital requirements for insurers.—  
(2)

(d) A life and health insurer's risk-based capital is  
determined in accordance with the formula set forth in the risk-  
based capital instructions. The formula takes into account and



144118

may adjust for the covariance between:

1. The risk with respect to the insurer's assets;
2. The risk of adverse insurance experience with respect to the insurer's liabilities and obligations;
3. The interest rate risk with respect to the insurer's business; and
4. Any other business or other relevant risk set out in the risk-based capital instructions,

determined in each case by applying the factors in the manner set forth in the risk-based capital instructions. This paragraph does not apply to a health maintenance organization.

(e) A property and casualty insurer's and, if subject to this section, a health maintenance organization's risk-based capital is determined in accordance with the formula set forth in the risk-based capital instructions. The formula takes into account and may adjust for the covariance between:

1. The asset risk;
2. The credit risk;
3. The underwriting risk; and
4. Any other business or other relevant risk set out in the risk-based capital instructions,

determined in each case by applying the factors in the manner set forth in the risk-based capital instructions.

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

And the title is amended as follows:

Between lines 17 and 18



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41 insert:  
42       amending s. 624.4085, F.S.; providing applicability of  
43       specified formulas for determining risk-based capital  
44       of insurers to health maintenance organizations;



833430

LEGISLATIVE ACTION

Senate

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House

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The Committee on Rules (Flores) recommended the following:

**Senate Amendment (with title amendment)**

Between lines 318 and 319  
insert:

Section 8. Paragraph (m) of subsection (1) of section  
626.9541, Florida Statutes, is amended to read:

626.9541 Unfair methods of competition and unfair or  
deceptive acts or practices defined.—

(1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE  
ACTS.—The following are defined as unfair methods of competition  
and unfair or deceptive acts or practices:



833430

(m) Advertising and promotional gifts and charitable contributions permitted.—

1. No provision of paragraph (f), paragraph (g), or paragraph (h) shall be deemed to prohibit a licensed insurer or its agent from:

a. Giving to insureds, prospective insureds, and others, for the purpose of advertising, any article of merchandise, goods, wares, gift cards, gift certificates, event tickets, and other items with a total value of \$100 or less per customer or prospective customer within 1 calendar year having a value of not more than \$25.

b. Making charitable contributions, as defined in s. 170(c) of the Internal Revenue Code, of up to \$100 per calendar year on behalf of each insured or prospective insured.

2. A title insurance agent or title insurance agency, as those terms are defined in s. 626.841, or a title insurer, as defined in s. 627.7711, may not give to insureds, prospective insureds, and others, for the purpose of advertising, any article of merchandise having a value in excess of \$25. A person or entity governed by this subparagraph is exempt from subparagraph 1.

===== T I T L E   A M E N D M E N T =====  
And the title is amended as follows:

Delete line 24  
and insert:

relating to specified levied assessments; amending s.  
626.9541, F.S.; revising a limitation on licensed  
insurers or their agents relating to advertising and



833430

41 promotional gifts given to insureds, prospective  
42 insureds, and others; authorizing such insurers and  
43 agents to make specified charitable contributions on  
44 behalf of insureds or prospective insureds; specifying  
45 a limitation on the value of merchandise given by  
46 title insurance agents or title insurance agencies to  
47 insureds, prospective insureds, and others; providing  
48 applicability; amending s.



673396

LEGISLATIVE ACTION

Senate

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House

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The Committee on Rules (Flores) recommended the following:

**Senate Substitute for Amendment (833430) (with title amendment)**

Between lines 318 and 319  
insert:

Section 8. Paragraph (m) of subsection (1) of section 626.9541, Florida Statutes, is amended to read:

626.9541 Unfair methods of competition and unfair or deceptive acts or practices defined.—

(1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE ACTS.—The following are defined as unfair methods of competition



673396

and unfair or deceptive acts or practices:

(m) Advertising and promotional gifts and charitable contributions permitted.—

1. No provision of paragraph (f), paragraph (g), or paragraph (h) shall be deemed to prohibit a licensed insurer or its agent from:

a. Giving to insureds, prospective insureds, and others, ~~for the purpose of advertising,~~ any article of merchandise, goods, wares, gift cards, gift certificates, event tickets, loss mitigation services, and other items with a total value of \$100 or less per customer or prospective customer within 1 calendar year ~~having a value of not more than \$25.~~

b. Making charitable contributions, as defined in s. 170(c) of the Internal Revenue Code, of up to \$100 per calendar year on behalf of each insured or prospective insured.

2. A title insurance agent or title insurance agency, as those terms are defined in s. 626.841, or a title insurer, as defined in s. 627.7711, may not give to insureds, prospective insureds, and others, for the purpose of advertising, any article of merchandise having a value in excess of \$25. A person or entity governed by this subparagraph is exempt from subparagraph 1.

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

And the title is amended as follows:

Delete line 24

and insert:

relating to specified levied assessments; amending s. 626.9541, F.S.; revising a limitation on licensed





673396

41       insurers or their agents relating to advertising and  
42       promotional gifts given to insureds, prospective  
43       insureds, and others; authorizing such insurers and  
44       agents to make specified charitable contributions on  
45       behalf of insureds or prospective insureds; specifying  
46       a limitation on the value of merchandise given by  
47       title insurance agents or title insurance agencies to  
48       insureds, prospective insureds, and others; providing  
49       applicability; amending s.



169090

LEGISLATIVE ACTION

Senate

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House

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The Committee on Rules (Flores) recommended the following:

**Senate Amendment (with title amendment)**

Between lines 351 and 352  
insert:

Section 10. Paragraph (n) of subsection (6) of section  
627.351, Florida Statutes, is amended to read:

627.351 Insurance risk apportionment plans.—

(6) CITIZENS PROPERTY INSURANCE CORPORATION.—

(n)1. Rates for coverage provided by the corporation must  
be actuarially sound and subject to s. 627.062, except as  
otherwise provided in this paragraph. The corporation shall file



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its recommended rates with the office at least annually. The corporation shall provide any additional information regarding the rates which the office requires. The office shall consider the recommendations of the board and issue a final order establishing the rates for the corporation within 45 days after the recommended rates are filed. The corporation may not pursue an administrative challenge or judicial review of the final order of the office.

2. In addition to the rates otherwise determined pursuant to this paragraph, the corporation shall impose and collect an amount equal to the premium tax provided in s. 624.509 to augment the financial resources of the corporation.

3.a. After the public hurricane loss-projection model under s. 627.06281 has been found to be accurate and reliable by the Florida Commission on Hurricane Loss Projection Methodology, the model shall be considered when establishing the windstorm portion of the corporation's rates. The corporation may use the public model results in combination with the results of private models to calculate rates for the windstorm portion of the corporation's rates. This sub-subparagraph ~~subparagraph~~ does not require or allow the corporation to adopt rates lower than the rates otherwise required or allowed by this paragraph.

b. Notwithstanding sub-subparagraph a., in a rating territory located in a county that the office determines does not have a reasonable degree of competition, the corporation shall annually file and the office shall approve a recommended rate change of 0 percent for the windstorm portion of a rate in that territory if, within that territory:

(I) At least one of the windstorm models used by the



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corporation indicates an increase in the windstorm portion of the rate and a different such model indicates a decrease in the windstorm portion of the rate;

(II) The combination of models used by the corporation under sub-subparagraph a. to calculate the rate indicates an increase for the windstorm portion of the rate; and

(III) At least 70 percent of residential policies covering windstorm losses in the county are covered by the corporation.

This sub-subparagraph expires December 31, 2022, unless reenacted by the Legislature.

4. The rate filings for the corporation which were approved by the office and took effect January 1, 2007, are rescinded, except for those rates that were lowered. As soon as possible, the corporation shall begin using the lower rates that were in effect on December 31, 2006, and provide refunds to policyholders who paid higher rates as a result of that rate filing. The rates in effect on December 31, 2006, remain in effect for the 2007 and 2008 calendar years except for any rate change that results in a lower rate. The next rate change that may increase rates shall take effect pursuant to a new rate filing recommended by the corporation and established by the office, subject to this paragraph.

5. Beginning on July 15, 2009, and annually thereafter, the corporation must make a recommended actuarially sound rate filing for each personal and commercial line of business it writes, to be effective no earlier than January 1, 2010.

6. Beginning on or after January 1, 2010, and notwithstanding the board's recommended rates and the office's



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final order regarding the corporation's filed rates under subparagraph 1., the corporation shall annually implement a rate increase which, except for sinkhole coverage, does not exceed 10 percent for any single policy issued by the corporation, excluding coverage changes and surcharges.

7. The corporation may also implement an increase to reflect the effect on the corporation of the cash buildup factor pursuant to s. 215.555(5) (b).

8. The corporation's implementation of rates as prescribed in subparagraph 6. shall cease for any line of business written by the corporation upon the corporation's implementation of actuarially sound rates. Thereafter, the corporation shall annually make a recommended actuarially sound rate filing for each commercial and personal line of business the corporation writes.

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

And the title is amended as follows:

Delete line 30

and insert:

organizations; amending s. 627.351, F.S.; requiring, under certain circumstances, the Citizens Property Insurance Corporation to annually file and the Office of Insurance Regulation to approve a 0 percent recommended rate change for the windstorm portion of a rate in certain rating territories; providing an expiration date for the requirement; amending s. 627.4035, F.S.; revising



931854

LEGISLATIVE ACTION

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The Committee on Rules (Brandes) recommended the following:

**Senate Amendment (with title amendment)**

Between lines 430 and 431  
insert:

Section 13. Section 627.747, Florida Statutes, is created  
to read:

627.747 Named driver exclusion.—

(1) A private passenger motor vehicle policy may exclude an  
identified individual from the following coverages while the  
identified individual is operating a motor vehicle:

(a) Any coverage that the named insured is not required by



931854

law to purchase.

(b) Property damage liability coverage.

(c) Notwithstanding the Florida Motor Vehicle No-Fault Law, the personal injury protection coverage specifically applicable to the identified individual's injuries, lost wages, and death benefits.

(d) Uninsured motorist coverage, if the named insured has purchased such coverage.

(e) Bodily injury liability coverage, if required by law and purchased by the named insured.

(2) A private passenger motor vehicle policy may not exclude coverage when:

(a) The identified individual is injured while not operating a motor vehicle.

(b) The exclusion is unfairly discriminatory under the Florida Insurance Code as determined by the office.

(c) The exclusion is inconsistent with the underwriting rules filed by the insurer pursuant to s. 627.0651(13)(a).

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

And the title is amended as follows:

Between lines 40 and 41

insert:

creating s. 627.747, F.S.; authorizing private passenger motor vehicle policies to exclude identified individuals from specified coverages while such individuals are operating motor vehicles; prohibiting such policies from excluding coverage under certain circumstances;

By the Committees on Appropriations; and Banking and Insurance;  
and Senator Brandes

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1 A bill to be entitled  
2 An act relating to the regulation of insurance  
3 companies; amending s. 177.041, F.S.; providing that a  
4 specified property information report, rather than a  
5 specified certification by an abstractor or a title  
6 company, may be submitted as part of certain  
7 information required in relation to the plat or replat  
8 of a subdivision; amending ss. 177.091 and 197.502,  
9 F.S.; conforming provisions to changes made by the  
10 act; amending s. 215.555, F.S.; deleting a future  
11 repeal of an exemption of medical malpractice  
12 insurance premiums from certain emergency assessments  
13 by the State Board of Administration relating to the  
14 Florida Hurricane Catastrophe Fund; amending s.  
15 624.407, F.S.; specifying the minimum surplus as to  
16 policyholders for insurers that only transact in  
17 specified forms of residential property insurance;  
18 amending s. 624.424, F.S.; revising a requirement for  
19 audit committees established by the boards of  
20 directors of insurers, relating to relationships that  
21 would interfere with the exercise of independent  
22 judgment of committee members; amending s. 625.012,  
23 F.S.; revising the allowable assets of insurers  
24 relating to specified levied assessments; amending s.  
25 627.062, F.S.; revising requirements for certain rate  
26 filings by medical malpractice insurers; amending s.  
27 627.0645, F.S.; adding certain medical malpractice  
28 insurance to casualty insurance excluded from an  
29 annual base rate filing requirement for rating

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

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30 organizations; amending s. 627.4035, F.S.; revising  
31 the methods of paying premiums for insurance  
32 contracts; authorizing an insurer to impose a  
33 specified insufficient funds fee if certain premium  
34 payment methods are returned, are declined, or cannot  
35 be processed; providing an exception; amending s.  
36 627.421, F.S.; providing that an electronically  
37 delivered document in an insurance policy meets  
38 formatting requirements for printed documents under  
39 certain conditions; amending s. 627.7295, F.S.;  
40 conforming provisions to changes made by the act;  
41 amending s. 627.7843, F.S.; replacing provisions  
42 relating to ownership and encumbrance reports with  
43 provisions relating to property information reports;  
44 defining the term "property information report";  
45 prohibiting property information reports from setting  
46 forth or implying certain assurances; providing  
47 construction; specifying a limitation on the  
48 contractual liability of issuers of property  
49 information reports; requiring a specified disclosure  
50 in property information reports; providing  
51 applicability; providing an effective date.  
52  
53 Be It Enacted by the Legislature of the State of Florida:  
54  
55 Section 1. Subsection (2) of section 177.041, Florida  
56 Statutes, is amended to read:  
57 177.041 Boundary survey and title certification required.—  
58 Every plat or replat of a subdivision submitted to the approving

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



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agency of the local governing body must be accompanied by:

(2) A title opinion of an attorney at law licensed in Florida or a property information report certification by an ~~abstractor or a title company~~ showing that record title to the land as described and shown on the plat is in the name of the person, persons, corporation, or entity executing the dedication. The title opinion or property information report ~~must certification shall~~ also show all mortgages not satisfied or released of record nor otherwise terminated by law.

Section 2. Subsection (16) of section 177.091, Florida Statutes, is amended to read:

177.091 Plats made for recording.—Every plat of a subdivision offered for recording shall conform to the following:

(16) Location and width of proposed easements and existing easements identified in the title opinion or property information report certification required by s. 177.041(2) ~~shall~~ must be shown on the plat or in the notes or legend, and their intended use shall be clearly stated. Where easements are not coincident with property lines, they must be labeled with bearings and distances and tied to the principal lot, tract, or right-of-way.

Section 3. Paragraph (a) of subsection (5) of section 197.502, Florida Statutes, is amended to read:

197.502 Application for obtaining tax deed by holder of tax sale certificate; fees.—

(5) (a) The tax collector may contract with a title company or an abstract company to provide the minimum information required in subsection (4), consistent with rules adopted by the

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department. If additional information is required, the tax collector must make a written request to the title or abstract company stating the additional requirements. The tax collector may select any title or abstract company, regardless of its location, as long as the fee is reasonable, the minimum information is submitted, and the title or abstract company is authorized to do business in this state. The tax collector may advertise and accept bids for the title or abstract company if he or she considers it appropriate to do so.

1. The property information ~~ownership and encumbrance~~ report must include the letterhead of the person, firm, or company that makes the search, and the signature of the individual who makes the search or of an officer of the firm. The tax collector is not liable for payment to the firm unless these requirements are met. The report may be submitted to the tax collector in an electronic format.

2. The tax collector may not accept or pay for any title search or abstract if financial responsibility is not assumed for the search. However, reasonable restrictions as to the liability or responsibility of the title or abstract company are acceptable. Notwithstanding s. 627.7843(3), the tax collector may contract for higher maximum liability limits.

3. In order to establish uniform prices for property information ~~ownership and encumbrance~~ reports within the county, the tax collector must ensure that the contract for property information ~~ownership and encumbrance~~ reports include all requests for title searches or abstracts for a given period of time.

Section 4. Paragraph (b) of subsection (6) of section

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215.555, Florida Statutes, is amended to read:

215.555 Florida Hurricane Catastrophe Fund.—

(6) REVENUE BONDS.—

(b) *Emergency assessments*.—

1. If the board determines that the amount of revenue produced under subsection (5) is insufficient to fund the obligations, costs, and expenses of the fund and the corporation, including repayment of revenue bonds and that portion of the debt service coverage not met by reimbursement premiums, the board shall direct the Office of Insurance Regulation to levy, by order, an emergency assessment on direct premiums for all property and casualty lines of business in this state, including property and casualty business of surplus lines insurers regulated under part VIII of chapter 626, but not including any workers' compensation premiums or medical malpractice premiums. As used in this subsection, the term "property and casualty business" includes all lines of business identified on Form 2, Exhibit of Premiums and Losses, in the annual statement required of authorized insurers by s. 624.424 and any rule adopted under this section, except for those lines identified as accident and health insurance and except for policies written under the National Flood Insurance Program. The assessment shall be specified as a percentage of direct written premium and is subject to annual adjustments by the board in order to meet debt obligations. The same percentage applies to all policies in lines of business subject to the assessment issued or renewed during the 12-month period beginning on the effective date of the assessment.

2. A premium is not subject to an annual assessment under

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this paragraph in excess of 6 percent of premium with respect to obligations arising out of losses attributable to any one contract year, and a premium is not subject to an aggregate annual assessment under this paragraph in excess of 10 percent of premium. An annual assessment under this paragraph continues as long as the revenue bonds issued with respect to which the assessment was imposed are outstanding, including any bonds the proceeds of which were used to refund the revenue bonds, unless adequate provision has been made for the payment of the bonds under the documents authorizing issuance of the bonds.

3. Emergency assessments shall be collected from policyholders. Emergency assessments shall be remitted by insurers as a percentage of direct written premium for the preceding calendar quarter as specified in the order from the Office of Insurance Regulation. The office shall verify the accurate and timely collection and remittance of emergency assessments and shall report the information to the board in a form and at a time specified by the board. Each insurer collecting assessments shall provide the information with respect to premiums and collections as may be required by the office to enable the office to monitor and verify compliance with this paragraph.

4. With respect to assessments of surplus lines premiums, each surplus lines agent shall collect the assessment at the same time as the agent collects the surplus lines tax required by s. 626.932, and the surplus lines agent shall remit the assessment to the Florida Surplus Lines Service Office created by s. 626.921 at the same time as the agent remits the surplus lines tax to the Florida Surplus Lines Service Office. The

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emergency assessment on each insured procuring coverage and filing under s. 626.938 shall be remitted by the insured to the Florida Surplus Lines Service Office at the time the insured pays the surplus lines tax to the Florida Surplus Lines Service Office. The Florida Surplus Lines Service Office shall remit the collected assessments to the fund or corporation as provided in the order levied by the Office of Insurance Regulation. The Florida Surplus Lines Service Office shall verify the proper application of such emergency assessments and shall assist the board in ensuring the accurate and timely collection and remittance of assessments as required by the board. The Florida Surplus Lines Service Office shall annually calculate the aggregate written premium on property and casualty business, other than workers' compensation and medical malpractice, procured through surplus lines agents and insureds procuring coverage and filing under s. 626.938 and shall report the information to the board in a form and at a time specified by the board.

5. Any assessment authority not used for a particular contract year may be used for a subsequent contract year. If, for a subsequent contract year, the board determines that the amount of revenue produced under subsection (5) is insufficient to fund the obligations, costs, and expenses of the fund and the corporation, including repayment of revenue bonds and that portion of the debt service coverage not met by reimbursement premiums, the board shall direct the Office of Insurance Regulation to levy an emergency assessment up to an amount not exceeding the amount of unused assessment authority from a previous contract year or years, plus an additional 4 percent

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provided that the assessments in the aggregate do not exceed the limits specified in subparagraph 2.

6. The assessments otherwise payable to the corporation under this paragraph shall be paid to the fund unless the Office of Insurance Regulation and the Florida Surplus Lines Service Office received a notice from the corporation and the fund, which shall be conclusive and upon which they may rely without further inquiry, that the corporation has issued bonds and the fund has no agreements in effect with local governments under paragraph (c). On or after the date of the notice and until the date the corporation has no bonds outstanding, the fund shall have no right, title, or interest in or to the assessments, except as provided in the fund's agreement with the corporation.

7. Emergency assessments are not premium and are not subject to the premium tax, to the surplus lines tax, to any fees, or to any commissions. An insurer is liable for all assessments that it collects and must treat the failure of an insured to pay an assessment as a failure to pay the premium. An insurer is not liable for uncollectible assessments.

8. If an insurer is required to return an unearned premium, it shall also return any collected assessment attributable to the unearned premium. A credit adjustment to the collected assessment may be made by the insurer with regard to future remittances that are payable to the fund or corporation, but the insurer is not entitled to a refund.

9. If a surplus lines insured or an insured who has procured coverage and filed under s. 626.938 is entitled to the return of an unearned premium, the Florida Surplus Lines Service Office shall provide a credit or refund to the agent or such

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insured for the collected assessment attributable to the unearned premium before remitting the emergency assessment collected to the fund or corporation.

~~10. The exemption of medical malpractice insurance premiums from emergency assessments under this paragraph is repealed May 31, 2019, and medical malpractice insurance premiums shall be subject to emergency assessments attributable to loss events occurring in the contract years commencing on June 1, 2019.~~

Section 5. Subsection (1) of section 624.407, Florida Statutes, is amended to read:

624.407 Surplus required; new insurers.—

(1) To receive authority to transact any one kind or combinations of kinds of insurance, as defined in part V of this chapter, an insurer applying for its original certificate of authority in this state shall possess surplus as to policyholders at least the greater of:

(a) For a property and casualty insurer, \$5 million, or \$2.5 million for any other insurer;

(b) For life insurers, 4 percent of the insurer's total liabilities;

(c) For life and health insurers, 4 percent of the insurer's total liabilities, plus 6 percent of the insurer's liabilities relative to health insurance;

(d) For all insurers other than life insurers and life and health insurers, 10 percent of the insurer's total liabilities;

(e) Notwithstanding paragraph (a) or paragraph (d), for a domestic insurer that transacts residential property insurance and is:

1. Not a wholly owned subsidiary of an insurer domiciled in

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any other state, \$15 million.

2. A wholly owned subsidiary of an insurer domiciled in any other state, \$50 million; ~~or~~

(f) Notwithstanding paragraphs (a), (d), and (e), for a domestic insurer that only transacts limited sinkhole coverage insurance for personal lines residential property pursuant to s. 627.7151, \$7.5 million; or

(g) Notwithstanding paragraphs (a), (b), and (e), for an insurer that only transacts residential property insurance in the form of renter's insurance, tenant's coverage, cooperative unit owner insurance, or any combination thereof, \$10 million.

Section 6. Paragraph (c) of subsection (8) of section 624.424, Florida Statutes, is amended to read:

624.424 Annual statement and other information.—

(8)

(c) The board of directors of an insurer shall hire the certified public accountant that prepares the audit required by this subsection and the board shall establish an audit committee of three or more directors of the insurer or an affiliated company. The audit committee shall be responsible for discussing audit findings and interacting with the certified public accountant with regard to her or his findings. The audit committee shall be comprised ~~solely~~ of members who are free from any relationship that, in the opinion of its board of directors, would interfere with the exercise of independent judgment as a committee member. The audit committee shall report to the board any findings of adverse financial conditions or significant deficiencies in internal controls that have been noted by the accountant. The insurer may request the office to waive this

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291 requirement of the audit committee membership based upon unusual  
292 hardship to the insurer.

293 Section 7. Subsection (15) of section 625.012, Florida  
294 Statutes, is amended to read:

295 625.012 "Assets" defined.—In any determination of the  
296 financial condition of an insurer, there shall be allowed as  
297 "assets" only such assets as are owned by the insurer and which  
298 consist of:

299 (15)(a) Assessments levied pursuant to s. 631.57(3)(a) and  
300 (e) or s. 631.914 which ~~that~~ are paid before policy surcharges  
301 are collected and result in a receivable for policy surcharges  
302 to be collected in the future. This amount, to the extent it is  
303 likely that it will be realized, meets the definition of an  
304 admissible asset as specified in the National Association of  
305 Insurance Commissioners' Statement of Statutory Accounting  
306 Principles No. 4. The asset shall be established and recorded  
307 separately from the liability regardless of whether it is based  
308 on a retrospective or prospective premium-based assessment. If  
309 an insurer is unable to fully recoup the amount of the  
310 assessment because of a reduction in writings or withdrawal from  
311 the market, the amount recorded as an asset shall be reduced to  
312 the amount reasonably expected to be recouped.

313 (b) Assessments levied as monthly installments pursuant to  
314 s. 631.57(3)(e)3. or s. 631.914 which ~~that~~ are paid after policy  
315 surcharges are collected so that the recognition of assets is  
316 based on actual premium written offset by the obligation to the  
317 Florida Insurance Guaranty Association or the Florida Workers'  
318 Compensation Insurance Guaranty Association, Incorporated.

319 Section 8. Paragraph (e) of subsection (7) of section

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320 627.062, Florida Statutes, is amended to read:

321 627.062 Rate standards.—

322 (7) The provisions of this subsection apply only to rates  
323 for medical malpractice insurance and control to the extent of  
324 any conflict with other provisions of this section.

325 (e) For medical malpractice rates subject to paragraph  
326 (2)(a), the medical malpractice insurer shall make an annual  
327 base a rate filing in accordance with s. 627.0645 ~~under this~~  
328 ~~section~~, sworn to by at least two executive officers of the  
329 insurer, ~~at least once each calendar year.~~

330 Section 9. Subsection (1) of section 627.0645, Florida  
331 Statutes, is amended to read:

332 627.0645 Annual filings.—

333 (1) Each rating organization filing rates for, and each  
334 insurer writing, any line of property or casualty insurance to  
335 which this part applies, except:

336 (a) Workers' compensation and employer's liability  
337 insurance;

338 (b) Insurance as defined in ss. 624.604 and 624.605,  
339 limited to coverage of commercial risks other than commercial  
340 residential multiperil and medical malpractice insurance that is  
341 subject to s. 627.062(2)(a) and (f); or

342 (c) Travel insurance, if issued as a master group policy  
343 with a situs in another state where each certificateholder pays  
344 less than \$30 in premium for each covered trip and where the  
345 insurer has written less than \$1 million in annual written  
346 premiums in the travel insurance product in this state during  
347 the most recent calendar year,  
348

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shall make an annual base rate filing for each such line with the office no later than 12 months after its previous base rate filing, demonstrating that its rates are not inadequate.

Section 10. Section 627.4035, Florida Statutes, is amended to read:

627.4035 ~~Cash~~ Payment of premiums; claims.—

(1) ~~(a)~~ The premiums for insurance contracts issued in this state or covering risk located in this state ~~must~~ shall be paid in cash consisting of coins, currency, checks, electronic checks, drafts, or money orders or by using a debit card, credit card, automatic electronic funds transfer, or payroll deduction plan. ~~By July 1, 2007,~~ Insurers issuing personal lines residential and commercial property policies shall provide a premium payment plan option to their policyholders which allows for a minimum of quarterly and semiannual payment of premiums. Insurers may, but are not required to, offer monthly payment plans. Insurers issuing such policies must submit their premium payment plan option to the office for approval before use.

(b) If, due to insufficient funds, a payment of premium under this subsection by debit card, credit card, electronic funds transfer, or electronic check is returned, is declined, or cannot be processed, the insurer may impose an insufficient funds fee of up to \$15 per occurrence pursuant to the policy terms. However, the insurer may not charge the policyholder an insufficient funds fee if the failure in payment resulted from fraud or misuse on the policyholder's account from which the payment was made and such fraud or misuse was not attributed to the policyholder.

(2) Subsection (1) is not applicable to:

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(a) Reinsurance agreements;

(b) Pension plans;

(c) Premium loans, whether or not subject to an automatic provision;

(d) Dividends, whether to purchase additional paid-up insurance or to shorten the dividend payment period;

(e) Salary deduction plans;

(f) Preauthorized check plans;

(g) Waivers of premiums on disability;

(h) Nonforfeiture provisions affording benefits under supplementary contracts; or

(i) Such other methods of paying for life insurance as may be permitted by the commission pursuant to rule or regulation.

(3) All payments of claims made in this state under any contract of insurance shall be paid:

(a) In cash consisting of coins, currency, checks, drafts, or money orders and, if by check or draft, shall be in such form as will comply with the standards for cash items adopted by the Federal Reserve System to facilitate the sorting, routing, and mechanized processing of such items; or

(b) If authorized in writing by the recipient or the recipient's representative, by debit card or any other form of electronic transfer. Any fees or costs to be charged against the recipient must be disclosed in writing to the recipient or the recipient's representative at the time of written authorization. However, the written authorization requirement may be waived by the recipient or the recipient's representative if the insurer verifies the identity of the insured or the insured's recipient and does not charge a fee for the transaction. If the funds are

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misdirected, the insurer remains liable for the payment of the claim.

Section 11. Subsection (5) is added to section 627.421, Florida Statutes, to read:

627.421 Delivery of policy.—

(5) An electronically delivered document satisfies any font, size, color, spacing, or other formatting requirement for printed documents if the format in the electronically delivered document has reasonably similar proportions or emphasis of the characters relative to the rest of the electronic document or is otherwise displayed in a reasonably conspicuous manner.

Section 12. Subsection (9) of section 627.7295, Florida Statutes, is amended to read:

627.7295 Motor vehicle insurance contracts.—

~~(9)(a) In addition to the methods provided in s. 627.4035(1), premium for motor vehicle insurance contracts issued in this state or covering risk located in this state may be paid in cash in the form of a draft or drafts.~~

~~(b) If, due to insufficient funds, payment of premium under this subsection by debit card, credit card, electronic funds transfer, or electronic check is returned, is declined, or cannot be processed, the insurer may impose an insufficient funds fee of up to \$15 per occurrence pursuant to the policy terms.~~

Section 13. Section 627.7843, Florida Statutes, is amended to read:

627.7843 Property information reports ~~Ownership and encumbrance reports.~~—

(1) As used in this section, the term "property information

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report" means any report that contains the limitations of this section and discloses documents or information appearing in the Official Records as described in s. 28.222, in the records of a county tax collector pertaining to ad valorem real property taxes and special assessments imposed by a governmental authority against real property, in the Secretary of State filing office, or in another governmental filing office pertaining to real or personal property. A property information report may be issued by any person, including a Florida-licensed title insurer, title agent, or title agency "ownership and encumbrance report" means a report that discloses certain defined documents imparting constructive notice and appearing in the official records relating to specified real property.

(2) A property information ~~An ownership and encumbrance~~ report may not directly or indirectly set forth or imply any opinion, warranty, guarantee, insurance, or other similar assurance and does not constitute title insurance as defined in s. 624.608 as to the status of title to real property.

(3) The contractual liability of the issuer of a property information report is limited to the person or persons expressly identified by name in the property information report as the recipient or recipients of the property information report and may not exceed the amount paid for the property information report. Only contractual remedies are available for an error or omission that arises from a property information report. A property information report must contain the following language:

"This report is not title insurance. Pursuant to s. 627.7843, Florida Statutes, the maximum liability of the issuer of this

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property information report for errors or omissions in this  
property information report is limited to the amount paid for  
this property information report, and is further limited to the  
person(s) expressly identified by name in the property  
information report as the recipient(s) of the property  
information report." ~~Any ownership and encumbrance report or~~  
~~similar report that is relied on or intended to be relied on by~~  
~~a consumer must be on forms approved by the office, and must~~  
~~provide for a maximum liability for incorrect information of not~~  
~~more than \$1,000.~~

(4) This section is not applicable to an opinion of title  
issued by an attorney.

Section 14. This act shall take effect upon becoming a law.



**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/CS/SB 680

INTRODUCER: Banking and Insurance Committee; Judiciary Committee; and Senators Baxley and Garcia

SUBJECT: Bail Bonds

DATE: April 27, 2017

REVISED: \_\_\_\_\_

| ANALYST    | STAFF DIRECTOR | REFERENCE | ACTION           |
|------------|----------------|-----------|------------------|
| 1. Brown   | Cibula         | JU        | <b>Fav/CS</b>    |
| 2. Matiyow | Knudson        | BI        | <b>Fav/CS</b>    |
| 3. Sumner  | Hrdlicka       | CJ        | <b>Favorable</b> |
| 4. Brown   | Phelps         | RC        | <b>Favorable</b> |

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 680 amends several provisions related to bail. Under the bill, a bond is a commitment by the bail bond agent to ensure that the defendant appears at all criminal proceedings *for which the surety bond is posted*.

**Bail Advertising in Jail**

The bill prohibits any person or entity that charges a fee for facilitating the release of a defendant through the posting of a *cash bond* from using the term “bail” in any advertisement for services or in any of the printed materials posted in a jail. Such advertisements or printed materials must disclose that the services do not facilitate a *surety bail bond*.

**Forfeiture and Discharge of a Bond**

This bill creates additional circumstances under which a court must discharge the forfeiture of a bail bond and amends circumstances currently provided in law. Specifically, the additional circumstances include that the bond must be discharged if, within 60 days after the scheduled appearance, the defendant is confined in an immigration detention facility, is deported, or is deceased; and if the defendant becomes incarcerated and the state refuses to seek the extradition

of the defendant within 30 days after a surety agent's request if the agent agrees to pay all costs and expenses to return the defendant.

The bill revises an existing ground in which a court is required to discharge a forfeiture of a bail bond. Under existing law, the forfeiture must be discharged or the proceeds remitted if the defendant surrenders or is arrested. Under the bill, a forfeiture must be discharged only if the surrender or arrest occurs within 60 days after the required court appearance and if a hold is placed on the defendant to return him or her to the court.

### **Remission of a Bond**

Current law also authorizes a bail bond agent to seek the remission or return of all or a portion of the proceeds of a bail bond which has been forfeited to the court when a defendant surrenders or is apprehended within a certain number of days after forfeiture. Current law grants the court discretion to order a remission of "up to" a certain percent of the amount of money forfeited, depending on the number of days between the forfeiture and the return of the defendant. This bill removes discretion from the court and instead orders remission based on the maximum percentages available under current law.

### **Cancellation of a Bond**

Current law requires the court to order a bail bond cancelled within 10 business days after the conditions of the bond are met. This bill provides that the conditions of the bond are met if the bond has not been declared forfeited within the 36 months since the original bond was posted.

The fiscal impact of the bill is indeterminate at this time. The provisions of the bill may have a negative impact on fees collected by the clerks of court related to criminal surety bail bonds. See Section V. Fiscal Impact Statement.

## **II. Present Situation:**

### **Bail**

Bail is a common monetary condition of pretrial release, governed by ch. 903, F.S. For the defendant to be released from jail, a court may require bail by a defendant to provide security, such as cash or a bond, that he or she will return for trial and any other required court appearances.<sup>1</sup> As an alternative to posting the entire bail amount, a defendant may provide a criminal surety bail bond<sup>2</sup> executed by a bail bond agent. Generally, the defendant pays the bail bond agent a nonrefundable fee equal to 10 percent of the bond amount set by the court. If the defendant does not appear in court, the bail bond agent is responsible for paying the entire amount of the bond.<sup>3</sup> This contract acts as an insurance policy against the risk that the defendant will not abide by the conditions of his or her release.

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<sup>1</sup> "Bail," Black's Law Dictionary (3rd Pocket Edition). The purpose of a bail bond is to guarantee the defendant's presence in court to face criminal charges. *Universal Bail Bonds v. State*, 929 So. 2d 697, 699 (Fla. 3d DCA 2006).

<sup>2</sup> Sections 903.011 and 903.105, F.S.

<sup>3</sup> Office of Program Policy Analysis & Gov't Accountability, *County Pretrial Release Programs: Calendar Year 2015*, Report No. 16-10 (Dec. 2016), at 2.

## Determination of Pretrial Release

Setting bail for a defendant at an initial appearance is a way for the court to ensure the presence of the defendant at subsequent court hearings without keeping him or her incarcerated.<sup>4</sup> This is consistent with the requirements of the Florida Constitution which provide a constitutional right to pretrial release in Art. I, s. 14:

Unless charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great, every person charged with a crime or violation of municipal or county ordinance shall be entitled to pretrial release on reasonable conditions.

However, the court must balance the constitutional right to pretrial release with other considerations:

If no conditions of release can reasonably protect the community from risk of physical harm to persons, assure the presence of the accused at trial, or assure the integrity of the judicial process, the accused may be detained.<sup>5</sup>

Therefore, in determining whether to release a defendant on bail and the actual amount of bail, the court must include in its considerations:

- The nature and circumstances of the offense charged;
- The weight of the evidence against the defendant;
- The defendant's family ties, length of residence in the community, employment history, financial resources, and mental condition;
- The defendant's past and present conduct, including convictions, previous flight to avoid prosecution, or failure to appear at court proceedings;
- The nature and probability of danger which the defendant's release poses to the community;
- The source of funds used to post bail or procure an appearance bond, and any connection of such funds to criminal activity;
- Whether the defendant is already on release pending resolution of another criminal proceeding or on probation, parole, or other release pending completion of a sentence;
- The nature and probability of intimidation and danger to victims;
- Whether there is probable cause to believe that the defendant committed a new crime while on pretrial release; and
- Any other factors relevant to the court.<sup>6</sup>

At the time of determining bail, the court will establish conditions of pretrial release. The court must impose as a condition of pretrial release that the defendant refrain from criminal activity.

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<sup>4</sup> Section 903.011(1), F.S.

<sup>5</sup> Art. I, s. 14, FLA. CONST. Section 903.046(1), F.S., provides that the purpose of a bail determination is to ensure the appearance of the defendant at subsequent proceedings, while protecting the community from unreasonable danger from the defendant.

<sup>6</sup> Section 903.046(2), F.S.

Also, the court may issue an order of no contact, prohibiting the defendant from having any contact with the victim.<sup>7</sup>

If the court includes a monetary requirement of bail in its order of pretrial release, a registered bail bond agent<sup>8</sup> may satisfy the bail requirement through the posting of a criminal surety bail bond.<sup>9</sup>

### **Qualifications as a Bail Bond Agent**

To qualify as a bail bond agent, a person must:

- Be at least 18 years old and possess a high school diploma or its equivalent;
- Meet citizen or legal alien requirements;
- Have certain ties to the state, including locating the business in the state;
- Provide at least three sworn letters of recommendation from residents of the counties in which the person intends to operate;
- Not have been convicted of or plead guilty or no contest to a felony, a crime involving moral turpitude, or a crime punishable by incarceration in prison; and
- Have passed any required examination.<sup>10</sup>

If the Department of Financial Services (DFS) finds that a person meets the conditions to serve as a bail bond agent, the DFS will issue a license to him or her.<sup>11</sup> To operate, a bail bond agent must register with the sheriff's office and the clerk of the circuit court in the county in which he or she lives, and then may register in the same manner in any other county in which he or she desires to operate.<sup>12</sup>

### **Bail Advertising in Jails**

A bail bond agent licensed under ch. 648, F.S., is prohibited from directly or indirectly soliciting business in or on the grounds of a jail, prison, or other place where prisoners are confined, or in or on the grounds of any court.<sup>13</sup> A bail bond agent is allowed to post print advertising in a jail, but such advertising is "strictly limited to a listing in a telephone directory and the posting of the bail bond agent's or agency's name, address, and telephone number in a designated location within the jail."<sup>14</sup> A finding by the DFS that the bail bond agent has failed to comply with the solicitation requirements can be subject to a fine of \$5,000 for each act of improper solicitation.<sup>15</sup>

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<sup>7</sup> Section 903.047(1), F.S.

<sup>8</sup> Section 903.045, F.S., provides, in part, "It is the public policy of this state and the intent of the Legislature that a criminal surety bail bond, executed by a bail bond agent ... shall be construed as a commitment by and an obligation upon the bail bond agent to ensure that the defendant appears at all subsequent criminal proceedings and otherwise fulfills all conditions of the bond."

<sup>9</sup> Section 903.011, F.S.

<sup>10</sup> Section 648.34(2), F.S.

<sup>11</sup> Section 648.27, F.S.

<sup>12</sup> Section 648.42, F.S.

<sup>13</sup> Section 648.44(1)(b), F.S. "The term "solicitation" includes the distribution of business cards, print advertising, or other written or oral information directed to prisoners or potential indemnitors, unless a request is initiated by the prisoner or a potential indemnitor."

<sup>14</sup> *Id.*

<sup>15</sup> Section 648.525, F.S.

Additionally, a bail bond agency is prohibited from advertising or holding itself out to be a bail bond or surety company.<sup>16</sup>

## **Forfeiture, Discharge, Remission, and Cancellation of a Bond**

### ***Forfeiture and Discharge of a Bond***

If a defendant on pretrial release fails to appear at a scheduled court appearance or breaches a bond in anyway, any bond posted is forfeited.<sup>17</sup> If the bond is forfeited, the clerk of the court will mail or electronically send a notice to the bail bond agent within 5 days after forfeiture. The bail bond agent must pay the forfeiture within 60 days of the date the notice was mailed or electronically sent.<sup>18</sup>

However, the court will discharge a forfeiture within 60 days of:

- Determining that it was impossible for the defendant to appear due to circumstances beyond the defendant's control.
- Determining that, at the time of the required appearance, the defendant was:
  - Adjudicated insane and confined in an institution or hospital; or
  - Incarcerated.
- The defendant surrendering or being arrested, if the delay has not compromised the ability of the state to prosecute the defendant.<sup>19</sup>

If the defendant is arrested and returned to the county of jurisdiction prior to the court entering a judgment, upon affirmation of the sheriff or chief correctional officer, the clerk of the court must discharge the forfeiture of the bond. However, the bail bond agent must pay the costs and expenses incurred in returning the defendant to the county.<sup>20</sup>

### ***Remission of a Bond***

If a court has ordered the forfeiture of a bond and the amount of the forfeiture has been paid to the clerk of the court, a bail bond agent may still recoup some or all of the original bond through a remission. If the defendant surrenders or is apprehended within 90 days after forfeiture, the court must direct remission of up to 100 percent of a forfeiture if the bail bond agent apprehended and surrendered the defendant or if the bail bond agent substantially procured the return of the defendant.<sup>21</sup> Percentages of up to less than 100 percent of a forfeiture are provided beyond 90 days after forfeiture, so that if the defendant surrenders or is returned to the county within:

- 180 days after forfeiture, up to 95 percent is remitted;
- 270 days after forfeiture, up to 90 percent is remitted;
- 1 year after forfeiture, up to 85 percent is remitted; or
- 2 years after forfeiture, up to 50 percent is remitted.<sup>22</sup>

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<sup>16</sup> Section 648.44(6), F.S.

<sup>17</sup> Section 903.26(2)(b), F.S. Forfeiture means that the conditions of the bond were "breached."

<sup>18</sup> Section 903.26(2)(a), F.S.

<sup>19</sup> Section 903.26(5), F.S.

<sup>20</sup> Section 903.26(8), F.S.

<sup>21</sup> Section 903.28(2), F.S.

<sup>22</sup> Section 903.28, F.S.

***Cancellation of a Bond***

The conditions of the bond are met at the time that a case is disposed of by a court entering an order of an adjudication of guilt or innocence, an acquittal, or a withholding of an adjudication of guilt. Within 10 business days after the conditions of a bond are met, or the forfeiture discharged or remitted, the court must order the bond cancelled.<sup>23</sup>

**III. Effect of Proposed Changes:****Bail Advertising in Jails (Section 1, amending s. 903.045, F.S.)**

The bill prohibits any person not a licensed bail bond agent pursuant to ch. 648, F.S., a corporation, company, or other entity that charges a fee or premium to facilitate the release of a defendant from jail through the posting of a *cash bond* from using the term “bail” in any advertisements or printed materials posted in a jail. Such advertisements or printed materials must disclose that the services do not facilitate a *surety bail bond*.

The bill also amends this section to state that the bond is a commitment by the bail bond agent to ensure that the defendant appears at all criminal proceedings *for which the surety bond is posted*. This limits the obligation of the bail bond agent to “ensuring the defendant appears at the criminal proceedings related directly to the surety bond that was posted. It would not apply to other charges against the defendant that had a different surety bond posted for the charges.”<sup>24</sup>

**Forfeiture, Discharge, Remission, and Cancellation of a Bond*****Forfeiture and Discharge of a Bond (Section 2, amending s. 903.26, F.S.)***

This bill provides additional grounds for a court to discharge or release a bail bond agent from the obligation to pay the amount of a forfeited bond to a court.

As discussed above in the Present Situation, current law requires a court to discharge a forfeiture within 60 days of:

- Determining that circumstances beyond the defendant’s control made it impossible for the defendant to appear.
- Determining that, at the time of the required appearance, the defendant was:
  - Adjudicated insane and confined in an institution or hospital; or
  - Incarcerated.
- The defendant surrendering or being arrested, if the delay has not compromised the ability of the state to prosecute the defendant.

The bill requires a court to discharge a forfeiture within 60 days of:

- Determining that circumstances beyond the defendant’s control made it impossible for the defendant to appear *not just on the original required date to appear but also within 60 days after the required appearance*.

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<sup>23</sup> Section 903.31(1), F.S.

<sup>24</sup> Department of Financial Services, *2017 Agency Bill Analysis HB 361*, February 19, 2017.

- Determining that, at the time of the required appearance *or within 60 days after the required appearance*, the defendant was:
  - Confined in an institution or hospital;<sup>25</sup>
  - *Incarcerated in any county, state, or federal, or immigration detention facility;*
  - *Deported;* or
  - *Deceased.*
- The defendant surrendering or being arrested *on the original required date to appear or within 60 days after the required appearance in any county, state, or federal jail or prison, and a hold being placed to return the defendant to the jurisdiction of the court.*
- *Determining that the state is unwilling to seek extradition of a fugitive defendant within 30 days after a bail bond agent requests extradition, provided that the agent agrees to pay all costs and the expenses incurred to return the defendant to the county, up to the penal amount of the bond.*

Additionally, the bill provides that *if the defendant posts a new bond for the case at issue prior to the court entering a judgment, upon affirmation of the sheriff or chief correctional officer, the clerk of the court must discharge the forfeiture of the bond. Under the bill, the clerk of the court shall discharge the bond without further hearing or order by the court if the defendant posts a new bond or the defendant is arrested and returned to the county.*

The bill also replaces references to a “breach” of a bond with a “forfeiture” of a bond, and states instead that if there is a “failure of the defendant to appear as required” instead of a “breach of the bond,” then the court will declare the bond forfeited. By changing the references, courts will be precluded from ordering the forfeiture of a bond if a defendant breaches a condition of pretrial release other than the failure to appear at as required.

### ***Remission of a Bond (Section 3, amending s. 903.28, F.S.)***

As discussed above in the Present Situation, current law authorizes a bail bond agent to recoup a bond that has been forfeited through a remission, in instances in which a defendant surrenders or is apprehended within a certain number of days after forfeiture. The court has discretion to order a remission of “up to” a certain percent of the amount of money forfeited, depending on the number of days between the forfeiture and the return of the defendant.

This bill removes discretion from the court and instead orders remission based on those fixed percentages in existing law. If the defendant surrenders or is apprehended within:

- 90 days after forfeiture, 100 percent is remitted;
- 180 days after forfeiture, 95 percent is remitted;
- 270 days after forfeiture, 90 percent is remitted;
- 1 year after forfeiture, 85 percent is remitted; or
- 2 years after forfeiture, 50 percent is remitted.

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<sup>25</sup> The bill removes the requirement that the person be adjudicated insane.

***Cancellation of a Bond (Section 4, amending s. 903.31, F.S.)***

Current law requires the court to order the bond cancelled within 10 business days after the conditions of a bond are met. This bill provides that the conditions of the bond have been met if 36 months have passed since the defendant posted the original bond.

The bill also provides that the original appearance bond does not guarantee placement in a court-ordered program, including a residential mental health facility. Current law states that the original appearance bond does not guarantee deferred sentences, appearance during or after a presentence investigation, appearance during or after appeals, conduct during or appearance after admission to a pretrial intervention program, payment of fines, or attendance at educational or rehabilitation facilities the court otherwise provides in a judgment.

**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.

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

None.

**B. Private Sector Impact:**

Bail bond and surety companies will financially benefit from this bill, due to the additional grounds authorized for a discharge of a forfeiture, remission of fixed percentages of a forfeiture, and the cancellation of a bond if 36 months have passed from the original posting of the bond.

**C. Government Sector Impact:**

The clerks of court receive funding from a variety of sources, including the fine and forfeiture fund, which the clerk of the circuit court in each county is required to establish



for use in “performing court-related functions.”<sup>26</sup> The fine and forfeiture fund has many funding sources, one of which is the proceeds of forfeited bail bonds.<sup>27</sup>

To the extent that the bill reduces forfeitures of bail bonds or requires the remission of forfeited amounts, the bill may reduce the funding of the clerks of court for their court-related functions.<sup>28</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 903.045, 903.26, 903.28, and 903.31.

**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 3, 2017:**

The committee substitute:

- Prohibits any person not licensed pursuant to ch. 648, F.S., a corporation, company, or other entity that charges a fee or premium to facilitate the release of an accused defendant from jail through the posting of a cash bail bond, from using the term “bail” in any advertisements or printed materials posted in a jail. Such advertisements and printed materials must disclose their services do not facilitate a surety bail bond.
- Does not require a person, corporation, company, or other entity that charges a fee or premium to facilitate the release of an accused defendant from jail through the posting of a cash or surety bail bond to be licensed under ch. 648, F.S.
- Does not repeal s. 903.26(6), F.S., which states: “The discharge of a forfeiture shall not be ordered for any reason other than as specified herein.”

**CS by Judiciary on March 22, 2017:**

The CS provides that to qualify for a discharge of a forfeiture:

- Based on the surrender or arrest of the defendant, the surrender or arrest may be at any county, state, or federal jail or prison, upon a hold being placed to return the defendant to the county; or

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<sup>26</sup> Section 142.01, F.S.

<sup>27</sup> Section 142.01(1)(d), F.S.

<sup>28</sup> See s. 142.01(1)(d), F.S.

- Based on a determination that the state is unwilling to extradite a fugitive defendant, the number of days after which the surety agent requests extradition is increased from 10 to 30 days, and the surety agent must pay all costs and expenses incurred to return the defendant, not just transportation costs.

B. Amendments:

None.

By the Committees on Banking and Insurance; and Judiciary; and  
Senators Baxley and Garcia

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1 A bill to be entitled  
2 An act relating to bail bonds; amending s. 903.045,  
3 F.S.; revising legislative intent concerning the  
4 obligations of a bail bond agent; revising the  
5 commitments and obligations of a bail bond agent;  
6 prohibiting a person or entity that charges a fee for  
7 facilitating the release of a defendant through the  
8 posting of a cash bond from using the term "bail" in  
9 advertisements and printed materials posted in a jail;  
10 requiring a certain disclaimer in such materials;  
11 deleting a provision relating to circumstances that  
12 constitute a breach by the bail bond agent; amending  
13 s. 903.26, F.S.; revising the circumstances under  
14 which a surety bond deposited as bail must be  
15 forfeited; revising the circumstances that require a  
16 forfeiture to be discharged; amending s. 903.28, F.S.;  
17 revising the amount of forfeiture to be remitted under  
18 specified conditions; amending s. 903.31, F.S.;  
19 specifying that certain provisions concerning  
20 cancellation of a bond do not apply if the bond is  
21 forfeited within a specified period after it has been  
22 posted; providing that an original appearance bond  
23 does not guarantee placement in a court-ordered  
24 program; providing an effective date.

25  
26 Be It Enacted by the Legislature of the State of Florida:

27  
28 Section 1. Section 903.045, Florida Statutes, is amended to  
29 read:

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

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30 903.045 Nature of criminal surety bail bonds.—It is the  
31 public policy of this state and the intent of the Legislature  
32 that a criminal surety bail bond, executed by a bail bond agent  
33 licensed pursuant to chapter 648 in connection with the pretrial  
34 or appellate release of a criminal defendant, shall be construed  
35 as a commitment by and an obligation upon the bail bond agent to  
36 ensure that the defendant appears at all ~~subsequent~~ criminal  
37 proceedings for which the surety bond is posted. A person not  
38 licensed under chapter 648, a corporation, company, or other  
39 entity that charges a fee to facilitate the release of an  
40 accused defendant from jail through the posting of a cash bond  
41 may not use the term "bail" in any advertisement for such  
42 services or in any of its printed materials posted in a jail,  
43 and any such materials must include a disclaimer stating that  
44 the service is not to facilitate a surety bail bond and  
45 otherwise fulfills all conditions of the bond. The failure of a  
46 defendant to appear at any subsequent criminal proceeding or the  
47 breach by the defendant of any other condition of the bond  
48 constitutes a breach by the bail bond agent of this commitment  
49 and obligation.

50 Section 2. Subsections (2), (5), (7), and (8) of section  
51 903.26, Florida Statutes, are amended to read:

52 903.26 Forfeiture of the bond; when and how directed;  
53 discharge; how and when made; effect of payment.—

54 (2) (a) If there is a failure of the defendant to appear as  
55 required ~~breach of the bond~~, the court shall declare the bond  
56 and any bonds or money deposited as bail forfeited. The clerk of  
57 the court shall mail or electronically transmit a notice to the  
58 surety agent and surety company within 5 days after the

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

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forfeiture. A certificate signed by the clerk of the court or the clerk's designee, certifying that the notice required herein was mailed or electronically transmitted on a specified date and accompanied by a copy of the required notice, shall constitute sufficient proof that such mailing or electronic transmission was properly accomplished as indicated therein. If such mailing or electronic transmission was properly accomplished as evidenced by such certificate, the failure of the surety agent, of a company, or of a defendant to receive such notice shall not constitute a defense to such forfeiture and shall not be grounds for discharge, remission, reduction, set aside, or continuance of such forfeiture. The forfeiture shall be paid within 60 days after ~~of~~ the date the notice was mailed or electronically transmitted.

(b) Failure of the defendant to appear at the time, date, and place of required appearance shall result in forfeiture of the bond. Such forfeiture shall be automatically entered by the clerk upon such failure to appear, and the clerk shall follow the procedures ~~outlined~~ in paragraph (a). However, the court may determine, in its discretion, in the interest of justice, that an appearance by the defendant on the same day as required does not warrant forfeiture of the bond; and the court may direct the clerk to set aside any such forfeiture which may have been entered. Any appearance by the defendant later than the required day constitutes forfeiture of the bond, and the court shall not preclude entry of such forfeiture by the clerk.

(c) If there is a forfeiture breach of the bond, the clerk shall provide, upon request, a certified copy of the warrant or capias to the bail bond agent or surety company.

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(5) The court shall discharge a forfeiture within 60 days upon:

(a) A determination that it was impossible for the defendant to appear as required or within 60 days after the date of the required appearance due to circumstances beyond the defendant's control. The potential adverse economic consequences of appearing as required may ~~shall~~ not be considered as constituting a ground for such a determination;

(b) A determination that, at the time of the required appearance or within 60 days after the date of the required appearance, the defendant was ~~adjudicated insane and~~ confined in an institution or hospital; ~~or~~ was confined in any county, state, federal, or immigration detention facility; was deported; or is deceased a jail or prison;

(c) Surrender or arrest of the defendant at the time of the required appearance or within 60 days after the date of the required appearance in any county, state, or federal jail or prison and upon a hold being placed to return the defendant to the jurisdiction of the court if the delay has not thwarted the proper prosecution of the defendant. If the forfeiture has been before discharge, the court shall direct remission of the forfeiture. The court shall condition a discharge or remission on the payment of costs and the expenses incurred by an official in returning the defendant to the jurisdiction of the court; or

(d) A determination that the state is unwilling to seek extradition of the fugitive defendant within 30 days after a request by the surety agent to do so, and contingent upon the surety agent's consent to pay all costs and the expenses incurred by an official in returning the defendant to the

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jurisdiction of the court, up to the penal amount of the bond.

(7) The payment by a surety of a forfeiture under ~~the provisions of~~ this law shall have the same effect on the bond as payment of a judgment.

(8) If the defendant is arrested and returned to the county of jurisdiction of the court or has posted a new bond for the case at issue before ~~prior to~~ judgment, the clerk, upon affirmation by the sheriff or the chief correctional officer, shall, without further hearing or order of the court, discharge the forfeiture of the bond. However, if the surety agent fails to pay the costs and expenses incurred in returning the defendant to the county of jurisdiction, the clerk shall not discharge the forfeiture of the bond. If the surety agent and the sheriff fail to agree on the amount of said costs, then the court, after notice to the sheriff and the state attorney, shall determine the amount of the costs.

Section 3. Subsections (2), (3), (4), (5), and (6) of section 903.28, Florida Statutes, are amended to read:

903.28 Remission of forfeiture; conditions.—

(2) If the defendant surrenders or is apprehended within 90 days after forfeiture, the court, on motion at a hearing upon notice having been given to the clerk of the circuit court and the state attorney as required in subsection (8), shall direct remission of ~~up to, but not more than,~~ 100 percent of a forfeiture if the surety apprehended and surrendered the defendant or if the apprehension or surrender of the defendant was substantially procured or caused by the surety, or the surety has substantially attempted to procure or cause the apprehension or surrender of the defendant, and the delay has

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not thwarted the proper prosecution of the defendant. In addition, remission shall be granted when the surety did not substantially participate or attempt to participate in the apprehension or surrender of the defendant when the costs of returning the defendant to the jurisdiction of the court have been deducted from the remission and when the delay has not thwarted the proper prosecution of the defendant.

(3) If the defendant surrenders or is apprehended within 180 days after forfeiture, the court, on motion at a hearing upon notice having been given to the clerk of the circuit court and the state attorney as required in subsection (8), shall direct remission of ~~up to, but not more than,~~ 95 percent of a forfeiture if the surety apprehended and surrendered the defendant or if the apprehension or surrender of the defendant was substantially procured or caused by the surety, or the surety has substantially attempted to procure or cause the apprehension or surrender of the defendant, and the delay has not thwarted the proper prosecution of the defendant. In addition, remission shall be granted when the surety did not substantially participate or attempt to participate in the apprehension or surrender of the defendant when the costs of returning the defendant to the jurisdiction of the court have been deducted from the remission and when the delay has not thwarted the proper prosecution of the defendant.

(4) If the defendant surrenders or is apprehended within 270 days after forfeiture, the court, on motion at a hearing upon notice having been given to the clerk of the circuit court and the state attorney as required in subsection (8), shall direct remission of ~~up to, but not more than,~~ 90 percent of a

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175 forfeiture if the surety apprehended and surrendered the  
 176 defendant or if the apprehension or surrender of the defendant  
 177 was substantially procured or caused by the surety, or the  
 178 surety has substantially attempted to procure or cause the  
 179 apprehension or surrender of the defendant, and the delay has  
 180 not thwarted the proper prosecution of the defendant. In  
 181 addition, remission shall be granted when the surety did not  
 182 substantially participate or attempt to participate in the  
 183 apprehension or surrender of the defendant when the costs of  
 184 returning the defendant to the jurisdiction of the court have  
 185 been deducted from the remission and when the delay has not  
 186 thwarted the proper prosecution of the defendant.

187 (5) If the defendant surrenders or is apprehended within 1  
 188 year after forfeiture, the court, on motion at a hearing upon  
 189 notice having been given to the clerk of the circuit court and  
 190 the state attorney as required in subsection (8), shall direct  
 191 remission of ~~up to, but not more than~~, 85 percent of a  
 192 forfeiture if the surety apprehended and surrendered the  
 193 defendant or if the apprehension or surrender of the defendant  
 194 was substantially procured or caused by the surety, or the  
 195 surety has substantially attempted to procure or cause the  
 196 apprehension or surrender of the defendant, and the delay has  
 197 not thwarted the proper prosecution of the defendant. In  
 198 addition, remission shall be granted when the surety did not  
 199 substantially participate or attempt to participate in the  
 200 apprehension or surrender of the defendant when the costs of  
 201 returning the defendant to the jurisdiction of the court have  
 202 been deducted from the remission and when the delay has not  
 203 thwarted the proper prosecution of the defendant.

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204 (6) If the defendant surrenders or is apprehended within 2  
 205 years after forfeiture, the court, on motion at a hearing upon  
 206 notice having been given to the clerk of the circuit court and  
 207 the state attorney as required in subsection (8), shall direct  
 208 remission of ~~up to, but not more than~~, 50 percent of a  
 209 forfeiture if the surety apprehended and surrendered the  
 210 defendant or if the apprehension or surrender of the defendant  
 211 was substantially procured or caused by the surety, or the  
 212 surety has substantially attempted to procure or cause the  
 213 apprehension or surrender of the defendant, and the delay has  
 214 not thwarted the proper prosecution of the defendant. In  
 215 addition, remission shall be granted when the surety did not  
 216 substantially participate or attempt to participate in the  
 217 apprehension or surrender of the defendant when the costs of  
 218 returning the defendant to the jurisdiction of the court have  
 219 been deducted from the remission and when the delay has not  
 220 thwarted the proper prosecution of the defendant.

221 Section 4. Section 903.31, Florida Statutes, is amended to  
 222 read:

223 903.31 Canceling the bond.—

224 (1) Within 10 business days after the conditions of a bond  
 225 have been satisfied or the forfeiture discharged or remitted,  
 226 the court shall order the bond canceled and, if the surety has  
 227 attached a certificate of cancellation to the original bond, the  
 228 clerk of the court shall mail or electronically furnish an  
 229 executed certificate of cancellation to the surety without cost.  
 230 An adjudication of guilt or innocence or an acquittal, if a  
 231 period of 36 months has passed since the original bond was  
 232 posted, or a withholding of an adjudication of guilt shall

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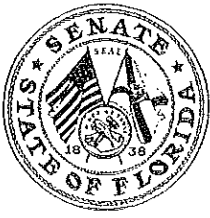
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233 satisfy the conditions of the bond. The original appearance bond  
234 shall expire 36 months after such bond has been posted for the  
235 release of the defendant from custody. This subsection does not  
236 apply to cases in which a bond has been declared forfeited  
237 before the 36-month expiration.

238 (2) The original appearance bond does not guarantee a  
239 deferred sentence; sentences; appearance during or after a  
240 presentence investigation; appearance during or after appeals;  
241 conduct during or appearance after admission to a pretrial  
242 intervention program; placement in a court-ordered program,  
243 including a residential mental health facility; payment of  
244 fines; or attendance at educational or rehabilitation  
245 facilities the court otherwise provides in the judgment. If the  
246 original appearance bond has been forfeited or revoked, the bond  
247 shall not be reinstated without approval from the surety on the  
248 original bond.

249 (3) If in any case where no formal charges are ~~have been~~  
250 brought against the defendant within 365 days after arrest, the  
251 court shall order the bond canceled unless good cause is shown  
252 by the state.

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



**SENATOR DENNIS BAXLEY**  
12th District

## THE FLORIDA SENATE

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

**SELECT COMMITTEE:**  
Joint Select Committee on Collective Bargaining

**JOINT COMMITTEE:**  
Joint Legislative Auditing Committee

April 17, 2017

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

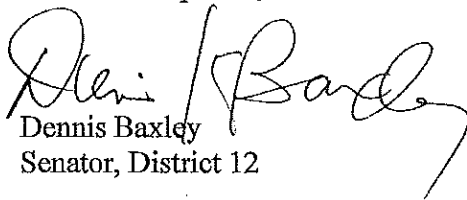
Dear Chairwoman Benacquisto,

I respectfully request you place Senate Bill 680 Bail Bonds on your next available agenda.

The bill creates flexibility for judges and bail bond agents to remedy and resolve breaches of a bond. To the extent that a greater number of bonds are reinstated after forfeiture, and to the extent that signing onto bonds is more affordable for the bail bond agent, this may increase the number of arrestees that can post bail, thereby reducing the need for jail beds.

I appreciate your favorable consideration.

Onward & Upward,

  
Dennis Baxley  
Senator, District 12

DKB/dd

cc: John Phelps, Staff Director

320 Senate Office Building, 404 South Monroe St, Tallahassee, Florida 32399-1100 • (850) 487-5012

Email: [baxley.dennis@flsenate.gov](mailto:baxley.dennis@flsenate.gov)

JOE NEGRON  
President of the Senate

ANITERE FLORES  
President Pro Tempore



**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/CS/SB 736

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on General Government); Banking and Insurance Committee; and Senators Mayfield and Steube

SUBJECT: International Financial Institutions

DATE: April 27, 2017

REVISED: \_\_\_\_\_

| ANALYST            | STAFF DIRECTOR | REFERENCE | ACTION                   |
|--------------------|----------------|-----------|--------------------------|
| 1. Johnson         | Knudson        | BI        | <b>Fav/CS</b>            |
| 2. Sanders/Johnson | Betta          | AGG       | <b>Recommend: Fav/CS</b> |
| 3. Sanders/Johnson | Hansen         | AP        | <b>Fav/CS</b>            |
| 4. Johnson         | Phelps         | RC        | <b>Favorable</b>         |

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 736 modernizes the regulatory framework of international financial services under the Office of Financial Regulation (OFR), which will promote the growth of international financial services market in Florida. The bill revises provisions relating to the regulation of international banking corporations and international trust company representative offices (ITCROs) of international trust entities and creates a regulatory framework for qualified limited service affiliates (QLSAs). QLSAs are marketing and liaison offices that engage in permissible activities for the benefit of an international trust entity (ITE) and are qualified by the OFR. An ITE is an international trust company, an international business, an international business organization, or an affiliated or subsidiary entities that is licensed, chartered, or similarly permitted to conduct trust business in a foreign country or countries under the laws of which it is organized and supervised. An ITCRO may conduct any nonfiduciary activities that are ancillary to the fiduciary business of its international trust entity, such as marketing and soliciting for fiduciary business on behalf of the ITE. The bill provides the following changes:

- Establishes oversight of qualified limited service affiliates and offices of international trust entities.
- Provides an abbreviated application process to establish additional locations of an entity that meets certain conditions.

- Authorizes the OFR to implement a risk-based approach for capital requirements, which will allow the OFR to calculate capital requirements that reflect an entity's business model and its particular inherent risk profile.
- Provides the OFR with discretion to allow an after-the-fact licensure process of an entity in the event of an acquisition, merger, or consolidation, which would allow continuity of operations.
- Clarifies permissible activities of entities regulated under chapter 663, Florida Statutes.

The bill creates regulatory fines and fees. In its analysis, the OFR indicates it can maintain regulatory oversight with current staffing levels.<sup>1</sup>

Except as otherwise provided, the bill has an effective date of January 1, 2018.

## **II. Present Situation:**

### **Regulation of the International Financial Services Market**

Miami, the gateway to Latin America, is home to the second-largest banking and finance hub in the United States.<sup>2</sup> Estate, tax, and asset protection planning are important components of the region's financial sector, attracting international financial institutions from Europe, Latin America, and Canada serving individual, family, and business customers.

The Office of Financial Regulation (OFR) regulates state-chartered depository and non-depository financial institutions and financial service companies. One of the OFR's primary goals is to protect consumers while preserving the integrity of Florida's markets and financial service industries. To achieve this goal, Florida law provides the OFR with regulatory authority over entities regulated under the Financial Institutions Codes (codes).<sup>3</sup>

### ***International Banking Corporations***

The OFR licenses and regulates international banking corporations<sup>4</sup> that transact business in Florida.<sup>5</sup> International banking entities enable depository institutions in the United States to offer deposit and loan services to foreign residents and institutions, and are subject to the jurisdiction of the Board of Governors of the Federal Reserve. The OFR does not regulate institutions chartered and regulated by foreign jurisdictions, except to the extent that those foreign institutions seek to engage in the banking or trust business in Florida. If foreign institutions do

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<sup>1</sup> Office of Financial Regulation, Senate Bill 736 Fiscal Analysis (on file with the Senate Appropriations Subcommittee on General Government).

<sup>2</sup> See [http://bus.miami.edu/magazine/fall2014/features/miami\\_the\\_global\\_hub.html](http://bus.miami.edu/magazine/fall2014/features/miami_the_global_hub.html) (Fall 2014) (last viewed Feb. 27, 2017).

<sup>3</sup> Financial Institutions Codes include chs. 655 relating to financial institutions generally, 657 relating to banks and trust companies, 660 relating to trust business, 662 family trust companies, 663 relating to international banking, 665 relating to associations, and 657 relating to savings banks.

<sup>4</sup> An international banking corporation, such as a foreign commercial bank, foreign merchant bank, or other foreign institution that engages in banking activities usual in connection with the business of banking in the country where such foreign institution is organized or operating. The term also includes foreign trust companies, or any similar business entities, including, but not limited to, foreign banks with fiduciary powers, that conduct trust business as defined in the codes. See s. 663.01(6), F.S.

<sup>5</sup> Sections 663.04 and 663.05, F.S.

so, they must obtain a Florida charter and comply with the provisions of ch. 663, F.S., and the applicable codes.

An international banking corporation may operate through a variety of business models, all of which are subject to licensure by the OFR.<sup>6</sup> These models include international bank agencies, international representative offices, international trust company representative offices (ITCRO), international administrative offices, and international branches. The definition of “financial institution”<sup>7</sup> includes an international banking corporation and all of these entities. As of February 2017, there were no ITCROs licensed with the OFR; however, two international administrative offices, nine international bank agencies, six international representative offices, and six international bank branches were licensed with the OFR.<sup>8</sup> In addition, the OFR qualified six entities for the moratorium on the OFR’s enforcement of licensing requirements for an international trust entity or related parties pursuant to s. 663.0441, F.S.<sup>9</sup>

If an international banking corporation (IBC) wants to operate an office in Florida, which includes an ITCRO, the IBC is required to meet minimum licensure requirements, and is subject to the examination and enforcement authority of the OFR. The OFR may not issue a license to an international banking corporation unless it:

- Holds an unrestricted license to conduct trust business in the foreign country under the law of which it is organized and chartered;
- Has been authorized by the foreign country's trust business regulatory authority to establish the proposed international trust representative office;
- Is adequately supervised by the central bank or trust regulatory agency in the foreign country in which it is organized and chartered;<sup>10</sup>
- Meets all requirements under the Financial Institutions Codes for the operation of a trust company or trust department as if it was a state-chartered trust company or bank authorized to exercise fiduciary powers; and
- Meets a minimum capital requirement of \$20 million.

Section 663.02, F.S., subjects international banking corporations with offices in Florida to the provisions of ch. 655, F.S., as though such corporations are state banks or trust companies.<sup>11</sup>

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<sup>6</sup> Section 663.06(1), F.S.

<sup>7</sup> Section 655.005(i), F.S.

<sup>8</sup> Office of Financial Regulation, *Financial Institution Search*, at <https://real.flofr.com/ConsumerServices/FinancialInstitutions/InstSrch.aspx> (last visited February 25, 2017).

<sup>9</sup> The following entities qualified for the moratorium: JTC Miami Corporation, Citco Corporate Services, Inc., Amicorp Services Ltd., Corpag Services USA, Inc., Integritas Inc., and Cisa Latam LLC. Email correspondence from the Office of Financial Regulation (Feb. 27, 2017) (on file with Senate Committee on Banking and Insurance).

<sup>10</sup> Section 663.05(8), F.S. requires the OFR to establish general principles to evaluate the adequacy of supervision of an international banking corporation’s foreign establishments, and must address at a minimum, the capital adequacy, asset quality, management, earnings, liquidity, internal controls, audits, and foreign exchange operations and positions of the international banking corporation. See Rule 69U-140.003, F.A.C., *Principles of Adequate Supervision of an International Banking Corporation’s Foreign Establishment*.

<sup>11</sup> Section 663.02, F.S., provides that it is the intent of the Legislature that the following provisions apply to such entities: s. 655.031, F.S., relating to administrative enforcement guidelines; s. 655.032, F.S., relating to investigations, subpoenas, hearings, and witnesses; s. 655.0321, F.S., relating to hearings, proceedings, related documents, and restricted access; s. 655.033, F.S., relating to cease and desist orders; s. 655.037, F.S., relating to removal by the office of an officer, director, committee member, employee, or other person; s. 655.041, F.S., relating to administrative fines and enforcement; and

Further, s. 663.02, F.S., provides that neither an international bank agency nor an international branch shall have any greater right under, or by virtue of s. 663.02, F.S., than is granted to banks organized under the laws of this state.

### ***International Bank Agencies and International Branches***

International bank agencies and international branches are permitted to conduct activities similar to those of a state-chartered financial institution. These activities include making and servicing loans, acting as a custodian, furnishing investment advice, conducting foreign exchange activities and trading in securities and commercial paper.<sup>12</sup> An international branch has the same rights and privileges as a federally licensed international branch.<sup>13</sup>

### ***International Representative Offices and International Administrative Offices***

International representative offices and international administrative offices perform activities that are more limited, such as soliciting business for the IBC, providing information to customers concerning their accounts, receiving applications for services, transmitting documents for customers, and arranging for customers to transact business on their accounts.<sup>14</sup> In addition to the powers delineated above, an administrative office may administer personnel and operations, engage in data processing and recordkeeping, and negotiate, approve, or service loans or extensions of credit and investments.<sup>15</sup>

### ***International Trust Company Representative Offices***

An ITCRO is an office of an international banking corporation or trust company organized and licensed under the laws of a foreign country, which is established or maintained in Florida for engaging in the nonfiduciary activities described in s. 663.0625, F.S.<sup>16</sup> An ITCRO may also include any affiliate, subsidiary, or other person that engages in such activities on behalf of such international banking corporation or trust company from an office located in Florida.<sup>17</sup> An ITCRO is not a bank and may not accept deposits or make loans. The activities of a licensed ITCRO are limited to engaging in the following non-fiduciary activities that are ancillary to the trust business of the international banking corporation, such as:

- Advertising, marketing, and soliciting for fiduciary business on behalf of an international banking corporation or trust company;
- Contacting existing or potential customers and answering questions and providing information about matters related to customer accounts;

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s. 655.50, F.S., relating to the control of money laundering and terrorist financing; and any law for which the penalty is increased under s. 775.31 F.S., for facilitating or furthering terrorism.

<sup>12</sup> Section 663.061, F.S.

<sup>13</sup> Section 663.064, F.S.

<sup>14</sup> Section 663.062, F.S.

<sup>15</sup> Section 663.063, F.S.

<sup>16</sup> In 2010, legislation was enacted to establish OFR's oversight responsibilities of "offshore" international non-depository trust companies that wanted to maintain an ITCRO in Florida [ch. 2010-9, Laws of Fla.]. The legislation defined the ITCRO entity and established the licensing and regulatory requirements for these entities under the OFR. This legislation was in response to the exposure of the \$8 billion dollar Ponzi scheme perpetrated by Allen Stanford. Because Florida law did not address representative offices of international non-depository trust companies at that time, Mr. Stanford was able to facilitate his scheme in Florida through the establishment of a representative office in Miami, Florida.

<sup>17</sup> Section 663.01(9), F.S.

- Serving as a liaison in Florida between the international banking corporation or trust company and its existing or potential customers; and
- Such other activities as may be approved by the OFR or rules of the Financial Services Commission (commission).<sup>18</sup>

In 2016, the Legislature imposed a moratorium on the OFR's enforcement with respect to the licensure of an entity in Florida providing services to an international trust entity (ITE) that engages in ITCRO activities described in s. 663.0625, F.S., if it meets certain conditions. The moratorium expires June 30, 2017, and applies to the ITE, which is the offshore entity and the Florida entity that is providing marketing and customer assistance on behalf of the ITE. An "international trust entity," is defined to mean any international trust company, international business, international business organization, or affiliated or subsidiary entities that are licensed, chartered, or similarly permitted to conduct trust business in a foreign country or countries under the laws of which it is organized and supervised.

### III. Effect of Proposed Changes:

#### Regulation of International Banking Corporations and their Offices

**Sections 1 through 19** amend provisions of part I of ch. 663, F.S., and ss. 655.005 and 655.059, F.S., relating to the regulation of international banking corporations. In addition, technical conforming changes are made to transfer provisions relating to the regulation of offices of international trust entities and international trust company representative offices (ITCROs) to the newly created part III of ch. 663, F.S., and create the regulation of qualified limited service affiliates (QLSA) in the newly created part IV of ch. 663, F.S. Many of the sections provide technical, conforming changes relating to the newly created parts III or IV.

**Sections 1, 4, 5, and 6** revise definitions. **Section 1** amends s. 655.005, F.S. The section expands the definition of the term "financial institution" to include an international trust entity and a QLSA, which are located in the newly created parts III and IV. **Section 4** amends s. 663.01, F.S. This section revises the definition of the term "international banking corporation" by removing the term "foreign trust companies" from the definition. A foreign trust company will be included within the definition of the term "international trust entity," which is transferred along with the regulation of offices of international trust entities in the newly created part III. The term, "international trust entity," is also defined and used in part IV. Section 4 removes the term, "international trust company representative office," to conform to Section 22. **Section 5** amends s. 663.02, F.S. The definition of the term, "international banking corporation," is amended to reflect definition changes in Section 4. **Section 6** revises s. 663.021, F.S. This section removes the term "international trust company representative officer" to conform to the definition change reflected in Section 4.

**Section 2** amends s. 665.059, F.S., to allow home-country supervisors access to confidential books and records of an international banking corporation or international trust entity that conducts onsite or offsite examinations outside Florida. The supervision of licensed locations of an international banking corporation or international trust entity in Florida requires the sharing of

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<sup>18</sup> Section 663.0625, F.S.

information with the bank regulatory agency or other similarly sanctioned organization located in the home jurisdiction of the international entity. These regulatory agencies known as the “home-country supervisor,” fulfill a similar function to the Office of Financial Regulation (OFR) in the home jurisdiction. Currently, the home-country supervisor of an international banking corporation or international trust company must travel to Florida to review and examine documents at the licensee’s location.

**Section 3** creates s. 663.001, F.S., to establish a legal and regulatory framework for the conduct by international banking corporations of financial services business in Florida. Section 3 serves to:

- Support the Florida operations of international banking corporations and promote the growth of international financial services to benefit the economy and consumers of this state; and,
- Provide for appropriate supervision and regulatory oversight to ensure that financial services activities of international banking corporations in this state are conducted responsibly and in a safe and sound manner.

**Section 7** amends s. 663.04, F.S. Section 7 reduces the time that an international institution must wait to qualify for licensure after experiencing certain changes in status or control (e.g., bankruptcy or government intervention such as bailouts) from seven to three years. The section further authorizes the OFR to permit an international branch, international bank agency, international administrative office, or international representative office to remain operational while the international banking corporation is experiencing certain types of status or control in the home country pursuant to the provisions of s. 663.11(11)(1)(b), F.S. (See Section 17.) Currently, if an international banking corporation is placed in bankruptcy, conservatorship, receivership, liquidation, or is operating under the direct control of its home government or regulator due to government intervention or other extraordinary actions, then the license of is automatically terminated and that entity may not transact any banking or trust business or maintain any office in Florida. This change may allow the entity to remain open for business to ensure continuity of operations, as issues affecting the home country institution are resolved.

**Section 8** adds and redesignates subsections within s. 663.05, F.S. This section creates an abbreviated application process for international banking corporations to establish additional locations in Florida. Currently, international banking corporations are subject to a full licensure process for each new office location. The OFR will maintain the discretion, as provided in current law, to require an international banking corporation seeking such approval to submit a full application. For applications filed on or after January 1, 2018, the time limitations for approval or disapproval must be prescribed by commission rule. Currently, there are no time limitations governing applications for licensure under ch. 663, F.S.

This section expands the group of international financial institutions that may establish facilities or exercise their powers in Florida. Currently, the OFR is not permitted to grant a license to an international banking corporation if the laws of their home country did not contemplate a Florida bank, specifically, establishing a similar type of operation in the international banking corporation’s home country. In order to enforce this requirement, the application for approval to establish an international branch or international bank agency requires the applicant (the international banking corporation) to provide documentation that the international banking corporation is chartered in a jurisdiction in which any bank having its principal place of business

in Florida may establish similar facilities or exercise similar powers, or that Federal law permits the appropriate federal regulatory authority to issue a comparable license to the international banking corporation. This section is amended to provide that reciprocity is dependent upon whether a financial institution based anywhere in the United States, not just in Florida, could establish a similar type of operation in the international banking corporation's home country. This approach also eliminates potential ambiguity since the laws of other countries typically do not contemplate reciprocity on a state level. This section provides technical and conforming changes.

**Section 9** amends s. 663.055, F.S. The bill authorizes the OFR to adopt a risk-based approach for capital requirements of international banks. This approach will allow the OFR to evaluate the varying levels and types of risk inherent in the activities of a particular bank. However, the total capital amounts must meet at least the minimum required under s. 658.21(2), F.S. Current statutes contain a static approach for capital requirements:

- \$20 million to establish a representative office; and,
- \$40 million, or between \$20 million and \$40 million if certain conditions are met, to establish an agency, branch, or administrative office.

The commission will establish by rule the criteria for determining the adequacy of an international banking corporation's financial resources prior to establishing an office in Florida. Additionally, the section deletes a provision that references OFR's role in adopting rules to maintain the safe and sound condition of international banking corporations since the OFR does not examine such entities for safety and soundness. Rather, the OFR determines whether the corporation has adequate supervision by the home country supervisor.

**Section 10** makes technical changes to s. 663.06, F.S.

**Section 11** creates s. 663.0601, F.S. This section authorizes the OFR to implement an after-the-fact licensure process in the event of the acquisition, merger, or consolidation of international banking corporations.<sup>19</sup> Subject to certain requirements, in the event that an international banking corporation proposes to acquire, merge, or consolidate with an international banking corporation that currently has an office in Florida, the transaction in the home country is permitted to occur prior to the OFR receiving an application for the resulting entity to have an office in Florida. Currently, as soon as such a transaction occurs, the statute terminates the license of an international banking corporation's Florida office. This change will allow continuity of operations of the Florida office despite a merger, acquisition, or consolidation of the international banking corporation.

**Section 12** amends s. 663.061, F.S. This section authorizes additional permissible activities for international bank agencies. This will allow an international bank agency to provide nonresidents with investment management services for domestic investments. Currently, an international bank agency can only do so with regard to international or foreign investments. Additionally, the section clarifies that an international bank agency may engage in any activities permissible for an international administrative office and international representative office. International bank agencies are already permitted by s. 663.06(5)(b), F.S., to engage in those activities.

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<sup>19</sup> This provision is modeled after federal regulations [12 C.F.R. s. 211.24(6)].

**Sections 13 through 15** clarify the permissible activities of offices of an IBC. **Section 13** amends s. 663.062, F.S. This section clarifies that a representative office of an international banking corporation is not subject to licensure under the newly created part III of ch. 663, F.S., because it may engage in any activities permissible for an ITCRO. **Section 14** amends s. 663.063, F.S., and clarifies that an international administrative office may engage in the activities permissible for an international representative office, which is already permitted by s. 663.06(5)(c), F.S., to engage in those activities. **Section 15** amends s. 663.064, F.S. This section authorizes the commission to prescribe by rule the types of deposits international branches may accept. The current statute does not provide an enumerated list of permissible deposits. The section also clarifies that an international branch may engage in any activities permissible for an international bank agency, international administrative office, and international representative office. International branches are already permitted by s. 663.06(5)(a), F.S., to engage in those activities.

**Section 16** amends s. 663.09, F.S. This section revises record requirements by allowing a licensed office to maintain certain documents in a language other than English. Currently, each international banking corporation with a licensed office in Florida must keep a correct and complete books and records of that office, policies and procedures, ledger, charter, and bylaws in the English language. The OFR maintains the right to request any document it deems necessary for regulation and supervision be translated into English at the expense of the international banking corporation.

**Section 17** amends s. 663.11, F.S., to allow an international branch, international bank agency, international administrative office, or international representative office to remain open and in operation while the international banking corporation is experiencing certain types of changes in status or control (e.g., bankruptcy or government intervention such as bailouts) if certain conditions are met. Within 30 days of a change in status or control, the licensee must provide the OFR with a plan to wind down the business, or as an alternative, the licensee may submit an interim operational plan for its continued operations. If the OFR determines that the plan does not allow for the conduct of business in a safe and sound manner, the OFR must revoke the license. This change may allow continuity of operations as operations in the home country institution are being resolved.

**Section 18** amends s. 663.12, F.S. This section removes language relating to the nonrefundable application fee for establishing an international trust company representative office since the regulation of these entities is transferred to part III.

**Section 19** makes technical changes to s. 663.17, F.S.

### **Regulation of International Trust Entities and ITCROs**

**Sections 20 through 37** create part III of ch. 663, F.S. The Division of Law Revision and Information is directed to create part III consisting of ss. 663.4001 - 663.416, F.S., which provide for the regulation of licensed offices of international trust entities and is applicable to trust business. Part III is entitled "International Trust Company Representative Offices." According to the OFR, these provisions will create a level playing field between the representative offices of



an international banking corporation and the similarly functioning ITCROs of an international trust entity.

**Section 21** creates s. 663.4001, F.S. This section establishes a legal and regulatory framework for the conduct by international trust entities within the state.

**Section 22** creates s. 663.401, F.S., and provides definitions for part III. The definition of “international trust company representative office” is transferred from part I and other definitions are provided.

**Section 23** creates s. 663.402, F.S. This section provides applicability of the financial institutions codes and specifies that the financial institutions codes do not authorize an international trust entity to conduct trust business in Florida.

**Section 24** creates s. 663.403, F.S., and provides applicability of the Florida Business Corporation Act. This section is consistent with s. 663.03, F.S., which applies to international banking corporations and their Florida offices.

**Section 25** creates s. 663.404, F.S. This section specifies requirements an international trust entity must meet to establish and maintain an ITCRO in Florida. This section also permits an ITCRO to remain open while the international trust entity is experiencing certain types of changes in status, or control (e.g., bankruptcy or government intervention such as bailouts) pursuant to the provisions of s. 663.412(1)(b), F.S., (*See Section 34*). Currently, termination of an ITCRO’s license occurs if the home country institution experiences one of these events. This change ensures continuity of operations while issues in the home country institution are resolved.

**Section 26** creates s. 663.405, F.S. This section provides that ITCROs are not required to produce certain books and records in response to a civil subpoena if the books and records are maintained outside of the United States and not in its possession or control of the ITCRO. Section 663.021, F.S., providing the same language, had previously applied to international trust company representative offices along with all offices of international banking corporations. Since the bill transfers the regulation of ITCRO to part III, this is a conforming change and provides parity with the treatment of Florida offices of an international banking corporation.

**Sections 27, 34, 35, and 37** create ss. 663.406, 663.412, 663.413 and 663.415, F.S., respectively. These sections specify licensure requirements and grounds for termination of a license of an office of an international trust entity. The international trust entity must submit an application along with a nonrefundable \$5,000 filing fee, and provide detailed background information to the OFR. The section authorizes the OFR to allow an international trust entity meeting certain requirements to establish additional locations in Florida by submitting an abbreviated application to the OFR. This provision creates parity between ITCROs and the Florida offices of an international banking corporation. (*See Section 8.*) The commission is authorized to adopt rules. An ITE that maintains an office licensed under part III is also responsible for paying for the costs of OFR examinations.

The bill delineates the circumstances that would result in the termination of a license of an office of an international trust entity. The section also authorizes the OFR to permit an ITCRO to

remain open and operational while the international trust entity is experiencing certain types of status or control if certain conditions are met. Currently, any international banking corporation (the definition of which encompasses an ITCRO) placed in bankruptcy, conservatorship, receivership, liquidation, or is operating under the direct control of its home government or regulator due to government intervention or other extraordinary actions, may no longer transact any banking or trust business or maintain any office in Florida to carry on such business. This provision may provide continuity of operations as the entity addresses issues in the home country institution. The bill provides similar flexibility for international banking corporations (See Section 7.). The section maintains parity between international trust company representative offices and the Florida offices of an international banking corporation.

**Section 28** creates s. 663.407, F.S., and authorizes the OFR to adopt a risk-based approach for capital requirements of international trust entities rather than requiring the same minimum amount for all entities. Currently, s. 663.055, F.S., of part I addresses ITCROs, which requires the home country institution to meet a minimum a \$20 million capital requirement in order to establish a representative office.

**Section 29** creates s. 663.408, F.S., and establishes the requirements and limitations for the licenses of international trust companies. The section specifies grounds for the OFR to revoke a license to operate an ITCRO and provides rulemaking authority for the commission to prescribe procedures for the surrender of a license. This is consistent with the provisions of s. 663.06, F.S., which applies to offices of an international banking corporation.

**Section 30** creates s. 663.4081, F.S. This section authorizes the OFR to issue an after-the-fact licensure process in the event of the acquisition, merger, or consolidation of international trust entities. Subject to certain requirements, in the event that an international trust entity proposes to acquire, merge, or consolidate with another international trust entity that currently has an office in Florida, the transaction in the home country is permitted to occur prior to the OFR receiving an application for the resulting entity to have an office in Florida. Currently, as soon as the transaction occurs, the license for the Florida office is terminated. This change permits continuity of operations of the Florida office despite a merger, acquisition, or consolidation of the international banking corporation, and ensures parity between the Florida offices of an international banking corporation and ITCROs.

**Section 31** transfers and renumbers s. 663.0625, F.S., to s. 663.409, F.S. This section transfers and clarifies the existing ITCRO permissible activities from part I and provides that a licensed ITCRO may engage in any activities permissible for a limited service affiliate under part IV.

**Section 32** creates s. 663.410, F.S. This section requires a licensed ITCRO to certify to the OFR the amount of its capital accounts, both prior to opening an ITCRO and on an annual basis thereafter by the specified date. This section is consistent with s. 663.08, F.S., which requires international banking corporations licensed to operate a Florida office must provide the same certification. This section maintains parity between international trust entities operating ITCROs in Florida and international banking corporations operating offices in Florida.

**Section 33** creates s. 663.411, F.S. This section requires an international trust entity that operates an office in Florida to maintain certain reports and records. Failure to comply with this provision is grounds for suspension or revocation of any license under part III.

**Section 36** creates s. 663.414, F.S. This section authorizes the commission to adopt rules for the administration of part III. This section provides an exemption to the applicability of ss. 120.54(3)(b) and 120.541, F.S., which requires a statement of regulatory costs, due to difficulty in obtaining economic data. An identical exemption exists in s. 663.13, F.S. This provision ensures parity between ITCROs and the Florida offices of an international banking corporation.

### **Regulation of Limited Service Affiliates of International Trust Entities**

**Sections 38 through 50** create part IV of ch. 663, F.S. The Division of Law Revision and Information is directed to create part IV of ch. 663, F.S., consisting of ss. 663.530 - 663.540, F.S. Part IV establishes the regulatory framework for qualified limited service affiliates (QLSA) of international trust entities. Unlike an ITCRO, whose license for operation is issued to an international trust entity, a qualified limited service affiliate is a stand-alone entity whose qualification by the OFR is independent of any affiliated international trust entities. While an ITCRO may only provide services for the international trust entity licensed to operate that office, a qualified limited service affiliate may provide services for any number of affiliated international trust entities. Since a qualified limited service affiliate is a stand-alone entity and is not subject to any other regulations, the permissible activities are more limited than that of an ITCRO.

**Section 39** creates s. 663.530, F.S. This section creates definitions for part IV and defines the term “limited service affiliate” to mean a marketing and liaison office that engages in the permissible activities enumerated in s. 663.531, F.S., for the benefit of an international trust entity. A “qualified limited service affiliate” is a person or entity that is qualified by the OFR under part IV to perform permissible activities outlined in s. 663.531, F.S., for the benefit of an international trust entity.

**Section 40** creates s. 663.531, F.S., and specifies the permissible activities of QLSA. Permissible activities include marketing and liaison activities, advertising and marketing at trade events, and transmitting documents between affiliated international trust entities and their clients. This section further:

- Provides descriptions of impermissible activities and includes acting as a fiduciary, advertising to the public, and otherwise engaging in banking or trust business;
- Prescribes guidance for permissible website usage and mandatory disclosure; and,
- Authorizes the OFR to enforce the chapter through the remedies and penalties available to it through the financial institutions codes.

**Section 41** creates s. 663.532, F.S., to provide that no later than March 1, 2018, a person or entity that previously qualified under the moratorium in s. 663.041, F.S., must seek qualification as a QLSA or cease doing business in Florida. Notwithstanding the expiration of the moratorium, a person or entity that previously qualified under such moratorium may remain open and

operational but must refrain from engaging in new lines of business in Florida until qualified as a QLSA. This section is effective upon this act becoming a law.

**Section 42** as created by this act, s. 663.532, F.S., is amended to provide the requirements and process for qualification as qualified limited service affiliates. A proposed QLSA must submit a written notice containing specified information regarding the proposed QLSA. This information includes services and activities of the applicant on behalf of the international trust entity (ITE), disclosures about officers, directors, and other parties who will be part of the operations of the proposed qualified limited service affiliate, and disclosures about the ITEs that the proposed qualified limited service affiliate will be providing services for in Florida. Once OFR deems the notice complete, the OFR has 120 days to qualify the limited services affiliates or issue a denial with notice of ch. 120, F.S., rights for denied limited service affiliates. This section authorizes the OFR to suspend, revoke, or deny a qualification in certain circumstances. A person or entity in operation as of January 1, 2018, which meets the definition of a LSA under the moratorium must file a written notice with the OFR seeking qualification as a qualified LSA on or before March 31, 2018, or cease doing business in Florida.

**Section 43** creates s. 663.5325, F.S. This section provides for civil action subpoena enforcement. A QLSA is not required to produce certain books and records pertaining to a customer of an affiliated ITE, located outside of the United States, in response to a civil subpoena if the book or record is maintained outside of the United States and is not in the possession or control of the QLSA. This section does not apply to subpoenas issued by or on behalf of a federal, state, or local government law enforcement agency, administrative or regulatory agency, legislative body or grand jury and does not limit the power of the OFR to access all books and records under regulatory and supervisory powers under the financial institution codes. Parts I and III have the same provision applicable to international banking corporations and ITCROs, respectively.

**Section 44** creates s. 663.533, F.S. This section provides applicability of the financial institutions codes to the regulation of the QLSA. This creates parity with the regulation of Florida offices of international banking corporations and international trust company representative offices, which are subject to the financial institutions codes in Sections 5 and 23 of the bill, respectively.

**Section 45** creates s. 663.534, F.S., and requires QLSAs to report any changes in the information provided to the OFR during the initial qualification or renewal process.

**Section 46** creates s. 633.535, F.S., and requires a disclosure that must accompany any marketing or advertising materials disseminated by a qualified limited service affiliate. The disclosure notifies those in receipt of the marketing or advertising materials that the OFR does not have regulatory oversight of the affiliated international trust entities served by the qualified limited service affiliate. Further, the OFR does not provide safety and soundness oversight of the QLSA. The disclosure also notifies those in receipt of the marketing or advertising materials that the qualified limited service affiliate may not act as a fiduciary. The disclosure delineates impermissible activities and puts the consumer on notice of which activities are impermissible.

**Section 47** creates s. 663.536, F.S., to require a qualified limited service affiliate to maintain specified records of their activities at trade, industry, or professional events.

**Section 48** creates s. 663.537, F.S. This section authorizes the OFR to examine and investigate a limited service affiliate before or after qualification to ensure compliance with the financial institutions codes.

**Section 49** creates s. 663.538, F.S. This section establishes grounds for the suspension, revocation, or voluntary surrender of a qualification and authorizes the commission to adopt rules. A qualified limited service affiliate seeking to surrender its qualification must notify the OFR of its intention to do so at least 60 days prior to the date of the proposed surrender. The section authorizes the OFR to conduct an examination of the books and records of a qualified limited service affiliate who proposes to surrender their qualification to ensure the winding down of operations.

**Section 50** creates s. 663.539, F.S. This section requires qualification renewal every two years. At renewal, a QLSA must provide any information as required by the commission. Further, a QLSA must provide a statement under penalty of perjury that the information for the purposes of renewal is true and correct.

**Section 51** reenacts subsection (4) of section 663.16, F.S., to incorporate an amendment to s. 663.01, F.S.

**Section 52** provides, except as otherwise expressly provided in this act and except for this section, which takes effect upon becoming a law, this act will take effect January 1, 2018.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

The bill creates registration fees, renewal fees, examination fees, and late fees that are applicable to offices of international trust entities under part III. International banking corporations are already subject to such fees under part I.

**B. Private Sector Impact:**

The bill modernizes and streamlines the regulatory framework of international financial services under ch. 663, F.S., thereby reducing regulatory burden and ensuring Florida remains competitive with other states.

**C. Government Sector Impact:**

The bill has an indeterminate increase in revenues relating to new regulatory fees and fines. While the Office of Financial Regulation (OFR) may have additional workload, OFR states that it can maintain regulatory oversight with current staffing levels.<sup>20</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 655.005, 655.059, 663.01, 663.02, 663.021, 663.04, 663.05, 663.055, 663.06, 663.061, 663.062, 663.063, 663.064, 663.09, 663.11, 663.12, 663.17, and 663.0625.

This bill creates the following sections of the Florida Statutes: 663.001, 663.0601, 663.4001, 663.401, 663.402, 663.403, 663.404, 663.405, 663.406, 663.407, 663.408, 663.4081, 663.410, 663.411, 663.412, 663.413, 663.414, 663.415, 663.530, 663.531, 663.532, 663.533, 663.534, 663.535, 663.537, 663.538, and 663.539.

This bill reenacts section 663.16 of the Florida Statutes.

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

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

**CS/CS by Appropriations on April 13, 2017:**

The committee substitute provides specific conditions that must be met for the Office of Financial Regulation (OFR) to permit a licensed office to remain open for business as issues affecting the home country institutions are resolved. The committee substitute also revises definitions; clarifies the qualification process for limited service affiliates; eliminates associated registration and renewal fees, and removes examination fees for qualified limited service affiliates.

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<sup>20</sup> Office of Financial Regulation, *2017 Legislative Bill Analysis of SB 736* (on file with Senate Committee on Banking and Insurance).

**CS by Banking and Insurance on March 6, 2017:**

The CS clarifies the registration process for limited service affiliates (LSAs) and the Office of Financial Regulation's authority to take action against LSAs. Further, the LSA is not required to produce certain books and records pertaining to a customer of an affiliated international trust entity (ITE) that is located outside of the United States in response to a civil subpoena if the book or record is maintained outside of the United States and are not in the possession or control of the affiliated LSA with exceptions.

**B. Amendments:**

None.

By the Committees on Appropriations; and Banking and Insurance;  
and Senators Mayfield and Steube

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1 A bill to be entitled  
2 An act relating to international financial  
3 institutions; amending s. 655.005, F.S.; redefining  
4 the term "financial institution" to include  
5 international trust entities and qualified limited  
6 service affiliates; amending s. 655.059, F.S.;  
7 specifying conditions under which confidential books  
8 and records of international trust entities may be  
9 disclosed to their home-country supervisors; revising  
10 conditions for such disclosure for international  
11 banking corporations; redefining the term "home-  
12 country supervisor"; requiring books and records  
13 pertaining to trust accounts to be kept confidential  
14 by financial institutions and their directors,  
15 officers, and employees; providing an exception;  
16 providing construction; creating s. 663.001, F.S.;  
17 providing legislative intent; amending s. 663.01,  
18 F.S.; redefining terms; deleting the definition of the  
19 term "international trust company representative  
20 office"; amending s. 663.02, F.S.; revising  
21 applicability of the financial institutions codes as  
22 to international banking corporations; amending s.  
23 663.021, F.S.; conforming a provision to changes made  
24 by the act; amending s. 663.04, F.S.; deleting  
25 international trust companies from requirements for  
26 carrying on financial institution business; conforming  
27 a provision to changes made by the act; authorizing  
28 the Office of Financial Regulation to permit certain  
29 entities that would otherwise be prohibited from

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30 carrying on financial institution business to remain  
31 open and in operation under certain circumstances;  
32 amending s. 663.05, F.S.; providing for an abbreviated  
33 application procedure for certain entities established  
34 by an international banking corporation; specifying  
35 that the Financial Services Commission, rather than  
36 the office, prescribes a certain application form;  
37 requiring the commission to adopt rules for a time  
38 limitation for an application decision after a  
39 specified date; revising conditions for the office to  
40 issue an international banking corporation license;  
41 conforming a provision to changes made by the act;  
42 amending s. 663.055, F.S.; revising capital  
43 requirements for international banking corporations;  
44 amending s. 663.06, F.S.; making technical changes;  
45 conforming a provision to changes made by the act;  
46 creating s. 663.0601, F.S.; providing an after-the-  
47 fact licensure process in the event of the  
48 acquisition, merger, or consolidation of international  
49 banking corporations; specifying conditions for such  
50 license; amending s. 663.061, F.S.; providing  
51 permissible activities for international bank  
52 agencies; amending s. 663.062, F.S.; providing  
53 permissible activities for certain international  
54 representative offices; amending s. 663.063, F.S.;  
55 providing permissible activities for international  
56 administrative offices; amending s. 663.064, F.S.;  
57 requiring the commission to adopt rules relating to  
58 permissible deposits of international branches;

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59 providing permissible activities for international  
 60 branches; amending s. 663.09, F.S.; revising  
 61 requirements for the maintenance of books and records  
 62 of international banking corporations; authorizing the  
 63 office to require international banking corporations  
 64 to translate certain documents into English at the  
 65 expense of the international banking corporations;  
 66 amending s. 663.11, F.S.; authorizing the office to  
 67 permit certain entities that would otherwise be  
 68 prohibited from continuing business to remain open and  
 69 in operation under certain circumstances; authorizing  
 70 the commission to adopt certain rules; requiring an  
 71 entity to surrender its license under certain  
 72 circumstances; making technical and conforming  
 73 changes; amending s. 663.12, F.S.; conforming a  
 74 provision to changes made by the act; amending s.  
 75 663.17, F.S.; making technical changes; providing a  
 76 directive to the Division of Law Revision and  
 77 Information to create part III of ch. 663, F.S.,  
 78 entitled "International Trust Company Representative  
 79 Offices"; creating s. 663.4001, F.S.; providing  
 80 legislative intent; creating s. 663.401, F.S.;  
 81 defining terms; creating s. 663.402, F.S.; providing  
 82 applicability of the financial institutions codes as  
 83 to international trust entities; creating s. 663.403,  
 84 F.S.; providing applicability of the Florida Business  
 85 Corporation Act as to international trust entities;  
 86 creating s. 663.404, F.S.; specifying requirements for  
 87 an international trust entity or certain related

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88 entities to conduct financial institution business;  
 89 authorizing the office to permit an international  
 90 trust company representative office that would  
 91 otherwise be prohibited from continuing business to  
 92 remain open and in operation under certain  
 93 circumstances; creating s. 663.405, F.S.; providing  
 94 that an international trust company representative  
 95 office is not required to produce certain books and  
 96 records under certain circumstances; providing  
 97 applicability; creating s. 663.406, F.S.; providing  
 98 requirements for applications for an international  
 99 trust entity license; requiring the office to disallow  
 100 certain financial resources from capitalization  
 101 requirements; requiring the international trust entity  
 102 to submit to the office a certain certificate;  
 103 providing an abbreviated application process for  
 104 certain international trust entities to establish  
 105 international trust company representative offices;  
 106 specifying parameters and requirements for the office  
 107 in determining whether to approve or disapprove an  
 108 application; requiring the commission to adopt by rule  
 109 general principles regarding the adequacy of  
 110 supervision of an international trust entity's foreign  
 111 establishments rules; creating s. 663.407, F.S.;  
 112 providing capital requirements for an international  
 113 trust entity; requiring the commission to adopt rules;  
 114 creating s. 663.408, F.S.; providing permissible  
 115 activities under and requirements and limitations for  
 116 international trust entity licenses; providing

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117 procedures, conditions, and requirements for the  
 118 suspension, revocation, or surrender of an  
 119 international trust entity license; creating s.  
 120 663.4081, F.S.; providing for an after-the-fact  
 121 licensure process in the event of the acquisition,  
 122 merger, or consolidation of international trust  
 123 entities; specifying conditions for such licensure;  
 124 transferring, renumbering, and amending s. 663.0625,  
 125 F.S.; adding prohibited activities of representatives  
 126 and employees of an international trust company  
 127 representative office; providing permissible  
 128 activities of such offices; conforming provisions to  
 129 changes made by the act; creating s. 663.410, F.S.;  
 130 requiring international trust entities to certify to  
 131 the office the amount of their capital accounts at  
 132 specified intervals; providing construction; creating  
 133 s. 663.411, F.S.; specifying reporting and  
 134 recordkeeping requirements for international trust  
 135 entities; providing penalties; authorizing the office  
 136 to require an international trust entity to translate  
 137 certain documents into English at the international  
 138 trust entity's expense; creating s. 663.412, F.S.;  
 139 prohibiting an international trust entity from  
 140 continuing to conduct business in this state under  
 141 certain circumstances; authorizing the office to  
 142 permit an international trust company representative  
 143 office to remain open and in operation under certain  
 144 circumstances; authorizing the commission to adopt  
 145 certain rules; requiring an entity to surrender its

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146 license under certain circumstances; requiring an  
 147 international trust entity or its surviving officers  
 148 and directors to deliver specified documents to the  
 149 office; providing construction; creating s. 663.413,  
 150 F.S.; specifying application and examination fees for  
 151 international trust company representative offices;  
 152 creating s. 663.414, F.S.; authorizing the commission  
 153 to adopt certain rules; providing an exemption from  
 154 statement of estimated regulatory costs requirements;  
 155 creating s. 663.415, F.S.; requiring international  
 156 trust company representative offices that are under  
 157 examination to reimburse domestic or foreign travel  
 158 expenses of the office; providing a directive to the  
 159 Division of Law Revision and Information to create  
 160 part IV of ch. 663, F.S., entitled "Qualified Limited  
 161 Service Affiliates of International Trust Entities";  
 162 creating s. 663.530, F.S.; defining terms; creating s.  
 163 663.531, F.S.; specifying permissible and prohibited  
 164 activities of a qualified limited service affiliate;  
 165 requiring specified notices to be posted on an  
 166 international trust entity's or qualified limited  
 167 service affiliate's website; authorizing enforcement  
 168 actions by the office; providing construction;  
 169 creating s. 663.532, F.S.; requiring certain persons  
 170 or entities to qualify as qualified limited service  
 171 affiliates by a specified date or cease doing business  
 172 in this state; permitting certain persons or entities  
 173 to remain open and in operation under certain  
 174 circumstances; amending s. 663.532, F.S., as created

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175 by this act; specifying qualification notice  
 176 requirements; providing requirements and procedures  
 177 for additional information requested by the office;  
 178 providing summary suspension requirements and  
 179 procedures; requiring the office to make investigation  
 180 of specified persons upon the filing of a completed  
 181 qualification notice; requiring the office to approve  
 182 a qualification only if certain conditions are met;  
 183 providing factors for the office to consider when  
 184 evaluating a previous offense or violation committed  
 185 by, or a previous fine or penalty imposed on,  
 186 specified persons; providing that qualifications are  
 187 not transferable or assignable; requiring certain  
 188 persons or entities to file notices seeking  
 189 qualification by a specified date or cease doing  
 190 business in this state; creating s. 663.5325, F.S.;  
 191 providing that a qualified limited service affiliate  
 192 is not required to produce certain books and records  
 193 under certain circumstances; providing applicability;  
 194 creating s. 663.533, F.S.; providing applicability of  
 195 the financial institutions codes as to qualified  
 196 limited service affiliates; providing construction;  
 197 creating s. 663.534, F.S.; requiring qualified limited  
 198 service affiliates to report changes of certain  
 199 information to the office within a specified  
 200 timeframe; creating s. 663.535, F.S.; requiring a  
 201 specified notice to customers in marketing documents,  
 202 advertisements, and displays at the qualified limited  
 203 service affiliate's location or at certain events;

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204 creating s. 663.536, F.S.; specifying recordkeeping  
 205 requirements relating to certain events that a  
 206 qualified limited service affiliate participates in;  
 207 creating s. 663.537, F.S.; authorizing the office to  
 208 conduct examinations or investigations of qualified  
 209 limited service affiliates for certain purposes;  
 210 specifying a minimum interval of examinations to  
 211 assess compliance; authorizing the office to examine a  
 212 person or entity submitting a notice of qualification  
 213 for certain purposes; creating s. 663.538, F.S.;  
 214 providing requirements and procedures relating to the  
 215 suspension, revocation, or voluntary surrender of a  
 216 qualified limited service affiliate's qualification;  
 217 providing a penalty; authorizing the office to conduct  
 218 examinations under certain circumstances; prohibiting  
 219 the office from denying a request to terminate  
 220 operations except under certain circumstances;  
 221 providing construction; creating s. 663.539, F.S.;  
 222 requiring a qualified limited service affiliate to  
 223 renew its qualification biennially; specifying  
 224 requirements for the renewal qualification; reenacting  
 225 s. 663.16, F.S., relating to definitions, to  
 226 incorporate the amendment made to s. 663.01, F.S., in  
 227 a reference thereto; providing effective dates.

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

230

231 Section 1. Paragraph (i) of subsection (1) of section  
 232 655.005, Florida Statutes, is amended to read:

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655.005 Definitions.—

(1) As used in the financial institutions codes, unless the context otherwise requires, the term:

(i) "Financial institution" means a state or federal savings or thrift association, bank, savings bank, trust company, international bank agency, international banking corporation, international branch, international representative office, international administrative office, international trust entity, international trust company representative office, qualified limited service affiliate, credit union, or an agreement corporation operating pursuant to s. 25 of the Federal Reserve Act, 12 U.S.C. ss. 601 et seq. or Edge Act corporation organized pursuant to s. 25(a) of the Federal Reserve Act, 12 U.S.C. ss. 611 et seq.

Section 2. Subsection (1) and paragraph (b) of subsection (2) of section 655.059, Florida Statutes, are amended to read:

655.059 Access to books and records; confidentiality; penalty for disclosure.—

(1) The books and records of a financial institution are confidential and shall be made available for inspection and examination only:

(a) To the office or its duly authorized representative;

(b) To any person duly authorized to act for the financial institution;

(c) To any federal or state instrumentality or agency authorized to inspect or examine the books and records of an insured financial institution;

(d) With respect to an international banking corporation or international trust entity, to the home-country supervisor of

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the international banking corporation or international trust entity, provided:

1. The home-country supervisor provides advance notice to the office that the home-country supervisor intends to examine the Florida office of the international banking corporation or international trust entity. Such examination may be conducted onsite or offsite and may include ongoing reporting by the Florida office of the international banking corporation or international trust entity to the home-country supervisor.

2. The home-country supervisor confirms to the office that the purpose of the examination is to ensure the safety and soundness of the international banking corporation or international trust entity.

3. The books and records pertaining to customer deposit, investment, ~~and~~ custodial, and trust accounts are not disclosed to the home-country supervisor.

4. At any time during the conduct of the examination, the office reserves the right to have an examiner present, ~~or~~ to participate jointly in the examination, or to receive copies of all information provided to the home-country supervisor.

~~As used in For purposes of~~ this paragraph, the term "home-country supervisor" means the governmental entity in the international banking corporation's or international trust entity's home country with responsibility for the supervision and regulation of the safety and soundness of the international banking corporation or international trust entity;

(e) As compelled by a court of competent jurisdiction, pursuant to a subpoena issued pursuant to the Florida Rules of

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291 Civil Procedure, the Florida Rules of Criminal Procedure, or the  
 292 Federal Rules of Civil Procedure, or pursuant to a subpoena  
 293 issued in accordance with state or federal law. ~~Before~~ ~~Prior to~~  
 294 the production of the books and records of a financial  
 295 institution, the party seeking production must reimburse the  
 296 financial institution for the reasonable costs and fees incurred  
 297 in compliance with the production. If the parties disagree  
 298 regarding the amount of reimbursement, the party seeking the  
 299 records may request the court or agency having jurisdiction to  
 300 set the amount of reimbursement;

301 (f) As compelled by legislative subpoena as provided by  
 302 law, in which case the provisions of s. 655.057 apply;

303 (g) Pursuant to a subpoena, to any federal or state law  
 304 enforcement or prosecutorial instrumentality authorized to  
 305 investigate suspected criminal activity;

306 (h) As authorized by the board of directors of the  
 307 financial institution; or

308 (i) As provided in subsection (2).

309 (2)

310 (b) The books and records pertaining to trust accounts and  
 311 the deposit accounts and loans of depositors, borrowers,  
 312 members, and stockholders of any financial institution shall be  
 313 kept confidential by the financial institution and its  
 314 directors, officers, and employees and ~~may shall~~ not be released  
 315 except upon express authorization of the account holder as to  
 316 her or his own accounts, loans, or voting rights. However,  
 317 information relating to any loan made by a financial institution  
 318 may be released without the borrower's authorization in a manner  
 319 prescribed by the board of directors for the purpose of meeting

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320 the needs of commerce and for fair and accurate credit  
 321 information. Information may also be released, without the  
 322 authorization of a member or depositor but in a manner  
 323 prescribed by the board of directors, to verify or corroborate  
 324 the existence or amount of a customer's or member's account when  
 325 such information is reasonably provided to meet the needs of  
 326 commerce and to ensure accurate credit information. In addition,  
 327 a financial institution, affiliate, and its subsidiaries, and  
 328 any holding company of the financial institution or subsidiary  
 329 of such holding company, may furnish to one another information  
 330 relating to their customers or members, subject to the  
 331 requirement that each corporation receiving information that is  
 332 confidential maintain the confidentiality of such information  
 333 and not provide or disclose such information to any unaffiliated  
 334 person or entity. Notwithstanding this paragraph, ~~nothing in~~  
 335 this subsection does not shall prohibit:

336 1. A financial institution from disclosing financial  
 337 information as referenced in this subsection as authorized  
 338 permitted by Pub. L. No. 106-102 (1999), as set forth in 15  
 339 U.S.C.A. s. 6802, as amended.

340 2. The Florida office of the international banking  
 341 corporation or international trust entity from sharing books and  
 342 records under this subsection with the home-country supervisor  
 343 in accordance with subsection (1).

344 Section 3. Section 663.001, Florida Statutes, is created in  
 345 part I of chapter 663, Florida Statutes, to read:

346 663.001 Purpose.—The purpose of this part is to establish a  
 347 legal and regulatory framework for the conduct by international  
 348 banking corporations of financial services business in this

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state. This part is intended to:

(1) Support the Florida operations of international banking corporations and promote the growth of international financial services to benefit the economy and consumers in this state.

(2) Provide for appropriate supervision and regulatory oversight to ensure that financial services activities of international banking corporations in this state are conducted responsibly and in a safe and sound manner.

Section 4. Subsections (6) and (9) and paragraph (b) of subsection (11) of section 663.01, Florida Statutes, are amended to read:

663.01 Definitions.—As used in this part, the term:

(6) "International banking corporation" means a banking corporation organized and licensed under the laws of a foreign country. The term ~~"international banking corporation"~~ includes, without limitation, a foreign commercial bank, foreign merchant bank, or other foreign institution that engages in banking activities usual in connection with the business of banking in the country where such foreign institution is organized or operating, including a corporation: the sole shareholders of which are one or more international banking corporations or holding companies which own or control one or more international banking corporations which are authorized to carry on a banking business, or a central bank or government agency of a foreign country and any affiliate or division thereof; which has the power to receive deposits from the general public in the country where it is chartered and organized; and which is under the supervision of the central bank or other bank regulatory authority of such country. The term also includes ~~foreign trust~~

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~~companies, or any similar business entities, including, but not limited to, foreign banks with fiduciary powers which, that~~ conduct trust business as defined in the financial institutions codes.

~~(9) "International trust company representative office" means an office of an international banking corporation or trust company organized and licensed under the laws of a foreign country which office is established or maintained in this state for the purpose of engaging in nonfiduciary activities described in s. 663.0625, or any affiliate, subsidiary, or other person that engages in such activities on behalf of such international banking corporation or trust company from an office located in this state.~~

(10)(11) "Nonresident" means:

(b) A person, other than an individual, whose principal place of business or domicile is outside the United States and includes a person who conducts a majority of its business activities in a foreign country and any foreign government and its subdivision, agencies, and instrumentalities. Any person who conducts business in the United States is considered to have its principal place of business outside the United States if any one of the following requirements is satisfied for its most recent fiscal year:

1. Its assets located outside the United States exceed its assets located within the United States;
2. Its gross revenues generated outside the United States exceed its gross revenues generated within the United States; or
3. Its payroll expenses incurred outside the United States exceed its payroll expenses incurred within the United States.

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Section 5. Section 663.02, Florida Statutes, is amended to read:

663.02 Applicability of the financial institutions codes  
~~state banking laws.~~

(1) International banking corporations having offices in this state are subject to all the provisions of the financial institutions codes ~~and chapter 655~~ as though such corporations were state banks ~~or trust companies~~, except where it may appear, from the context or otherwise, that such provisions are clearly applicable only to banks ~~or trust companies~~ organized under the laws of this state or the United States. Without limiting the foregoing general provisions, it is the intent of the Legislature that the following provisions are applicable to such banks or trust companies: s. 655.031, relating to administrative enforcement guidelines; s. 655.032, relating to investigations, subpoenas, hearings, and witnesses; s. 655.0321, relating to hearings, proceedings, and related documents and restricted access thereto; s. 655.033, relating to cease and desist orders; s. 655.037, relating to removal by the office of an officer, director, committee member, employee, or other person; s. 655.041, relating to administrative fines and enforcement; s. 655.50, relating to the control of money laundering and terrorist financing; and any law for which the penalty is increased under s. 775.31 for facilitating or furthering terrorism. International banking corporations do not have the powers conferred on domestic banks by s. 658.60, relating to deposits of public funds. Chapter 687, relating to interest and usury, applies to all bank loans.

(2) Neither an international bank agency nor an

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international branch shall have any greater right under, or by virtue of, this section than is granted to banks organized under the laws of this state. Legal and financial terms used herein shall be deemed to refer to equivalent terms used by the country in which the international banking corporation is organized. This chapter and the financial institutions codes may not be construed to authorize any international banking corporation ~~or trust company~~ to conduct trust business, as defined in s. 658.12, from an office in this state except for those activities specifically authorized by s. 663.061(5) ~~ss. 663.061(5) and 663.0625.~~

Section 6. Subsection (1) of section 663.021, Florida Statutes, is amended to read:

663.021 Civil action subpoena enforcement.—

(1) Notwithstanding s. 655.059, an international representative office, international bank agency, international branch, ~~international trust company representative office~~, or international administrative office established under this chapter is not required to produce a book or record pertaining to a deposit account, investment account, or loan of a customer of the international banking corporation's offices that are located outside the United States or its territories in response to a subpoena if the book or record is maintained outside the United States or its territories and is not in the possession, custody, or control of the international banking corporation's office, agency, or branch established in this state.

Section 7. Section 663.04, Florida Statutes, is amended to read:

663.04 Requirements for carrying on financial institution

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business.—An international banking corporation ~~or trust company,~~  
or any affiliate, subsidiary, or other person or business entity  
acting as an agent for, on behalf of, or for the benefit of such  
international banking corporation ~~or trust company~~ who engages  
in such activities from an office located in this state, may not  
transact a banking or trust business, or maintain in this state  
any office for carrying on such business, or any part thereof,  
unless such corporation, ~~trust company,~~ affiliate, subsidiary,  
person, or business entity:

(1) Has been authorized by its charter to carry on a  
banking or trust business and has complied with the laws of the  
jurisdiction in which it is chartered.

(2) Has furnished to the office such proof as to the nature  
and character of its business and as to its financial condition  
as the commission or office requires.

(3) Has filed with the office a certified copy of that  
information required to be supplied to the Department of State  
by those provisions of part I of chapter 607 which are  
applicable to foreign corporations.

(4) Has received a license duly issued to it by the office.

(5) Has sufficient capital in accordance with the  
requirements of capital accounts no less than the minimums  
~~required per~~ s. 663.055 and the rules adopted thereunder and is  
not imminently insolvent or insolvent, as those terms are  
defined in ~~per~~ s. 655.005(1).

(6) (a) Is not in bankruptcy, conservatorship, receivership,  
liquidation, or similar status under the laws of any country.

(b) Is not operating under the direct control of the  
government, regulatory, or supervisory authority of the

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jurisdiction of its incorporation through government  
intervention or any other extraordinary actions.

(c) Has not been in such status or control at any time  
within the 3 ~~7~~ years preceding the date of application for a  
license.

Notwithstanding paragraphs (a) and (b), the office may permit an  
international branch, international bank agency, international  
administrative office, or international representative office to  
remain open and in operation pursuant to s. 663.11(1)(b).

Section 8. Present subsections (4) through (8) of section  
663.05, Florida Statutes, are redesignated as subsections (5)  
through (9), respectively, a new subsection (4) is added to that  
section, and present subsections (4), (5), and (6), paragraph  
(c) of present subsection (7), and present subsection (8) of  
that section are amended, to read:

663.05 Application for license; approval or disapproval.—

(4) Notwithstanding subsection (1), an international  
banking corporation that has operated an international branch,  
international bank agency, international administrative office,  
or international representative office in this state for a  
minimum of 3 years in a safe and sound manner, as defined by  
commission rule, and that is otherwise eligible to establish an  
additional office may establish one or more additional  
international branches, international bank agencies,  
international administrative offices, or international  
representative offices by providing an abbreviated application  
and paying the appropriate license fee pursuant to s. 663.12.  
This subsection does not permit an international banking



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corporation to file an abbreviated application for any license type whose permissible activities are broader than those in which the international banking corporation is currently authorized to engage.

~~(5)(4)~~ An application filed pursuant to this section must ~~shall~~ be made on a form prescribed by the commission office and ~~must shall~~ contain such information as the commission or office requires.

~~(6)(5)~~ The office may, in its discretion, approve or disapprove the application, but it may ~~shall~~ not approve the application unless, in its opinion, the applicant meets each and every requirement of this part and any other applicable provision of the financial institutions codes. The office shall approve the application only if it has determined that the directors, executive officers, and principal shareholders of the international banking corporation are qualified by reason of their financial ability, reputation, and integrity and have sufficient banking and other business experience to indicate that they will manage and direct the affairs of the international banking corporation in a safe, sound, and lawful manner. In the processing of an application filed pursuant to this section ~~applications~~, the time limitations under the Administrative Procedure Act ~~do shall~~ not apply as to approval or disapproval of the application. For applications filed on or after January 1, 2018, the time limitations for approval or disapproval of an application must be prescribed by rule of the commission.

~~(7)(6)~~ The office may not issue a license to an international banking corporation unless:

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(a) It is chartered in a jurisdiction in which any financial institution licensed or chartered by any state or any federal bank regulatory agency in the United States ~~bank or trust company having its principal place of business in this state~~ may establish similar facilities or exercise similar powers; or

(b) Federal law permits the appropriate federal regulatory authority to issue a comparable license to the international banking corporation.

~~(8)(7)~~ The office may not issue a license to an international banking corporation for the purpose of operating:

~~(c) A trust representative office in this state unless the corporation:~~

~~1. Holds an unrestricted license to conduct trust business in the foreign country under the laws of which it is organized and chartered.~~

~~2. Has been authorized by the foreign country's trust business regulatory authority to establish the proposed international trust representative office.~~

~~3. Is adequately supervised by the central bank or trust regulatory agency in the foreign country in which it is organized and chartered.~~

~~4. Meets all requirements under the financial institutions codes for the operation of a trust company or trust department as if it were a state chartered trust company or bank authorized to exercise fiduciary powers.~~

~~(9)(8)~~ The commission shall establish, by rule, the general principles which shall determine the adequacy of supervision of an international banking corporation's foreign establishments.

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581 These principles shall be based upon the need for cooperative  
 582 supervisory efforts and consistent regulatory guidelines and  
 583 shall address, at a minimum, the capital adequacy, asset  
 584 quality, management, earnings, liquidity, internal controls,  
 585 audits, and foreign exchange operations and positions of the  
 586 international banking corporation. This subsection does shall  
 587 not require examination by the home-country regulatory  
 588 authorities of any office of an international banking  
 589 corporation in this state. The commission may also establish, by  
 590 rule, other standards for approval of an application for a  
 591 license as considered necessary to ensure the safe and sound  
 592 operations of the international banking corporation ~~bank or~~  
 593 ~~trust representative office~~ in this state.

594 Section 9. Section 663.055, Florida Statutes, is amended to  
 595 read:

596 663.055 Capital requirements.—

597 (1) To qualify for a license under ~~the provisions of this~~  
 598 part, the proposed capitalization of the international banking  
 599 corporation must be in such amount as the office determines is  
 600 necessary, taking into consideration the risk profile of the  
 601 international banking corporation and the ability of the  
 602 international banking corporation to operate a licensed office  
 603 in a safe and sound manner. In making this determination, the  
 604 office must consider the financial resources of the  
 605 international banking corporation, including an international  
 606 ~~banking corporation must have net capital accounts, calculated~~  
 607 ~~according to United States generally accepted accounting~~  
 608 ~~principles and practices, of at least:~~

609 (a) The international banking corporation's current and

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610 projected capital position, profitability, level of  
 611 indebtedness, and business and strategic plans ~~Forty million~~  
 612 ~~dollars for the establishment of an international bank agency,~~  
 613 ~~an international branch, or an international administrative~~  
 614 ~~office; or~~

615 (b) The financial condition of any of the international  
 616 banking corporation's existing offices located in the United  
 617 States; Twenty million dollars for the establishment of an  
 618 ~~international representative office or international trust~~  
 619 ~~representative office.~~

620 (c) The minimum capital requirements of the international  
 621 banking corporation's home-country jurisdiction; and

622 (d) The capital ratio standards used in the United States  
 623 and in the international banking corporation's home-country  
 624 jurisdiction.

625 (2) The proposed capitalization of the international  
 626 banking corporation must be in such amount as the office deems  
 627 adequate, but in no case may the total capital accounts of the  
 628 international banking corporation be less than the minimum  
 629 required under s. 658.21(2) to establish a state bank  
 630 ~~Notwithstanding the provisions of paragraph (1)(a), the office~~  
 631 ~~may approve an application for a license to establish an~~  
 632 ~~international bank agency, an international branch, or an~~  
 633 ~~international administrative office if:~~

634 (a) ~~The international banking corporation is licensed to~~  
 635 ~~receive deposits from the general public in the country where it~~  
 636 ~~is organized and licensed and to engage in such other activities~~  
 637 ~~as are usual in connection with the business of banking in such~~  
 638 ~~country;~~

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~~(b) The office receives a certificate that is issued by the banking or supervisory authority of the country in which the international banking corporation is organized and licensed and states that the international banking corporation is duly organized and licensed and lawfully existing in good standing, and is empowered to conduct a banking business; and~~

~~(c) The international banking corporation has been in the business of banking for at least 10 years and is ranked by the banking or supervisory authority of the country in which it is organized and licensed as one of the five largest banks in that country in terms of domestic deposits, as of the date of its most recent statement of financial condition. However, in no event shall the office approve an application under this subsection for any international banking corporation with capital accounts of less than \$20 million.~~

~~(3) The office may specify such other conditions as it determines are appropriate, considering the public interest and the need to maintain a safe, sound, and competitive banking system in this state, and the preservation of an environment conducive to the conduct of an international banking business in this state. In translating the capital accounts of an international banking corporation, the office may consider monetary corrections accounts that reflect results consistent with the requirements of generally accepted accounting principles in the United States.~~

~~(4) For the purpose of this part, the capital accounts of and capital ratio standards for an international banking corporation must ~~shall~~ be determined in accordance with rules adopted by the commission. In adopting such rules, the~~

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commission shall consider similar rules adopted by bank regulatory agencies in the United States and the need to provide reasonably consistent regulatory requirements for international banking corporations ~~which will maintain the safe and sound condition of international banking corporations~~ doing business in this state, as well as capital adequacy standards of an international banking corporation's home-country jurisdiction.

Section 10. Subsections (1) and (3) of section 663.06, Florida Statutes, are amended to read:

663.06 Licenses; permissible activities.—

(1) (a) An international banking corporation licensed to operate an office in this state may engage in the business authorized by this part at the office specified in such license for an indefinite period.

(b) An international banking corporation may operate more than one licensed office, each at a different place of business, provided that each office is ~~shall be~~ separately licensed.

(c) A ~~No~~ license is not transferable or assignable. However, the location of a licensed office may be changed after notification of the office.

(d) Every such license must ~~shall~~ be, at all times, conspicuously displayed in the place of business specified therein.

(3) The license for any international banking corporation office in this state may be suspended or revoked by the office, with or without examination, upon its determination that the international banking corporation or the licensed office does not meet all requirements for original licensing. Additionally, the office shall revoke the license of any licensed office that

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the office determines has been inactive for 6 months or longer.  
 The commission may by rule prescribe additional conditions or  
 standards under which the license of an international bank  
 agency, international branch, international representative  
 office, ~~international trust company representative office~~, or  
 international administrative office may be suspended or revoked.

Section 11. Section 663.0601, Florida Statutes, is created  
 to read:

663.0601 After-the-fact licensure process in the event of  
 the acquisition, merger, or consolidation of international  
 banking corporations.—If an international banking corporation  
 proposes to acquire, merge, or consolidate with an international  
 banking corporation that presently operates an international  
 branch, international bank agency, international administrative  
 office, or international representative office licensed in this  
 state, the office may authorize the currently licensed  
 international branch, international bank agency, international  
 administrative office, or international representative office to  
 remain open and in operation after consummation of the proposed  
 acquisition, merger, or consolidation, if the acquiring  
 international banking corporation files an after-the-fact  
 application and all of the following conditions are met:

(1) The international banking corporation or corporations  
 resulting from the acquisition, merger, or consolidation will  
 not directly or indirectly own or control more than 5 percent of  
 any class of the voting securities of, or control, a United  
 States bank.

(2) Before consummation of the acquisition, merger, or  
 consolidation, the international banking corporation currently

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licensed to operate an international branch, international bank  
 agency, international administrative office, or international  
 representative office in this state must provide the office at  
 least 30 days' advance written notice, as prescribed by rules  
 adopted by the commission, of the proposed acquisition, merger,  
 or consolidation.

(3) Before consummation of the acquisition, merger, or  
 consolidation, each international banking corporation commits in  
 writing that it will either:

(a) Comply with the conditions in subsections (1) and (2)  
 and file an after-the-fact application for a license under s.  
 663.05(1) within 60 days after consummation of the proposed  
 acquisition, merger, or consolidation; and refrain from engaging  
 in new lines of business and from otherwise expanding the  
 activities of such establishment in this state until the  
 disposition of the after-the-fact license application, in  
 accordance with chapter 120; or

(b) Promptly wind down and close any international branch,  
 international bank agency, international administrative office,  
 or international representative office in this state if the  
 international banking corporations that are party to the  
 acquisition, merger, or consolidation elect not to file an  
 application for a license in accordance with paragraph (a); and,  
 before such wind-down and closure, refrain from engaging in new  
 lines of business or otherwise expanding the activities of such  
 establishment in this state.

Section 12. Subsection (1) of section 663.061, Florida  
 Statutes, is amended to read:

663.061 International bank agencies; permissible

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activities.-

(1) An international bank agency licensed under this part may make any loan, extension of credit, or investment which it could make if incorporated and operating as a bank organized under the laws of this state. An international bank agency may act as custodian and may furnish investment management, and investment advisory services authorized under rules adopted by the commission, to nonresident entities or persons whose principal places of business or domicile are outside the United States and to resident entities or persons with respect to international, ~~or~~ foreign, or domestic investments. An international banking corporation that ~~which~~ has an international bank agency licensed under the terms of this part is shall be exempt from the registration requirements of s. 517.12. An international bank agency licensed by the office may engage in any activity permissible for an international administrative office or international representative office.

Section 13. Section 663.062, Florida Statutes, is amended to read:

663.062 International representative offices; permissible activities.-An international representative office may promote or assist the deposit-taking, lending, or other financial or banking activities of an international banking corporation. An international representative office may serve as a liaison in Florida between an international banking corporation and its existing and potential customers. Representatives and employees based at such office may solicit business for the international banking corporation and its subsidiaries and affiliates, provide information to customers concerning their accounts, answer

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questions, receive applications for extensions of credit and other banking services, transmit documents on behalf of customers, and make arrangements for customers to transact business on their accounts, but a representative office may not conduct any banking or trust business in this state. An international representative office of an international banking corporation that has fiduciary powers may engage in the international trust representative office activities enumerated in s. 663.409.

Section 14. Subsection (2) of section 663.063, Florida Statutes, is amended to read:

663.063 International administrative offices.-

(2) An office established pursuant to ~~the provisions of~~ this section may ~~not~~ engage only in ~~any activity except~~ those activities set forth in subsection (1) and the activities permissible for an international representative office pursuant to s. 663.062.

Section 15. Section 663.064, Florida Statutes, is amended to read:

663.064 International branches; permissible activities; requirements.-

(1) An international banking corporation that meets the requirements of ss. 658.26, 663.04, and 663.05 may, with the approval of the office, establish one or more branches in this state. ~~An international branch shall have the same rights and privileges as a federally licensed international branch.~~ The operations of an international branch shall be conducted pursuant to requirements determined by the office as necessary to ensure compliance with the provisions of the financial

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institutions codes, including requirements for the maintenance of accounts and records separate from those of the international banking corporation of which it is a branch.

(2) An international branch has the same rights and privileges as a federally licensed international branch. The permissible deposits of an international branch must be determined in accordance with rules adopted by the commission. In adopting such rules, the commission shall consider the similar deposit-taking authority of a federally licensed international branch and the need to provide reasonably consistent regulatory requirements for international banking corporations doing business in this state.

(3) An international branch licensed by the office may engage in any activity permissible for an international bank agency, international administrative office, or international representative office.

Section 16. Subsection (3) of section 663.09, Florida Statutes, is amended, and subsection (5) is added to that section, to read:

663.09 Reports; records.—

(3) Each international banking corporation ~~that which~~ operates an office licensed under this part shall cause to be kept, at a location accepted by the office:

(a) Correct and complete books and records of account of the business operations transacted by such office. All policies and procedures relating specifically to governing the operations of such office, as well as any existing general ledger or subsidiary accounts, must ~~shall~~ be maintained in the English language. Any policies and procedures of the international

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banking corporation which are not specific to the operations of such office may be maintained in a language other than English  
~~The office may require that any other document not written in the English language which the office deems necessary for the purposes of its regulatory and supervisory functions be translated into English at the expense of the international banking corporation.~~

(b) Current copies of the charter and bylaws of the international banking corporation, relative to the operations of the office, and minutes of the proceedings of its directors, officers, or committees relative to the business of the office. Such records may be maintained in a language other than English and must ~~shall~~ be kept pursuant to s. 655.91 and ~~shall be~~ made available to the office, upon request, at any time during regular business hours of the office. Any failure to keep such records as aforesaid or any refusal to produce such records upon request by the office is ~~shall be~~ grounds for suspension or revocation of any license issued under this part.

(5) The office may require at any time that any document not written in the English language which the office deems necessary for the purposes of its regulatory and supervisory functions be translated into English at the expense of the international banking corporation.

Section 17. Section 663.11, Florida Statutes, is amended to read:

663.11 Termination of international banking corporation's charter or authority.—

(1) (a) An international banking corporation that is licensed to maintain an office in this state may not continue to

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871 conduct its licensed business in this state if the international  
872 banking corporation:

873 1. Is dissolved, or its authority or existence is otherwise  
874 terminated or canceled in the jurisdiction of its  
875 incorporation;

876 2. Is in bankruptcy, conservatorship, receivership,  
877 liquidation, or similar status under the laws of any country;  
878 or

879 3. Is operating under the direct control of the government  
880 or the regulatory or supervisory authority of the jurisdiction  
881 of its incorporation through government intervention or any  
882 other extraordinary actions.

883 (b)1. Notwithstanding subparagraphs (a)2. and 3., the  
884 office may permit an international branch, international bank  
885 agency, international administrative office, or international  
886 representative office to remain open and in operation under the  
887 following conditions:

888 a. Within 30 days after the occurrence of an event  
889 described in subparagraph (a)2. or subparagraph (a)3., the  
890 international branch, international bank agency, international  
891 administrative office, or international representative office  
892 provides the office with a plan to wind down its affairs and  
893 business within the subsequent 90 days or provides an interim  
894 operational plan outlining parameters for its continued  
895 operation. If the office finds that such interim operational  
896 plan does not allow for the conduct of business in a safe and  
897 sound manner, the office shall revoke the license.

898 b. The international banking corporation is authorized by  
899 the foreign country in which it is organized and licensed to

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900 address the affairs of any international branch, international  
901 bank agency, international administrative office, or  
902 international representative office in this state.

903 c. The international branch, international bank agency,  
904 international administrative office, or international  
905 representative office does not engage in any new lines of  
906 business or otherwise expand its activities in this state.

907 d. The office determines that allowing the international  
908 branch, international bank agency, international administrative  
909 office, or international representative office to remain open  
910 further domestic and foreign supervisory cooperation.

911 e. The office determines that allowing the international  
912 branch, international bank agency, international administrative  
913 office, or international representative office to remain open is  
914 in the public's interest and does not present an immediate or  
915 serious danger to the public health, safety, or welfare.

916 2. The commission may establish, by rule, additional  
917 standards and conditions for approval of an interim operational  
918 plan and for ongoing compliance with the plan. Such standards  
919 and conditions shall be based upon the need for cooperative  
920 supervisory efforts, consistent regulatory oversight, and the  
921 orderly administration of the international banking  
922 corporation's affairs.

923 3. After the resolution of all applicable events described  
924 in subparagraphs (a)2. and 3., if an international banking  
925 corporation is no longer authorized by the foreign country in  
926 which it is organized and licensed to conduct banking business,  
927 the international branch, international bank agency,  
928 international administrative office, or international

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929 representative office shall surrender its license in accordance  
 930 with s. 663.06.

931 ~~(2) A certificate of the official who is responsible for~~  
 932 ~~records of banking corporations of the jurisdiction of~~  
 933 ~~incorporation of such international banking corporation,~~  
 934 ~~attesting to the occurrence of any such event, or a certified~~  
 935 ~~copy of an order or decree of a court of such jurisdiction,~~  
 936 ~~directing the dissolution of such international banking~~  
 937 ~~corporation, the termination of its existence, or the~~  
 938 ~~cancellation of its authority, or declaring its status in~~  
 939 ~~bankruptcy, conservatorship, receivership, liquidation, or~~  
 940 ~~similar proceedings, or other reliable documentation that the~~  
 941 ~~international banking corporation is operating under the direct~~  
 942 ~~control of its government or a regulatory or supervisory~~  
 943 ~~authority, shall be delivered by The international banking~~  
 944 ~~corporation or its surviving officers and directors shall~~  
 945 ~~deliver to the office;:-~~

946 (a) A certificate of the official who is responsible for  
 947 records of banking corporations of the jurisdiction of  
 948 incorporation of such international banking corporation,  
 949 attesting to the occurrence of any event described in paragraph  
 950 (1) (a);

951 (b) A certified copy of an order or decree of a court of  
 952 such jurisdiction, directing the dissolution of such  
 953 international banking corporation, the termination of its  
 954 existence, or the cancellation of its authority or declaring its  
 955 status in bankruptcy, conservatorship, receivership,  
 956 liquidation, or similar proceedings; or

957 (c) Other reliable documentation evidencing that the

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958 international banking corporation is operating under the direct  
 959 control of its government or a regulatory or supervisory  
 960 authority.

961 (3) The filing of the certificate, order, documentation, or  
 962 decree ~~has shall have~~ the same effect as the revocation of the  
 963 license of such international banking corporation as provided in  
 964 s. 663.06, unless the office has permitted the international  
 965 branch, international bank agency, international administrative  
 966 office, or international representative office to remain open  
 967 and in operation pursuant to paragraph (1) (b).

968 Section 18. Subsection (1) of section 663.12, Florida  
 969 Statutes, is amended to read:

970 663.12 Fees; assessments; fines.-

971 (1) Each application for a license under ~~the provisions of~~  
 972 this part must ~~shall~~ be accompanied by a nonrefundable filing  
 973 fee payable to the office in the following amount:

974 (a) Ten thousand dollars for establishing a state-chartered  
 975 investment company.

976 (b) Ten thousand dollars for establishing an international  
 977 bank agency or branch.

978 (c) Five thousand dollars for establishing an international  
 979 administrative office.

980 (d) Five thousand dollars for establishing an international  
 981 representative office.

982 ~~(e) Five thousand dollars for establishing an international~~  
 983 ~~trust company representative office.~~

984 (e) ~~(f)~~ An amount equal to the initial filing fee for an  
 985 application to convert from one type of license to another. The  
 986 commission may increase the filing fee for any type of license



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987 to an amount established by rule and calculated in a manner so  
 988 as to cover the direct and indirect cost of processing such  
 989 applications.

990 Section 19. Subsection (11) of section 663.17, Florida  
 991 Statutes, is amended to read:

992 663.17 Liquidation; possession of business and property;  
 993 inventory of assets; wages; depositing collected assets;  
 994 appointing agents; appointment of judges.—

995 (11) The compensation of agents and any other employees  
 996 appointed by the office to assist in the liquidation of an  
 997 international banking corporation, or any of the corporation's  
 998 licensed offices located in this state, the distribution of its  
 999 assets, or the expenses of supervision, must ~~shall~~ be paid out  
 1000 of the assets of the corporation in the possession hands of the  
 1001 office. Expenses of liquidation and approved claims for fees and  
 1002 assessments due the office must ~~shall~~ be given first priority  
 1003 among unsecured creditors.

1004 Section 20. The Division of Law Revision and Information is  
 1005 directed to create part III of chapter 663, Florida Statutes,  
 1006 consisting of ss. 663.4001-663.416, Florida Statutes, to be  
 1007 entitled "International Trust Company Representative Offices."

1008 Section 21. Section 663.4001, Florida Statutes, is created  
 1009 to read:

1010 663.4001 Purpose.—The purpose of this part is to establish  
 1011 a legal and regulatory framework for the conduct by  
 1012 international trust entities of financial services business in  
 1013 this state. This part is intended to:

1014 (1) Support the Florida operations of international trust  
 1015 entities and promote the growth of international financial

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1016 services to benefit the economy and consumers in this state.

1017 (2) Provide for appropriate supervision and regulatory  
 1018 oversight to ensure that financial services activities of  
 1019 international trust entities in this state are conducted  
 1020 responsibly and in a safe and sound manner.

1021 Section 22. Section 663.401, Florida Statutes, is created  
 1022 to read:

1023 663.401 Definitions.—

1024 (1) "Affiliate" means a person or business or a group of  
 1025 persons or businesses acting in concert which controls, is  
 1026 controlled by, or is under common control of an international  
 1027 trust entity.

1028 (2) "International trust company representative office"  
 1029 means an office of an international trust entity which is  
 1030 established or maintained in this state for the purpose of  
 1031 engaging in nonfiduciary activities described in s. 663.409, or  
 1032 any affiliate, subsidiary, or other person that engages in such  
 1033 activities on behalf of such international trust entity from an  
 1034 office located in this state.

1035 (3) "International trust entity" means an international  
 1036 trust company or organization, or any similar business entity,  
 1037 or an affiliated or subsidiary entity that is licensed,  
 1038 chartered, or similarly permitted to conduct trust business in a  
 1039 foreign country or countries under the laws where such entity is  
 1040 organized and supervised.

1041 Section 23. Section 663.402, Florida Statutes, is created  
 1042 to read:

1043 663.402 Applicability of the financial institutions codes.—

1044 (1) An international trust entity that operates an office

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licensed under this part is subject to all the financial institutions codes as though such international trust entity were a state trust company, except when it appears, from the context or otherwise, that such provisions are clearly applicable only to trust companies organized under the laws of this state or the United States. Without limiting the foregoing general provisions, it is the intent of the Legislature that the following provisions are applicable to such international trust entities having offices in this state: s. 655.031, relating to administrative enforcement guidelines; s. 655.032, relating to investigations, subpoenas, hearings, and witnesses; s. 655.0321, relating to restricted access hearings, proceedings, and related documents; s. 655.033, relating to cease and desist orders; s. 655.037, relating to removal of a financial institution-related party by the office; s. 655.041, relating to administrative fines and enforcement; s. 655.50, the Florida Control of Money Laundering and Terrorist Financing in Financial Institutions Act; and any law for which the penalty is increased under s. 775.31 for facilitating or furthering terrorism.

(2) An international trust entity does not have any greater right under, or by virtue of, this section than is granted to trust companies organized under the laws of this state. Legal and financial terms used in this chapter are deemed to refer to equivalent terms used by the country in which the international trust entity is organized. This chapter and the financial institutions codes may not be construed to authorize any international trust entity to conduct trust business, as defined in s. 658.12, from an office in this state.

Section 24. Section 663.403, Florida Statutes, is created

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to read:

663.403 Applicability of the Florida Business Corporation Act.—Notwithstanding s. 607.01401(12), the provisions of part I of chapter 607 which are not in conflict with the financial institutions codes and which relate to foreign corporations apply to all international trust entities and their offices doing business in this state.

Section 25. Section 663.404, Florida Statutes, is created to read:

663.404 Requirements for conducting financial institution business.—An international trust entity, or any affiliated, subsidiary, or other person or business entity acting as an agent for, on behalf of, or for the benefit of such international trust entity, who engages in such activities from an office located in this state, may not transact a trust business, or maintain in this state any office for carrying on such business, or any part thereof, unless such international trust entity, affiliate, subsidiary, person, or business entity:

(1) Has been authorized by charter, license, or similar authorization by operation of law to carry on trust business and has complied with the laws of each jurisdiction in which it is chartered, licensed, or otherwise authorized and created under operation of law.

(2) Has furnished to the office such proof as to the nature and character of its business and as to its financial condition as the commission or office requires.

(3) Has filed with the office a certified copy of that information required to be supplied to the Department of State by those provisions of part I of chapter 607 which are

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applicable to foreign corporations.

(4) Has received a license duly issued to it by the office.

(5) Has sufficient capital in accordance with the requirements of s. 663.407 and the rules adopted thereunder and is not imminently insolvent or insolvent, as those terms are defined under s. 655.005(1).

(6) (a) Is not in bankruptcy, conservatorship, receivership, liquidation, or similar status under the laws of any country.

(b) Is not operating under the direct control of the government or the regulatory or supervisory authority of the home jurisdiction in which it has been chartered, licensed, or otherwise authorized and created under operation of law, through government intervention or any other extraordinary actions.

(c) Has not been in such status or control at any time within the 3 years preceding the date of application for a license.

Notwithstanding paragraphs (a) and (b), the office may permit an international trust company representative office to remain open and in operation pursuant to s. 663.412(1)(b).

Section 26. Section 663.405, Florida Statutes, is created to read:

663.405 Civil action subpoena enforcement.—

(1) Notwithstanding s. 655.059, an international trust company representative office established under this chapter is not required to produce a book or record pertaining to a deposit account, investment account, trust account, or loan of a customer of the international trust entity's offices that are located outside the United States or its territories in response

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to a subpoena, if the book or record is maintained outside the United States or its territories and is not in the possession, custody, or control of the international trust entity's representative office established in this state.

(2) This section applies only to a subpoena issued pursuant to the Florida Rules of Civil Procedure, the Federal Rules of Civil Procedure, or other similar law or rule of civil procedure in another state. This section does not apply to a subpoena issued by or on behalf of a federal, state, or local government law enforcement agency, administrative or regulatory agency, legislative body, or grand jury and does not limit the power of the office to access all books and records in the exercise of the office's regulatory and supervisory powers under the financial institutions codes.

Section 27. Section 663.406, Florida Statutes, is created to read:

663.406 Application for license; approval or disapproval.—

(1) An international trust entity, before being licensed by the office to maintain any office in this state, must subscribe and acknowledge, and submit to the office, an application that contains all of the following:

(a) The name of the international trust entity.

(b) The proposed location, by street and post office address and county, where its business is to be transacted in this state, and the name of the person who will be in charge of the business and affairs of the office.

(c) The location where its initial registered office will be located in this state.

(d) The total amount of the capital accounts of the

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1161 international trust entity.

1162 (e) A complete and detailed statement of its financial  
 1163 condition as of a date within 180 days before the date of such  
 1164 application, except that the office in its discretion may, when  
 1165 necessary or expedient, accept such statement of financial  
 1166 condition as of a date within 240 days before the date of such  
 1167 application. The office in its discretion may, when necessary or  
 1168 expedient, require an independent opinion audit or the  
 1169 equivalent satisfactory to the office.

1170 (f) A listing of any occasion within the 10-year period  
 1171 before the application on which either the international trust  
 1172 entity or any of its directors, executive officers, or principal  
 1173 shareholders have been arrested for, charged with, convicted of,  
 1174 or pled guilty or nolo contendere to, regardless of  
 1175 adjudication, any offense with respect to which the penalties  
 1176 include the possibility of imprisonment for 1 year or more, or  
 1177 to any offense involving money laundering, currency transaction  
 1178 reporting, facilitating or furthering terrorism, or fraud, or  
 1179 otherwise related to the operation of a financial institution.

1180 (2) The office shall disallow any illegally obtained  
 1181 currency, monetary instruments, funds, or other financial  
 1182 resources from the capitalization requirements of this section,  
 1183 and the existence of such illegally obtained resources is  
 1184 grounds for denial of the application for license.

1185 (3) An international trust entity that submits an  
 1186 application to the office shall concurrently submit a  
 1187 certificate issued by the supervisory authority of the country  
 1188 in which the international trust entity is chartered or  
 1189 organized which states that the international trust entity is

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1190 duly organized and licensed, or otherwise authorized by  
 1191 operation of law to transact business as a trust entity, and  
 1192 lawfully existing in good standing.

1193 (4) An international trust entity that has operated an  
 1194 international trust company representative office in this state  
 1195 for at least 3 years in a safe and sound manner, as defined by  
 1196 commission rule, and that is otherwise eligible to establish an  
 1197 additional office may establish one or more international trust  
 1198 company representative offices by providing an abbreviated  
 1199 application, and paying the appropriate license fee pursuant to  
 1200 s. 663.413.

1201 (5) An application filed pursuant to this section must be  
 1202 made on a form prescribed by the commission and must contain  
 1203 such information as the commission or office requires.

1204 (6) The office may, in its discretion, approve or  
 1205 disapprove the application, but it may not approve the  
 1206 application unless, in its opinion, the applicant meets each and  
 1207 every requirement of this part and any other applicable  
 1208 provision of the financial institutions codes. The office may  
 1209 approve the application only if it has determined that the  
 1210 directors, executive officers, and principal shareholders of the  
 1211 international trust entity are qualified by reason of their  
 1212 financial ability, reputation, and integrity and have sufficient  
 1213 trust company and other business experience to indicate that  
 1214 they will manage and direct the affairs of the international  
 1215 trust entity in a safe, sound, and lawful manner. In the  
 1216 processing of any application filed pursuant to this section,  
 1217 the time limitations under the Administrative Procedure Act do  
 1218 not apply as to approval or disapproval of the application. For

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1219 applications filed on or after January 1, 2018, the time  
 1220 limitations for approval or disapproval of an application must  
 1221 be prescribed by rule of the commission.

1222 (7) The office may not issue a license to an international  
 1223 trust entity unless it is chartered, licensed, or similarly  
 1224 authorized by operation of law in a jurisdiction in which any  
 1225 financial institution licensed or chartered by any state or  
 1226 federal regulatory agency in the United States may establish  
 1227 similar facilities or exercise similar powers.

1228 (8) The office may not issue a license to an international  
 1229 trust entity for the purpose of operating an international trust  
 1230 company representative office in this state unless the trust  
 1231 entity:

1232 (a) Holds an unrestricted license to conduct trust business  
 1233 in the foreign country under whose laws it is organized and  
 1234 chartered;

1235 (b) Has been authorized by the foreign country's  
 1236 appropriate regulatory authority to establish the proposed  
 1237 international trust company representative office; and

1238 (c) Is adequately supervised by the appropriate regulatory  
 1239 agency in the foreign country in which it is organized and  
 1240 chartered.

1241 (9) The commission shall establish, by rule, the general  
 1242 principles that determine the adequacy of supervision of an  
 1243 international trust entity's foreign establishments. These  
 1244 principles must be based upon the need for cooperative  
 1245 supervisory efforts and consistent regulatory guidelines and  
 1246 must address, at a minimum, the capital adequacy, asset quality,  
 1247 management, earnings, liquidity, internal controls, audits, and

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1248 foreign exchange operations and positions of the international  
 1249 trust entity. This subsection does not require examination by  
 1250 the home-country regulatory authorities of any office of an  
 1251 international trust entity in this state. The commission may  
 1252 also establish, by rule, other standards for approval of an  
 1253 application for a license as considered necessary to ensure the  
 1254 safe and sound operations of the international trust entity in  
 1255 this state.

1256 Section 28. Section 663.407, Florida Statutes, is created  
 1257 to read:

1258 663.407 Capital requirements.—

1259 (1) For an international trust entity to qualify for a  
 1260 license under this part, the proposed capitalization of the  
 1261 international trust entity must be in such amount as the office  
 1262 determines is necessary, taking into consideration the risk  
 1263 profile of the international trust entity and the ability of the  
 1264 international trust entity to operate a licensed office in a  
 1265 safe and sound manner. In making this determination, the office  
 1266 shall consider the financial resources of the international  
 1267 trust entity, including:

1268 (a) The international trust entity's current and projected  
 1269 capital position, profitability, level of indebtedness, business  
 1270 and strategic plans, and off-balance sheet asset management and  
 1271 administration activities;

1272 (b) The financial condition of any of the international  
 1273 trust entity's existing offices located in the United States;

1274 (c) The minimum capital requirements of the international  
 1275 trust entity's home-country jurisdiction; and

1276 (d) The capital ratio standards used in the United States

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1277 and in the international trust entity's home-country  
1278 jurisdiction.

1279 (2) The proposed capitalization of the international trust  
1280 entity must be in such amount as the office deems adequate, but  
1281 in no case may the total capital accounts of the international  
1282 trust entity be less than \$1 million.

1283 (3) The office may specify such other conditions as it  
1284 determines are appropriate, considering the public interest and  
1285 the need to maintain a safe, sound, and competitive financial  
1286 marketplace in this state.

1287 (4) For purposes of this part, the capital accounts of and  
1288 capital ratio standards for an international trust entity must  
1289 be determined in accordance with rules adopted by the  
1290 commission. In adopting such rules, the commission shall  
1291 consider similar rules adopted by regulatory agencies in the  
1292 United States and the need to provide reasonably consistent  
1293 regulatory requirements for international trust entities doing  
1294 business in this state, as well as capital adequacy standards of  
1295 an international trust entity's home-country jurisdiction.

1296 Section 29. Section 663.408, Florida Statutes, is created  
1297 to read:

1298 663.408 Licenses; permissible activities of licensees.—

1299 (1) (a) An international trust entity licensed to operate an  
1300 office in this state may engage in the business authorized by  
1301 this part at the office specified in such license for an  
1302 indefinite period.

1303 (b) An international trust entity may operate more than one  
1304 licensed office, each at a different place of business, provided  
1305 that each office is separately licensed.

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1306 (c) A license is not transferable or assignable. However,  
1307 the location of a licensed office may be changed after  
1308 notification to the office.

1309 (d) A license must at all times be conspicuously displayed  
1310 in the place of business specified therein.

1311 (2) An international trust entity that proposes to  
1312 terminate the operations of a licensed office in this state must  
1313 surrender its license to the office and comply with such  
1314 procedures as the commission may prescribe by rule.

1315 (3) The license for an international trust company  
1316 representative office in this state may be suspended or revoked  
1317 by the office, with or without examination, upon its  
1318 determination that the international trust entity or the  
1319 licensed office does not meet all requirements for original  
1320 licensing. Additionally, the office shall revoke the license of  
1321 any licensed office that the office determines has been inactive  
1322 for 6 months or longer. The commission may by rule prescribe  
1323 additional conditions or standards under which the license of an  
1324 international trust company representative office may be  
1325 suspended or revoked.

1326 (4) If any such license is surrendered by the international  
1327 trust entity or is suspended or revoked by the office, all  
1328 rights and privileges of the international trust entity to  
1329 transact the business under the license cease. The commission  
1330 shall prescribe by rule procedures for the surrender of a  
1331 license and for the orderly cessation of business by an  
1332 international trust entity in a manner that is not harmful to  
1333 the interests of its customers or of the public.

1334 Section 30. Section 663.4081, Florida Statutes, is created

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to read:

663.4081 After-the-fact licensure process in the event of the acquisition, merger, or consolidation of international trust entities.-If an international trust entity proposes to acquire, merge, or consolidate with an international trust entity that presently operates an international trust company representative office licensed in this state, the office may allow the currently licensed international trust company representative office to remain open and in operation after consummation of the proposed acquisition, merger, or consolidation, subject to the filing with the office of an after-the-fact license application in accordance with all of the following conditions:

(1) The international trust entity or entities resulting from the acquisition, merger, or consolidation will not directly or indirectly own or control more than 5 percent of any class of the voting securities of, or control, a United States bank.

(2) Before consummation of the acquisition, merger, or consolidation, the international trust entity currently licensed to operate an international trust company representative office in this state must provide the office at least 30 days' advance written notice, as prescribed by rules adopted by the commission, of the proposed acquisition, merger, or consolidation.

(3) Before consummation of the acquisition, merger, or consolidation, each international trust entity commits in writing that it will:

(a) Comply with the conditions in subsections (1) and (2) and file an after-the-fact application for a license under s. 663.406(1) within 60 days after consummation of the proposed

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acquisition, merger, or consolidation; and refrain from engaging in new lines of business and from otherwise expanding the activities of such establishment in this state until the disposition of the after-the-fact license application, in accordance with chapter 120; or

(b) Promptly wind down and close any international trust company representative office in this state if the international trust entities that are party to the acquisition, merger, or consolidation elect not to file an application for a license in accordance with paragraph (a); and, before such wind-down and closure, refrain from engaging in new lines of business or otherwise expanding the activities of such establishment in this state.

Section 31. Section 663.0625, Florida Statutes, is transferred, renumbered as section 663.409, Florida Statutes, and amended to read:

663.409 ~~663.0625~~ International trust company representative offices; permissible activities; requirements.-

(1) An international trust company representative office may conduct any nonfiduciary activities that are ancillary to the fiduciary business of its international trust entity ~~banking corporation or trust company~~, but may not act as a fiduciary. Permissible activities include advertising, marketing, and soliciting for fiduciary business on behalf of an international trust entity ~~banking corporation or trust company~~; contacting existing or potential customers, answering questions, and providing information about matters related to their accounts; serving as a liaison in this state between the international trust entity ~~banking corporation or trust company~~ and its

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1393 existing or potential customers; and engaging in any other  
 1394 activities approved by the office or under rules of the  
 1395 commission.

1396 (2) Representatives and employees at such office may not  
 1397 act as a fiduciary, including, but not limited to, accepting the  
 1398 fiduciary appointment, executing the fiduciary documents that  
 1399 create the fiduciary relationship, ~~or~~ making discretionary  
 1400 decisions regarding the investment or distribution of fiduciary  
 1401 accounts, or accepting custody of any trust property or any  
 1402 other good, asset, or thing of value on behalf of the affiliated  
 1403 international trust entity, its subsidiaries or affiliates, or  
 1404 subsidiaries and affiliates of the international trust company  
 1405 representative office.

1406 (3) An international trust company representative office  
 1407 licensed by the office may engage in any activities permissible  
 1408 for a qualified limited service affiliate under part IV of this  
 1409 chapter.

1410 Section 32. Section 663.410, Florida Statutes, is created  
 1411 to read:

1412 663.410 Certification of capital accounts.—Before opening  
 1413 an office in this state, and annually thereafter so long as an  
 1414 international trust company representative office is maintained  
 1415 in this state, an international trust entity licensed pursuant  
 1416 to this part must certify to the office the amount of its  
 1417 capital accounts, expressed in the currency of the home  
 1418 jurisdiction where it has been authorized by charter, license,  
 1419 or similar authorization by operation of law to carry on trust  
 1420 business. The dollar equivalent of these amounts, as determined  
 1421 by the office, is deemed to be the amount of its capital

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1422 accounts. The annual certification of capital accounts must be  
 1423 received by the office on or before June 30 of each year.

1424 Section 33. Section 663.411, Florida Statutes, is created  
 1425 to read:

1426 663.411 Reports; records.—

1427 (1) An international trust entity that operates an office  
 1428 licensed under this part shall, at such times and in such form  
 1429 as the commission prescribes, make written reports in the  
 1430 English language to the office, under the oath of one of its  
 1431 officers, managers, or agents transacting business in this  
 1432 state, showing the amount of its assets and liabilities and  
 1433 containing such other matters as the commission or office  
 1434 requires. An international trust entity that maintains two or  
 1435 more representative offices may consolidate such information in  
 1436 one report unless the office requires otherwise for purposes of  
 1437 its supervision of the condition and operations of each such  
 1438 office. The late filing of such reports is subject to an  
 1439 administrative fine as prescribed under s. 655.045(2). If the  
 1440 international trust entity fails to make such report as directed  
 1441 by the office or if such report contains a false statement  
 1442 knowingly made, the same are grounds for revocation of the  
 1443 license of the international trust entity.

1444 (2) An international trust entity that operates an office  
 1445 licensed under this part shall cause to be kept, at a location  
 1446 accepted by the office:

1447 (a) Correct and complete books and records of account of  
 1448 the business operations transacted by such office. All policies  
 1449 and procedures relating specifically to the operations of such  
 1450 office, as well as any existing general ledger or subsidiary



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accounts, must be maintained in the English language; however, any policies and procedures of the international trust entity which are not specific to the operations of such office may be maintained in a language other than English.

(b) Current copies of the charter or statement of operation and bylaws of the international trust entity, relative to the operations of the international trust company representative office, and minutes of the proceedings of its directors, officers, or committees relative to the business of the international trust company representative office. Such records may be maintained in a language other than English and must be kept pursuant to s. 655.91 and be made available to the office, upon request, at any time during regular business hours of the international trust company representative office.

(3) Any failure to keep such records as required in subsection (2) or any refusal to produce such records upon request by the office is grounds for suspension or revocation of any license issued under this part.

(4) The office may require at any time that any document not written in the English language which the office deems necessary for the purposes of its regulatory and supervisory functions be translated into English at the expense of the international trust entity.

Section 34. Section 663.412, Florida Statutes, is created to read:

663.412 Termination of international trust entity's charter or authority.—

(1) (a) An international trust entity that is licensed to maintain an office in this state may not continue to conduct its

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licensed business in this state if the international trust entity:

1. Is dissolved, or its authority or existence is otherwise terminated or canceled in the home jurisdiction where it has been authorized by charter, license, or similar authorization by operation of law to carry on trust business;

2. Is in bankruptcy, conservatorship, receivership, liquidation, or similar status under the laws of any country; or

3. Is operating under the direct control of the government or the regulatory or supervisory authority of the jurisdiction where it has been authorized by charter, license, or similar authorization by operation of law to carry on trust business through government intervention or any other extraordinary actions.

(b)1. Notwithstanding subparagraphs (a)2. and 3., the office may permit an international trust company representative office to remain open and in operation under the following conditions:

a. Within 30 days after the occurrence of an event described in subparagraph (a)2. or subparagraph (a)3., the international trust company representative office provides the office with a plan to wind down its affairs and business within the subsequent 90 days or provides an interim operational plan outlining parameters for its continued operation. If the office finds that such interim operational plan does not allow for the conduct of business in a safe and sound manner, the office shall revoke the license.

b. The international trust entity is authorized by the foreign country in which it is organized and licensed to address

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the affairs of any international trust company representative office in this state.

c. The international trust company representative office does not engage in any new lines of business or otherwise expand its activities in this state.

d. The office determines that allowing the international trust company representative office to remain open furthers domestic and foreign supervisory cooperation.

e. The office determines that allowing the international trust company representative office to remain open is in the public's interest and does not present an immediate or serious danger to the public health, safety, or welfare.

2. The commission may establish, by rule, additional standards and conditions for approval of an interim operational plan and for ongoing compliance with the plan. Such standards and conditions shall be based upon the need for cooperative supervisory efforts, consistent regulatory oversight, and the orderly administration of the international trust entity's affairs.

3. After the resolution of all applicable events described in subparagraphs (a)2. and 3., if an international trust entity is no longer authorized by the foreign country in which it is organized and supervised to conduct trust business, the international trust company representative office shall surrender its license in accordance with s. 663.408.

(2) The international trust entity or its surviving officers and directors shall deliver to the office:

(a) A certificate of the official who is responsible for records of trust entities in the jurisdiction where the

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international trust entity has been authorized by charter, license, or similar authorization by operation of law to carry on trust business of the international trust entity, attesting to the occurrence of any event described in paragraph (1) (a);

(b) A certified copy of an order or decree of a court of such jurisdiction, directing the dissolution of such international trust entity, the termination of its existence, or the cancellation of its authority, or declaring its status in bankruptcy, conservatorship, receivership, liquidation, or similar proceedings; or

(c) Other reliable documentation evidencing that the international trust entity is operating under the direct control of its government or a regulatory or supervisory authority.

(3) The filing of the certificate, order, documentation, or decree has the same effect as the revocation of the license of such international trust entity as provided in s. 663.408, unless the office has permitted the international trust company representative office to remain open and in operation pursuant to paragraph (1) (b).

Section 35. Section 663.413, Florida Statutes, is created to read:

663.413 Application and examination fees.—

(1) An application for a license to establish an international trust company representative office under this part must be accompanied by a nonrefundable \$5,000 filing fee, payable to the office.

(2) An international trust entity that maintains an office licensed under this part must pay to the office examination fees that are determined by the commission by rule and that are

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calculated in a manner so as to be equal to the actual cost of each examiner's participation in the examination, as measured by the examiner's pay scale, plus any other expenses directly incurred in the examination. However, the examination fees may not be less than \$200 per day for each examiner participating in the examination.

Section 36. Section 663.414, Florida Statutes, is created to read:

663.414 Rules; exemption from statement of estimated regulatory costs requirements.—In addition to any other rulemaking authority it has under the financial institutions codes, the commission may adopt reasonable rules that it deems advisable for the administration of international trust entities under this part in the interest of protecting depositors, creditors, borrowers, or the public interest and in the interest of maintaining a sound banking and trust system in this state. Because of the difficulty in obtaining economic data with regard to such trusts, ss. 120.54(3)(b) and 120.541 do not apply to the adoption of rules pursuant to this section.

Section 37. Section 663.415, Florida Statutes, is created to read:

663.415 Travel expenses.—If domestic or foreign travel is deemed necessary by the office to effectuate the purposes of this part, the office must be reimbursed for actual, reasonable, and necessary expenses incurred in such domestic or foreign travel by the international trust company representative office under examination.

Section 38. The Division of Law Revision and Information is directed to create part IV of chapter 663, Florida Statutes,

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consisting of ss. 663.530-663.540, Florida Statutes, to be entitled "Qualified Limited Service Affiliates of International Trust Entities."

Section 39. Section 663.530, Florida Statutes, is created to read:

663.530 Definitions.—

(1) As used in ss. 663.531-663.539, the term:

(a) "Foreign country" means a country other than the United States and includes any colony, dependency, or possession of such country notwithstanding any definitions in chapter 658, and any territory of the United States, including Guam, American Samoa, the Virgin Islands, and the Commonwealth of Puerto Rico.

(b) "Home-country regulator" means the supervisory authority or equivalent or other similarly sanctioned body, organization, governmental entity, or recognized authority, which has similar responsibilities in a foreign country in which and by whom an international trust entity is licensed, chartered, or has similar authorization to organize and operate.

(c) "International trust entity" means an international trust company or organization, or any similar business entity, or an affiliated or subsidiary entity that is licensed, chartered, or similarly permitted to conduct trust business in a foreign country or countries under the laws where such entity is organized and supervised.

(d) "Limited service affiliate" means a marketing and liaison office that engages in the permissible activities enumerated in s. 663.531 for the benefit of an international trust entity.

(e) "Nonresident" has the same meaning as in s. 663.01.

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(f) "Professional" means an accountant, attorney, or other financial services and wealth planning professional who is licensed by a governing body or affiliated with a licensed, chartered, or similarly authorized entity.

(g) "Qualified limited service affiliate" means a person or entity that is qualified under this part to perform the permissible activities outlined in s. 663.531 related to or for the benefit of an affiliated international trust entity.

(2) As used in ss. 663.531-663.539, the terms "affiliate," "commission," "executive officer," "financial institution," "financial institution-affiliated party," "financial institutions codes," "office," "officer," "state," and "subsidiary" have the same meaning as provided in s. 655.005.

Section 40. Section 663.531, Florida Statutes, is created to read:

663.531 Permissible activities; prohibited activities.—

(1) Qualification as a qualified limited service affiliate under this part does not provide any exemption from licensure, registration, application, and requirements to conduct licensed business activities in this state. A qualified limited service affiliate may engage in any of the following permissible activities, which are not meant to be restrictive unless an activity is prohibited under subsection (2):

(a) Marketing and liaison services related to or for the benefit of the affiliated international trust entities, directed exclusively at professionals and current or prospective nonresident clients of an affiliated international trust entity;

(b) Advertising and marketing at trade, industry, or professional events;

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(c) Transmission of documents between the international trust entity and its current or prospective clients or a designee of such clients; and

(d) Transmission of information about the trust or trust holdings of current clients between current clients or their designees and the international trust entity.

(2) A qualified limited service affiliate may not engage in any of the following activities:

(a) Advertising and marketing related to or for the benefit of the international trust entity which are directed to the general public;

(b) Acting as a fiduciary, including, but not limited to, accepting the fiduciary appointment, executing the fiduciary documents that create the fiduciary relationship, or making discretionary decisions regarding the investment or distribution of fiduciary accounts;

(c) Accepting custody of any trust property or any other good, asset, or thing of value on behalf of the affiliated international trust entity, its subsidiaries or affiliates, or subsidiaries and affiliates of the qualified limited service affiliate;

(d) Soliciting business within this state from the general public related to or for the benefit of an affiliated international trust entity;

(e) Adding a director, an executive officer, a principal shareholder, a manager, a managing member, or an equivalent position to the qualified limited service affiliate without prior written notification to the office;

(f) Commencing services for an international trust entity

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without complying with the requirements of s. 663.532;

(g) Providing services for any international trust entity that is in bankruptcy, conservatorship, receivership, liquidation, or a similar status under the laws of any country; or

(h) Otherwise conducting banking or trust business.

(3) The provisions of subsection (2) are not deemed to prevent the qualified limited service affiliate's use of an international trust entity's website, or its own website, if the posted information or communication includes the following:

(a) The following statement: "Certain described services are not offered to the general public in Florida, but are marketed by ... (insert name of qualified limited service affiliate)... exclusively to professionals and current or prospective non-U.S. resident clients of the affiliated international trust entity or entities."

(b) The notice required by s. 663.535.

(4) In addition to any other power conferred upon it to enforce and administer this chapter and the financial institutions codes, the office may impose any remedy or penalty pursuant to s. 655.033, relating to cease and desist orders; s. 655.034, relating to injunctions; s. 655.037, relating to removal of a financial institution-affiliated party by the office; or s. 655.041, relating to administrative fines and enforcement, if a qualified limited service affiliate engages in any of the impermissible activities in subsection (2).

Section 41. Effective upon this act becoming a law, section 663.532, Florida Statutes, is created to read:

663.532 Qualification.—No later than March 31, 2018, a

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person or entity that previously qualified under the moratorium in s. 663.041 must seek qualification as a qualified limited service affiliate or cease doing business in this state. Notwithstanding the expiration of the moratorium under s. 663.041, a person or entity that previously qualified under such moratorium may remain open and in operation but shall refrain from engaging in new lines of business in this state until qualified as a qualified limited service affiliate under this part.

Section 42. Section 663.532, Florida Statutes, as created by this act, is amended to read:

663.532 Qualification.—

(1) To qualify as a qualified limited service affiliate under this part, a limited service affiliate must file a written notice with the office, in the manner and on a form prescribed by the commission. Such written notice must include:

(a) The name under which the proposed qualified limited service affiliate will conduct business in this state.

(b) A copy of the articles of incorporation or articles of organization, or the equivalent, of the proposed qualified limited service affiliate.

(c) The physical address where the proposed qualified limited service affiliate will conduct business.

(d) The mailing address of the proposed qualified limited service affiliate.

(e) The name and biographical information of each director, executive officer, manager, managing member, or equivalent position of the proposed qualified limited service affiliate, to be submitted on a form prescribed by the commission.

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1741 (f) The number of officers and employees of the proposed  
 1742 qualified limited service affiliate.  
 1743 (g) A detailed list and description of the activities to be  
 1744 conducted by the proposed qualified limited service affiliate.  
 1745 The detailed list and description must include:  
 1746 1. The services and activities of the proposed qualified  
 1747 limited service affiliate;  
 1748 2. An explanation of how the services and activities of the  
 1749 proposed qualified limited service affiliate serve the business  
 1750 purpose of each international trust entity; and  
 1751 3. An explanation of how the services and activities of the  
 1752 proposed qualified limited service affiliate are distinguishable  
 1753 from those of the permissible activities of an international  
 1754 trust company representative office described under s. 663.409.  
 1755 (h) Disclosure of any instance occurring within the prior  
 1756 10 years when the proposed qualified limited service affiliate's  
 1757 director, executive officer, principal shareholder, manager,  
 1758 managing member, or equivalent position was:  
 1759 1. Arrested for, charged with, or convicted of, or who pled  
 1760 guilty or nolo contendere to, regardless of adjudication, any  
 1761 offense that is punishable by imprisonment for a term exceeding  
 1762 1 year, or to any offense that involves money laundering,  
 1763 currency transaction reporting, tax evasion, facilitating or  
 1764 furthering terrorism, fraud, theft, larceny, embezzlement,  
 1765 fraudulent conversion, misappropriation of property, dishonesty,  
 1766 breach of trust, breach of fiduciary duty, or moral turpitude,  
 1767 or that is otherwise related to the operation of a financial  
 1768 institution;  
 1769 2. Fined or sanctioned as a result of a complaint to the

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1770 office or any other state or federal regulatory agency; or  
 1771 3. Ordered to pay a fine or penalty in a proceeding  
 1772 initiated by a federal, state, foreign, or local law enforcement  
 1773 agency or an international agency related to money laundering,  
 1774 currency transaction reporting, tax evasion, facilitating or  
 1775 furthering terrorism, fraud, theft, larceny, embezzlement,  
 1776 fraudulent conversion, misappropriation of property, dishonesty,  
 1777 breach of trust, breach of fiduciary duty, or moral turpitude,  
 1778 or that is otherwise related to the operation of a financial  
 1779 institution.  
 1780 (i) A declaration under penalty of perjury signed by the  
 1781 executive officer, manager, or managing member of the proposed  
 1782 qualified limited service affiliate that, to the best of his or  
 1783 her knowledge:  
 1784 1. No employee, representative, or agent provides, or will  
 1785 provide, banking services; promotes or sells, or will promote or  
 1786 sell, investments; or accepts, or will accept, custody of  
 1787 assets.  
 1788 2. No employee, representative, or agent acts, or will act,  
 1789 as a fiduciary in this state, which includes, but is not limited  
 1790 to, accepting the fiduciary appointment, executing the fiduciary  
 1791 documents that create the fiduciary relationship, or making  
 1792 discretionary decisions regarding the investment or distribution  
 1793 of fiduciary accounts.  
 1794 3. The jurisdiction of the international trust entity or  
 1795 its offices, subsidiaries, or any affiliates that are directly  
 1796 involved in or facilitate the financial services functions,  
 1797 banking, or fiduciary activities of the international trust  
 1798 entity is not listed on the Financial Action Task Force Public

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1799 Statement or on its list of jurisdictions with deficiencies in  
 1800 anti-money laundering or counterterrorism.

1801 (j) For each international trust entity that the proposed  
 1802 qualified limited service affiliate will provide services for in  
 1803 this state, the following:

1804 1. The name of the international trust entity;

1805 2. A list of the current officers and directors of the  
 1806 international trust entity;

1807 3. Any country where the international trust entity is  
 1808 organized or authorized to do business;

1809 4. The name of the home-country regulator;

1810 5. Proof that the international trust entity has been  
 1811 authorized by charter, license, or similar authorization by its  
 1812 home-country regulator to engage in trust business;

1813 6. Proof that the international trust entity lawfully  
 1814 exists and is in good standing under the laws of the  
 1815 jurisdiction where it is chartered, licensed, or organized;

1816 7. A statement that the international trust entity is not  
 1817 in bankruptcy, conservatorship, receivership, liquidation, or in  
 1818 a similar status under the laws of any country;

1819 8. Proof that the international trust entity is not  
 1820 operating under the direct control of the government or the  
 1821 regulatory or supervisory authority of the jurisdiction of its  
 1822 incorporation, through government intervention or any other  
 1823 extraordinary actions, and confirmation that it has not been in  
 1824 such a status or under such control at any time within the prior  
 1825 3 years;

1826 9. Proof and confirmation that the proposed qualified  
 1827 limited service affiliate is affiliated with the international

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1828 trust entities provided in the notice; and

1829 10. Proof that the jurisdictions where the international  
 1830 trust entity or its offices, subsidiaries, or any affiliates  
 1831 that are directly involved in or that facilitate the financial  
 1832 services functions, banking, or fiduciary activities of the  
 1833 international trust entity are not listed on the Financial  
 1834 Action Task Force Public Statement or on its list of  
 1835 jurisdictions with deficiencies in anti-money laundering or  
 1836 counterterrorism.

1837 (k) A declaration under penalty of perjury, signed by an  
 1838 executive officer, manager, or managing member of each  
 1839 affiliated international trust entity, declaring that the  
 1840 information provided to the office is true and correct to the  
 1841 best of his or her knowledge.

1842  
 1843 The proposed qualified limited service affiliate may provide  
 1844 additional information in the form of exhibits when attempting  
 1845 to satisfy any of the qualification requirements. All  
 1846 information that the proposed qualified limited service  
 1847 affiliate desires to present to support the written notice must  
 1848 be submitted with the notice.

1849 (2) The office may request additional information as the  
 1850 office reasonably requires. Any request for additional  
 1851 information must be made by the office within 30 days after  
 1852 initial receipt of the written notice. Additional information  
 1853 must be submitted within 60 days after a request has been made  
 1854 by the office. Failure to respond to such request within 60 days  
 1855 after the date of the request is a ground for denial of the  
 1856 qualification. A notice is not deemed complete until all

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1857 requested information has been submitted to the office. Upon  
 1858 deeming the notice complete, the office has 120 days to qualify  
 1859 the limited service affiliate or issue a denial. An order  
 1860 denying a qualification must contain notice of opportunity for a  
 1861 hearing pursuant to ss. 120.569 and 120.57.

1862 (3) A qualification under this part must be summarily  
 1863 suspended by the office if the qualified limited service  
 1864 affiliate made a material false statement in the written notice.  
 1865 The summary suspension must remain in effect until a final order  
 1866 is entered by the office. For purposes of s. 120.60(6), a  
 1867 material false statement made in the qualified limited service  
 1868 affiliate's written notice constitutes an immediate and serious  
 1869 danger to the public health, safety, and welfare. If a qualified  
 1870 limited service affiliate made a material false statement in the  
 1871 written notice, the office must enter a final order revoking the  
 1872 qualification and may issue a fine as prescribed by s. 655.041  
 1873 or issue an order of suspension, removal, or prohibition under  
 1874 s. 655.037 to a financial institution-affiliated party of the  
 1875 qualified limited service affiliate.

1876 (4) Upon the filing of a completed qualification notice  
 1877 under this section, the office shall make an investigation of  
 1878 the character, reputation, business experience, and business  
 1879 qualifications of the proposed qualified limited service  
 1880 affiliate's proposed directors, executive officers, principal  
 1881 shareholder, managers, managing members, or equivalent  
 1882 positions. The office shall approve the qualification only if it  
 1883 has determined that such persons are qualified by reason of  
 1884 their ability, reputation, and integrity and have sufficient  
 1885 experience to manage and direct the affairs of the qualified

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1886 limited service affiliate in a lawful manner and in accordance  
 1887 with the requirements for obtaining and maintaining a  
 1888 qualification under this part. When evaluating a qualification  
 1889 notice, the office may consider factors reasonably related to an  
 1890 offense or related to a violation, fine, or penalty, such as  
 1891 mitigating factors, history of multiple violations, severity of  
 1892 the offense, and showings of rehabilitation.

1893 (5) A qualification is not transferable or assignable.

1894 (6) A person or entity in operation as of January 1, 2018,  
 1895 which meets the definition of a limited service affiliate under  
 1896 s. 663.530 must, on or before March 31, 2018, file the written  
 1897 notice pursuant to this section seeking qualification as a  
 1898 qualified limited service affiliate or cease doing business in  
 1899 this state.

1900 (7) No later than March 31, 2018, a person or entity that  
 1901 previously qualified under the moratorium in s. 663.041 must  
 1902 seek qualification as a qualified limited service affiliate or  
 1903 cease doing business in this state. Notwithstanding the  
 1904 expiration of the moratorium under s. 663.041, a person or  
 1905 entity that previously qualified under such moratorium may  
 1906 remain open and in operation but shall refrain from engaging in  
 1907 new lines of business in this state until qualified as a  
 1908 qualified limited service affiliate under this part.

1909 Section 43. Section 663.5325, Florida Statutes, is created  
 1910 to read:

1911 663.5325 Civil action subpoena enforcement.—

1912 (1) Notwithstanding s. 655.059, a qualified limited service  
 1913 affiliate established under this chapter is not required to  
 1914 produce a book or record pertaining to a customer of an



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1915 affiliated international trust entity that is located outside  
 1916 the United States or its territories in response to a subpoena  
 1917 if the book or record is maintained outside the United States or  
 1918 its territories and is not in the possession, custody, or  
 1919 control of the qualified limited service affiliate.

1920 (2) This section applies only to a subpoena issued pursuant  
 1921 to the Florida Rules of Civil Procedure, the Federal Rules of  
 1922 Civil Procedure, or other similar law or rule of civil procedure  
 1923 in another state or territory of the United States. This section  
 1924 does not apply to a subpoena issued by or on behalf of a  
 1925 federal, state, or local government law enforcement agency,  
 1926 administrative or regulatory agency, legislative body, or grand  
 1927 jury and does not limit the power of the office to access all  
 1928 books and records in the exercise of the office's regulatory and  
 1929 supervisory powers under the financial institutions codes.

1930 Section 44. Section 663.533, Florida Statutes, is created  
 1931 to read:

1932 663.533 Applicability of the financial institutions codes.-  
 1933 A qualified limited service affiliate is subject to the  
 1934 financial institutions codes. Without limiting the foregoing,  
 1935 the following provisions are applicable to a qualified limited  
 1936 service affiliate:

1937 (1) Section 655.012, relating to general supervisory powers  
 1938 of the office.

1939 (2) Section 655.031, relating to administrative enforcement  
 1940 guidelines.

1941 (3) Section 655.032, relating to investigations, subpoenas,  
 1942 hearings, and witnesses.

1943 (4) Section 655.0321, relating to restricted access to

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1944 certain hearings, proceedings, and related documents.

1945 (5) Section 655.033, relating to cease and desist orders.

1946 (6) Section 655.034, relating to injunctions.

1947 (7) Section 655.037, relating to removal of a financial  
 1948 institution-affiliated party by the office.

1949 (8) Section 655.041, relating to administrative fines and  
 1950 enforcement.

1951 (9) Section 655.057, relating to restrictions on access to  
 1952 public records.

1953 (10) Section 655.059, relating to access to books and  
 1954 records.

1955 (11) Section 655.0591, relating to trade secret documents.

1956 (12) Section 655.91, relating to records of institutions  
 1957 and copies thereof; retention and destruction.

1958 (13) Section 655.968, relating to financial institutions;  
 1959 transactions relating to Iran or terrorism.

1960  
 1961 This section does not prohibit the office from investigating or  
 1962 examining an entity to ensure that it is not in violation of  
 1963 this chapter or applicable provisions of the financial  
 1964 institutions codes.

1965 Section 45. Section 663.534, Florida Statutes, is created  
 1966 to read:

1967 663.534 Events that require notice to be provided to the  
 1968 office.-A qualified limited service affiliate must report to the  
 1969 office, within 15 days of its knowledge of the occurrence, any  
 1970 changes to the information previously relied upon by the office  
 1971 when qualifying or renewing a qualification under this part.

1972 Section 46. Section 663.535, Florida Statutes, is created

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1973 to read:

1974 663.535 Notice to customers.—All marketing documents and  
 1975 advertisements and any display at the location of the qualified  
 1976 limited service affiliate or at any trade or marketing event  
 1977 must contain the following statement in a contrasting color in  
 1978 at least 10-point type: "The Florida Office of Financial  
 1979 Regulation DOES NOT provide safety and soundness oversight of  
 1980 this company, does not provide any opinion as to any affiliated  
 1981 companies or products, and does not provide the oversight of  
 1982 this company's affiliated international trust entities or the  
 1983 jurisdictions within which they operate. This company may not  
 1984 act as a fiduciary and may not accept the fiduciary appointment,  
 1985 execute or transmit fiduciary documents, take possession of any  
 1986 assets, create a fiduciary relationship, make discretionary  
 1987 decisions regarding the investment or distribution of fiduciary  
 1988 accounts, provide banking services, or promote or sell  
 1989 investments."

1990 Section 47. Section 663.536, Florida Statutes, is created  
 1991 to read:

1992 663.536 Recordkeeping requirements for trade, industry, or  
 1993 professional events.—A qualified limited service affiliate who  
 1994 participates in a trade, industry, or professional event  
 1995 pursuant to s. 663.531 must keep a record of its participation  
 1996 in the event. The record must be maintained for at least 2 years  
 1997 following the event and must contain the following information:

1998 (1) The date, time, and location of the event;

1999 (2) To the extent known or available, a list of  
 2000 participants in the event, including other vendors, presenters,  
 2001 attendees, and targeted attendees;

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2002 (3) The nature and purpose of the event;

2003 (4) The qualified limited service affiliate's purpose for  
 2004 participating in the event; and

2005 (5) Samples of materials or, when samples are unavailable,  
 2006 descriptions of materials provided by the qualified limited  
 2007 service affiliate to attendees and other participants.

2008 Section 48. Section 663.537, Florida Statutes, is created  
 2009 to read:

2010 663.537 Examination or investigation of a qualified limited  
 2011 service affiliate.—The office may conduct an examination or  
 2012 investigation of a qualified limited service affiliate at any  
 2013 time that it deems necessary to determine whether the qualified  
 2014 limited service affiliate or financial institution-affiliated  
 2015 party thereof has violated, or is about to violate, any  
 2016 provision of this chapter, any applicable provision of the  
 2017 financial institutions codes, or any rule adopted by the  
 2018 commission pursuant to this chapter or the financial  
 2019 institutions codes. The office shall conduct an examination of  
 2020 each qualified limited service affiliate at least once every 18  
 2021 months to assess compliance with this part and the financial  
 2022 institutions codes. The office may conduct an examination,  
 2023 before or after qualification, of any person or entity that  
 2024 submits the written notice for qualification pursuant to s.  
 2025 663.532 to confirm information provided in the written notice  
 2026 and to confirm the activities of the person or entity seeking  
 2027 qualification.

2028 Section 49. Section 663.538, Florida Statutes, is created  
 2029 to read:

2030 663.538 Suspension, revocation, or voluntary surrender of

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2031 qualification.—

2032 (1) A qualified limited service affiliate that proposes to  
 2033 terminate operations in this state shall surrender its  
 2034 qualification to the office and comply with such procedures as  
 2035 required by rule of the commission.

2036 (2) A qualified limited service affiliate that fails to  
 2037 renew its qualification may be subject to a fine and penalty;  
 2038 however, such qualified limited service affiliate may renew its  
 2039 qualification within 30 days after expiration or may surrender  
 2040 the qualification in accordance with procedures prescribed by  
 2041 commission rule.

2042 (3) The qualification of a qualified limited service  
 2043 affiliate in this state may be suspended or revoked by the  
 2044 office, with or without examination, upon the office's  
 2045 determination that the qualified limited service affiliate does  
 2046 not meet all requirements for original or renewal qualification.

2047 (4) If a qualified limited service affiliate surrenders its  
 2048 qualification or its qualification is suspended or revoked by  
 2049 the office, all rights and privileges afforded by this part to  
 2050 the qualified limited service affiliate cease.

2051 (5) At least 60 days before a proposed date of voluntary  
 2052 termination of a qualification, a qualified limited service  
 2053 affiliate must provide to the office written notice by letter of  
 2054 its intention to surrender its qualification and terminate  
 2055 operations. The notice must include the proposed date of  
 2056 termination and the name of the officer in charge of the  
 2057 termination procedures.

2058 (6) The office may conduct an examination of the books and  
 2059 records of a qualified limited service affiliate at any time

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2060 after receipt of the notice of surrender of qualification to  
 2061 confirm the winding down of operations.

2062 (7) Operations of a qualified limited service affiliate are  
 2063 deemed terminated effective upon the later of the expiration of  
 2064 60 days from the date of the filing of the notice of voluntary  
 2065 surrender or upon the date provided in the notice of voluntary  
 2066 surrender, unless the office provides written notice specifying  
 2067 the grounds for denial of such proposed termination. The office  
 2068 may not deny a request to terminate unless it learns of the  
 2069 existence of any outstanding claim or claims against the  
 2070 qualified limited service affiliate, it finds that the  
 2071 requirements to terminate operations have not been satisfied, or  
 2072 there is an immediate and serious danger to the public health,  
 2073 safety, and welfare if the termination occurred.

2074 Section 50. Section 663.539, Florida Statutes, is created  
 2075 to read:

2076 663.539 Biennial qualification renewal.—A qualification  
 2077 must be renewed every 2 years. A qualification must be renewed  
 2078 by furnishing such information as the commission requires. A  
 2079 complete biennial renewal of qualification must include a  
 2080 declaration under penalty of perjury, signed by the executive  
 2081 officer or managing member of the qualified limited service  
 2082 affiliate seeking renewal, declaring that the information  
 2083 submitted for the purposes of renewal is true and correct to the  
 2084 best of his or her knowledge, and confirming or providing all of  
 2085 the following:

2086 (1) That the qualified limited service affiliate is in  
 2087 compliance with this part.

2088 (2) The physical location of the principal place of

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business of the qualified limited service affiliate.

(3) The telephone number of the qualified limited service affiliate.

(4) A list of the qualified limited service affiliate's current directors, executive officers, principal shareholder, managers, managing members, or equivalent positions.

(5) Any updates or changes in information which were not previously provided either in the initial qualification or in subsequent qualification renewals or which were not previously disclosed to the office.

Section 51. For the purpose of incorporating the amendment made by this act to section 663.01, Florida Statutes, in a reference thereto, subsection (4) of section 663.16, Florida Statutes, is reenacted to read:

663.16 Definitions; ss. 663.17-663.181.—As used in ss. 663.17-663.181, the term:

(4) Except where the context otherwise requires, "international banking corporation" or "corporation" has the same meaning as that provided in s. 663.01 and includes any licensed office of an international banking corporation operating in this state.

Section 52. Except as otherwise expressly provided in this act and except for this section, which shall take effect upon this act becoming a law, this act shall take effect January 1, 2018.



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Education, *Vice Chair*  
Appropriations Subcommittee on the Environment  
and Natural Resources  
Appropriations Subcommittee on General  
Government  
Banking and Insurance  
Judiciary

### JOINT COMMITTEE:

Joint Legislative Auditing Committee,  
*Alternating Chair*

**SENATOR DEBBIE MAYFIELD**

17th District

April 17, 2017

Chair Lizbeth Benacquisto  
Rules Committee  
400 Senate Office Building  
404 South Monroe Street  
Tallahassee, FL 32399-1100

Re: SB 736

Dear Chair Benacquisto,

I am respectfully requesting Senate Bill 736, a bill relating to International Financial Institutions, 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,

A handwritten signature in black ink, appearing to read "Debbie Mayfield", written over a horizontal line.

Senator Debbie Mayfield  
District 17

Cc: John B. Phelps, Cynthia Futch, Dave 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](http://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)

4-28-2017  
Meeting Date

736  
Bill Number (if applicable)

Topic INTERNATIONAL FINANCIAL INSTITUTIONS

Amendment Barcode (if applicable)

Name SLATER BATLISS

Job Title \_\_\_\_\_

Address 264 S. MONROE ST  
Street

Phone 222 8900

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 THE FLORIDA INTERNATIONAL ADMINISTRATORS 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)

4/28/17  
Meeting Date

738  
736 & 738  
Bill Number (if applicable)

Topic Waive in Support of 736 & 738

Amendment Barcode (if applicable)

Name Jamie Mongiovi (MON-JOE-VEE)

Job Title Florida Office of Financial Regulation

Address 101 G Gaines St  
Street

Phone

Tall, FL 32399  
City State Zip

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Office of Financial Regulation

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

4 128/2017

Meeting Date

Topic \_\_\_\_\_

Bill Number 736  
(if applicable)

Name BRIAN PITTS

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG

FLORIDA

33705

City

State

Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☐ Against ☒ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/20/11)



**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/CS/CS/SB 738

INTRODUCER: Appropriations Committee; Governmental Oversight and Accountability Committee;  
Banking and Insurance Committee; and Senators Mayfield and Steube

SUBJECT: Public Records/International Financial Institutions

DATE: April 27, 2017

REVISED: \_\_\_\_\_

| ANALYST            | STAFF DIRECTOR | REFERENCE | ACTION           |
|--------------------|----------------|-----------|------------------|
| 1. Knudson         | Knudson        | BI        | <b>Fav/CS</b>    |
| 2. Kim             | Ferrin         | GO        | <b>Fav/CS</b>    |
| 3. Sanders/Knudson | Hansen         | AP        | <b>Fav/CS</b>    |
| 4. Knudson         | Phelps         | RC        | <b>Favorable</b> |

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/CS/SB 738 makes certain records related to international trust entities and qualified limited service affiliates confidential and exempt from public inspection and copying. The Office of Financial Regulation (OFR) must hold the following information confidential and exempt:

- Personal identifying information of the customer or prospective customers of affiliated international trust entities that appear in regulatory records of an international trust company representative office or a qualified limited services affiliate;
- The names of shareholders or members of an affiliated international trust entity or a qualified limited services affiliate; and
- Information received by the OFR from a person from another state or country or the Federal Government that is confidential, or exempt pursuant to the laws of that state or country or pursuant to federal law.

The bill authorizes the OFR to disclose otherwise confidential and exempt information in specified circumstances.

The bill also revises the public records exemption for OFR records and information related to investigations and examinations of financial institutions, and confidential documents supplied by other state and federal agencies, to specify that such records are exempt from section 24(a), Article I of the Florida Constitution. The revision is necessary because CS/CS/SB 736 expands

the definition of “financial institution” to include an “international trust entity” and “qualified limited services affiliate,” thus expanding the existing public records exemption.

The public records exemptions created and amended by this bill are subject to the Open Government Sunset Review Act and repeal on October 2, 2022, unless the Legislature reviews and saves them from repeal through reenactment.

This bill requires a two-thirds vote from each chamber for passage because the bill creates a series of public records exemptions.

The bill does not affect state revenues or expenditures.

The bill will be effective on the same date CS/CS/SB 736 takes effect, should that bill be adopted in the same legislative session or an extension thereof and becomes a 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.<sup>1</sup> 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.<sup>2</sup>

In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.<sup>3</sup> Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.<sup>4</sup> 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.<sup>5</sup>

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.<sup>6</sup> The Florida Supreme

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<sup>1</sup> FLA. CONST., art. I, s. 24(a).

<sup>2</sup> *Id.*

<sup>3</sup> 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.

<sup>4</sup> Public records laws are found throughout the Florida Statutes.

<sup>5</sup> Section 119.01(1), F.S.

<sup>6</sup> 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.”

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.”<sup>7</sup> A violation of the Public Records Act may result in civil or criminal liability.<sup>8</sup>

The Legislature may create an exemption to public records requirements.<sup>9</sup> An exemption must pass by a two-thirds vote of the House and the Senate.<sup>10</sup> 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.<sup>11</sup> A statutory exemption that does not meet these criteria may be unconstitutional and may not be judicially saved.<sup>12</sup>

When creating a public records exemption, the Legislature may provide that a record is “confidential and exempt” or “exempt.”<sup>13</sup> 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.<sup>14</sup>

### **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.<sup>15</sup> 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.<sup>16</sup>

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.<sup>17</sup> 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:

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

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

<sup>9</sup> FLA. CONST., art. I, s. 24(c).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *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).

<sup>13</sup> 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).

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

<sup>15</sup> 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.

<sup>16</sup> Section 119.15(3), F.S.

<sup>17</sup> Section 119.15(6)(b), F.S.

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;<sup>18</sup>
- 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;<sup>19</sup> or
- It protects trade or business secrets.<sup>20</sup>

The OGSR also requires specified questions to be considered during the review process.<sup>21</sup> 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.<sup>22</sup> 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.<sup>23</sup>

### **Regulation of the International Financial Services Market**

Miami is home to the second-largest banking and finance hub in the United States.<sup>24</sup> Estate, tax, and asset protection planning are important components of the region's financial sector, attracting international financial institutions from Europe, Latin America, and Canada serving individual, family, and business customers.

The Office of Financial Regulation (OFR) regulates state-chartered depository and non-depository financial institutions and financial service companies. One of the OFR's primary goals is to protect consumers while preserving the integrity of Florida's markets and financial service industries. To achieve this goal, Florida law provides the OFR with regulatory authority over entities regulated under the Financial Institutions Codes (codes).<sup>25</sup>

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<sup>18</sup> Section 119.15(6)(b)1., F.S.

<sup>19</sup> Section 119.15(6)(b)2., F.S.

<sup>20</sup> Section 119.15(6)(b)3., F.S.

<sup>21</sup> 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?

<sup>22</sup> FLA. CONST. art. I, s. 24(c).

<sup>23</sup> Section 119.15(7), F.S.

<sup>24</sup> See [http://bus.miami.edu/magazine/fall2014/features/miami\\_the\\_global\\_hub.html](http://bus.miami.edu/magazine/fall2014/features/miami_the_global_hub.html) (Fall 2014) (last viewed Feb. 27, 2017).

<sup>25</sup> Financial Institutions Codes include chs. 655 relating to financial institutions generally, 657 relating to banks and trust companies, 660 relating to trust business, 662 family trust companies, 663 relating to international banking, 665 relating to associations, and 657 relating to savings banks.

### ***International Banking Corporations***

The OFR licenses and regulates international banking corporations<sup>26</sup> that transact business in Florida.<sup>27</sup> International banking entities enable depository institutions in the United States to offer deposit and loan services to foreign residents and institutions, and are subject to the jurisdiction of the Board of Governors of the Federal Reserve. The OFR does not regulate institutions that are chartered and regulated by foreign jurisdictions, except to the extent that those foreign institutions seek to engage in the banking or trust business in Florida. If foreign institutions do so, they must obtain a Florida charter and comply with the provisions of ch. 663, F.S., and the applicable codes.

An international banking corporation may operate through a variety of business models, all of which are subject to licensure by the OFR.<sup>28</sup> These models include international bank agencies, international representative offices, international trust company representative offices (ITCRO), international administrative offices, and international branches. The definition of “financial institution”<sup>29</sup> includes an international banking corporation and all of these entities. As of February 2017, there were no ITCROs licensed with the OFR; however, two international administrative offices, nine international bank agencies, six international representative offices, and six international bank branches were licensed with the OFR.<sup>30</sup> In addition, the OFR qualified six entities for the moratorium on the OFR’s enforcement of licensing requirements for an international trust entity or related parties pursuant to s. 663.0441, F.S.<sup>31</sup>

If an international banking corporation (IBC) wants to operate an office in Florida, which includes an ITCRO, the IBC is required to meet minimum licensure requirements, and is subject to the examination and enforcement authority of the OFR. The OFR may not issue a license to an international banking corporation unless it:

- Holds an unrestricted license to conduct trust business in the foreign country under the law of which it is organized and chartered;
- Has been authorized by the foreign country's trust business regulatory authority to establish the proposed international trust representative office;
- Is adequately supervised by the central bank or trust regulatory agency in the foreign country in which it is organized and chartered;<sup>32</sup>

<sup>26</sup> An international banking corporation, such as a foreign commercial bank, foreign merchant bank, or other foreign institution that engages in banking activities usual in connection with the business of banking in the country where such foreign institution is organized or operating. The term also includes foreign trust companies, or any similar business entities, including, but not limited to, foreign banks with fiduciary powers, that conduct trust business as defined in the codes. See s. 663.01(6), F.S.

<sup>27</sup> Sections 663.04 and 663.05, F.S.

<sup>28</sup> Section 663.06(1), F.S.

<sup>29</sup> Section 655.005(i), F.S.

<sup>30</sup> Office of Financial Regulation, *Financial Institution Search*, at <https://real.flofr.com/ConsumerServices/FinancialInstitutions/InstSrch.aspx> (last visited February 25, 2017).

<sup>31</sup> The following entities qualified for the moratorium: JTC Miami Corporation, Citco Corporate Services, Inc., Amicorp Services Ltd., Corpag Services USA, Inc., Integritas Inc., and Cisa Latam LLC. Email correspondence from the OFR (Feb. 27, 2017) (on file with Senate Committee on Banking and Insurance).

<sup>32</sup> Section 663.05(8), F.S., requires the OFR to establish general principles to evaluate the adequacy of supervision of an international banking corporation’s foreign establishments, and must address at a minimum, the capital adequacy, asset quality, management, earnings, liquidity, internal controls, audits, and foreign exchange operations and positions of the

- Meets all requirements under the Financial Institutions Codes for the operation of a trust company or trust department as if it was a state-chartered trust company or bank authorized to exercise fiduciary powers; and
- Meets a minimum capital requirement of \$20 million.

Section 663.02, F.S., provides that international banking corporations with offices in Florida are subject to the provisions of ch. 655, F.S., as though such corporations were state banks or trust companies.<sup>33</sup> Further, s. 663.02, F.S., provides that neither an international bank agency nor an international branch shall have any greater right under, or by virtue of s. 663.02, F.S., than is granted to banks organized under the laws of this state.

### ***International Bank Agencies and International Branches***

International bank agencies and international branches are permitted to conduct activities similar to those of a state-chartered financial institution. These activities include making and servicing loans, acting as a custodian, furnishing investment advice, conducting foreign exchange activities and trading in securities and commercial paper.<sup>34</sup> An international branch has the same rights and privileges as a federally licensed international branch.<sup>35</sup>

### ***International Representative Offices and International Administrative Offices***

International representative offices and international administrative offices perform activities that are more limited, such as soliciting business for the IBC, providing information to customers concerning their accounts, receiving applications for services, transmitting documents for customers, and arranging for customers to transact business on their accounts.<sup>36</sup> In addition to the powers delineated above, an administrative office may administer personnel and operations, engage in data processing and recordkeeping, and negotiate, approve, or service loans or extensions of credit and investments.<sup>37</sup>

### ***International Trust Company Representative Offices***

An ITCRO is an office of an international banking corporation or trust company organized and licensed under the laws of a foreign country, which is established or maintained in Florida for engaging in nonfiduciary activities described in s. 663.0625, F.S.<sup>38</sup> An ITCRO may also include

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international banking corporation. See Rule 69U-140.003, F.A.C., *Principles of Adequate Supervision of an International Banking Corporation's Foreign Establishment*.

<sup>33</sup> Section 663.02, F.S., provides that it is the intent of the Legislature that the following provisions apply to such entities: s. 655.031, F.S., relating to administrative enforcement guidelines; s. 655.032, F.S., relating to investigations, subpoenas, hearings, and witnesses; s. 655.0321, F.S., relating to hearings, proceedings, related documents, and restricted access; s. 655.033, F.S., relating to cease and desist orders; s. 655.037, F.S., relating to removal by the office of an officer, director, committee member, employee, or other person; s. 655.041, F.S., relating to administrative fines and enforcement; and s. 655.50, F.S., relating to the control of money laundering and terrorist financing; and any law for which the penalty is increased under s. 775.31, F.S., for facilitating or furthering terrorism.

<sup>34</sup> Section 663.061, F.S.

<sup>35</sup> Section 663.064, F.S.

<sup>36</sup> Section 663.062, F.S.

<sup>37</sup> Section 663.063, F.S.

<sup>38</sup> In 2010, legislation was enacted to establish OFR's oversight responsibilities of "offshore" international non-depository trust companies that wanted to maintain an ITCRO in Florida [ch. 2010-9, Laws of Fla.]. The legislation defined the ITCRO entity and established the licensing and regulatory requirements for these entities under the OFR. This legislation was in

any affiliate, subsidiary, or other person that engages in such activities on behalf of such international banking corporation or trust company from an office located in Florida.<sup>39</sup> An ITCRO is not a bank and may not accept deposits or make loans. The activities of a licensed ITCRO are limited to engaging in the following non-fiduciary activities that are ancillary to the trust business of the international banking corporation, such as:

- Advertising, marketing, and soliciting for fiduciary business on behalf of an international banking corporation or trust company;
- Contacting existing or potential customers and answering questions and providing information about matters related to customer accounts;
- Serving as a liaison in Florida between the international banking corporation or trust company and its existing or potential customers; and
- Such other activities as may be approved by the OFR or rules of the Financial Services Commission (commission).<sup>40</sup>

In 2016, the Legislature imposed a moratorium on the OFR's enforcement with respect to the licensure of an entity in Florida providing services to an international trust entity (ITE) that engages in ITCRO activities described in s. 663.0625, F.S., if certain conditions are met. The moratorium expires June 30, 2017, and applies to the ITE, which is the offshore entity and the Florida entity that is providing marketing and customer assistance on behalf of the ITE. An "international trust entity," is defined to mean any international trust company, international business, international business organization, or affiliated or subsidiary entities that are licensed, chartered, or similarly permitted to conduct trust business in a foreign country or countries under the laws of which it is organized and supervised.

### **Senate Bill 736 (2017)**

CS/CS/SB 738 provides public records exemptions that accompany the classification of international trust entities and qualified limited service affiliates as financial institutions in CS/CS/SB 736 (2017). CS/CS/SB 736 modernizes the regulatory framework of international financial services under the OFR, which will promote the growth of international financial services market in Florida. The bill revises provisions relating to the regulation of international banking corporations and international trust company representative offices (ITCROs) of international trust entities and creates a regulatory framework for qualified limited service affiliates (QLSAs). The QLSAs are marketing and liaison offices that engage in activities for the benefit of an international trust entity (ITE). An ITE is an international trust company, an international business, an international business organization, or an affiliated or subsidiary entities that is licensed, chartered, or similarly permitted to conduct trust business in a foreign country or countries under the laws of which it is organized and supervised. An ITCRO may conduct any nonfiduciary activities that are ancillary to the fiduciary business of its international trust entity, such as marketing and soliciting for fiduciary business on behalf of the ITE. The bill provides the following changes:

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response to the exposure of the \$8 billion dollar Ponzi scheme perpetrated by Allen Stanford. Because Florida law did not address representative offices of international non-depository trust companies at that time, Mr. Stanford was able to facilitate his scheme in Florida through the establishment of a representative office in Miami, Florida.

<sup>39</sup> Section 663.01(9), F.S.

<sup>40</sup> Section 663.0625, F.S.

- Establishes oversight of qualified limited service affiliates and offices of international trust entities.
- Provides an abbreviated application process to establish additional locations of an entity that meets certain conditions.
- Authorizes the OFR to implement a risk-based approach for capital requirements, which will allow the OFR to calculate capital requirements that reflect an entity's business model and its particular inherent risk profile.
- Provides the OFR with discretion to allow an after-the-fact licensure process of an entity in the event of an acquisition, merger, or consolidation, which would allow continuity of operations.
- Clarifies permissible activities of entities regulated under ch. 663, F.S.

### III. Effect of Proposed Changes:

#### **International Trust Entity Member and Customer Public Records Exemption Created in Section 633.416, F.S.**

**Section 1** creates s. 663.416, F.S., to create a public records exemption that requires the OFR to hold confidential and exempt from disclosure specified information relating to international trust entities. The bill exempts the following from the requirements of s. 119.07(1), F.S., and Art. I, s. 24(a) of the State Constitution:

- Personal identifying information of the customer or prospective customers of an affiliated international trust entity. The exemption applies to all such information that appears in books and records relating to reports and working papers regarding examinations, the operations, or the condition of an international trust company representative office.
- The names of shareholders or members of an affiliated international trust entity.
- Information received by the OFR from a person from another state or country or the Federal Government that is confidential, or exempt pursuant to the laws of that state or country or pursuant to federal law.

The OFR may disclose information governed by the public records exemption to the following persons and in the following situations:

- The authorized representative of the international trust company representative office under examination, if identified by resolution or written consent of the board of directors, or the equivalent, of the international trust entity.
- A fidelity insurance company, upon written consent of the board of directors, or the equivalent, of the international trust entity.
- An independent auditor, upon written consent of the board of directors, or the equivalent, of the international trust entity.
- The liquidator, receiver, or conservator for the international trust entity, if the OFR redacts the personal identifying information of customers, prospective customers, shareholders, and members of the international trust entity.
- A law enforcement agency in furtherance of its official duties and responsibilities.
- Law enforcement or a prosecutorial agency, to report suspected criminal activity.
- Pursuant to a legislative subpoena. The legislative body or committee must maintain confidentiality. Disclosure may be made to the extent the legislative body or committee



deems necessary in a case involving the investigation of charges against a public official subject to impeachment or removal.

The public records exemption does not prevent or restrict publication of a report required by federal law.

The willful disclosure of information made confidential and exempt by the bill is a third-degree felony punishable as provided in ss. 775.082, 775.083, or 775.084, F.S.

The public records exemption is subject to the Open Government Sunset Review Act and is repealed effective October 2, 2022, unless the Legislature reviews and reenacts it.

**Section 2** provides legislative findings that the public records exemption is a public necessity.

This section justifies the public records exemption for personal identifying information of customers, prospective customers, shareholders, or members of the affiliated international trust entity because disclosure could defame or jeopardize the personal and financial safety of those individuals and their family members. Such individuals are often of high net worth and the target of criminal predators seeking their assets through extortion, kidnapping, and other crimes.

This section justifies the public records exemption for public disclosure of information received by OFR from a person from another state or country or the Federal Government because disclosure may hinder the OFR's ability to receive information from other regulatory bodies and to engage in joint examinations with federal regulators.

**Qualified Limited Service Affiliate Public Records Exemption Created in Section 633.540, F.S.**

**Section 3** creates s. 663.540, F.S., to create a public records exemption that requires the OFR to hold confidential and exempt from disclosure specified information relating to qualified limited service affiliates. The bill exempts the following from the requirements of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution:

- Personal identifying information of the customers and prospective customers of an affiliated international trust entity. The exemption applies to all such information that appears in books and records relating to reports and working papers regarding examinations, the operations, or the condition of a limited service affiliate.
- The names of shareholders or members of a limited service affiliate.
- Information received by the OFR from a person from another state or country or the Federal Government that is confidential or exempt pursuant to the laws of that state or country or pursuant to federal law.

The OFR may disclose information governed by the public records exemption to the following persons and in the following situations:

- The authorized representative of the qualified limited service affiliate under examination, if identified by resolution or written consent of the board of directors or managers of the qualified limited service affiliate.

- A fidelity insurance company, upon written consent of the board of directors or managers of the qualified limited service affiliate.
- An independent auditor, upon written consent of the board of directors or managers of the qualified limited service affiliate.
- The liquidator, receiver, or conservator for the qualified limited service affiliate, if the OFR redacts the personal identifying information of customers, shareholders, and members of the limited service affiliate.
- A law enforcement agency in furtherance of its official duties and responsibilities.
- A law enforcement or a prosecutorial agency, to report suspected criminal activity.
- Pursuant to a legislative subpoena. The legislative body or committee must maintain confidentiality. Disclosure may be made to the extent the legislative body or committee deems necessary in a case involving the investigation of charges against a public official subject to impeachment or removal.

The public records exemption does not prevent or restrict publication of a report required by federal law.

The willful disclosure of information made confidential and exempt by the bill is a third-degree felony punishable as provided in ss. 775.082, 775.083, or 775.084, F.S.

The public records exemption is subject to the Open Government Sunset Review Act and is repealed effective October 2, 2022, unless the Legislature reviews and reenacts it.

**Section 4** provides legislative findings that the public records exemption is a public necessity.

This section justifies the public records exemption for personal identifying information of customers, prospective customers, shareholders, or members of a qualified limited service affiliate because disclosure could defame or jeopardize the personal and financial safety of those individuals and their family members. Such individuals are often of high net worth and the target of criminal predators seeking their assets through extortion, kidnapping, and other crimes.

This section justifies the public records exemption for public disclosure of information received by OFR from a person from another state or country or the Federal Government because disclosure may hinder the OFR's ability to receive information from other regulatory bodies and to engage in joint examinations with federal regulators.

**Expansion of Public Records Exemption for Investigations of Financial Institutions  
Amended in Sections 655.057(1), (2), (5), (9), and (15), F.S.**

**Section 5** amends s. 655.057, F.S., to specify that the existing public records exemption for records and information of an OFR investigation or examination of a financial institution, and confidential documents supplied by other state and federal agencies, are exempt from s. 24(a), Art. I of the State Constitution. The amendment is necessary because CS/CS/SB 736 expands the definition of "financial institution" to include an "international trust entity" and "limited services affiliate," thus expanding the existing public records exemption. Expanding the public records exemptions also subjects them to an Open Government Sunset Review and repeal on October 2, 2022, unless the Legislature reviews and saves the exemptions from repeal by reenacting them.

**Section 6** provides legislative findings that expanding the public records exemptions to international trust entities and qualified limited services affiliates is a public necessity. Such entities should receive the same protections afforded to other financial institutions to prevent them from being disadvantaged. The exemption for reports of examinations, operations, or condition and associated working papers is needed to allow the OFR to administer its duties, which deter fraud and ensure the safety and soundness of the financial system. Disclosure of such records could cause unwarranted damage to the good name or reputation of a financial institution and impair its, and the financial system's, safety and soundness. Disclosure of records and information relating to an investigation could jeopardize the integrity of another investigation or reveal investigative techniques, to the detriment of the OFR's ability to administer its duties. Revealing personal financial information or a confidential source's identity could damage those persons or jeopardize their safety.

#### **Effective Date**

**Section 7** makes the bill effective on the date CS/CS/SB 736 or similar legislation takes effect during the same legislative session or an extension thereof and becomes a law.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

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

C. Trust Funds Restrictions:

None.

#### **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 655.057 of the Florida Statutes.

This bill creates the following sections of the Florida Statutes: 663.416 and 663.540.

**IX. Additional Information:**

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

**CS/CS/CS by Appropriations on April 13, 2017:**

The committee substitute references that the public records exemptions apply to qualified limited service affiliates of an international trust entity.

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

This CS/CS does the following:

- Adds “books and records” of an international trust company representative office to the public records exemption for personal identifying information contained in affiliated international trust entity records;
- Clarifies language about the criminal penalty for willful disclosure of confidential and exempt information;
- Removes “books and records” from the definition of “working papers” for limited service affiliates;
- Adds “books and records” of an limited service affiliate to the public records exemption for personal identifying information contained in limited services affiliate records;
- Removes the public records exemption for reports of examinations or operations of limited service affiliates;
- Modifies the public necessity statement to reflect these changes; and
- Adds a reference to ch. 119 and Art. 1 s. 24(a) of the Florida Constitution to one of the public necessity statements to clarify that it supports the expansions in the definitions in the bill.

**CS by Banking and Insurance on March 6, 2017:**

Links the bill to SB 736 and creates an effective date.

B. Amendments:

None.

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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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By the Committees on Appropriations; Governmental Oversight and Accountability; and Banking and Insurance; and Senators Mayfield and Steube

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A bill to be entitled

An act relating to public records; creating ss. 663.416 and 663.540, F.S.; defining terms; providing exemptions from public records requirements for certain information held by the Office of Financial Regulation relating to international trust company representative offices or qualified limited service affiliates, respectively, and relating to affiliated international trust entities; authorizing the disclosure of the information by the office to specified persons; providing construction; providing criminal penalties; providing future legislative review and repeal of the exemptions; providing statements of public necessity; amending s. 655.057, F.S.; providing that certain exemptions from public records requirements for information relating to investigations, reports of examinations, operations, or condition, including working papers, and certain materials supplied by governmental agencies are exempt from Section 24(a) of Article I of the State Constitution, as a result of the expansion of such exemptions to include the records of international trust entities and qualified limited service affiliates, as made by CS/CS/SB 736, 2017 Regular Session; providing a statement of public necessity; providing a contingent effective date.

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

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Section 1. Section 663.416, Florida Statutes, is created and incorporated into part III of chapter 663, Florida Statutes, as created by CS/CS/SB 736, 2017 Regular Session, to read:

663.416 Public records exemption.—

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

(a) "Reports of examinations, operations, or condition" means records submitted to or prepared by the office as part of the office's duties performed pursuant to s. 655.012 or s. 655.045.

(b) "Working papers" means the records of the procedure followed, the tests performed, the information obtained, and the conclusions reached in an investigation or examination performed under s. 655.032 or s. 655.045. The term includes planning documentation, work programs, analyses, memoranda, letters of confirmation and representation, abstracts of the books and records of a financial institution, as defined in s. 655.005, and schedules or commentaries prepared or obtained in the course of such investigation or examination.

(2) PUBLIC RECORDS EXEMPTION.—The following information held by the office is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

(a) Any personal identifying information of the customers or prospective customers of an affiliated international trust entity which appears in the books and records of an international trust company representative office or in records relating to reports of examinations, operations, or condition of an international trust company representative office, including working papers.

(b) Any portion of a list of names of the shareholders or

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members of an affiliated international trust entity.

(c) Information received by the office from a person from another state or country or the Federal Government which is otherwise confidential or exempt pursuant to the laws of that state or country or pursuant to federal law.

(3) AUTHORIZED RELEASE OF CONFIDENTIAL AND EXEMPT INFORMATION.—Information made confidential and exempt under subsection (2) may be disclosed by the office:

(a) To the authorized representative or representatives of the international trust company representative office under examination. The authorized representative or representatives must be identified in a resolution or by written consent of the board of directors, or the equivalent, of the international trust entity.

(b) To a fidelity insurance company, upon written consent of the board of directors, or the equivalent, of the international trust entity.

(c) To an independent auditor, upon written consent of the board of directors, or the equivalent, of the international trust entity.

(d) To the liquidator, receiver, or conservator for the international trust entity, if a liquidator, receiver, or conservator is appointed. However, any portion of the information which discloses the identity of a customer or prospective customer of the international trust entity, or a shareholder or member of the international trust entity, must be redacted by the office before releasing such portion to the liquidator, receiver, or conservator.

(e) To a law enforcement agency in furtherance of the

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agency's official duties and responsibilities.

(f) To the appropriate law enforcement or prosecutorial agency for the purpose of reporting any suspected criminal activity.

(g) Pursuant to a legislative subpoena. A legislative body or committee that receives records or information pursuant to such a subpoena must maintain the confidential status of the records or information, except in a case involving the investigation of charges against a public official subject to impeachment or removal, in which case the records or information may be disclosed only to the extent necessary as determined by such legislative body or committee.

(4) PUBLICATION OF INFORMATION.—This section does not prevent or restrict the publication of a report required by federal law.

(5) PENALTY.—A person who willfully, in violation of this section, discloses information made confidential and exempt by this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(6) OPEN GOVERNMENT SUNSET REVIEW.—This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and is 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 personal identifying information of the customers or prospective customers of an affiliated international trust entity which appears in the books and records of an

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international trust company representative office or in records relating to reports of examinations, operations, or condition of an international trust company representative office, including working papers; any portion of a list of names of the shareholders or members of an affiliated international trust entity which is held by the office; and information received by the Office of Financial Regulation from a person from another state or country or the Federal Government which is otherwise confidential or exempt pursuant to the laws of that state or country or pursuant to federal law.

(1) An exemption from public records requirements is necessary for such records and information because the Office of Financial Regulation may receive sensitive personal and financial information, including personal identifying information relating to such entities, in the course of its investigation and examination duties. Public disclosure of the personal identifying information of existing customers, prospective customers, shareholders, or members of the affiliated international trust entity could defame or jeopardize the personal and financial safety of those individuals and their family members. The individuals served by the affiliated international trust entity are often individuals of high net worth. Individuals of high net worth and shareholders or members of financial institutions are frequently the targets of criminal predators seeking access to their assets. It is important that the exposure of such individuals and their family members to threats of extortion, kidnapping, and other crimes not be increased. Placing the personal identifying information of these individuals within the public domain would increase the security

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risk that those individuals or their families could become the target of criminal activity.

(2) Public disclosure of information received by the Office of Financial Regulation from a person from another state or country or the Federal Government which is otherwise confidential or exempt pursuant to the laws of that state or country or pursuant to federal law may deteriorate the office's relationships with other regulatory bodies. The office frequently engages in joint examinations with federal regulators. If such information were subject to disclosure to the public, not only would such disclosure deter other regulatory bodies from communicating vital information to the office, but the office would violate existing information-sharing agreements governing the sharing of confidential supervisory information.

Section 3. Section 663.540, Florida Statutes, is created and incorporated into part IV of chapter 663, Florida Statutes, as created by CS/CS/SB 736, 2017 Regular Session, to read:

663.540 Public records exemption.—

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

(a) "Reports of examinations, operations, or condition" means records submitted to or prepared by the office as part of the office's duties performed pursuant to s. 655.012 or s. 663.537.

(b) "Working papers" means the records of the procedure followed, the tests performed, the information obtained, and the conclusions reached in an investigation or examination performed under s. 655.032 or s. 663.537. The term includes planning documentation, work programs, analyses, memoranda, letters of



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confirmation and representation, abstracts of the books and records of a financial institution, as defined in s. 655.005, and schedules or commentaries prepared or obtained in the course of such investigation or examination.

(2) PUBLIC RECORDS EXEMPTION.—The following information held by the office is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

(a) Any personal identifying information of the customers or prospective customers of an affiliated international trust entity which appears in the books and records of a qualified limited service affiliate or in records relating to reports of examinations, operations, or condition of a qualified limited service affiliate, including working papers.

(b) Any portion of a list of names of the shareholders or members of a qualified limited service affiliate.

(c) Information received by the office from a person from another state or country or the Federal Government which is otherwise confidential or exempt pursuant to the laws of that state or country or pursuant to federal law.

(3) AUTHORIZED RELEASE OF CONFIDENTIAL AND EXEMPT INFORMATION.—Information made confidential and exempt under subsection (2) may be disclosed by the office:

(a) To the authorized representative or representatives of the qualified limited service affiliate under examination. The authorized representative or representatives must be identified in a resolution or by written consent of the board of directors, if the qualified limited service affiliate is a corporation, or of the managers, if the qualified limited service affiliate is a limited liability company.

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(b) To a fidelity insurance company, upon written consent of the qualified limited service affiliate's board of directors, if the qualified limited service affiliate is a corporation, or of the managers, if the qualified limited service affiliate is a limited liability company.

(c) To an independent auditor, upon written consent of the qualified limited service affiliate's board of directors, if the qualified limited service affiliate is a corporation, or of the managers, if the qualified limited service affiliate is a limited liability company.

(d) To the liquidator, receiver, or conservator for a qualified limited service affiliate, if a liquidator, receiver, or conservator is appointed. However, any portion of the information which discloses the identity of a customer of the affiliated international trust entity, or a shareholder or member of the qualified limited service affiliate, must be redacted by the office before releasing such portion to the liquidator, receiver, or conservator.

(e) To a law enforcement agency in furtherance of the agency's official duties and responsibilities.

(f) To the appropriate law enforcement or prosecutorial agency for the purpose of reporting any suspected criminal activity.

(g) Pursuant to a legislative subpoena. A legislative body or committee that receives records or information pursuant to such a subpoena must maintain the confidential status of the records or information, except in a case involving the investigation of charges against a public official subject to impeachment or removal, in which case the records or information

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may be disclosed only to the extent necessary as determined by such legislative body or committee.

(4) PUBLICATION OF INFORMATION.—This section does not prevent or restrict the publication of a report required by federal law.

(5) PENALTY.—A person who willfully, in violation of this section, discloses information made confidential and exempt by this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(6) OPEN GOVERNMENT SUNSET REVIEW.—This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and is repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 4. 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 personal identifying information of the customers or prospective customers of an affiliated international trust entity which appears in the books and records of a qualified limited service affiliate or in records relating to reports of examinations, operations, or condition of a qualified limited service affiliate, including working papers; any portion of a list of names of the shareholders or members of a qualified limited service affiliate which is held by the Office of Financial Regulation; and information received by the office from a person from another state or country or the Federal Government which is otherwise confidential or exempt pursuant to the laws of that state or country or pursuant to federal law.

(1) An exemption from public records requirements is

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necessary for personal identifying information of existing and prospective customers of an affiliated international trust entity or shareholders or members of a qualified limited service affiliate, because if such information is available for public access, such access could defame or jeopardize the personal and financial safety of those individuals. The individuals served by the affiliated international trust entity are often individuals of high net worth. Individuals of high net worth and shareholders or members of financial institutions are frequently the targets of criminal predators seeking access to their assets. It is important that the exposure of such individuals and their family members to threats of extortion, kidnapping, and other crimes not be increased. Placing the personal identifying information of these individuals within the public domain would increase the security risk that those individuals or their families could become the target of criminal activity.

(2) An exemption from public records requirements is necessary for information received by the Office of Financial Regulation from a person from another state or country or the Federal Government which is otherwise confidential or exempt pursuant to the laws of that state or country or pursuant to federal law, as public disclosure may deteriorate the office's relationships with other regulatory bodies. The office frequently engages in joint examinations with federal regulators. If such information were subject to disclosure to the public, not only would this disclosure deter other regulatory bodies from communicating vital information to the office, but the office would violate existing information-sharing agreements governing the sharing of confidential

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291 supervisory information.

292 Section 5. Subsections (1), (2), (5), and (9) of section  
293 655.057, Florida Statutes, are amended, and subsection (15) is  
294 added to that section, to read:

295 655.057 Records; limited restrictions upon public access.—

296 (1) Except as otherwise provided in this section and except  
297 for such portions thereof which are otherwise public record, all  
298 records and information relating to an investigation by the  
299 office are confidential and exempt from s. 119.07(1) and s.  
300 24(a), Art. I of the State Constitution until such investigation  
301 is completed or ceases to be active. For purposes of this  
302 subsection, an investigation is considered "active" while such  
303 investigation is being conducted by the office with a  
304 reasonable, good faith belief that it may lead to the filing of  
305 administrative, civil, or criminal proceedings. An investigation  
306 does not cease to be active if the office is proceeding with  
307 reasonable dispatch, and there is a good faith belief that  
308 action may be initiated by the office or other administrative or  
309 law enforcement agency. After an investigation is completed or  
310 ceases to be active, portions of the records relating to the  
311 investigation are confidential and exempt from s. 119.07(1) and  
312 s. 24(a), Art. I of the State Constitution to the extent that  
313 disclosure would:

314 (a) Jeopardize the integrity of another active  
315 investigation;

316 (b) Impair the safety and soundness of the financial  
317 institution;

318 (c) Reveal personal financial information;

319 (d) Reveal the identity of a confidential source;

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320 (e) Defame or cause unwarranted damage to the good name or  
321 reputation of an individual or jeopardize the safety of an  
322 individual; or

323 (f) Reveal investigative techniques or procedures.

324 (2) Except as otherwise provided in this section and except  
325 for such portions thereof which are public record, reports of  
326 examinations, operations, or condition, including working  
327 papers, or portions thereof, prepared by, or for the use of, the  
328 office or any state or federal agency responsible for the  
329 regulation or supervision of financial institutions in this  
330 state are confidential and exempt from s. 119.07(1) and s.  
331 24(a), Art. I of the State Constitution. However, such reports  
332 or papers or portions thereof may be released to:

333 (a) The financial institution under examination;

334 (b) Any holding company of which the financial institution  
335 is a subsidiary;

336 (c) Proposed purchasers if necessary to protect the  
337 continued financial viability of the financial institution, upon  
338 prior approval by the board of directors of such institution;

339 (d) Persons proposing in good faith to acquire a  
340 controlling interest in or to merge with the financial  
341 institution, upon prior approval by the board of directors of  
342 such financial institution;

343 (e) Any officer, director, committee member, employee,  
344 attorney, auditor, or independent auditor officially connected  
345 with the financial institution, holding company, proposed  
346 purchaser, or person seeking to acquire a controlling interest  
347 in or merge with the financial institution; or

348 (f) A fidelity insurance company, upon approval of the

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financial institution's board of directors. However, a fidelity insurance company may receive only that portion of an examination report relating to a claim or investigation being conducted by such fidelity insurance company.

(g) Examination, operation, or condition reports of a financial institution shall be released by the office within 1 year after the appointment of a liquidator, receiver, or conservator to the financial institution. However, any portion of such reports which discloses the identities of depositors, bondholders, members, borrowers, or stockholders, other than directors, officers, or controlling stockholders of the institution, shall remain confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

Any confidential information or records obtained from the office pursuant to this paragraph shall be maintained as confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(5) This section does not prevent or restrict:

(a) Publishing reports that are required to be submitted to the office pursuant to s. 655.045(2) or required by applicable federal statutes or regulations to be published.

(b) Furnishing records or information to any other state, federal, or foreign agency responsible for the regulation or supervision of financial institutions.

(c) Disclosing or publishing summaries of the condition of financial institutions and general economic and similar statistics and data, provided that the identity of a particular financial institution is not disclosed.

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(d) Reporting any suspected criminal activity, with supporting documents and information, to appropriate law enforcement and prosecutorial agencies.

(e) Furnishing information upon request to the Chief Financial Officer or the Division of Treasury of the Department of Financial Services regarding the financial condition of any financial institution that is, or has applied to be, designated as a qualified public depository pursuant to chapter 280.

(f) Furnishing information to Federal Home Loan Banks regarding its member institutions pursuant to an information sharing agreement between the Federal Home Loan Banks and the office.

Any confidential information or records obtained from the office pursuant to this subsection shall be maintained as confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(9) Materials supplied to the office or to employees of any financial institution by other state or federal governmental agencies remain the property of the submitting agency or the corporation, and any document request must be made to the appropriate agency. Any confidential documents supplied to the office or to employees of any financial institution by other state or federal governmental agencies are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Such information shall be made public only with the consent of such agency or the corporation.

(15) Subsections (1), (2), (5), and (9) are subject to the Open Government Sunset Review Act in accordance with s. 119.15

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and are repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 6. 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 records and information relating to an investigation by the Office of Financial Regulation; portions of records relating to a completed or inactive investigation by the office which would jeopardize the integrity of another active investigation, impair the safety and soundness of the financial institution, reveal personal financial information, reveal the identity of a confidential source, defame or cause unwarranted damage to the good name or reputation of an individual or jeopardize the safety of an individual, or reveal investigative techniques or procedures; reports of examinations, operations, or condition, including working papers, or portions thereof, prepared by, or for the use of, the office or any state or federal agency responsible for the regulation or supervision of financial institutions in this state; any portion of such reports which discloses the identities of depositors, bondholders, members, borrowers, or stockholders, other than directors, officers, or controlling stockholders of the institution; and materials supplied to the office or to employees of any financial institution by other state or federal governmental agencies.

(1) The terms "international trust entity" and "qualified limited service affiliate" referenced in newly created parts III and IV of chapter 663, Florida Statutes, are added to the definition of the term "financial institution" in s.

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655.005(1)(i), Florida Statutes, in CS/CS/SB 736. The international trust company representative offices and qualified limited service affiliates servicing international trust entities are thus subject to examination by the Office of Financial Regulation. As a result, the office may receive sensitive personal and financial information relating to such entities in conjunction with its duties under chapters 655 and 663, Florida Statutes. An exemption from public records requirements prevents gaps in the law by providing the same protections to international trust entities and qualified limited service affiliates which are afforded to other financial institutions, thereby preventing any disadvantage to these similarly regulated entities in comparison to other entities currently defined as "financial institutions." An exemption from public records requirements for reports of examinations, operations, or condition, including working papers, is necessary to ensure the office's ability to effectively and efficiently administer its examination and investigation duties. Examination and investigation are essential components of financial institutions regulation. They deter fraud and ensure the safety and soundness of the financial system. Examinations also provide a means of early detection of violations, allowing for corrective action to be taken before any harm can be done.

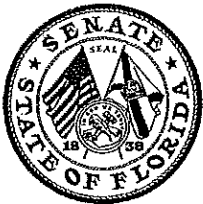
(2) The Legislature finds that it is a public necessity that information and records relating to an examination or investigation by the office be held confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. Public disclosure of records and information relating to an examination or investigation by the office could

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465 expose the subject financial institution to unwarranted damage  
466 to its good name or reputation and impair its safety and  
467 soundness, as well as the safety and soundness of the financial  
468 system in the state. Public disclosure of records and  
469 information relating to an investigation by the office which  
470 could jeopardize the integrity of another active investigation  
471 or reveal investigative techniques or procedures of the office  
472 would impair the office's ability to effectively and efficiently  
473 administer its duties under ss. 655.032 and 655.045, Florida  
474 Statutes. Any portion of a record or information relating to an  
475 investigation or examination which reveals personal financial  
476 information or the identity of a confidential source may defame,  
477 or cause unwarranted damage to the good name or reputation of,  
478 those individuals, or jeopardize their safety.

479       Section 7. This act shall take effect on the same date that  
480 CS/CS/SB 736 or similar legislation takes effect, if such  
481 legislation is adopted in the same legislative session or an  
482 extension thereof and becomes a law.



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Education, *Vice Chair*  
Appropriations Subcommittee on the Environment  
and Natural Resources  
Appropriations Subcommittee on General  
Government  
Banking and Insurance  
Judiciary

### JOINT COMMITTEE:

Joint Legislative Auditing Committee,  
*Alternating Chair*

**SENATOR DEBBIE MAYFIELD**

17th District

April 17, 2017

Chair Lizbeth Benacquisto  
Rules Committee  
400 Senate Office Building  
404 South Monroe Street  
Tallahassee, FL 32399-1100

Re: SB 738

Dear Chair Benacquisto,

I am respectfully requesting Senate Bill 738, a bill relating to Public Records and International Financial Institutions, 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,

A handwritten signature in black ink, appearing to read "Debbie", with a long horizontal flourish extending to the right.

Senator Debbie Mayfield  
District 17

Cc: John B. Phelps, Cynthia Futch, Dave 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](http://www.flsenate.gov)

**JOE NEGRON**  
President of the Senate

**ANITERE FLORES**  
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

4/28/17  
Meeting Date

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

738  
736 & 738  
Bill Number (if applicable)

Topic Waive in Support of 736 & 738

Amendment Barcode (if applicable)

Name Jamie Mongiovi (MON-JOE-VEE)

Job Title Florida Office of Financial Regulation

Address 101 E Gaines St

Phone

Street

Tall, FL 32399

City

State

Zip

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Office of Financial Regulation

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

4/28/2017

Meeting Date

738

Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Brian Pitts

Job Title Trustee

Address 1119 Newton Ave S

Street

Phone 727/897-9291

St Petersburg

City

FL

State

33705

Zip

Email justice2jesus@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Justice-2-Jesus

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

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.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/CS/SB 744

INTRODUCER: Judiciary Committee; Regulated Industries Committee; and Senator Passidomo

SUBJECT: Community Associations

DATE: April 27, 2017

REVISED: \_\_\_\_\_

| ANALYST     | STAFF DIRECTOR | REFERENCE | ACTION           |
|-------------|----------------|-----------|------------------|
| 1. Oxamendi | McSwain        | RI        | <b>Fav/CS</b>    |
| 2. Stallard | Cibula         | JU        | <b>Fav/CS</b>    |
| 3. Oxamendi | Phelps         | RC        | <b>Favorable</b> |

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

SB 744 revises requirements for the governance and operation of condominium, cooperative, and homeowners' associations, with the most significant changes pertaining to fire safety systems in condominium and cooperative buildings and financial reporting by condominium and cooperative associations.

The bill no longer automatically permits a condominium or cooperative association having fewer than 50 units to prepare an annual report of cash receipts and expenditures instead of a more thorough type of financial statement. However, the option remains for the associations to vote to do so.

Additionally, the bill no longer requires a condominium or cooperative association having a building 75 feet or less in height to vote to forego retrofitting the building with fire safety systems, such as fire sprinklers. As to taller buildings, two-thirds of the voting interests must vote to forego retrofitting. The bill clarifies that if an association, whether by vote or by statute, is permitted to forego retrofitting a building with a fire sprinkler system, it may also forego retrofitting with an engineered lifesafety system.

Regarding homeowners' and cooperative associations, the bill specifies that the board members of each type of association may communicate by e-mail, but not vote by e-mail. Condominium law already includes a similar provision.

The bill makes several changes affecting the optional termination of a condominium. Specifically, the bill:

- Requires that an optional termination of a condominium be approved by at least 80 percent of a condominium's voting interests, regardless of what the condominium's governing documents would require;
- Decreases the threshold to veto a termination from 10 percent to 5 percent of the voting interests;
- Also, the bill prohibits an optional termination of a condominium created by conversion (such as from an apartment complex) until 10 years after conversion; and
- Increases consumer protections in terminations of condominiums 80-percent-owned by a "bulk owner."

The bill makes several changes that relate only to cooperative associations. The bill strips a director or officer of the board of a cooperative association of his or her post if he or she is more than 90 days delinquent in paying any money due the association. As to associations having more than 10 units, the bill prohibits co-owners of a unit from serving simultaneously on the association's board, unless the co-owners own more than one unit or there are not enough eligible candidates.

## **II. Present Situation:**

### **Condominiums, Cooperatives, and Homeowners' Associations in General**

#### ***Condominiums***

A condominium is a "form of ownership of real property created pursuant to [chapter 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] each unit, an undivided share in common [portion of the condominium property]." <sup>1</sup> A condominium is created by recording a declaration of condominium in the public records of the county where the condominium is located. <sup>2</sup> The declaration must include the condominium's bylaws, and the declaration functions as the condominium's "constitution," subject to applicable laws. <sup>3</sup> A condominium is administered by a board of directors referred to as a "board of administration." <sup>4</sup>

#### ***Cooperatives***

A cooperative is similar to a condominium in many ways. However, a key distinction between the two is the sense in which a person may "own" a unit in a condominium or a cooperative. In a cooperative, a "unit owner" owns a share in the cooperative association, and he or she leases, instead of owns, a unit. <sup>5</sup> The cooperative association is the corporation or other legal entity that

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<sup>1</sup> Section 718.103(11), F.S.

<sup>2</sup> Section 718.104(2), F.S.

<sup>3</sup> *Neuman v. Grandview at Emerald Hills*, 861 So. 2d 494, 496-97 (Fla. 4th DCA 2003) (internal citations omitted).

<sup>4</sup> Section 718.103(4), F.S.

<sup>5</sup> See s. 719.103(26), F.S.

owns the record interest or leasehold of the cooperative's property.<sup>6</sup> The cooperative association may assess costs for the maintenance of common elements.<sup>7</sup>

### ***Homeowners' Associations***

Another legal relationship that may exist between the members of a community is membership in a homeowners' association. A homeowner's association, unlike a condominium association or cooperative, generally exists in a subdivision of single-family homes or in a mobile home community. However, a key legal distinction between homeowners' associations and the other arrangements is that members of a homeowners' association do not necessarily own a share in the common areas of the community, though they will often have to pay to maintain these areas. Indeed, the Florida Statutes authorize homeowners' associations to impose assessments that, if unpaid, may become a lien on the homeowner's property.<sup>8</sup>

Homeowners' associations are administered by an elected board of directors.<sup>9</sup> The officers and directors of a homeowners' association have a fiduciary relationship to the members who are served by the association.<sup>10</sup> The powers and duties of homeowners' associations include the powers and duties provided in statute<sup>11</sup> and in the governing documents of the association, which include the recorded declaration of covenants, bylaws, articles of incorporation, and duly-adopted amendments to these documents.<sup>12</sup>

### **Statutes Governing Condominiums, Cooperatives, and Homeowner's Associations**

Chapter 718, F.S., relating to condominiums, ch. 719, F.S., relating to cooperatives, and ch. 720, F.S., relating to homeowners' associations, regulate these associations, along with each association's governing documents. For example, these chapters describe requirements for notices of meetings,<sup>13</sup> recordkeeping requirements, requirements to make certain records of an association accessible to its members,<sup>14</sup> and financial reporting requirements.<sup>15</sup> Timeshare condominiums are generally governed by ch. 721, F.S., the "Florida Vacation Plan and Timesharing Act."

### ***Official Records***

The Florida Statutes specify those official records that must be maintained by these condominium, cooperative, and homeowners' associations.<sup>16</sup> As a general matter, these records

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<sup>6</sup> Section 719.103(12), F.S.

<sup>7</sup> See ss. 719.106(1)(g) and 719.107, F.S.

<sup>8</sup> Section 720.301(9), F.S.

<sup>9</sup> See ss. 720.303 and 720.307, F.S.

<sup>10</sup> Section 720.303(1), F.S.

<sup>11</sup> Chapter 720, Florida Statutes.

<sup>12</sup> See ss. 720.301 and 720.303, F.S.

<sup>13</sup> See s. 718.112(2), F.S., for condominiums, s. 719.106(2)(c), F.S., for cooperatives, and s. 720.303(2), F.S., for homeowners' associations.

<sup>14</sup> See s. 718.111(12), F.S., relating to condominiums, s. 719.104(2), F.S., relating to cooperatives, and s. 720.303(4), F.S., relating to homeowners' associations.

<sup>15</sup> See s. 718.111(13), F.S., for condominiums, s. 719.104(4), F.S., for cooperatives, and s. 720.303(7), F.S., for homeowners' associations.

<sup>16</sup> See s. 718.111(12), F.S., relating to condominium associations, s. 719.104(2), F.S., relating to cooperative associations, and s. 720.303(5), F.S., relating to homeowners' associations.

must be maintained in this state for at least 7 years.<sup>17</sup> Certain of these records must be accessible to the members of an association.

One type of record—bids and contracts—must be maintained for 1 year by cooperative and homeowners’ associations<sup>18</sup> but for 7 years by condominium associations.<sup>19</sup>

Condominium and cooperative associations, but not homeowners’ associations, must maintain as an official record the ballots, sign-in sheets, voting proxies, and all other papers relating to voting by unit owners. And these records must be maintained for 1 year from the date of the election, vote, or meeting to which the document relates.<sup>20</sup>

### ***Financial Reporting***

These associations must also prepare and produce annual financial reports for the preceding fiscal year.<sup>21</sup>

The type of financial reporting that an association must perform differs based on the association’s total annual revenue. From the least stringent to the most stringent, an association that has a total annual revenue of:

- Less than \$150,000 must prepare a report of cash receipts and expenditures.
- At least \$150,000 but less than \$300,000 must prepare *compiled* financial statements.<sup>22</sup>
- At least \$300,000 but less than \$500,000 must prepare *reviewed* financial statements.<sup>23</sup>
- \$500,000 or more must prepare *audited* financial statements.<sup>24</sup>

An association having fewer than 50 units or parcels, regardless of the association’s annual revenues, must prepare a report of cash receipts and expenditures.<sup>25</sup>

<sup>17</sup> See s. 718.111(13)(b), F.S., for condominiums, s. 719.104(2)(b), F.S., for cooperatives, and s. 720.303(5), F.S., for homeowners’ associations.

<sup>18</sup> See ss. 719.104(2)(a)9.d., and 720.303(4)(i), F.S.

<sup>19</sup> Section 718.111(12)(a)11.d., F.S.

<sup>20</sup> Sections 718.111(12)(a)12., and 719.104(2)(a)10., F.S.

<sup>21</sup> See ss. 718.111(13), 719.104(4), and 720.303(7), F.S. However, both the condominium and the cooperative statute include the following language, “An association may not waive the financial reporting requirements of this section for more than 3 consecutive years.” This strongly implies that these associations may waive the reporting requirement for up to three years, though the statute nowhere says this.

<sup>22</sup> A compiled financial statement is an accounting service based on information provided by the entity that is the subject of the financial statement. A compiled financial statement is made without a Certified Public Accountant’s (CPA) assurance as to conformity with GAAP. Compiled financial statements must conform to the American Institute of Certified Public Accountants (AICPA) Statements on Standards for Accounting and Review Services. J.G. Siegel and J.K. Shim, *Barron’s Business Guides, Dictionary of Accounting Terms*, 3rd ed. (Barron’s 2000).

<sup>23</sup> A reviewed financial statement is an accounting service that provides a board of directors and interested parties some assurance as to the reliability of financial data without the CPA conducting an examination in accordance with GAAP. Reviewed financial statements must comply with AICPA auditing and review standards for public companies or the AICPA review standards for non-public businesses. *Id.*

<sup>24</sup> An audited financial statement by a CPA verifies the accuracy and completeness of the audited entities records in accordance with GAAP. *Id.*

<sup>25</sup> Sections 718.111(13)(b)2., 719.104(4)(c)2., and 720.303(7)(b)2., F.S.

The type of report or statement required may often be adjusted to a more or less stringent type if approved by vote of the association.<sup>26</sup>

### ***Notice of Board Meetings***

Condominium and cooperative associations must post notice of all board meetings in a conspicuous place on the property for at least the 48 hours prior to the meeting, except in emergencies. However, 14 days' notice is required for a meeting at which a nonemergency special assessment or an amendment to any rule regarding unit use will be considered.<sup>27</sup> This notice apparently does not need to state that a special assessment or rule change regarding unit use will be considered at the meeting.

Similarly, homeowners' associations must post notice of a board meeting in a conspicuous place in the community for the 48 hours prior to the meeting, except in emergencies. Alternatively, if notice is not posted in a conspicuous place, then it must be mailed or delivered to each member 7 days prior to the meeting, except in emergencies. Notice of a meeting at which assessments might be levied must include a statement to that effect.<sup>28</sup> Moreover, for any meeting at which a special assessment or a change to a rule regarding parcel use will be considered, notice must be provided at least 14 days prior to the meeting.<sup>29</sup>

### **Fire Prevention in Condominium and Cooperative Buildings**

Retrofitting a condominium or cooperative building with a fire sprinkler system is not required if an association votes to forego it, even if other provisions of law or rules<sup>30</sup> may otherwise require retrofitting condominium or cooperative buildings with fire sprinkler systems or an engineered lifesafety system (ELSS).<sup>31</sup>

If an association has previously voted to forego this retrofitting, the matter may be brought up for a vote to undo the prior decision as often as once every 3 years.

A condominium or cooperative association that was not in compliance with the requirements regarding a fire sprinkler system and had not voted to forego these requirements had until December 31, 2016, to apply for a building permit to undergo retrofitting. This application was required to demonstrate that the association would become compliant by December 31, 2019.<sup>32</sup>

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<sup>26</sup> See, e.g., 720.303(7)(c)-(d), F.S.

<sup>27</sup> In addition to being conspicuously posted, this notice must be mailed, delivered, or electronically transmitted to the unit owners. Sections 718.112(2)(c)1. and 719.106(1)(c), F.S.

<sup>28</sup> Section 720.303(2)(c)1., F.S.

<sup>29</sup> *Id.*

<sup>30</sup> See ch. 633, F.S., and the Florida Fire Prevention Code, <http://www.nfpa.org/codes-and-standards/all-codes-and-standards/list-of-codes-and-standards/free-access?mode=view> (last visited April 11, 2017).

<sup>31</sup> An ELSS consists of a combination of partial automatic sprinkler protection, smoke detection alarms, smoke control, or compartmentation or other approved systems or both. See ss. 31.3.5.11.4 and 31.3.5.11.1, Florida Fire Prevention Code, 5th Edition, 2012.

<sup>32</sup> Sections 718.112(2)(l) and 719.1055(5)(a)1., F.S.

Condominiums and cooperatives that complete retrofitting must receive a certificate of compliance from a licensed electrical contractor or electrician as evidence of compliance with the applicable fire and life safety code.<sup>33</sup>

The Chief Financial Officer, acting in his capacity as the State Fire Marshal, adopts by rule the Florida Fire Prevention Code (FFPC),<sup>34</sup> which contains all fire safety rules that pertain to the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities and the enforcement of such fire safety rules.<sup>35</sup> The State Fire Marshal adopts a new edition of the FFPC every 3 years.

The FFPC requires all existing high-rise buildings,<sup>36</sup> including condominiums and cooperatives, to be retrofitted with fire sprinkler system or with an engineered lifesafety system (ELSS).<sup>37</sup> Florida adopted the requirement to retrofit high-rise, existing multi-family structures after 87 people died in the MGM Grand Hotel Fire in 1980 and 97 people died in the San Juan DuPont Plaza fire in 1986.<sup>38</sup>

In a report published in 2009, the Department of Business and Professional Regulation presented the estimated per-unit cost of retrofitting a sample of condominium buildings from Clearwater to the Keys. The per-unit cost varied widely, from \$595 to \$8,633. The factors said to account for this variation included the extent of sprinkler coverage in the building, the age of the building, the size and number of the units, and type of construction.<sup>39</sup>

### **Termination of a Condominium**

The termination of a condominium is authorized under two circumstances.<sup>40</sup> One circumstance is that in which 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 that in which 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.

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<sup>33</sup> *Id.*

<sup>34</sup> A copy of the Florida Fire Prevention Code is available at: <http://www.nfpa.org/codes-and-standards/all-codes-and-standards/list-of-codes-and-standards/free-access?mode=view> (last visited Apr. 13, 2017).

<sup>35</sup> Ch. 69A-60, F.A.C.

<sup>36</sup> A high-rise building is a building where the floor of an occupied story is greater than 75 feet (23 meters) above the lowest level of fire department vehicle access. Section 3.3.30.6, Florida Fire Prevention Code, 5th ed., 2012.

<sup>37</sup> Section 31.3.5.11.2, Florida Fire Prevention Code, 5th ed., 2012.

<sup>38</sup> Florida Fire and Sprinkler Association, High-rise Sprinkler retrofit requirement frequently asked questions, [http://www.floridafiresprinkler.com/files/4714/7122/2210/Hi\\_Rise\\_Retrofit\\_-\\_FAQ\\_Final.pdf](http://www.floridafiresprinkler.com/files/4714/7122/2210/Hi_Rise_Retrofit_-_FAQ_Final.pdf) (last visited Apr. 13, 2017).

<sup>39</sup> Department of Business and Professional Regulation, *Condominium Sprinkler Retrofit Report, A Review of Retrofit Costs and the Impact of Retrofitting on Insurance Premiums*, October 2009, available at: <http://www.myfloridalicense.com/dbpr/lsc/documents/CondominiumSprinklerRetrofitReportOctober2009.pdf> (last visited Apr. 13, 2017).

<sup>40</sup> 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.

### ***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.<sup>41</sup> 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.<sup>42</sup>

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.<sup>43</sup> 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<sup>44</sup> holding these voting interests.<sup>45</sup>

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.<sup>46</sup>

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.<sup>47</sup>

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.<sup>48</sup> 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.<sup>49</sup> The plan of termination must provide for the payment of a first mortgage encumbering a unit to the extent necessary to satisfy the lien.<sup>50</sup> The payment may not exceed the unit's share of the proceeds of termination under the plan.<sup>51</sup>

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<sup>41</sup> Section 718.117(3), F.S.

<sup>42</sup> Section 718.117(3)(a)2., F.S.

<sup>43</sup> Section 718.117(3)(c), F.S.

<sup>44</sup> See s. 726.102(8), F.S., for the definition of "insider."

<sup>45</sup> *Id.*

<sup>46</sup> Section 718.117(3)(c)5., F.S.

<sup>47</sup> Section 718.117(3)(d), F.S.

<sup>48</sup> Section 718.117(3)(c)3., F.S.

<sup>49</sup> *Id.*

<sup>50</sup> Section 718.117(3)(c)4., F.S.

<sup>51</sup> *Id.*



Additionally, former unit owners are allowed to lease their units if the former condominium units are offered for lease to the public<sup>52</sup> and a relocation fee must be paid to former unit owners who had a homestead exemption on their units.<sup>53</sup>

### ***Number of Condominium Terminations***

The Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation furnished the numbers of condominium terminations for the previous 5 calendar years, which are shown in the chart below:<sup>54</sup>

| <b>Calendar Year</b> | <b>Total Terminations</b> | <b>Optional Terminations</b> |
|----------------------|---------------------------|------------------------------|
| <b>2012</b>          | 30                        | 28                           |
| <b>2013</b>          | 37                        | 35                           |
| <b>2014</b>          | 38                        | 37                           |
| <b>2015</b>          | 33                        | 33                           |
| <b>2016</b>          | 29                        | 26                           |

### **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.<sup>55</sup> 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.<sup>56</sup>

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.<sup>57</sup>

<sup>52</sup> Section 718.117(3)(c)1., F.S.

<sup>53</sup> Section 718.117(3)(c)2. F.S.

<sup>54</sup> E-mail from Colton Madill, DBPR, March 28, 2017, on file with the Senate Committee on Regulated Industries.

<sup>55</sup> Section 718.501(1), F.S.

<sup>56</sup> Sections 718.501(1) and 719.501(1), F.S.

<sup>57</sup> *Id.*

### III. Effect of Proposed Changes:

#### Changes Common to Condominium and Cooperative Associations

##### *Financial Reporting Requirements for Associations of Cooperatives and Condominiums*

Under the bill, the associations of condominiums and cooperatives having fewer than 50 units are no longer required to prepare a report of cash receipts and expenditures, which they were required to do unless their governing documents provided otherwise. In effect, this means that these smaller associations are required to prepare financial statements in accordance with their annual revenue, just as the associations of larger condominiums and cooperatives must. As such, regardless of the number of units, the association of a condominium or cooperative having annual revenue of:

- Less than \$150,000 must prepare a report of cash receipts and expenditures.
- Between \$150,000 and less than \$300,000 must prepare *compiled* financial statements.<sup>58</sup>
- At least \$300,000 but less than \$500,000 must prepare *reviewed* financial statements.<sup>59</sup>
- \$500,000 or more must prepare *audited* financial statements.<sup>60</sup>

However, the type of report or statement required may be adjusted by vote of the association.

Also, the bill strikes the following language from current law: “An association may not waive the financial reporting requirements of this section for more than 3 consecutive years.” However, the effect of this deletion is uncertain because nowhere in the statute does it expressly permit an association to waive financial reporting requirements for any length of time.

##### *When a Vote is Necessary to Opt Out of Retrofitting with Fire-Prevention Systems*

Under current law, retrofitting with a fire sprinkler system is not required if a mere majority of an association votes to forego it. Under the bill, however, no vote by the association is necessary to forego retrofitting in buildings that are 75 feet or less in height; as to taller buildings a vote to forego retrofitting must be approved by a two-thirds vote of the association.

Current law only permits an association to forego required retrofitting with a fire sprinkler system. However, even if an association votes to forego retrofitting with a fire sprinkler system, retrofitting with an engineered lifesafety system (ELSS) may still be required. The bill addresses this issue, clarifying that when an association is permitted to forego retrofitting with a fire sprinkler system, it is also permitted to forego retrofitting with an ELSS.

<sup>58</sup> A compiled financial statement is an accounting service based on information provided by the entity that is the subject of the financial statement. A compiled financial statement is made without a Certified Public Accountant’s (CPA) assurance as to conformity with GAAP. Compiled financial statements must conform to the American Institute of Certified Public Accountants (AICPA) Statements on Standards for Accounting and Review Services. J.G. Siegel and J.K. Shim, *Barron’s Business Guides, Dictionary of Accounting Terms*, 3rd ed. (Barron’s 2000).

<sup>59</sup> A reviewed financial statement is an accounting service that provides a board of directors and interested parties some assurance as to the reliability of financial data without the CPA conducting an examination in accordance with GAAP. Reviewed financial statements must comply with AICPA auditing and review standards for public companies or the AICPA review standards for non-public businesses. *Id.*

<sup>60</sup> An audited financial statement by a CPA verifies the accuracy and completeness of the audited entities records in accordance with GAAP. *Id.*

The bill specifies that these provisions on retrofitting do not apply to “timeshare condominiums.”<sup>61</sup>

### ***Procedural Matters Relating to a Vote to Opt Out of Retrofitting***

In addition to the several ways provided in current law to vote as to whether to forego retrofitting, the bill also permits “electronic voting.” The bill further provides that an association’s failure to provide timely notice to unit owners of a vote to forego retrofitting requirements does not invalidate the vote if notice of the results is provided to the owners.

Under the bill, as under current law, a vote to forego retrofitting may be reversed by a subsequent vote. Current law permits this subsequent vote if at least 10 percent of the voting interests call for it, but the bill also permits a majority of the board to call for a vote to reconsider retrofitting. These votes to reconsider retrofitting can occur at any time because the bill repeals the prohibition on these reconsideration votes happening more often than once every 3 years. Also, the bill requires two thirds of an association to vote in favor of retrofitting, but current law requires a mere majority.

### ***Required Sign or Symbol to Indicate a Lack of Sprinkler System***

The bill requires a condominium or cooperative association that operates a building having at least three stories but lacking a fire sprinkler system in the common areas of the building to mark the building with a sign or symbol approved by the State Fire Marshal. The sign or symbol must sufficiently indicate the lack of a sprinkler system in the common areas to persons conducting fire control and other emergency operations. The State Fire Marshal must ensure that the dimensions and placement of the sign or symbol do not diminish the aesthetic value of the building. Moreover, the State Fire Marshal must adopt rules regarding the appearance, use, and location of the sign or symbol.

### ***Other Fire Safety System Provisions***

Under current law, a condominium or cooperative association that was not in compliance with the requirements regarding a fire sprinkler system and that did not vote to forego these requirements had until December 31, 2016, to apply for a building permit. Under the bill, these associations now have until December 31, 2018. Under current law, the application for a building permit must demonstrate that the association will become compliant by December 31, 2019, a date which the bill changes to December 31, 2021.

Lastly, the bill provides that a local authority having jurisdiction may not require completion of retrofitting with a fire sprinkler system *or other ELSS* before January 1, 2022, instead of the compliance date set forth in current law, which is December 31, 2019.

### ***Notice of Board Meetings***

Under the bill, notice of a meeting of the board of a condominium or cooperative association may be posted to a website. However, for this notice to be sufficient, an association must have adopted, by rule, a procedure for posting notice in this manner and the association must provide

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<sup>61</sup> Timeshare condominiums are governed by s. 721.24, F.S.

unit owners with an electronic notice with a hyperlink to the website containing the meeting notice. Nonetheless, boards may still post notice of meetings in the ways permitted under current law.

### ***Electronic Records***

The bill adds *electronic* records relating to voting to the list of official records that a condominium or cooperative association must maintain.

### **Changes Common to Cooperative and Homeowners' Associations**

The bill expressly permits members of a cooperative or homeowners' association board to communicate using e-mail but it prohibits these persons from casting a vote in this manner. Condominium law already includes a similar provision.

### **Changes Relating Only to Condominium Associations**

#### ***Optional Terminations of Condominiums***

For an optional condominium termination plan 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. In contrast, current law prohibits the progress of a termination plan if at least 10 percent of the voting interests vote against termination.

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.

#### ***Optional Terminations of Condominiums Created by Conversion of Other Form of Property***

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 to 10 years from 5 years.

#### ***Optional Termination of 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.

The bill 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.

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.

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 at least the original purchase price.

### ***Official Records of Associations of Condominiums***

The bill requires condominium associations to maintain as an official record all bids and contracts for work performed for 1 year instead of the current law's 7-year requirement. This conforms condominium law in this regard to the laws regulating homeowners' associations and cooperative associations.

### **Changes Relating Only to Cooperative Associations**

Regarding cooperative associations, the bill strips a director or officer of the board of a cooperative association of his or her post if he or she is more than 90 days delinquent in paying any money due the association. The bill also prohibits co-owners of a unit from serving simultaneously on the board of a cooperative association that has more than 10 units unless the co-owners own more than one unit or unless there are not enough eligible candidates.

### **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.

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

None.

**B. Private Sector Impact:**

The bill may have a positive impact on property owners in condominium or cooperative buildings that are 75 feet or less in height, as these property owners are now exempt from the requirement that their buildings be retrofitted with fire safety systems.

The bill may cause a negative impact on homeowners' associations that have fewer than 50 parcels, as well as condominium and cooperative associations that have fewer than 50 units, both of which, under current law, must prepare a statement of cash receipts and expenditures, instead of a more-rigorous type of financial report. Depending on these associations' revenues, they may now be required to engage more-costly accounting services to prepare their financial reports.

However, the bill may also reduce costs to condominium associations to prepare financial statements. Current law allows associations to opt for a less thorough, and therefore less costly, reporting option, but not for more than 3 consecutive years. Under the bill, an association may opt for a less thorough reporting for unlimited consecutive years.

**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: 633.2225, 718.111, 718.112, 718.113, 718.117, 719.104, 719.1055, 719.106, 719.107, and 720.303.

**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 19, 2017:**

The committee substitute:

- Requires a condominium or cooperative association to post a sign or symbol on a building that has three or more stories if the building lacks a fire sprinkler system.
- Requires that a condominium or cooperative association having a building taller than 75 feet may forego retrofitting with a fire sprinkler system or engineered lifesafety system only upon two-thirds of the association's total voting interests vote to do so. In contrast, the bill required only a mere majority to vote to forego retrofitting.
- Requires two-thirds of a condominium or cooperative association to vote to retrofit a building if the association has previously voted not to retrofit the building; in contrast, current law requires a mere majority.
- Omits a provision of the underlying bill that would have deleted the current law's requirement that in order for a person to receive the favorable "bulk buyer" or "bulk assignee" legal status, he or she must have acquired 8 or more condominium units *by July 1, 2018*.
- Removes a provision of the underlying bill that required the board of a homeowners' association, if requested by 10 percent of the voting interests, to reconsider an annual budget that includes assessments that are at least 115 percent of those in the previous year's budget.
- Requires that an optional termination of a condominium be approved by at least 80 percent of a condominium's voting interests, regardless of what the condominium's governing documents would require.
- Reduces the percentage of a condominium's voting interests necessary to veto an optional termination from 10 percent to 5 percent.
- Prohibits an optional termination of a condominium that was created by conversion (such as from an apartment complex) until 10 years after conversion; current law requires only 5 years to have passed since conversion.
- Increases consumer protections in the process to terminate a condominium that is at least 80-percent-owned by a "bulk owner."

**CS by Regulated Industries on March 28, 2017:**

The committee substitute:

- Amends s. 718.113(2), F.S., to clarify that approval by the voting interests is required before any material alterations or substantial additions to common elements or association property is commenced.
- Repeals ss. 719.104(4)(c)2. and 720.303(7)(b)2., F.S., the provisions that require cooperative and homeowners' associations of fewer than 50 units or parcels,

regardless of the association's annual revenues, to prepare a report of cash receipts and expenditures.

- Amends s. 719.1055(5), F.S., to retain the requirement that a licensed contractor or electrician must provide the certificate of compliance for a cooperative association.
- Replaces the term "life safety" with the term "lifesafety."
- Amends s. 719.106(1)(a)1., F.S., to prohibit co-owners of a unit in a residential cooperative association of more than 10 units from serving on the board at the same time, unless the co-owners own more than one unit or there are not enough eligible candidates.
- Creates s. 719.106(1)(m), F.S., to provide that an officer or director of a cooperative association is deemed to have abandoned the office if he or she is more than 90 days delinquent in a monetary obligation due to the association.
- Amends s. 719.106(1), F.S., to provide that, if provided in the cooperative association's bylaws, the cost of bulk contracts for communication services, information services, or internet services are deemed a common expense of the cooperative association, and that such contracts may be canceled by a majority vote of the voting interests.
- Amends s. 720.303(2), F.S., to permit homeowners' associations to provide meeting notices to members by facsimile number or e-mail.
- Removes revisions in the bill to s. 720.303(6), F.S., relating to the maintenance and funding of reserve accounts in the budget of a homeowners' association.

B. Amendments:

None.



By the Committees on Judiciary; and Regulated Industries; and  
Senator Passidomo

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1 A bill to be entitled  
2 An act relating to community associations; creating s.  
3 633.2225, F.S.; requiring certain condominium or  
4 cooperative associations to post certain signs or  
5 symbols on buildings; requiring the State Fire Marshal  
6 to ensure that the dimensions and placement of the  
7 signs or symbols do not diminish the aesthetic value  
8 of the buildings on which they are placed and to adopt  
9 rules governing such signs or symbols; providing for  
10 enforcement; providing penalties; amending s. 718.111,  
11 F.S.; revising reporting requirements; amending s.  
12 718.112, F.S.; revising provisions relating to  
13 required condominium and cooperative association  
14 bylaws; authorizing an association to adopt rules for  
15 posting certain notices on a website; revising  
16 provisions relating to evidence of condominium and  
17 cooperative association compliance with the fire and  
18 life safety code; revising unit and common elements  
19 required to be retrofitted; revising provisions  
20 relating to an association vote to forego  
21 retrofitting; providing applicability; amending s.  
22 718.113, F.S.; revising voting requirements relating  
23 to alterations and additions to certain common  
24 elements or association property; amending s. 718.117,  
25 F.S.; providing legislative findings; revising voting  
26 requirements for the rejection of a plan of  
27 termination; increasing the amount of time before a  
28 subsequent plan of termination may be considered under  
29 certain conditions; revising applicability; revising

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30 the requirements to qualify for payment as a homestead  
31 owner if the owner has rejected a plan of termination;  
32 revising and providing notice requirements; providing  
33 applicability; amending s. 719.104, F.S.; revising  
34 recordkeeping and reporting requirements; amending s.  
35 719.1055, F.S.; revising provisions relating to  
36 required cooperative association bylaws; revising  
37 provisions relating to evidence of condominium and  
38 cooperative association compliance with the fire and  
39 life safety code; revising unit and common elements  
40 required to be retrofitted; revising provisions  
41 relating to an association vote to forego  
42 retrofitting; providing applicability; amending s.  
43 719.106, F.S.; revising requirements to serve as a  
44 board member; prohibiting a board member from voting  
45 via e-mail; authorizing an association to adopt rules  
46 for posting certain notices on a website; requiring  
47 that directors who are delinquent in certain payments  
48 owed in excess of certain periods of time be deemed to  
49 have abandoned their offices; amending s. 719.107,  
50 F.S.; specifying certain services which are obtained  
51 pursuant to a bulk contract to be deemed a common  
52 expense; amending s. 720.303, F.S.; prohibiting a  
53 board member from voting via e-mail; revising certain  
54 notice requirements relating to board meetings;  
55 providing an effective date.

56  
57 Be It Enacted by the Legislature of the State of Florida:  
58

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Section 1. Section 633.2225, Florida Statutes, is created to read:

633.2225 Condominium and cooperative buildings without sprinkler systems; notice requirements; enforcement.-

(1) The board of a condominium or cooperative association that operates a building of three stories or more that has not installed a sprinkler system in the common areas of the building shall mark the building with a sign or symbol approved by the State Fire Marshal in a manner sufficient to warn persons conducting fire control and other emergency operations of the lack of a sprinkler system in the common areas.

(2) The State Fire Marshal shall ensure that the dimensions and placement of the sign or symbol do not diminish the aesthetic value of the building and shall adopt rules necessary to implement this section. Among other things, the rules must address:

(a) The dimensions and color of such sign or symbol.

(b) The time within which the condominium or cooperative buildings without sprinkler systems shall be marked as required by this section.

(c) The location on each condominium or cooperative building without a sprinkler system where such sign or symbol must be posted.

(3) The State Fire Marshal, and local fire officials in accordance with s. 633.118, shall enforce this section. An owner who fails to comply with the requirements of this section is subject to penalties as provided in s. 633.228.

Section 2. Subsections (12) and (13) of section 718.111, Florida Statutes, are amended to read:

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718.111 The association.-

(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, and 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 subparagraph (c)5. However, the association is not liable for an inadvertent disclosure of the electronic mail address or

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117 facsimile number for receiving electronic transmission of  
118 notices.

119 8. All current insurance policies of the association and  
120 condominiums operated by the association.

121 9. A current copy of any management agreement, lease, or  
122 other contract to which the association is a party or under  
123 which the association or the unit owners have an obligation or  
124 responsibility.

125 10. Bills of sale or transfer for all property owned by the  
126 association.

127 11. Accounting records for the association and separate  
128 accounting records for each condominium that the association  
129 operates. All accounting records must be maintained for at least  
130 7 years. Any person who knowingly or intentionally defaces or  
131 destroys such records, or who knowingly or intentionally fails  
132 to create or maintain such records, with the intent of causing  
133 harm to the association or one or more of its members, is  
134 personally subject to a civil penalty pursuant to s.  
135 718.501(1)(d). The accounting records must include, but are not  
136 limited to:

137 a. Accurate, itemized, and detailed records of all receipts  
138 and expenditures.

139 b. A current account and a monthly, bimonthly, or quarterly  
140 statement of the account for each unit designating the name of  
141 the unit owner, the due date and amount of each assessment, the  
142 amount paid on the account, and the balance due.

143 c. All audits, reviews, accounting statements, and  
144 financial reports of the association or condominium.

145 d. All contracts for work to be performed. Bids for work to

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146 be performed are also considered official records and must be  
147 maintained by the association for 1 year.

148 12. Ballots, sign-in sheets, voting proxies, and all other  
149 papers and electronic records relating to voting by unit owners,  
150 which must be maintained for 1 year from the date of the  
151 election, vote, or meeting to which the document relates,  
152 notwithstanding paragraph (b).

153 13. All rental records if the association is acting as  
154 agent for the rental of condominium units.

155 14. A copy of the current question and answer sheet as  
156 described in s. 718.504.

157 15. All other written records of the association not  
158 specifically included in the foregoing which are related to the  
159 operation of the association.

160 16. A copy of the inspection report as described in s.  
161 718.301(4)(p).

162 (b) The official records of the association must be  
163 maintained within the state for at least 7 years. The records of  
164 the association shall be made available to a unit owner within  
165 45 miles of the condominium property or within the county in  
166 which the condominium property is located within 10 ~~5~~ working  
167 days after receipt of a written request by the board or its  
168 designee. However, such distance requirement does not apply to  
169 an association governing a timeshare condominium. This paragraph  
170 may be complied with by having a copy of the official records of  
171 the association available for inspection or copying on the  
172 condominium property or association property, or the association  
173 may offer the option of making the records available to a unit  
174 owner electronically via the Internet or by allowing the records

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to be viewed in electronic format on a computer screen and printed upon request. The association is not responsible for the use or misuse of the information provided to an association member or his or her authorized representative pursuant to the compliance requirements of this chapter unless the association has an affirmative duty not to disclose such information pursuant to this chapter.

(c) 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. 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. 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

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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). 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:

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

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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.

2. Information obtained by an association in connection with the approval of the lease, sale, or other transfer of a unit.

3. Personnel records of association or management company employees, including, but not limited to, disciplinary, payroll, health, and insurance records. For purposes of this 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.

4. Medical records of unit owners.

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 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

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owner may consent in writing to the disclosure of other contact information described in this subparagraph. The association is not liable for the inadvertent disclosure of information that is protected under this 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.

6. Electronic security measures that are used by the association to safeguard data, including passwords.

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.

(d) The association shall prepare a question and answer sheet as described in s. 718.504, and shall update it annually.

(e)1. The association or its authorized agent is not required to provide a prospective purchaser or lienholder with information about the condominium or the association other than information or documents required by this chapter to be made available or disclosed. The association or its authorized agent may charge a reasonable fee to the prospective purchaser, lienholder, or the current unit owner for providing good faith responses to requests for information by or on behalf of a prospective purchaser or lienholder, other than that required by law, if the fee does not exceed \$150 plus the reasonable cost of photocopying and any attorney's fees incurred by the association in connection with the response.

2. An association and its authorized agent are not liable for providing such information in good faith pursuant to a written request if the person providing the information includes

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a written statement in substantially the following form: "The responses herein are made in good faith and to the best of my ability as to their accuracy."

(f) An outgoing board or committee member must relinquish all official records and property of the association in his or her possession or under his or her control to the incoming board within 5 days after the election. The division shall impose a civil penalty as set forth in s. 718.501(1)(d)6. against an outgoing board or committee member who willfully and knowingly fails to relinquish such records and property.

(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 financial report or a notice that a copy of the financial report will be mailed or hand delivered to the unit owner, without charge, 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

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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).~~

2.3. A report of cash receipts and disbursements must

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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

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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.~~

Section 3. Paragraphs (c) and (1) of subsection (2) of section 718.112, Florida Statutes, are amended to read:

718.112 Bylaws.—

(2) REQUIRED PROVISIONS.—The bylaws shall provide for the

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following and, if they do not do so, shall be deemed to include the following:

(c) *Board of administration meetings.*—Meetings of the board of administration at which a quorum of the members is present are open to all unit owners. Members of the board of administration may use e-mail as a means of communication but may not cast a vote on an association matter via e-mail. A unit owner may tape record or videotape the meetings. The right to attend such meetings includes the right to speak at such meetings with reference to all designated agenda items. The division shall adopt reasonable rules governing the tape recording and videotaping of the meeting. The association may adopt written reasonable rules governing the frequency, duration, and manner of unit owner statements.

1. Adequate notice of all board meetings, which must specifically identify all agenda items, must be posted conspicuously on the condominium property at least 48 continuous hours before the meeting except in an emergency. If 20 percent of the voting interests petition the board to address an item of business, the board, within 60 days after receipt of the petition, shall place the item on the agenda at its next regular board meeting or at a special meeting called for that purpose. An item not included on the notice may be taken up on an emergency basis by a vote of at least a majority plus one of the board members. Such emergency action must be noticed and ratified at the next regular board meeting. Notice of any meeting in which a regular or special assessment against unit owners is to be considered must specifically state that assessments will be considered and provide the estimated amount

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and a description of the purposes for such assessments. ~~However,~~ Written notice of a meeting at which a nonemergency special assessment or an amendment to rules regarding unit use will be considered must be mailed, delivered, or electronically transmitted to the unit owners and posted conspicuously on the condominium property at least 14 days before the meeting. Evidence of compliance with this 14-day notice requirement must be made by an affidavit executed by the person providing the notice and filed with the official records of the association. Upon notice to the unit owners, the board shall, by duly adopted rule, designate a specific location on the condominium or association property where all notices of board meetings must be posted. If there is no condominium property or association property where notices can be posted, notices shall be mailed, delivered, or electronically transmitted to each unit owner at least 14 days before the meeting. In lieu of or in addition to the physical posting of the notice on the condominium property, 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 physically posted on 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. In addition to any

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of the authorized means of providing notice of a meeting of the board, the association may adopt by rule a procedure for conspicuously posting the meeting notice and the agenda on a website serving the condominium association for at least the minimum period of time for which a notice of a meeting is also required to be physically posted on the condominium property. Any rule adopted shall, in addition to other matters, include a requirement that the association send an electronic notice providing a hypertext link to the website where the notice is posted. Notice of any meeting in which regular or special assessments against unit owners are to be considered must specifically state that assessments will be considered and provide the nature, estimated cost, and description of the purposes for such assessments.

2. Meetings of a committee to take final action on behalf of the board or make recommendations to the board regarding the association budget are subject to this paragraph. Meetings of a committee that does not take final action on behalf of the board or make recommendations to the board regarding the association budget are subject to this section, unless those meetings are exempted from this section by the bylaws of the association.

3. Notwithstanding any other law, the requirement that board meetings and committee meetings be open to the unit owners does not apply to:

a. Meetings between the board or a committee and the association's attorney, with respect to proposed or pending litigation, if the meeting is held for the purpose of seeking or rendering legal advice; or

b. Board meetings held for the purpose of discussing

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personnel matters.

(1) *Certificate of compliance.*—A provision that a certificate of compliance from a licensed electrical contractor or electrician may be accepted by the association's board as evidence of compliance ~~of the condominium units~~ with the applicable fire and life safety code must be included. Notwithstanding chapter 633, s. 509.215, s. 553.895(1), or ~~of~~ any other code, statute, ordinance, administrative rule, or regulation, or any interpretation of the foregoing, an association, residential condominium, or unit owner is not obligated to retrofit the common elements, association property, or units of a residential condominium with a fire sprinkler system or other engineered lifesafety system in a building that is 75 feet or less in height. There is no obligation to retrofit for a building greater than 75 feet in height, calculated from the lowest level of fire department vehicle access to the floor of the highest occupiable story ~~has been certified for occupancy by the applicable governmental entity~~ if the unit owners have voted to forego such retrofitting by the affirmative vote of two-thirds a majority of all voting interests in the affected condominium. ~~There is no requirement that owners in condominiums of 75 feet or less conduct an opt-out vote and such condominiums are exempt from fire sprinkler or other engineered lifesafety retrofitting.~~ The preceding sentence is intended to clarify existing law. The local authority having jurisdiction may not require completion of retrofitting with a fire sprinkler system or other engineered lifesafety system before January 1, 2022 2020. By December 31, 2018 2016, ~~an a residential condominium~~ association that operates a residential condominium that is not

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in compliance with the requirements for a fire sprinkler system or other engineered lifesafety system and has not voted to forego retrofitting of such a system must initiate an application for a building permit for the required installation with the local government having jurisdiction demonstrating that the association will become compliant by December 31, 2021 ~~2019~~.

1. A vote to forego required retrofitting may be obtained by limited proxy or by a ballot personally cast at a duly called membership meeting, or by execution of a written consent by the member, or by electronic voting, and is effective upon recording a certificate executed by an officer or agent of the association attesting to such vote in the public records of the county where the condominium is located. When an opt-out vote is to be conducted at a meeting, the association shall mail or ~~hand~~ deliver to each unit owner, at each physical and electronic address of record, written notice at least 14 days before the membership meeting in which the vote to forego retrofitting of the required fire sprinkler system or other engineered lifesafety system is to take place. Within 30 days after the association's opt-out vote, notice of the results of the opt-out vote must be mailed or ~~hand~~ delivered to all unit owners at each physical and electronic address of record. Evidence of compliance with this notice requirement must be made by affidavit executed by the person providing the notice and filed among the official records of the association. Failure to provide timely notice to unit owners does not invalidate an otherwise valid opt-out vote if notice of the results is provided to the owners. After notice is provided to each owner, a copy must be provided by the current owner to a new owner

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before closing and by a unit owner to a renter before signing a lease.

2. If there has been a previous vote to forego retrofitting, a vote to require retrofitting may be obtained at a special meeting of the unit owners called by a petition of at least 10 percent of the voting interests or by a majority of the board of directors. The vote to require retrofitting requires a two-thirds vote of the total voting interest. ~~Such a vote may only be called once every 3 years.~~ Notice shall be provided as required for any regularly called meeting of the unit owners, and must state the purpose of the meeting. ~~Electronic transmission may not be used to provide notice of a meeting called in whole or in part for this purpose.~~

3. As part of the information collected annually from condominiums, the division shall require condominium associations to report the membership vote and recording of a certificate under this subsection and, if retrofitting has been undertaken, the per-unit cost of such work. The division shall annually report to the Division of State Fire Marshal of the Department of Financial Services the number of condominiums that have elected to forego retrofitting. Compliance with this administrative reporting requirement does not affect the validity of an opt-out vote.

4. Notwithstanding s. 553.509, a residential association may not be obligated to, and may forego the retrofitting of, any improvements required by s. 553.509(2) upon an affirmative vote of two-thirds a majority of the voting interests in the affected condominium.

5. The provisions of this paragraph do not apply to

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581 timeshare condominium associations, which shall be governed by  
 582 s. 721.24.

583 Section 4. Subsection (2) of section 718.113, Florida  
 584 Statutes, is amended to read:

585 718.113 Maintenance; limitation upon improvement; display  
 586 of flag; hurricane shutters and protection; display of religious  
 587 decorations.—

588 (2) (a) Except as otherwise provided in this section, there  
 589 shall be no material alteration or substantial additions to the  
 590 common elements or to real property which is association  
 591 property, except in a manner provided in the declaration as  
 592 originally recorded or as amended under the procedures provided  
 593 therein. If the declaration as originally recorded or as amended  
 594 under the procedures provided therein does not specify the  
 595 procedure for approval of material alterations or substantial  
 596 additions, 75 percent of the total voting interests of the  
 597 association must approve the alterations or additions before the  
 598 material alterations or substantial additions are commenced.  
 599 This paragraph is intended to clarify existing law and applies  
 600 to associations existing on the effective date of this act  
 601 ~~October 1, 2008.~~

602 (b) There shall not be any material alteration of, or  
 603 substantial addition to, the common elements of any condominium  
 604 operated by a multicondominium association unless approved in  
 605 the manner provided in the declaration of the affected  
 606 condominium or condominiums as originally recorded or as amended  
 607 under the procedures provided therein. If a declaration as  
 608 originally recorded or as amended under the procedures provided  
 609 therein does not specify a procedure for approving such an

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610 alteration or addition, the approval of 75 percent of the total  
 611 voting interests of each affected condominium is required before  
 612 the material alterations or substantial additions are commenced.  
 613 This subsection does not prohibit a provision in any  
 614 declaration, articles of incorporation, or bylaws as originally  
 615 recorded or as amended under the procedures provided therein  
 616 requiring the approval of unit owners in any condominium  
 617 operated by the same association or requiring board approval  
 618 before a material alteration or substantial addition to the  
 619 common elements is permitted. This paragraph is intended to  
 620 clarify existing law and applies to associations existing on the  
 621 effective date of this act.

622 (c) There shall not be any material alteration or  
 623 substantial addition made to association real property operated  
 624 by a multicondominium association, except as provided in the  
 625 declaration, articles of incorporation, or bylaws as originally  
 626 recorded or as amended under the procedures provided therein. If  
 627 the declaration, articles of incorporation, or bylaws as  
 628 originally recorded or as amended under the procedures provided  
 629 therein do not specify the procedure for approving an alteration  
 630 or addition to association real property, the approval of 75  
 631 percent of the total voting interests of the association is  
 632 required before the material alterations or substantial  
 633 additions are commenced. This paragraph is intended to clarify  
 634 existing law and applies to associations existing on the  
 635 effective date of this act.

636 Section 5. Subsections (1) and (3) of section 718.117,  
 637 Florida Statutes, are amended to read:

638 718.117 Termination of condominium.—

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639 (1) LEGISLATIVE FINDINGS.—The Legislature finds that:  
 640 (a) Condominiums are created as authorized by statute and  
 641 are subject to covenants that encumber the land and restrict the  
 642 use of the use of real property.

643 (b) In some circumstances, the continued enforcement of  
 644 those covenants that may create economic waste, areas of  
 645 disrepair that threaten the safety and welfare of the public, or  
 646 cause obsolescence of the a condominium property for its  
 647 intended use and thereby lower property tax values, and the  
 648 Legislature further finds that it is the public policy of this  
 649 state to provide by statute a method to preserve the value of  
 650 the property interests and the rights of alienation thereof that  
 651 owners have in the condominium property before and after  
 652 termination.

653 (c) The Legislature further finds that It is contrary to  
 654 the public policy of this state to require the continued  
 655 operation of a condominium when to do so constitutes economic  
 656 waste or when the ability to do so is made impossible by law or  
 657 regulation.

658 (d) It is in the best interest of the state to provide for  
 659 termination of the covenants of a declaration of condominium in  
 660 certain circumstances, in order to:

661 1. Ensure the continued maintenance, management, and repair  
 662 of stormwater management systems, conservation areas, and  
 663 conservation easements.

664 2. Avoid transferring the expense of maintaining  
 665 infrastructure serving the condominium property, including, but  
 666 not limited to, stormwater systems and conservation areas, to  
 667 the general tax bases of the state and local governments.

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668 3. Prevent covenants from impairing the continued  
 669 productive use of the property.

670 4. Protect state residents from health and safety hazards  
 671 created by derelict, damaged, obsolete, or abandoned condominium  
 672 properties.

673 5. Provide for fair treatment and just compensation for  
 674 individuals, preserve property values, and preserve the local  
 675 property tax base.

676 6. Preserve the state's long history of protecting  
 677 homestead property and homestead property rights by ensuring  
 678 that such protection is extended to homestead property owners in  
 679 the context of a termination of the covenants of a declaration  
 680 of condominium. This section applies to all condominiums in this  
 681 state in existence on or after July 1, 2007.

682 (3) OPTIONAL TERMINATION.—~~Except as provided in subsection~~  
 683 ~~(2) or unless the declaration provides for a lower percentage,~~  
 684 The condominium form of ownership may be terminated for all or a  
 685 portion of the condominium property pursuant to a plan of  
 686 termination meeting the requirements of this section and  
 687 approved by the division. Before a residential association  
 688 submits a plan to the division, the plan must be approved by at  
 689 least 80 percent of the total voting interests of the  
 690 condominium. However, if 5 10 percent or more of the total  
 691 voting interests of the condominium have rejected the plan of  
 692 termination by negative vote or by providing written objections,  
 693 the plan of termination may not proceed.

694 (a) The termination of the condominium form of ownership is  
 695 subject to the following conditions:

696 1. The total voting interests of the condominium must

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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

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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~~

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~~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

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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.

Section 6. The amendments made by Section 5 of this act 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

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813 Condominium Act.

814 Section 7. Paragraphs (a) and (b) of subsection (2) and  
 815 paragraphs (b) and (c) of subsection (4) of section 719.104,  
 816 Florida Statutes, are amended to read:

817 719.104 Cooperatives; access to units; records; financial  
 818 reports; assessments; purchase of leases.—

## 819 (2) OFFICIAL RECORDS.—

820 (a) From the inception of the association, the association  
 821 shall maintain a copy of each of the following, where  
 822 applicable, which shall constitute the official records of the  
 823 association:

824 1. The plans, permits, warranties, and other items provided  
 825 by the developer pursuant to s. 719.301(4).

826 2. A photocopy of the cooperative documents.

827 3. A copy of the current rules of the association.

828 4. A book or books containing the minutes of all meetings  
 829 of the association, of the board of directors, and of the unit  
 830 owners, which minutes shall be retained for a period of not less  
 831 than 7 years.

832 5. A current roster of all unit owners and their mailing  
 833 addresses, unit identifications, voting certifications, and, if  
 834 known, telephone numbers. The association shall also maintain  
 835 the electronic mailing addresses and the numbers designated by  
 836 unit owners for receiving notice sent by electronic transmission  
 837 of those unit owners consenting to receive notice by electronic  
 838 transmission. The electronic mailing addresses and numbers  
 839 provided by unit owners to receive notice by electronic  
 840 transmission shall be removed from association records when  
 841 consent to receive notice by electronic transmission is revoked.

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842 However, the association is not liable for an erroneous  
 843 disclosure of the electronic mail address or the number for  
 844 receiving electronic transmission of notices.

845 6. All current insurance policies of the association.

846 7. A current copy of any management agreement, lease, or  
 847 other contract to which the association is a party or under  
 848 which the association or the unit owners have an obligation or  
 849 responsibility.

850 8. Bills of sale or transfer for all property owned by the  
 851 association.

852 9. Accounting records for the association and separate  
 853 accounting records for each unit it operates, according to good  
 854 accounting practices. All accounting records shall be maintained  
 855 for a period of not less than 7 years. The accounting records  
 856 shall include, but not be limited to:

857 a. Accurate, itemized, and detailed records of all receipts  
 858 and expenditures.

859 b. A current account and a monthly, bimonthly, or quarterly  
 860 statement of the account for each unit designating the name of  
 861 the unit owner, the due date and amount of each assessment, the  
 862 amount paid upon the account, and the balance due.

863 c. All audits, reviews, accounting statements, and  
 864 financial reports of the association.

865 d. All contracts for work to be performed. Bids for work to  
 866 be performed shall also be considered official records and shall  
 867 be maintained for a period of 1 year.

868 10. Ballots, sign-in sheets, voting proxies, and all other  
 869 papers and electronic records relating to voting by unit owners,  
 870 which shall be maintained for a period of 1 year after the date

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of the election, vote, or meeting to which the document relates.

11. All rental records where the association is acting as agent for the rental of units.

12. A copy of the current question and answer sheet as described in s. 719.504.

13. All other written records of the association not specifically included in the foregoing which are related to the operation of the association.

(b) The official records of the association must be maintained within the state for at least 7 years. The records of the association shall be made available to a unit owner within 45 miles of the cooperative property or within the county in which the cooperative property is located within 10 5 working days after receipt of written request by the board or its designee. This paragraph may be complied with by having a copy of the official records of the association available for inspection or copying on the cooperative property or the association may offer the option of making the records available to a unit owner electronically via the Internet or by allowing the records to be viewed in an electronic format on a computer screen and printed upon request. The association is not responsible for the use or misuse of the information provided to an association member or his or her authorized representative pursuant to the compliance requirements of this chapter unless the association has an affirmative duty not to disclose such information pursuant to this chapter.

(4) FINANCIAL REPORT.—

(b) Except as provided in paragraph (c), an association whose total annual revenues meet the criteria of this paragraph

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shall prepare or cause to be prepared a complete set of financial statements according to the generally accepted accounting principles adopted by the Board of Accountancy. The financial statements shall be as follows:

1. An association with total annual revenues between \$150,000 and \$299,999 shall prepare a compiled financial statement.

2. An association with total annual revenues between \$300,000 and \$499,999 shall prepare a reviewed financial statement.

3. An association with total annual revenues of \$500,000 or more shall prepare an audited financial statement.

4. The requirement to have the financial statement compiled, reviewed, or audited does not apply to an association if a majority of the voting interests of the association present at a duly called meeting of the association have voted to waive this requirement for the fiscal year. In an association in which turnover of control by the developer has not occurred, the developer may vote to waive the audit requirement for the first 2 years of operation of the association, after which time waiver of an applicable audit requirement shall be by a majority of voting interests other than the developer. The meeting shall be held prior to the end of the fiscal year, and the waiver shall be effective for only one fiscal year. ~~An association may not waive the financial reporting requirements of this section for more than 3 consecutive years.~~

(c)1. An association with total annual revenues of less than \$150,000 shall prepare a report of cash receipts and expenditures.

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2. ~~An association in a community of fewer than 50 units, regardless of the association's annual revenues, shall prepare a report of cash receipts and expenditures in lieu of the financial statements required by paragraph (b), unless the declaration or other recorded governing documents provide otherwise.~~

2.3- A report of cash receipts and expenditures must disclose the amount of receipts by accounts and receipt classifications and the amount of expenses by accounts and expense classifications, including 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, if maintained by the association.

Section 8. Subsection (5) of section 719.1055, Florida Statutes, is amended to read:

719.1055 Amendment of cooperative documents; alteration and acquisition of property.—

(5) The bylaws must include a provision whereby a certificate of compliance from a licensed electrical contractor or electrician may be accepted by the association's board as evidence of compliance ~~of the cooperative units~~ with the applicable fire and life safety code.

(a)1. Notwithstanding chapter 633, s. 509.215, s. 553.895(1), or any other code, statute, ordinance, administrative rule, or regulation, or any interpretation of the foregoing, an association a cooperative or unit owner is not

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obligated to retrofit the common elements or units of a residential cooperative with a fire sprinkler system or other engineered lifesafety system in a building that is 75 feet or less in height. There is no obligation to retrofit for a building greater than 75 feet in height, calculated from the lowest level of fire department vehicle access to the floor of the highest occupiable story ~~has been certified for occupancy by the applicable governmental entity~~ if the unit owners have voted to forego such retrofitting by the affirmative vote of two-thirds a majority of all voting interests in the affected cooperative. There is no requirement that owners in cooperatives of 75 feet or less conduct an opt-out vote and such cooperatives are exempt from fire sprinkler or other engineered lifesafety retrofitting. The preceding sentence is intended to clarify existing law. The local authority having jurisdiction may not require completion of retrofitting with a fire sprinkler system or other engineered lifesafety system before January 1, 2022 ~~the end of 2019~~. By December 31, 2018 ~~2016~~, a cooperative that is not in compliance with the requirements for a fire sprinkler system or other engineered lifesafety system and has not voted to forego retrofitting of such a system must initiate an application for a building permit for the required installation with the local government having jurisdiction demonstrating that the cooperative will become compliant by December 31, 2021 ~~2019~~.

2. A vote to forego required retrofitting may be obtained by limited proxy or by a ballot personally cast at a duly called membership meeting, or by execution of a written consent by the member, or by electronic voting, and is effective upon recording a certificate executed by an officer or agent of the association

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987 attesting to such vote in the public records of the county where  
 988 the cooperative is located. When the opt-out vote is to be  
 989 conducted at a meeting, the cooperative shall mail or ~~hand~~  
 990 deliver to each unit owner, at each physical and electronic  
 991 address of record, written notice at least 14 days before the  
 992 membership meeting in which the vote to forego retrofitting of  
 993 the required fire sprinkler system or other engineered  
 994 lifesafety system is to take place. Within 30 days after the  
 995 cooperative's opt-out vote, notice of the results of the opt-out  
 996 vote must be mailed or ~~hand~~ delivered to all unit owners at each  
 997 physical and electronic address of record. Evidence of  
 998 compliance with this notice requirement must be made by  
 999 affidavit executed by the person providing the notice and filed  
 1000 among the official records of the cooperative. Failure to  
 1001 provide timely notice to unit owners does not invalidate an  
 1002 otherwise valid opt-out vote if notice of the results is  
 1003 provided to the owners. After notice is provided to each owner,  
 1004 a copy must be provided by the current owner to a new owner  
 1005 before closing and by a unit owner to a renter before signing a  
 1006 lease.

1007 (b) If there has been a previous vote to forego  
 1008 retrofitting, a vote to require retrofitting may be obtained at  
 1009 a special meeting of the unit owners called by a petition of  
 1010 least 10 percent of the voting interests or by a majority of the  
 1011 board of directors. The vote to require retrofitting requires a  
 1012 two-thirds vote of the total voting interest. ~~Such vote may only~~  
 1013 ~~be called once every 3 years~~. Notice must be provided as  
 1014 required for any regularly called meeting of the unit owners,  
 1015 and the notice must state the purpose of the meeting. ~~Electronic~~

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1016 ~~transmission may not be used to provide notice of a meeting~~  
 1017 ~~called in whole or in part for this purpose.~~

1018 (c) As part of the information collected annually from  
 1019 cooperatives, the division shall require associations to report  
 1020 the membership vote and recording of a certificate under this  
 1021 subsection and, if retrofitting has been undertaken, the per-  
 1022 unit cost of such work. The division shall annually report to  
 1023 the Division of State Fire Marshal of the Department of  
 1024 Financial Services the number of cooperatives that have elected  
 1025 to forego retrofitting. Compliance with this administrative  
 1026 reporting requirement does not affect the validity of an opt-out  
 1027 vote.

1028 Section 9. Paragraphs (a) and (c) of subsection (1) of  
 1029 section 719.106, Florida Statutes, are amended, and paragraph  
 1030 (m) is added to that subsection, to read:

1031 719.106 Bylaws; cooperative ownership.—

1032 (1) MANDATORY PROVISIONS.—The bylaws or other cooperative  
 1033 documents shall provide for the following, and if they do not,  
 1034 they shall be deemed to include the following:

1035 (a) *Administration.*—

1036 1. The form of administration of the association shall be  
 1037 described, indicating the titles of the officers and board of  
 1038 administration and specifying the powers, duties, manner of  
 1039 selection and removal, and compensation, if any, of officers and  
 1040 board members. In the absence of such a provision, the board of  
 1041 administration shall be composed of five members, except in the  
 1042 case of cooperatives having five or fewer units, in which case  
 1043 in not-for-profit corporations, the board shall consist of not  
 1044 fewer than three members. In a residential cooperative

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1045 association of more than 10 units, co-owners of a unit may not  
 1046 serve as members of the board of directors at the same time  
 1047 unless the co-owners own more than one unit or unless there are  
 1048 not enough eligible candidates to fill the vacancies on the  
 1049 board at the time of the vacancy. In the absence of provisions  
 1050 to the contrary, the board of administration shall have a  
 1051 president, a secretary, and a treasurer, who shall perform the  
 1052 duties of those offices customarily performed by officers of  
 1053 corporations. Unless prohibited in the bylaws, the board of  
 1054 administration may appoint other officers and grant them those  
 1055 duties it deems appropriate. Unless otherwise provided in the  
 1056 bylaws, the officers shall serve without compensation and at the  
 1057 pleasure of the board. Unless otherwise provided in the bylaws,  
 1058 the members of the board shall serve without compensation.

1059 2. A person who has been suspended or removed by the  
 1060 division under this chapter, or who is delinquent in the payment  
 1061 of any monetary obligation due to the association, is not  
 1062 eligible to be a candidate for board membership and may not be  
 1063 listed on the ballot. A director or officer charged by  
 1064 information or indictment with a felony theft or embezzlement  
 1065 offense involving the association's funds or property is  
 1066 suspended from office. The board shall fill the vacancy  
 1067 according to general law until the end of the period of the  
 1068 suspension or the end of the director's term of office,  
 1069 whichever occurs first. However, if the charges are resolved  
 1070 without a finding of guilt or without acceptance of a plea of  
 1071 guilty or nolo contendere, the director or officer shall be  
 1072 reinstated for any remainder of his or her term of office. A  
 1073 member who has such criminal charges pending may not be

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1074 appointed or elected to a position as a director or officer. A  
 1075 person who has been convicted of any felony in this state or in  
 1076 any United States District Court, or who has been convicted of  
 1077 any offense in another jurisdiction which would be considered a  
 1078 felony if committed in this state, is not eligible for board  
 1079 membership unless such felon's civil rights have been restored  
 1080 for at least 5 years as of the date such person seeks election  
 1081 to the board. The validity of an action by the board is not  
 1082 affected if it is later determined that a board member is  
 1083 ineligible for board membership due to having been convicted of  
 1084 a felony.

1085 3. When a unit owner files a written inquiry by certified  
 1086 mail with the board of administration, the board shall respond  
 1087 in writing to the unit owner within 30 days of receipt of the  
 1088 inquiry. The board's response shall either give a substantive  
 1089 response to the inquirer, notify the inquirer that a legal  
 1090 opinion has been requested, or notify the inquirer that advice  
 1091 has been requested from the division. If the board requests  
 1092 advice from the division, the board shall, within 10 days of its  
 1093 receipt of the advice, provide in writing a substantive response  
 1094 to the inquirer. If a legal opinion is requested, the board  
 1095 shall, within 60 days after the receipt of the inquiry, provide  
 1096 in writing a substantive response to the inquirer. The failure  
 1097 to provide a substantive response to the inquirer as provided  
 1098 herein precludes the board from recovering attorney's fees and  
 1099 costs in any subsequent litigation, administrative proceeding,  
 1100 or arbitration arising out of the inquiry. The association may,  
 1101 through its board of administration, adopt reasonable rules and  
 1102 regulations regarding the frequency and manner of responding to

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the unit owners' inquiries, one of which may be that the association is obligated to respond to only one written inquiry per unit in any given 30-day period. In such case, any additional inquiry or inquiries must be responded to in the subsequent 30-day period, or periods, as applicable.

(c) *Board of administration meetings.*—Members of the board of administration may use e-mail as a means of communication but may not cast a vote on an association matter via e-mail.

Meetings of the board of administration at which a quorum of the members is present shall be open to all unit owners. Any unit owner may tape record or videotape meetings of the board of administration. The right to attend such meetings includes the right to speak at such meetings with reference to all designated agenda items. The division shall adopt reasonable rules governing the tape recording and videotaping of the meeting. The association may adopt reasonable written rules governing the frequency, duration, and manner of unit owner statements. Adequate notice of all meetings shall be posted in a conspicuous place upon the cooperative property at least 48 continuous hours preceding the meeting, except in an emergency. Any item not included on the notice may be taken up on an emergency basis by at least a majority plus one of the members of the board. Such emergency action shall be noticed and ratified at the next regular meeting of the board. Notice of any meeting in which regular or special assessments against unit owners are to be considered must specifically state that assessments will be considered and provide the estimated amount and description of the purposes for such assessments. ~~However,~~ Written notice of any meeting at which nonemergency special assessments, or at

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which amendment to rules regarding unit use, will be considered shall be mailed, delivered, or electronically transmitted to the unit owners and posted conspicuously on the cooperative property not less than 14 days before the meeting. Evidence of compliance with this 14-day notice shall be made by an affidavit executed by the person providing the notice and filed among the official records of the association. Upon notice to the unit owners, the board shall by duly adopted rule designate a specific location on the cooperative property upon which all notices of board meetings shall be posted. In lieu of or in addition to the physical posting of notice of any meeting of the board of administration on the cooperative property, 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 cooperative association. However, if broadcast notice is used in lieu of a notice posted physically on the cooperative 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. When 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. In addition to any of the authorized means of providing notice of a meeting of the board, the association may adopt by rule a procedure for conspicuously posting the meeting notice and the agenda on a website serving the cooperative association for at least the minimum period of time for which a notice of a meeting is also required to be

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1161 physically posted on the cooperative property. Any rule adopted  
 1162 shall, in addition to other matters, include a requirement that  
 1163 the association send an electronic notice providing a hypertext  
 1164 link to the website where the notice is posted. Notice of any  
 1165 ~~meeting in which regular assessments against unit owners are to~~  
 1166 ~~be considered for any reason shall specifically contain a~~  
 1167 ~~statement that assessments will be considered and the nature of~~  
 1168 ~~any such assessments.~~ Meetings of a committee to take final  
 1169 action on behalf of the board or to make recommendations to the  
 1170 board regarding the association budget are subject to the  
 1171 provisions of this paragraph. Meetings of a committee that does  
 1172 not take final action on behalf of the board or make  
 1173 recommendations to the board regarding the association budget  
 1174 are subject to the provisions of this section, unless those  
 1175 meetings are exempted from this section by the bylaws of the  
 1176 association. Notwithstanding any other law to the contrary, the  
 1177 requirement that board meetings and committee meetings be open  
 1178 to the unit owners does not apply to board or committee meetings  
 1179 held for the purpose of discussing personnel matters or meetings  
 1180 between the board or a committee and the association's attorney,  
 1181 with respect to proposed or pending litigation, if the meeting  
 1182 is held for the purpose of seeking or rendering legal advice.

1183 (m) Director or officer delinquencies.—A director or  
 1184 officer more than 90 days delinquent in the payment of any  
 1185 monetary obligation due the association shall be deemed to have  
 1186 abandoned the office, creating a vacancy in the office to be  
 1187 filled according to law.

1188 Section 10. Paragraph (b) of subsection (1) of section  
 1189 719.107, Florida Statutes, is amended to read:

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1190 719.107 Common expenses; assessment.—

1191 (1)

1192 (b) If so provided in the bylaws, the cost of  
 1193 communications services as defined in chapter 202, information  
 1194 services, or Internet services ~~a master antenna television~~  
 1195 ~~system or duly franchised cable television service~~ obtained  
 1196 pursuant to a bulk contract shall be deemed a common expense,  
 1197 and if not obtained pursuant to a bulk contract, such cost shall  
 1198 be considered common expense if it is designated as such in a  
 1199 written contract between the board of administration and the  
 1200 company providing the communications services as defined in  
 1201 chapter 202, information services, or Internet services ~~master~~  
 1202 ~~television antenna system or the cable television service.~~ The  
 1203 contract shall be for a term of not less than 2 years.

1204 1. Any contract made by the board after April 2, 1992, for  
 1205 a community antenna system or duly franchised cable television  
 1206 service, communications services as defined in chapter 202,  
 1207 information services, or Internet services may be canceled by a  
 1208 majority of the voting interests present at the next regular or  
 1209 special meeting of the association. Any member may make a motion  
 1210 to cancel the contract, but if no motion is made or if such  
 1211 motion fails to obtain the required majority at the next regular  
 1212 or special meeting, whichever is sooner, following the making of  
 1213 the contract, then such contract shall be deemed ratified for  
 1214 the term therein expressed.

1215 2. Any such contract shall provide, and shall be deemed to  
 1216 provide if not expressly set forth, that any hearing impaired or  
 1217 legally blind unit owner who does not occupy the unit with a  
 1218 nonhearing impaired or sighted person may discontinue the

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1219 service without incurring disconnect fees, penalties, or  
 1220 subsequent service charges, and as to such units, the owners  
 1221 shall not be required to pay any common expenses charge related  
 1222 to such service. If less than all members of an association  
 1223 share the expenses of cable television, the expense shall be  
 1224 shared equally by all participating unit owners. The association  
 1225 may use the provisions of s. 719.108 to enforce payment of the  
 1226 shares of such costs by the unit owners receiving cable  
 1227 television.

1228 Section 11. Paragraphs (a) and (c) of subsection (2) of  
 1229 section 720.303, Florida Statutes, are amended to read:

1230 720.303 Association powers and duties; meetings of board;  
 1231 official records; budgets; budget meetings; financial reporting;  
 1232 association funds; recalls.—

1233 (2) BOARD MEETINGS.—

1234 (a) Members of the board of administration may use e-mail  
 1235 as a means of communication, but may not cast a vote on an  
 1236 association matter via e-mail. A meeting of the board of  
 1237 directors of an association occurs whenever a quorum of the  
 1238 board gathers to conduct association business. Meetings of the  
 1239 board must be open to all members, except for meetings between  
 1240 the board and its attorney with respect to proposed or pending  
 1241 litigation where the contents of the discussion would otherwise  
 1242 be governed by the attorney-client privilege. A meeting of the  
 1243 board must be held at a location that is accessible to a  
 1244 physically handicapped person if requested by a physically  
 1245 handicapped person who has a right to attend the meeting. The  
 1246 provisions of this subsection shall also apply to the meetings  
 1247 of any committee or other similar body when a final decision

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1248 will be made regarding the expenditure of association funds and  
 1249 to meetings of any body vested with the power to approve or  
 1250 disapprove architectural decisions with respect to a specific  
 1251 parcel of residential property owned by a member of the  
 1252 community.

1253 (c) The bylaws shall provide the following for giving  
 1254 notice to parcel owners and members of all board meetings and,  
 1255 if they do not do so, shall be deemed to include ~~provide~~ the  
 1256 following:

1257 1. Notices of all board meetings must be posted in a  
 1258 conspicuous place in the community at least 48 hours in advance  
 1259 of a meeting, except in an emergency. In the alternative, if  
 1260 notice is not posted in a conspicuous place in the community,  
 1261 notice of each board meeting must be mailed or delivered to each  
 1262 member at least 7 days before the meeting, except in an  
 1263 emergency. Notwithstanding this general notice requirement, for  
 1264 communities with more than 100 members, the association bylaws  
 1265 may provide for a reasonable alternative to posting or mailing  
 1266 of notice for each board meeting, including publication of  
 1267 notice, provision of a schedule of board meetings, or the  
 1268 conspicuous posting and repeated broadcasting of the notice on a  
 1269 closed-circuit cable television system serving the homeowners'  
 1270 association. However, if broadcast notice is used in lieu of a  
 1271 notice posted physically in the community, the notice must be  
 1272 broadcast at least four times every broadcast hour of each day  
 1273 that a posted notice is otherwise required. When broadcast  
 1274 notice is provided, the notice and agenda must be broadcast in a  
 1275 manner and for a sufficient continuous length of time so as to  
 1276 allow an average reader to observe the notice and read and

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comprehend the entire content of the notice and the agenda. The association may provide notice by electronic transmission in a manner authorized by law for meetings of the board of directors, committee meetings requiring notice under this section, and annual and special meetings of the members to any member who has provided a facsimile number or e-mail address to the association to be used for such purposes; however, a member must consent in writing to receiving notice by electronic transmission.

2. An assessment may not be levied at a board meeting unless the notice of the meeting includes a statement that assessments will be considered and the nature of the assessments. Written notice of any meeting at which special assessments will be considered or at which amendments to rules regarding parcel use will be considered must be mailed, delivered, or electronically transmitted to the members and parcel owners and posted conspicuously on the property or broadcast on closed-circuit cable television not less than 14 days before the meeting.

3. Directors may not vote by proxy or by secret ballot at board meetings, except that secret ballots may be used in the election of officers. This subsection also applies to the meetings of any committee or other similar body, when a final decision will be made regarding the expenditure of association funds, and to any body vested with the power to approve or disapprove architectural decisions with respect to a specific parcel of residential property owned by a member of the community.

Section 12. This act shall take effect July 1, 2017.



The Florida Senate

## Committee Agenda Request

**To:** Senator Lizbeth Benacquisto, Chair  
Committee on Rules

**Subject:** Committee Agenda Request

**Date:** April 19, 2017

---

I respectfully request that **Senate Bill #744**, relating to Community Associations, be placed on the;

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

A handwritten signature in black ink, appearing to read "K. Passidomo", followed by a horizontal line.

---

Senator Kathleen Passidomo  
Florida Senate, District 28



THE FLORIDA SENATE

APPEARANCE RECORD

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

4/28/17

Meeting Date

744

Bill Number (if applicable)

Topic Hi-Rise Sprinkler Retrofit

Amendment Barcode (if applicable)

Name William Stander

Job Title \_\_\_\_\_

Address P.O. Box 1042

Phone 850-212-3250

Tallahassee, FL 32302  
Street City State Zip

Email william@williamstander.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing American Fire Sprinkler Association - FL Chapter

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/28/17

Meeting Date

SB 744

Bill Number (if applicable)

Topic Community Assoc.

Amendment Barcode (if applicable)

Name Jim Millican

Job Title District Chief

Address 4360 - 55th Ave N

Phone 727-526-5650

Street

St. Pete

FL

33714

City

State

Zip

Email jmillican@floridafire.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Fire Marshals Assoc. & Florida Fire Chiefs

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/28/17  
Meeting Date

744  
Bill Number (if applicable)

Topic Community Association

Amendment Barcode (if applicable)

Name Justin Thames

Job Title Director of Governmental Affairs

Address  
Street

Phone 528-2209

City

State

Zip

Email thamesj@fipa.org

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)

4-28-17

Meeting Date

744

Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Richard Pinsky

Job Title \_\_\_\_\_

Address 106 E College Ave

Phone \_\_\_\_\_

Street

Tallahassee

FL

City

State

Zip

Email \_\_\_\_\_

Speaking: ☐ For ☐ Against ☐ Information

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

Representing 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**  
**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 802

INTRODUCER: Rules Committee; Judiciary Committee; and Senator Passidomo

SUBJECT:: Regulated Professions and Occupations

DATE: May 1, 2017

REVISED: \_\_\_\_\_

| ANALYST     | STAFF DIRECTOR | REFERENCE | ACTION           |
|-------------|----------------|-----------|------------------|
| 1. Kraemer  | McSwain        | RI        | <b>Favorable</b> |
| 2. Stallard | Cibula         | JU        | <b>Fav/CS</b>    |
| 3. Kraemer  | Phelps         | RC        | <b>Fav/CS</b>    |

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 802 reduces or eliminates the licensing and registration requirements for several occupations and professions, and otherwise reduces the role of the Department of Business and Professional Regulation (DBPR or Department) in regulating several of these, while maintaining and sometimes creating civil causes of action or criminal liability for wrongdoing by practitioners in these industries. More specifically, the bill eliminates:

- The requirement to have a license for each yacht or ship broker office;
- Required registration for labor organizations and licensing of labor organization business agents, while maintaining civil causes of action and criminal penalties;
- The requirement that an asbestos abatement contractor obtain a separate business license in addition to an individual license, yet increases accountability of asbestos contractors for the actions of their businesses;
- Required licensure or registration for hair braiders, hair wrappers, and body wrappers; and
- The requirement that landscape architects, architects, or interior designers obtain a separate business license in addition to individual license.

Additionally, the bill modifies the existing two-tiered barbering licensure for “barbers” and “restricted barbers.” Under the bill, restricted barbers are licensed to do most things that a barber may do under current law, with the exception of applying oils, creams, lotions, or other preparations to the face, neck or scalp.

## II. Present Situation:

The present situation relative to each section of the bill will be discussed in the Effect of Proposed Changes section of this bill analysis. But before proceeding to the Present Situation and Effect of Proposed Changes relative to each section of the bill, the following brief background information on the Department of Business and Professional Regulation (DBPR or Department) is presented to provide context for the discussion of the bill.

### Background

#### *Organization of the Department of Business and Professional Regulation*

Section 20.165, F.S., establishes the organizational structure of DBPR, which has the following 12 divisions:

- Administration;
- Alcoholic Beverages and Tobacco;
- Certified Public Accounting;
- Drugs, Devices, and Cosmetics;
- Florida Condominiums, Timeshares, and Mobile Homes;
- Hotels and Restaurants;
- Pari-mutuel Wagering;
- Professions;
- Real Estate;
- Regulation;
- Service Operations; and
- Technology.

Within several of these divisions, there exists one or more boards or programs, of which there are fifteen in total.<sup>1</sup> For example, two boards are within the Division of Real Estate,<sup>2</sup> and one board exists in the Division of Certified Public Accounting.<sup>3</sup>

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<sup>1</sup> Section 20.165(4)(a), F.S., establishes the following boards and programs which are noted with the implementing statutes: Board of Architecture and Interior Design, part I of ch. 481; Florida Board of Auctioneers, part VI of ch. 468; Barbers' Board, ch. 476; Florida Building Code Administrators and Inspectors Board, part XII of ch. 468; Construction Industry Licensing Board, part I of ch. 489; Board of Cosmetology, ch. 477; Electrical Contractors' Licensing Board, part II of ch. 489; Board of Employee Leasing Companies, part XI of ch. 468; Board of Landscape Architecture, part II of ch. 481; Board of Pilot Commissioners, ch. 310; Board of Professional Engineers, ch. 471; Board of Professional Geologists, ch. 492; Board of Veterinary Medicine, ch. 474; Home Inspection Services Licensing Program, part XV of ch. 468; and Mold-related Services Licensing Program, part XVI of ch. 468, F.S.

<sup>2</sup> See s. 20.165(4)(b), F.S., (establishing the Florida Real Estate Appraisal Board and the Florida Real Estate Commission).

<sup>3</sup> See s. 20.165(4)(c), F.S., (establishing the Board of Accountancy).

The Florida State Boxing Commission is assigned to DBPR for administrative and fiscal accountability purposes only.<sup>4</sup> DBPR also administers the Child Labor Law and Farm Labor Contractor Registration Law.<sup>5</sup>

### ***Powers and Duties of the Department***

Chapter 455, F.S., sets forth the general powers of DBPR as to the regulation of “profession[s],” and the term “professions” is defined as “any activity, occupation, profession, or vocation regulated by the department in the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation.” This Chapter also sets forth the procedural and administrative framework for the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation, and all of the professional boards within DBPR.<sup>6</sup>

The Department’s regulation of professions is to be undertaken “only for the preservation of the health, safety, and welfare of the public under the police powers of the state,”<sup>7</sup> and regulation is required when:

- The potential for harming or endangering public health, safety, and welfare is recognizable and outweighs any anticompetitive impact that may result;
- The public is not effectively protected by other state statutes, local ordinances, federal legislation, or other means; and
- Less restrictive means of regulation are not available.<sup>8</sup>

However, “neither the department nor any board may create a regulation that has an unreasonable effect on job creation or job retention,” or a regulation that unreasonably restricts the ability of those who desire to engage in a profession or occupation to find employment.<sup>9</sup>

### ***Permitting, Registration, Licensing, and Certification***

Sections 455.203 and 455.213, F.S., establish general licensing authority for the DBPR, including the authority to charge license fees and license renewal fees. Each board within the Department must determine by rule the amount of license fees for each profession, based on estimates of the required revenue to implement the regulatory laws affecting the profession.<sup>10</sup>

When a person is authorized to engage in a profession or occupation in Florida, the DBPR issues a “license,” which may be referred to in different instances as a permit, registration, certificate, or license.<sup>11</sup> Those who are granted any of these licenses are referred to as licensees.<sup>12</sup>

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<sup>4</sup> Section 548.003(1), F.S.

<sup>5</sup> See Parts I and III of ch. 450, F.S.

<sup>6</sup> See s. 455.203, F.S. DBPR must also provide legal counsel for boards within DBPR by contracting with the Department of Legal Affairs, by retaining private counsel, or by providing DBPR staff counsel. See s. 455.221(1), F.S.

<sup>7</sup> Section 455.201(2), F.S.

<sup>8</sup> *Id.*

<sup>9</sup> Section 455.201(4)(b), F.S.

<sup>10</sup> Section 455.219(1), F.S.

<sup>11</sup> Section 455.01(4), F.S.

<sup>12</sup> Section 455.01(5), F.S.

In Fiscal Year 2015-2016, there were 39,216 people licensed by the Division of Accountancy, 349,668 people licensed by the Division of Real Estate, and 61,396 people licensed by the Board of Professional Engineers.<sup>13</sup> In Fiscal Year 2015-2016, there were 434,001 people licensed by the Division of Professions,<sup>14</sup> including:

- Architects and interior designers;
- Asbestos consultants and contractors;
- Athlete agents;
- Auctioneers;
- Barbers;
- Building code administrators and inspectors;
- Community association managers;
- Construction industry contractors;
- Cosmetologists;
- Electrical contractors;
- Employee leasing companies;
- Geologists;
- Home inspectors;
- Landscape architects;
- Harbor pilots;
- Mold-related services;
- Talent agencies; and
- Veterinarians.<sup>15</sup>

The Department's Division of Florida Condominiums, Timeshares, and Mobile Homes provides consumer protection for Florida residents living in regulated communities through education, complaint resolution, mediation and arbitration, and developer disclosure.<sup>16</sup> This Division has limited regulatory authority over the following business entities and individuals:

- Condominium Associations;
- Cooperative Associations;
- Florida Mobile Home Parks and related associations;
- Vacation Units and Timeshares;
- Yacht and Ship Brokers and related business entities; and
- Homeowner's Associations (jurisdiction is limited to arbitration of election and recall disputes).<sup>17</sup>

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<sup>13</sup> See Department of Business and Professional Regulation, *Annual Report, Fiscal Year 2015-2016*, page 21, [http://www.myfloridalicense.com/dbpr/os/documents/ProfessionsAnnualReportFY2015-2016\\_Final.pdf](http://www.myfloridalicense.com/dbpr/os/documents/ProfessionsAnnualReportFY2015-2016_Final.pdf), (last visited Apr. 28, 2017).

<sup>14</sup> Of the total 415,207 licensees in the Division of Professions, 23,183 are inactive. *Id.* at page 22.

<sup>15</sup> *Id.* at pages 21-22.

<sup>16</sup> Department of Business and Professional Regulation, *Division of Florida condominiums, Timeshares, and Mobile Homes*, <http://www.myfloridalicense.com/dbpr/lsc/index.html> (last visited Apr. 28, 2017).

<sup>17</sup> *Id.*



### III. Effect of Proposed Changes:

#### **Yacht and Ship Broker Branch Office Licenses**

##### ***Present Situation:***

Chapter 326, F.S., governs the licensing and regulation of yacht and ship brokers, salespersons, and related business organizations in the state. The Yacht and Ship Broker's Section is a unit of the Division of Florida Condominiums, Timeshares and Mobile Homes of the Department of Business and Professional Regulation (DBPR or Department). This Section processes licenses and responds to consumer complaints and inquiries by monitoring activities and compliance within the yacht brokerage industry.<sup>18</sup>

A person may not act as a yacht or ship broker or salesperson unless licensed under ch. 326, F.S.<sup>19</sup> Each yacht or ship broker must maintain a principal place of business in Florida and may establish branch offices in Florida. A separate license must be maintained for each branch office."<sup>20</sup>

Applicants for a branch office license and renewal pay a \$100 fee; licenses must be renewed every two years.<sup>21</sup> A branch office has no regulatory obligations other than to obtain licensure. Additionally, branch offices are not subject to inspection requirements.

##### ***Effect of Proposed Changes:***

**Section 2** of the bill amends s. 326.004, F.S., to remove the requirement that separate branch office licenses be maintained by yacht and ship brokers in addition to a license for the principal office. Brokers and salespeople are required to maintain individual licensure, with a principal place of business in Florida tied to the broker's individual license.

#### **Labor Organizations**

##### ***Present Situation:***

Chapter 447, F.S., governs the licensing and regulation of labor organizations and related business agents in the state. The Department's Division of Regulation oversees the licensing and regulation of labor organizations. In addition to issuing licenses, this Division responds to consumer complaints and inquiries by monitoring activities and compliance within the labor organization industry.

A labor organization is defined as "[a]ny organization of employees or local or subdivision thereof, having within its membership residents of the state, whether incorporated or not, organized for the purpose of dealing with employers concerning hours of employment, rate of

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<sup>18</sup> See Department of Business and Professional Regulation, *Yacht and Ship Brokers; Licensing and Enforcement*, <http://www.myfloridalicense.com/dbpr/lsc/YachtandShip.html> (last visited Apr. 28, 2017).

<sup>19</sup> Section 326.004(1), F.S.

<sup>20</sup> Section 326.004(13), F.S.

<sup>21</sup> Rule 61B-60.002, F.A.C.

pay, working conditions, or grievances of any kind relating to employment and recognized as a unit of bargaining by one or more employers doing business in this state.”<sup>22</sup>

In Florida, all labor organizations are required to register with the Department and all business agents of labor organizations must obtain a license.<sup>23</sup> Business agents are defined as “[a]ny person, without regard to title, who shall, for a pecuniary or financial consideration, act or attempt to act for any labor organization in:

- The issuance of membership or authorization cards, work permits, or any other evidence of rights granted or claimed in, or by, a labor organization; or
- Soliciting or receiving from any employer any right or privilege for employees.”<sup>24</sup>

Applicants for a business agent license must pay a \$25 fee for licensure and must meet a number of licensure requirements.<sup>25</sup> A labor organization must register with the Department annually and pay a fee of \$1.<sup>26</sup>

### ***Effect of Proposed Changes:***

**Sections 3 through 10** of the bill amend Part I of ch. 447, F.S., eliminating the registration scheme relating to labor organizations and the licensing scheme relating to business agents. However, civil causes of action and criminal penalties for wrongdoing by labor organizations and business agents remain, as do provisions relating to the right to work and strike, recordkeeping requirements, and rights of franchise for labor organizations.

## **Building Code Administrators, Plans Examiners, and Inspectors Certifications**

### ***Present Situation:***

#### ***Building Code Inspector and Plans Examiner***

In order to take the examination for building code inspector or plans examiner certification, a person must be at least 18 years of age, be of good moral character, and meet one of the following eligibility requirements:

- Option 1: Demonstrate five years of combined experience in the field of construction or a related field, building code inspection, or plans review corresponding to the certification category sought.
- Option 2: Demonstrate four years of a combination of postsecondary education in the field of construction or a related field and experience, with at least one year of experience in construction, building code inspection, or plans review.
- Option 3: Demonstrate four years of a combination of technical education in the field of construction or a related field and experience, with at least one year of experience in construction, building code inspection, or plans review.
- Option 4: Currently hold a standard certificate issued by the Florida Building Code Administrators and Inspectors Board (FBCAIB), or a fire safety inspector license issued

<sup>22</sup> Section 447.02(1), F.S.

<sup>23</sup> Section 447.04(2), F.S.

<sup>24</sup> Section 447.02(2), F.S.

<sup>25</sup> Section 447.04(2), F.S.

<sup>26</sup> Section 447.06(2), F.S.

pursuant to ch. 633, F.S.; have a minimum of three years of verifiable full-time experience in inspection or plan review; and satisfactorily complete an approved building code inspector or plans examiner training program of at least 100 hours but not more than 200 hours in the certification category sought.

- Option 5: Demonstrate a minimum of two years combined experience in the field of building code inspection, plan review, fire code inspections and fire plans review of new buildings as a firesafety inspector, or construction; and the completion of an approved training program in the field of building code inspection or plan review of at least 200 hours but not more than 300 hours in the certification category sought, with at least 20 hours but not more than 30 hours of instruction in state laws, rules, and ethics relating to professional standards of practice, duties, and responsibilities of a certificate holder.
- Option 6: Currently hold a standard certificate issued by the FBCAIB or a firesafety inspector license if the person also:
  - Has at least five years of verifiable full-time experience as a building code inspector, plans examiner, or licensed firesafety inspector; and
  - Satisfactorily completes a building code inspector or plans examiner classroom training course or program that provides between 200 and 300 hours in the certification category sought, except for one-family and two-family dwelling training programs which are required to provide between 500 and 800 hours of training as prescribed by the FBCAIB.<sup>27</sup>

The FBCAIB must accept all classroom training offered by an approved provider if the content substantially meets the intent of the classroom component of the training program.<sup>28</sup>

Under s. 468.609(7), F.S., the FBCAIB is required to provide for the issuance of provisional one-year certificate for certain newly employed or promoted building code inspectors or plans examiners; and to provide appropriate levels of such provisional certificates.

Additionally, a newly employed or hired person may perform the duties of the plans examiner or building code inspector for 120 days if a provisional certificate application has been submitted and the newly employed or hired person is under the direct supervision of a certified building code administrator who holds a standard certification and who has found the person qualified for a provisional certificate.<sup>29</sup>

### ***Building Code Administrator***

In order to take the examination for building code administrator certification, a person must be at least 18 years of age, be of good moral character, and meet one of the following eligibility requirements:

- Option 1: Demonstrate 10 years of combined experience as an architect, engineer, plans examiner, building code inspector, registered or certified contractor, or construction superintendent, with at least five years of experience in supervisory positions; or
- Option 2: Demonstrate 10 years of a combination of experience as an architect, engineer, plans examiner, building code inspector, registered or certified contractor, or construction

<sup>27</sup> Section 468.609(2), F.S.

<sup>28</sup> *Id.*

<sup>29</sup> Section 468.609(7)(d), F.S.

superintendent, with at least five years of supervisory experience, and postsecondary education in the field of construction or related field, of which no more than five years may be applied. The individual must have also completed between 20 and 30 hours training in state laws, rules, and ethics relating to professional standards of practice, duties, and responsibilities of a certificate holder.<sup>30</sup>

### ***Private Providers***

Section 553.791(1)(i), F.S., defines “private provider” as a licensed engineer or a licensed architect who performs inspections on residential buildings in certain circumstances and, for additions and alterations under 1,000 square feet, the term also applies to individuals who hold a standard license under part XII of Chapter 468, F.S.

Private providers are authorized to contract with property owners and local building departments to conduct plans review and building code inspections.<sup>31</sup>

### ***Construction Industry Workforce Task Force***

Single-family building permit activity, an indicator of new construction, reached its peak in Florida in 2005. During the recent recession, new construction declined significantly, bottoming out in 2009. New construction has increased in recent years, but there are anecdotal reports that contractors are having a hard time finding skilled labor.

Because of the skilled labor shortage, the Legislature created the Construction Industry Workforce Task Force within the University of Florida M.E. Rinker, Sr., School of Construction Management in 2016.<sup>32</sup> The goals of the task force were to:

- Address the critical shortage of individuals trained in building construction and inspection.
- Develop a consensus path for training the next generation of construction workers in the state.
- Determine the causes for the current shortage of a trained construction industry work force and address the impact of the shortages on the recovery of the real estate market.
- Review current methods and resources available for construction training.
- Review the state of construction training available in K-12 schools.
- Address training issues relating to building code inspectors to increase the number of qualified inspectors.

The task force consisted of 23 members, representing various construction industries and the Legislature. The task force elected a chair from among its members. The University of Florida M.E. Rinker, Sr., School of Construction Management was required to provide assistance to the task force in carrying out its responsibilities.

The task force submitted a final report to the Governor, the President of the Senate, and the Speaker of the House of Representatives in January 2017, which states that the construction and

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<sup>30</sup> Section 468.609(3), F.S.

<sup>31</sup> DBPR, Legislative Bill Analysis for SB 860, pp. 2-3, (March 9, 2017)

<sup>32</sup> Chapter 2016-129, s. 31, Laws of Fla.

building profession is attracting fewer construction related workers.<sup>33</sup> Florida requires five years of construction trade experience in order to obtain an inspector license.<sup>34</sup> Given the stringent educational requirements, contractors often prefer working in the construction trades rather than becoming inspectors.

In its final report, the taskforce recommended the development of the following initiatives:

- Creating an Alternative Internship Certification Program to the current standard qualifications;
- Adding residential inspector and plan examiner categories for all trades;
- Expanding the provisional and 120-day periods beyond newly hired or promoted staff;
- Authorizing interagency service agreement inspections and plan examination for standard certified building officials across jurisdictions with populations 50,000 or fewer;
- Having the FBCAIB streamline the application for certification process by providing for an electronic application process and combining the examination registration with the provisional application;
- Providing high school education guidance material for construction related careers;
- Supporting higher education code curriculum in engineering, architecture, and construction management degrees; and
- Comprehensively studying the compensation for building code compliance personnel.<sup>35</sup>

### ***Effect of Proposed Changes:***

**Section 11** of the bill amends s. 468.603, F.S. to revise the terms “building code administrator” or “building official” to include any person, contracted by a municipal or county government, with specified building construction regulation responsibilities, including plan review or inspection. The term “building code inspector” is revised to include any person, contracted by a local government or state agency, with specified building construction responsibilities, who conduct inspections for projects that require permitting.

**Section 12** of the bill amends s. 468.617(3), F.S., to allow for the use of contracting with any person or entity for services as a building code administrator, or building official. Current law allows such contracting only for building code inspection services.

## **Asbestos Abatement Business Organization**

### ***Present Situation:***

Chapter 469, F.S., governs the licensing and regulation of asbestos abatement. The Asbestos Licensing Unit is a program located under the Division of Professions. The program processes licenses and responds to consumer complaints and inquiries by monitoring activities and compliance within the asbestos abatement industry.

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<sup>33</sup> Florida Workforce Taskforce Report, prepared by the University of Florida, p. 12, available at <http://www.cce.ufl.edu/wp-content/uploads/2016/12/6-Florida-Construction-Workforce-Taskforce-Address-training-issues-among-building-code-inspectors-to-increase-the-number-qualified-1.pdf> (Taskforce Report) (last visited Apr. 28, 2017).

<sup>34</sup> Section 468.609(2)(c)1., F.S.

<sup>35</sup> See the Taskforce Report, *supra* note 17 at page 14.

As a general matter, a person must be a licensed asbestos contractor in order to conduct asbestos abatement work.<sup>36</sup> A person must be a licensed asbestos consultant to:

- Conduct an asbestos survey;
- Develop an operation and maintenance plan;
- Monitor and evaluate asbestos abatement; or
- Prepare asbestos abatement specifications.<sup>37</sup>

An asbestos consultant's license may be issued only to an applicant who holds a current, valid, and active license as an architect, professional engineer, professional geologist, is a diplomat of the American Board of Industrial Hygiene, or has been awarded designation as a Certified Safety Professional by the Board of Certified Safety Professionals.<sup>38</sup>

If an applicant for licensure as an asbestos consultant or contractor intends to engage in consulting or contracting as a business organization, such as a corporation, or in any name other than the applicant's legal name, the business organization must be licensed separately as an asbestos abatement business. Each licensed business organization must have a qualifying agent who is licensed under ch. 469, F.S.,<sup>39</sup> is qualified to supervise the enterprise, and is financially responsible. If the qualifying agent terminates his or her affiliation with the business organization and is the only qualifying agent for the business organization, the business organization must be qualified by another qualifying agent within 60 days after the termination, and the business organization may not engage in the practice of asbestos abatement until it is qualified.

Applicants for an asbestos abatement business license pay an application fee of \$300, an unlicensed activity fee of \$5, an initial licensure fee of \$250, and a biennial renewal fee of \$250.<sup>40</sup> A branch office has no regulatory obligations other than to obtain licensure. Additionally, branch offices are not subject to inspection.

### ***Effect of Proposed Changes:***

**Sections 13 and 14** of the bill amend ch. 469, F.S., to remove the requirement that an asbestos abatement contractor obtain a separate business license in addition to an individual license. Nonetheless, asbestos abatement contractors must qualify the business organizations they supervise and they are liable for the actions of those businesses. Asbestos abatement contractors must inform the Department of any change in their relationship with the qualified business, and a qualified business has 60 days to obtain another asbestos abatement contractor to serve as qualifying agent.

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<sup>36</sup> Section 469.003(3), F.S.

<sup>37</sup> Section 469.003, F.S.

<sup>38</sup> Section 469.004(1), F.S.

<sup>39</sup> Section 469.006, F.S.

<sup>40</sup> Rule 61E1-3.001, F.A.C.

## **Barbering**

### ***Present Situation:***

The term “barbering” used in ss. 476.014 through 476.254, F.S., the Barbers’ Act, includes any of the following practices when done for payment by the public:<sup>41</sup> shaving, cutting, trimming, coloring, shampooing, arranging, dressing, curling, or waving the hair or beard or applying oils, creams, lotions, or other preparations to the face, scalp, or neck, either by hand or by mechanical appliances.<sup>42</sup>

If a person wants to be licensed as a barber, he or she must pass an examination. However, to be eligible to take the examination, a person must be at least 16 years of age, pay the application fee, and either have been licensed in another state for at least 1 year or have 1,200 hours of specified training.<sup>43</sup> However, the Barber Board is authorized to establish by rule a procedure for a barber school or program to certify a person to take the licensure examination following completion of a minimum of 1,000 hours of training and for the licensure of such person who passes the examination.<sup>44</sup> Alternatively, under s. 476.144(6), F.S., a person may apply for and receive a restricted license to practice barbering, which does not require the same level of training and authorizes the licensee to practice only in areas in which he or she has demonstrated competency.<sup>45</sup>

### ***Effect of Proposed Changes:***

**Sections 15 and 16** of the bill amend ss. 476.034 and 476.114, F.S., to provide for licensure as a “restricted barber” who may engage in certain practices.” Restricted barbers are licensed to perform shaving, cutting, trimming, coloring, shampooing, arranging, dressing, curling, or waving the hair or beard, but may not apply oils, creams, lotions, or other preparations to the face, neck or scalp.

The bill provides that an applicant for a restricted barbering license must hold, or have held within the previous five years, an active, valid license to practice barbering in another state or country, or a Florida barbering license that is void for failure to renew the license, or has the required hours of training at a licensed school of barbering, a public school system barbering program, or a government-operated barbering program in Florida. An applicant for licensure as a restricted barber is required to have a minimum of 1,000 hours of training (instead of the 1,200 hours required for barbers).

**Section 17** of the bill repeals s. 476.144(6), F.S., concerning the procedure to apply for a “restricted license to practice barbering” available under current law. Also repealed is a provision disqualifying an applicant for a restricted license for barbering, if the applicant has been disciplined for a barbering violation in the last five years.

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<sup>41</sup> But not when done for the treatment of disease or physical or mental ailments.

<sup>42</sup> Section 476.034(2), F.S.

<sup>43</sup> See s. 476.114(2), F.S.

<sup>44</sup> Section 476.114(2), F.S.

<sup>45</sup> Section 476.144(6), F.S.

## **Nail and Facial Specialists, Hair Braiders; Hair Wrappers, and Body Wrappers**

### ***Present Situation:***

Chapter 477, F.S., governs the licensing and regulation of cosmetologists, hair wrappers, hair braiders, nail specialists, facial specialists, full specialists, body wrappers and related salons in the state. The Board of Cosmetology, within the Department's Division of Professions, processes license applications and responds to consumer complaints and inquiries by monitoring activities and compliance within the cosmetology industry.

Individuals are prohibited from providing manicures or pedicures in Florida without first being registered as a nail specialist, full specialist, or cosmetologist.

A "specialist" is defined as "any person holding a specialty registration in one or more of the specialties registered under [ch. 477, F.S.]."<sup>46</sup> The term "specialty" is defined as "the practice of one or more of the following:

- Manicuring, or the cutting, polishing, tinting, coloring, cleansing, adding, or extending of the nails, and massaging of the hands. This term includes any procedure or process for the affixing of artificial nails, except those nails which may be applied solely by use of a simple adhesive.
- Pedicuring, or the shaping, polishing, tinting, or cleansing of the nails of the feet, and massaging or beautifying of the feet.
- Facials, or the massaging or treating of the face or scalp with oils, creams, lotions, or other preparations, and skin care services."<sup>47</sup>

The term "cosmetologist" is defined as "a person who is licensed to engage in the practice of cosmetology . . . ."<sup>48</sup> "Cosmetology" is defined as "the mechanical or chemical treatment of the head, face, and scalp for aesthetic rather than medical purposes, including, but not limited to, hair shampooing, hair cutting, hair arranging, hair coloring, permanent waving, and hair relaxing for compensation. This term also includes performing hair removal, including wax treatments, manicures, pedicures, and skin care services."<sup>49</sup>

A nail specialist may complete manicures and pedicures. A full specialist may complete manicures, pedicures, and facials. Manicures and pedicures, as a part of cosmetology services, are required to be provided in a licensed specialty salon or cosmetology salon.<sup>50</sup> All cosmetology and specialty salons are subject to inspection by DBPR.<sup>51</sup>

To qualify for a specialist license, the applicant must be at least 16 years old, obtain a certificate of completion from an approved specialty education program, and submit an application for registration with DBPR with the registration fee.<sup>52</sup>

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<sup>46</sup> Section 477.013(5), F.S.

<sup>47</sup> Section 477.013(6), F.S.

<sup>48</sup> Section 477.013(3), F.S.

<sup>49</sup> Section 477.013(4), F.S.

<sup>50</sup> Section 477.0263, F.S.

<sup>51</sup> Section 477.025, F.S.

<sup>52</sup> Section 477.0201, F.S.



To qualify for a license as a cosmetologist, the applicant must be at least 16 years old, have received a high school diploma, have submitted an application with the applicable fee and examination fee, and have either a license in another state or country for at least 1 year, or have received 1,200 hours training including completing an education at an approved cosmetology school or program. The applicants must also pass all parts of the licensure examination.<sup>53</sup>

The act of painting nails with fingernail polish falls under the scope of manicuring, even if the individual is not cutting, cleansing, adding, or extending the nails. Therefore, individuals seeking to add polish to fingernails and toenails for compensation are required to obtain a registration as a specialist or a license as a cosmetologist. DBPR does not have a separate license for polishing nails.

***Effect of Proposed Changes:***

**Section 18** of the bill amends s. 477.013, F.S. to specify the activities that constitute the practice of a “nail specialty,” a “facial specialty,” and a “full specialty.” A nail specialty, includes:

- Manicuring, or the cutting, polishing, tinting, coloring, cleansing, adding, or extending of the nails, and massaging of the hands, including any procedure for the affixing of artificial nails, except those that are affixed solely by a simple adhesive; and
- Pedicuring, or the shaping, polishing, tinting, or cleansing of the nails of the feet, and massaging or beautifying of the feet.

A facial specialty includes facials, or the massaging or treating of the face or scalp with oils, creams, lotions, or other preparations, and skin care services. A full specialty includes all manicuring, pedicuring, and facial services.

**Section 19** of the bill repeals s. 477.0132, F.S., eliminating registration requirements for hair braiding, hair wrapping, and body wrapping.

**Sections 20 and 21** of the bill amend ss. 477.0135 and 477.019, F.S., to eliminate licensure or registration for a person whose occupation or practice is confined solely to hair braiding, to hair wrapping, or to body wrapping, and to exempt these persons from certain continuing education requirements.

**Section 22** of the bill deletes s. 477.026(1)(f), F.S, eliminating the registration fee for hair braiders, hair wrappers, and body wrappers.

**Architecture Business or Interior Design Organization**

***Present Situation:***

Chapter 481, Part I, F.S., governs the licensing and regulation of architects, interior designers, and related business organizations. The Board of Architecture and Interior Design exists under the Department’s Division of Professions. The board processes licenses and responds to consumer complaints and inquiries by monitoring activities and compliance within the architecture and interior design industries.

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<sup>53</sup> Section 477.019(2), F.S.

“The practice of or the offer to practice architecture or interior design by licensees through a corporation, limited liability company, or partnership offering architectural or interior design services to the public, or by a corporation, limited liability company, or partnership offering architectural or interior design services to the public through licensees under this part as agents, employees, officers, or partners, is permitted, subject to the provisions of [ch. 481, Part I, F.S.].”<sup>54</sup> An architecture or interior design business corporation, limited liability company, or partnership, which is offering architecture or interior design service to the public, must obtain a certificate of authorization prior to practicing.<sup>55</sup>

Applicants for an architecture business certificate of authorization or interior design business certificate of authorization must pay an application fee of \$100, an unlicensed activity fee of \$5, and a biennial renewal fee of \$125.<sup>56</sup> A business entity has no regulatory obligations other than to obtain licensure.

According to DBPR, in recent years, the Board of Architecture and Interior Design disciplined licensed architecture businesses only six times in cases that did not also involve discipline against the supervising architect; generally, the licensed business was cited for operating without a supervising architect or for failure to include license numbers in advertisements.<sup>57</sup>

The Board of Architecture and Interior Design disciplined licensed interior design businesses only four times in recent years in cases that did not also involve discipline against the qualifying interior designer. In three of the four disciplinary cases, the business license was retained by the business after the qualifying interior designer had left the firm.<sup>58</sup>

### ***Effect of Proposed Changes:***

**Sections 23 through 26** of the bill amend ch. 481, F.S., to remove the requirement that architects and interior designers obtain a separate business license (certificate of authorization) in addition to an individual license. The bill provides that architects and interior designers qualify their business organizations with their individual licenses. The bill provides that architects and interior designers must inform DBPR of any change in their relationship with the qualified business, and the business has 60 days to obtain a replacement qualifying architect or interior designer. The executive director or chair of the Board of Architecture and Interior Design may authorize another registered architect or interior designer employed by the business organization to temporarily service as its qualifying agent for no more than 60 days.

The bill amends s. 481.219(2)(b), F.S., to provide that the Board of Architecture and Interior Design may deny an application to qualify a business organization if the applicant (or others identified in the application as partners, officers, directors, or stockholders who are also officers or directors) “has been involved in past disciplinary actions or on any grounds for which an individual registration or certification may be denied.”

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<sup>54</sup> Section 481.219(1), F.S.

<sup>55</sup> Section 481.219(2)-(3), F.S.

<sup>56</sup> Rules 61G1-17.001 and 61G1-17.002, F.A.C.

<sup>57</sup> *Id.* at 5.

<sup>58</sup> *Id.*

## **Landscape Architecture Business Organization**

### ***Present Situation:***

Chapter 481, Part II, F.S., governs the licensing and regulation of landscape architects and related business organizations in the state. The Board of Landscape Architecture, a board located within the Division of Professions, processes licenses and responds to consumer complaints and inquiries by monitoring activities and compliance within the landscape architecture industry.

A person may not knowingly practice landscape architecture unless the person holds a valid license issued pursuant to ch. 481, Part II, F.S.<sup>59</sup> A corporation or partnership is permitted to offer landscape architectural services to the public, subject to the provisions of ch. 481, Part I, F.S., if:

- One or more of the principals of the corporation, or partners in the partnership, is a licensed landscape architect;
- One or more of the officers, directors, or owners of the corporation, or one of more of the partners of the partnership is a licensed landscape architect; and
- The corporation or partnership has been issued a certificate of authorization by the board.<sup>60</sup>

Applicants for a landscape architecture business certificate of authorization must pay an application fee and initial licensure fee of \$450, an unlicensed activity fee of \$5, and a biennial, renewal fee of \$337.50.<sup>61</sup> A business entity has no regulatory obligations other than to obtain licensure.

### ***Effect of Proposed Changes:***

**Sections 27 through 32** of the bill amend Part II of ch. 481, F.S., to remove the requirement that landscape architects obtain a separate business license in addition to an individual license. The bill provides that landscape architects must qualify their business organization with their individual licenses and that they will be liable for the actions of the business organizations they qualify.

The bill repeals Department's authority to issue a certificate of authorization to an applicant wishing to practice as a corporation, limited liability company, or partnership offering landscape architectural services. Furthermore, the bill repeals the board's ability to grant a temporary certificate of authorization for a business organization that is seeking to work on one project in Florida for a period not to exceed 1 year to an out-of-state corporation, partnership, or firm.

The bill provides that a corporation or partnership is permitted to offer landscape architectural services to the public, subject to the provisions of ch. 481, Part I, F.S., if:

- One or more of the principals of the corporation, or partners in the partnership, is a licensed landscape architect; and
- One or more of the officers, directors, or owners of the corporation, or one of more of the partners of the partnership is a licensed landscape architect.

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<sup>59</sup> Section 481.323(1)(a), F.S.

<sup>60</sup> Section 481.319(1), F.S.

<sup>61</sup> Rule 61G10-12.002, F.A.C.

Under the bill, landscape architects must inform DBPR of any change in their relationship with the qualified business, and the business has 1 month to obtain another qualifying landscape architect. According to DBPR, the Board of Landscape Architecture and Design issued no disciplinary orders against landscape architecture businesses during the 3 previous fiscal years.<sup>62</sup>

## **State Boxing Commission**

### ***Present Situation:***

Chapter 548, F.S., provides for the regulation of professional and amateur boxing, kickboxing, and mixed martial arts by the Department's Florida State Boxing Commission.

The Commission has exclusive jurisdiction over every professional boxing match and professional mixed martial arts and kickboxing matches.<sup>63</sup> Professional matches held in this state must meet the requirements for holding the match set forth in ch. 548, F.S., and must accord with the rules adopted by the Commission.

However, as to amateur matches, the Commission's jurisdiction is limited to the approval, disapproval, suspension of approval, and revocation of approval of all amateur sanctioning organizations for boxing and kickboxing matches held in this state.<sup>64</sup> Amateur sanctioning organizations are business entities organized for sanctioning and supervising matches involving amateurs.<sup>65</sup> This jurisdiction does not extend to amateur sanctioning organizations for mixed martial arts.

Under current law, certain persons providing certain services related to professional and amateur boxing, kickboxing, and mixed martial arts must be licensed by the commission before directly or indirectly performing those services. Licensing is mandated for a participant, manager, trainer, second, timekeeper, referee, judge, announcer, physician, matchmaker, or promoter.<sup>66</sup>

### ***Effect of Proposed Changes:***

**Section 33** of the bill amends s. 548.017, F.S., to eliminate the licensure requirement for persons serving as timekeepers and announcers for a match.<sup>67</sup>

## **Conforming Revisions**

**Section 1** of the bill amends s. 287.055, F.S., the Consultants' Competitive Negotiation Act, to conform references to "qualified" (rather than "certified") entities.

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<sup>62</sup> *Id.*

<sup>63</sup> Section 548.006(3), F.S.

<sup>64</sup> *Id.*

<sup>65</sup> Section 548.002(2), F.S.

<sup>66</sup> Section 548.017, F.S.

<sup>67</sup> Section 34 conforms s. 548.003(2)(i), F.S., to the substantive change made in Section 33.

**Effective Date**

The bill takes effect October 1, 2017.

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

None.

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

None.

**C. Trust Funds Restrictions:**

None.

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

None.

**B. Private Sector Impact:**

According to the DBPR's analysis of the bill before it was amended by the Judiciary Committee, the bill would have resulted in a reduction of licensing fees, fees for renewal of licenses, and unlicensed activity fees paid by the private sector of approximately \$971,003 in Fiscal Year 2017-2018, \$1,123,148 in Fiscal Year 2018-2019, and \$970,828 in Fiscal Year 2019-2020.<sup>68</sup> However, CS/CS/SB 802, as amended in the Rules Committee, retains the current law regulation of talent agencies. In addition, the amendment adopted by the Judiciary Committee (reflected in CS/SB 802) retained the current law regulation of auctioneers and geologists. Accordingly, the reductions in licensing fees initially estimated by the DBPR will be smaller; the amount of these reductions is unknown.

The DBPR's Division of Condominiums (Yacht and Ship Brokers) estimates that the bill will result in a reduction of license and license renewal fees to be paid by the private sector of approximately \$4,300 in Fiscal Year 2017-2018, \$4,300 in Fiscal Year 2018-2019, and \$4,300 in Fiscal Year 2019-2020.<sup>69</sup>

The DBPR estimates that the bill will result in a reduction of the private sector's fees for licensing and renewal of licensing to be paid to the Florida State Boxing Commission of

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<sup>68</sup> Department of Business and Professional Regulation, *2017 Agency Legislative Bill Analysis (SB 802)*, page 9, Mar. 2, 2017 (on file with Senate Committee on Judiciary).

<sup>69</sup> *Id.* at page 10.

approximately \$1,000 in Fiscal Year 2017-2018, \$1,000 in Fiscal Year 2018-2019, and \$1,000 in Fiscal Year 2019-2020.<sup>70</sup>

### C. Government Sector Impact:

In short, the DBPR initially anticipated a reduction in the state government's revenue over the next three fiscal years of \$3,080,878. Also, as to the state government's expenditures in this same timeframe, the DBPR estimated \$246,470 less in General Revenue due to a reduction in the applicable 8% service charge.<sup>71</sup> The following chart displays these impacts in greater detail.<sup>72</sup> However, both the revenue and expenditure figures do not reflect changes made by amendments adopted in the Judiciary Committee and the Rules Committee, which restore the current law's licensing scheme as to three industries—talent agencies, auctioneering, and geological services. Both industries fall under the Division of Professions.

|                                                              | FY 2017-2018                                                                                                                  | FY 2018-2019                                                                                                                    | FY 2019-2020                                                                                                                  |
|--------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------|
| Revenues:<br>License fees<br>and Unlicensed<br>Activity Fees | Condominiums (Yacht<br>and Ship Brokers)<br>(\$4,300)<br><br>Professions<br>(\$971,003)<br><br>Boxing Commission<br>(\$1,000) | Condominiums (Yacht<br>and Ship Brokers)<br>(\$4,300)<br><br>Professions<br>(\$1,123,148)<br><br>Boxing Commission<br>(\$1,000) | Condominiums (Yacht<br>and Ship Brokers)<br>(\$4,300)<br><br>Professions<br>(\$970,828)<br><br>Boxing Commission<br>(\$1,000) |
| Expenditures:<br>Surcharge to GR<br>(non-operating)          | Condominiums (Yacht<br>and Ship Brokers)<br>(\$344)<br><br>Professions (\$77,680)<br><br>Boxing Commission<br>(\$80)          | Condominiums (Yacht<br>and Ship Brokers)<br>(\$344)<br><br>Professions (\$89,852)<br><br>Boxing Commission<br>(\$80)            | Condominiums (Yacht<br>and Ship Brokers)<br>(\$344)<br><br>Professions (\$77,666)<br><br>Boxing Commission<br>(\$80)          |

### VI. Technical Deficiencies:

None.

### VII. Related Issues:

None.

<sup>70</sup> *Id.*

<sup>71</sup> *Id.* at page 7. The sum of \$246,470 is 8% of \$3,080,878.

<sup>72</sup> Department of Business and Professional Regulation, *2017 Agency Legislative Bill Analysis (SB 802)*, page 9, Mar. 2, 2017 (on file with Senate Committee on Judiciary).

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 287.055, 326.004, 447.02, 447.09, 468.603, 468.617, 469.006, 469.009, 476.034, 476.114, 477.013, 477.0135, 477.019, 477.026, 481.203, 481.219, 481.221, 481.229, 481.303, 481.311, 481.317, 481.319, 481.321, 481.329, 548.003, and 548.017.

This bill repeals the following sections of the Florida Statutes: 447.04, 447.041, 447.045, 447.06, 447.12, 447.16, and 477.0132.

**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 28, 2017:**

The committee substitute:

- Retains current law dealing with the regulation of talent agencies;
- Allows local governments to contract with (in addition to employing) persons to perform building code duties (plans review and inspections of construction).
- Repeals a provision in s. 468.114(6, F.S., dealing with restricted barbering, in favor of a new s. 468.114(3), F.S. with *similar* provisions, but:
  - Adding requirements that a restricted barber be at least 16 years old and have a minimum of 1,000 hours of training; and
  - Deleting a current law requirement that an applicant for a restricted license for barbering not have been disciplined for a barbering violation in the last five years.

**CS by Judiciary on April 4, 2017:**

The committee substitute restores current law's requirement that a firm, corporation, or partnership that offers geological services to the public must first obtain a certificate of authorization from DBPR.

The bill would have lowered the number of hours of training a person must complete before taking the examination to become a barber by at least 200, but the committee substitute restores the training requirements in current law. The committee substitute also increases the required training before one may sit for the examination for "restricted barbering" licensure from 525 hours under the bill to 1,000 hours.

The committee substitute restores current law regarding licensing and regulation of auctioneers and auction businesses and restores the provisions creating and regulating the Auctioneer Recovery Fund. The recovery fund is used to reimburse persons who have lost money as a result of an auctioneer's or auction business's wrongdoing.

**B. Amendments:**

None.



417800

LEGISLATIVE ACTION

|            |   |       |
|------------|---|-------|
| Senate     | . | House |
| Comm: RCS  | . |       |
| 04/28/2017 | . |       |
|            | . |       |
|            | . |       |
|            | . |       |

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The Committee on Rules (Passidomo) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 187 - 473.

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

And the title is amended as follows:

Delete lines 18 - 58

and insert:

amending





912078

LEGISLATIVE ACTION

|            |   |       |
|------------|---|-------|
| Senate     | . | House |
| Comm: RCS  | . |       |
| 04/28/2017 | . |       |
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The Committee on Rules (Passidomo) recommended the following:

**Senate Amendment (with title amendment)**

Between lines 473 and 474  
insert:

Section 25. Subsections (1) and (2) of section 468.603,  
Florida Statutes, are amended to read:

468.603 Definitions.—As used in this part:

(1) "Building code administrator" or "building official"  
means any of those employees of municipal or county governments,  
or any person contracted by a municipal or county government,  
who have ~~with~~ building construction regulation responsibilities



912078

12 and who are charged with the responsibility for direct  
13 regulatory administration or supervision of plan review,  
14 enforcement, or inspection of building construction, erection,  
15 repair, addition, remodeling, demolition, or alteration projects  
16 that require permitting indicating compliance with building,  
17 plumbing, mechanical, electrical, gas, fire prevention, energy,  
18 accessibility, and other construction codes as required by state  
19 law or municipal or county ordinance. This term is synonymous  
20 with "building official" as used in the ~~administrative chapter~~  
21 ~~of the Standard Building Code and the South Florida Building~~  
22 Code. One person employed or contracted by each municipal or  
23 county government as a building code administrator or building  
24 official and who is so certified under this part may be  
25 authorized to perform any plan review or inspection for which  
26 certification is required by this part.

27 (2) "Building code inspector" means any of those employees  
28 of local governments or state agencies, or any person contracted  
29 by a local government or state agency, who have ~~with~~ building  
30 construction regulation responsibilities and who themselves  
31 conduct inspections of building construction, erection, repair,  
32 addition, or alteration projects that require permitting  
33 indicating compliance with building, plumbing, mechanical,  
34 electrical, gas, fire prevention, energy, accessibility, and  
35 other construction codes as required by state law or municipal  
36 or county ordinance.

37 Section 26. Subsection (3) of section 468.617, Florida  
38 Statutes, is amended to read:

39 468.617 Joint building code inspection department; other  
40 arrangements.—



912078

(3) Nothing in this part shall prohibit any county or municipal government, school board, community college board, state university, or state agency from entering into any contract with any person or entity for the provision of building code administrator, building official, or building code inspection services regulated under this part, and notwithstanding any other statutory provision, such county or municipal governments may enter into contracts.

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

And the title is amended as follows:

Between lines 58 and 59  
insert:

s. 468.603, F.S.; redefining the terms "building code administrator," "building official," and "building code inspector"; amending s. 468.617, F.S.; providing that a county or municipal government, school board, community college board, state university, or state agency is not prohibited from entering into any contract with any person or entity for the provision of building code administrator or building official services; amending



641970

LEGISLATIVE ACTION

|            |   |       |
|------------|---|-------|
| Senate     | . | House |
| Comm: RCS  | . |       |
| 04/28/2017 | . |       |
|            | . |       |
|            | . |       |
|            | . |       |

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The Committee on Rules (Passidomo) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 686 - 709  
and insert:  
to practice restricted barbering if the applicant:  
(a) Is at least 16 years of age;  
(b) Pays the required application fee;  
(c) Passes a written examination on the laws and rules  
governing the practice of barbering in Florida, as established  
by the board; and  
(d)1. Holds, or has within the previous 5 years held, an



641970

active valid license to practice barbering in another state or country, or has held a Florida barbering license which has been declared null and void for failure to renew the license; or

2. Has received a minimum of 1,000 hours of training as established by the board, which must include, but is not limited to, the equivalent of completion of services directly related to the practice of restricted barbering at one of the following:

a. A school of barbering licensed pursuant to chapter 1005;

b. A barbering program within the public school system; or

c. A government-operated barbering program in this state.

(4)(3) An applicant who meets the requirements set forth in subparagraphs (2)(c)1. and 2., or subparagraphs (3)(d)1. and 2., and who fails to pass the examination may take subsequent examinations as many times as necessary to pass, except that the board may specify by rule reasonable timeframes for rescheduling the examination and additional training requirements for applicants who, after the third attempt, fail to pass the examination. Prior to reexamination, the applicant must file the appropriate form and pay the reexamination fee as required by rule.

Section 29. Subsection (6) of section 476.144, Florida Statutes, is repealed.

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

And the title is amended as follows:

Delete line 74

and insert:

changes made by the act; repealing s. 476.144(6),

F.S., relating to requirements to apply for a



641970

41        restricted license to practice barbering; amending s.  
42        477.013, F.S.;

By the Committee on Judiciary; and Senator Passidomo

590-03415-17

2017802c1

1 A bill to be entitled  
 2 An act relating to regulated professions and  
 3 occupations; amending s. 287.055, F.S.; redefining the  
 4 term "design-build firm"; amending s. 326.004, F.S.;  
 5 deleting a requirement that yacht and ship brokers  
 6 maintain a separate license for each branch office and  
 7 related fees; amending s. 447.02, F.S.; deleting a  
 8 definition; repealing s. 447.04, F.S., relating to  
 9 business agents, licenses, and permits; repealing s.  
 10 447.041, F.S., relating to hearings; repealing s.  
 11 447.045, F.S., relating to certain confidential  
 12 information; repealing s. 447.06, F.S., relating to  
 13 the required registration of labor organizations;  
 14 amending s. 447.09, F.S.; deleting prohibitions  
 15 against specified actions; repealing s. 447.12, F.S.,  
 16 relating to registration fees; repealing s. 447.16,  
 17 F.S., relating to the applicability of ch. 447, F.S.;  
 18 amending s. 468.401, F.S.; deleting the definitions of  
 19 the terms "department," "license," and "licensee";  
 20 repealing s. 468.402, F.S., relating to the duties of  
 21 the Department of Business and Professional  
 22 Regulation; repealing s. 468.403, F.S., relating to  
 23 licensure and application requirements for owners and  
 24 operators of talent agencies; repealing s. 468.404,  
 25 F.S., relating to fees and renewal of talent agency  
 26 licenses; repealing s. 468.405, F.S., relating to  
 27 qualification for talent agency licenses; amending s.  
 28 468.406, F.S.; deleting the requirement for talent  
 29 agencies to file with the department an itemized

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

590-03415-17

2017802c1

30 schedule of certain fees and an amended or  
 31 supplemental schedule under certain circumstances;  
 32 repealing s. 468.407, F.S., relating to license  
 33 contents and posting; amending s. 468.408, F.S.;  
 34 deleting a requirement that a talent agency file a  
 35 bond for each talent agency license; deleting a  
 36 departmental requirement to approve talent agency  
 37 bonds; requiring that a bonding company notify the  
 38 talent agency, rather than the department, of certain  
 39 claims; amending s. 468.409, F.S.; deleting provisions  
 40 requiring talent agencies to make specified records  
 41 readily available for inspection by the department;  
 42 amending s. 468.410, F.S.; deleting a reference to the  
 43 department in talent agency contracts; amending s.  
 44 468.412, F.S.; revising the information that talent  
 45 agencies are required to enter on records; revising  
 46 the requirements for talent agencies to post certain  
 47 laws and rules; revising the information required in  
 48 talent agency publications; amending s. 468.413, F.S.;  
 49 deleting provisions relating to criminal violations  
 50 for failing to obtain or maintain licensure with the  
 51 department; deleting provisions authorizing the court  
 52 to suspend or revoke a license; deleting a provision  
 53 authorizing the department to impose a \$5,000 fine  
 54 under certain circumstances; repealing s. 468.414,  
 55 F.S., relating to collection and deposit of fines,  
 56 fees, and penalties by the department; amending s.  
 57 468.415, F.S.; deleting a provision authorizing the  
 58 department to permanently revoke a license; amending

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2017802c1

59 s. 469.006, F.S.; requiring an individual applicant to  
 60 apply for licensure in the name of the business  
 61 organization that he or she proposes to operate under;  
 62 requiring that a license be in the name of a  
 63 qualifying agent rather than the name of a business  
 64 organization; requiring the qualifying agent, rather  
 65 than the business organization, to report certain  
 66 changes in information; conforming provisions to  
 67 changes made by the act; amending s. 469.009, F.S.;  
 68 deleting the authority of the department to reprimand,  
 69 censure, or impose probation on certain business  
 70 organizations; amending s. 476.034, F.S.; defining and  
 71 redefining terms; amending s. 476.114, F.S.; providing  
 72 requirements for licensure by examination to practice  
 73 restricted barbering; conforming a provision to  
 74 changes made by the act; amending s. 477.013, F.S.;  
 75 revising the definition of the term "specialty";  
 76 repealing s. 477.0132, F.S., relating to hair  
 77 braiding, hair wrapping, and body wrapping  
 78 registration; amending s. 477.0135, F.S.; exempting  
 79 from certain licensure and registration requirements  
 80 persons whose occupations or practices are confined  
 81 solely to hair braiding, hair wrapping, or body  
 82 wrapping; amending s. 477.019, F.S.; deleting an  
 83 exemption from certain continuing education  
 84 requirements for persons whose occupations or  
 85 practices are confined solely to hair braiding, hair  
 86 wrapping, or body wrapping; amending s. 477.026, F.S.;  
 87 conforming a provision to changes made by the act;

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590-03415-17

2017802c1

88 amending s. 481.203, F.S.; defining the term "business  
 89 organization"; deleting the definition of the term  
 90 "certificate of authorization"; amending s. 481.219,  
 91 F.S.; revising the process by which a business  
 92 organization obtains the requisite license to perform  
 93 architectural services; requiring that a licensee or  
 94 an applicant apply to qualify a business organization  
 95 under certain circumstances; specifying application  
 96 requirements; authorizing the Board of Architecture  
 97 and Interior Design to deny an application under  
 98 certain circumstances; requiring that a qualifying  
 99 agent be a registered architect or a registered  
 100 interior designer under certain circumstances;  
 101 requiring that a qualifying agent notify the  
 102 department when she or he ceases to be affiliated with  
 103 a business organization; prohibiting a business  
 104 organization from engaging in certain practices until  
 105 it is qualified by a qualifying agent; authorizing the  
 106 executive director or the chair of the board to  
 107 authorize a certain registered architect or interior  
 108 designer to temporarily serve as the business  
 109 organization's qualifying agent for a specified  
 110 timeframe under certain circumstances; requiring the  
 111 qualifying agent to give written notice to the  
 112 department before engaging in practice under her or  
 113 his own name or in affiliation with another business  
 114 organization; requiring the board to certify an  
 115 applicant to qualify one or more business  
 116 organizations or to operate using a fictitious name

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2017802c1

117 under certain circumstances; conforming provisions to  
 118 changes made by the act; amending s. 481.221, F.S.;  
 119 requiring a business organization to include the  
 120 license number of a certain registered architect or  
 121 interior designer in any advertising; providing an  
 122 exception; conforming provisions to changes made by  
 123 the act; amending s. 481.229, F.S.; conforming  
 124 provisions to changes made by the act; reordering and  
 125 amending s. 481.303, F.S.; defining and redefining  
 126 terms; amending s. 481.321, F.S.; revising provisions  
 127 that require persons to display certificate numbers  
 128 under certain circumstances; conforming provisions to  
 129 changes made by the act; amending ss. 481.311,  
 130 481.317, and 481.319, F.S.; conforming provisions to  
 131 changes made by the act; amending s. 481.329, F.S.;  
 132 conforming a cross-reference; amending s. 548.017,  
 133 F.S.; revising the persons required to be licensed by  
 134 the State Boxing Commission; amending s. 548.003,  
 135 F.S.; conforming a provision to changes made by the  
 136 act; providing an effective date.

137  
 138 Be It Enacted by the Legislature of the State of Florida:

139  
 140 Section 1. Paragraph (h) of subsection (2) of section  
 141 287.055, Florida Statutes, is amended to read:

142 287.055 Acquisition of professional architectural,  
 143 engineering, landscape architectural, or surveying and mapping  
 144 services; definitions; procedures; contingent fees prohibited;  
 145 penalties.—

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590-03415-17

2017802c1

146 (2) DEFINITIONS.—For purposes of this section:

147 (h) A "design-build firm" means a partnership, corporation,  
 148 or other legal entity that:

149 1. Is certified under s. 489.119 to engage in contracting  
 150 through a certified or registered general contractor or a  
 151 certified or registered building contractor as the qualifying  
 152 agent; or

153 2. Is certified under s. 471.023 to practice or to offer to  
 154 practice engineering; qualified ~~certified~~ under s. 481.219 to  
 155 practice or to offer to practice architecture; or qualified  
 156 ~~certified~~ under s. 481.319 to practice or to offer to practice  
 157 landscape architecture.

158 Section 2. Subsection (13) of section 326.004, Florida  
 159 Statutes, is amended to read:

160 326.004 Licensing.—

161 (13) Each broker must maintain a principal place of  
 162 business in this state and may establish branch offices in the  
 163 state. ~~A separate license must be maintained for each branch~~  
 164 ~~office. The division shall establish by rule a fee not to exceed~~  
 165 ~~\$100 for each branch office license.~~

166 Section 3. Subsection (3) of section 447.02, Florida  
 167 Statutes, is amended to read:

168 447.02 Definitions.—The following terms, when used in this  
 169 chapter, shall have the meanings ascribed to them in this  
 170 section:

171 ~~(3) The term "department" means the Department of Business~~  
 172 ~~and Professional Regulation.~~

173 Section 4. Section 447.04, Florida Statutes, is repealed.

174 Section 5. Section 447.041, Florida Statutes, is repealed.

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175 Section 6. Section 447.045, Florida Statutes, is repealed.  
 176 Section 7. Section 447.06, Florida Statutes, is repealed.  
 177 Section 8. Subsections (6) and (8) of section 447.09,  
 178 Florida Statutes, are amended to read:  
 179 447.09 Right of franchise preserved; penalties.—It shall be  
 180 unlawful for any person:  
 181 ~~(6) To act as a business agent without having obtained and~~  
 182 ~~possessing a valid and subsisting license or permit.~~  
 183 ~~(8) To make any false statement in an application for a~~  
 184 ~~license.~~  
 185 Section 9. Section 447.12, Florida Statutes, is repealed.  
 186 Section 10. Section 447.16, Florida Statutes, is repealed.  
 187 Section 11. Section 468.401, Florida Statutes, is amended  
 188 to read:  
 189 468.401 ~~Regulation of~~ Talent agencies; definitions.—As used  
 190 in this part ~~or any rule adopted pursuant hereto~~:  
 191 (8)(1) “Talent agency” means any person who, for  
 192 compensation, engages in the occupation or business of procuring  
 193 or attempting to procure engagements for an artist.  
 194 (6)(2) “Owner” means any partner in a partnership, member  
 195 of a firm, or principal officer or officers of a corporation,  
 196 whose partnership, firm, or corporation owns a talent agency, or  
 197 any individual who is the sole owner of a talent agency.  
 198 (3) “Compensation” means any one or more of the following:  
 199 (a) Any money or other valuable consideration paid or  
 200 promised to be paid for services rendered by any person  
 201 conducting the business of a talent agency under this part;  
 202 (b) Any money received by any person in excess of that  
 203 which has been paid out by such person for transportation,

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204 transfer of baggage, or board and lodging for any applicant for  
 205 employment; or  
 206 (c) The difference between the amount of money received by  
 207 any person who furnishes employees, performers, or entertainers  
 208 for circus, vaudeville, theatrical, or other entertainments,  
 209 exhibitions, engagements, or performances and the amount paid by  
 210 him or her to such employee, performer, or entertainer.  
 211 (4) “Engagement” means any employment or placement of an  
 212 artist, where the artist performs in his or her artistic  
 213 capacity. However, the term “engagement” shall not apply to  
 214 procuring opera, music, theater, or dance engagements for any  
 215 organization defined in s. 501(c)(3) of the Internal Revenue  
 216 Code or any nonprofit Florida arts organization that has  
 217 received a grant from the Division of Cultural Affairs of the  
 218 Department of State or has participated in the state touring  
 219 program of the Division of Cultural Affairs.  
 220 ~~(5) “Department” means the Department of Business and~~  
 221 ~~Professional Regulation.~~  
 222 (5)(6) “Operator” means the person who is or who will be in  
 223 actual charge of a talent agency.  
 224 (2)(7) “Buyer” or “employer” means a person, company,  
 225 partnership, or corporation that uses the services of a talent  
 226 agency to provide artists.  
 227 (1)(8) “Artist” means a person performing on the  
 228 professional stage or in the production of television, radio, or  
 229 motion pictures; a musician or group of musicians; or a model.  
 230 (7)(9) “Person” means any individual, company, society,  
 231 firm, partnership, association, corporation, manager, or any  
 232 agent or employee of any of the foregoing.

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(10) "License" means a license issued by the Department of Business and Professional Regulation to carry on the business of a talent agency under this part.

(11) "Licensee" means a talent agency which holds a valid unrevoked and unforfeited license issued under this part.

Section 12. Section 468.402, Florida Statutes, is repealed.

Section 13. Section 468.403, Florida Statutes, is repealed.

Section 14. Section 468.404, Florida Statutes, is repealed.

Section 15. Section 468.405, Florida Statutes, is repealed.

Section 16. Subsection (1) of section 468.406, Florida Statutes, is amended to read:

468.406 Fees to be charged by talent agencies; rates; display.—

(1) Each owner or operator of a talent agency shall post applicant for a license shall file with the application an itemized schedule of maximum fees, charges, and commissions that which it intends to charge and collect for its services. This schedule may thereafter be raised only by filing with the department an amended or supplemental schedule at least 30 days before the change is to become effective. The schedule shall be posted in a conspicuous place in each place of business of the agency, and the schedule shall be printed in not less than a 30-point boldfaced type, except that an agency that uses written contracts containing maximum fee schedules need not post such schedules.

Section 17. Section 468.407, Florida Statutes, is repealed.

Section 18. Subsection (1) of section 468.408, Florida Statutes, is amended to read:

468.408 Bond required.—

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(1) A ~~There shall be filed with the department for each~~ talent agency shall obtain ~~license~~ a bond in the form of a surety by a reputable company engaged in the bonding business and authorized to do business in this state. The bond shall be for the penal sum of \$5,000, with one or more sureties ~~to be approved by the department~~, and be conditioned that the talent agency applicant conform to and not violate any of the duties, terms, conditions, provisions, or requirements of this part.

(a) If any person is aggrieved by the misconduct of any talent agency, the person may maintain an action in his or her own name upon the bond of the agency in any court having jurisdiction of the amount claimed. All such claims shall be assignable, and the assignee shall be entitled to the same remedies, upon the bond of the agency or otherwise, as the person aggrieved would have been entitled to if such claim had not been assigned. Any claim or claims so assigned may be enforced in the name of such assignee.

(b) The bonding company shall notify the talent agency department of any claim against such bond, and a copy of such notice shall be sent to the talent agency against which the claim is made.

Section 19. Section 468.409, Florida Statutes, is amended to read:

468.409 Records required to be kept.—Each talent agency shall keep on file the application, registration, or contract of each artist. In addition, such file must include the name and address of each artist, the amount of the compensation received, and all attempts to procure engagements for the artist. No such agency or employee thereof shall knowingly make any false entry

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in applicant files or receipt files. Each card or document in such files shall be preserved for a period of 1 year after the date of the last entry thereon. ~~Records required under this section shall be readily available for inspection by the department during reasonable business hours at the talent agency's principal office. A talent agency must provide the department with true copies of the records in the manner prescribed by the department.~~

Section 20. Subsection (3) of section 468.410, Florida Statutes, is amended to read:

468.410 Prohibition against registration fees; referral.—

(3) A talent agency shall give each applicant a copy of a contract, within 24 hours after the contract's execution, which lists the services to be provided and the fees to be charged. The contract shall state that the talent agency is regulated by the department and shall list the address and telephone number of the department.

Section 21. Section 468.412, Florida Statutes, is amended to read:

468.412 Talent agency regulations; prohibited acts.—

(1) A talent agency shall maintain a record sheet for each booking. This shall be the only required record of placement and shall be kept for a period of 1 year after the date of the last entry in the buyer's file.

(2) Each talent agency shall keep records in which shall be entered:

(a) The name and address of each artist employing such talent agency;

(b) The amount of fees received from each such artist; and

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(c) The employment in which each such artist is engaged at the time of employing such talent agency and the amount of compensation of the artist in such employment, if any, and the employments subsequently secured by such artist during the term of the contract between the artist and the talent agency and the amount of compensation received by the artist pursuant thereto, ~~and~~

~~(d) Other information which the department may require from time to time.~~

~~(3) All books, records, and other papers kept pursuant to this act by any talent agency shall be open at all reasonable hours to the inspection of the department and its agents. Each talent agency shall furnish to the department, upon request, a true copy of such books, records, and papers, or any portion thereof, and shall make such reports as the department may prescribe from time to time.~~

~~(3)(4) Each talent agency shall post in a conspicuous place in the office of such talent agency a printed copy of this part and of the rules adopted under this part. Such copies shall also contain the name and address of the officer charged with enforcing this part. The department shall furnish to talent agencies printed copies of any statute or rule required to be posted under this subsection.~~

~~(4)(a)(5)(a)~~ No talent agency may knowingly issue a contract for employment containing any term or condition which, if complied with, would be in violation of law, or attempt to fill an order for help to be employed in violation of law.

(b) A talent agency must advise an artist, in writing, that the artist has a right to rescind a contract for employment

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within the first 3 business days after the contract's execution.  
Any engagement procured by the talent agency for the artist  
during the first 3 business days of the contract remains  
commissionable to the talent agency.

(5) ~~(6)~~ No talent agency may publish or cause to be  
published any false, fraudulent, or misleading information,  
representation, notice, or advertisement. All advertisements of  
a talent agency by means of card, circulars, or signs, and in  
newspapers and other publications, and all letterheads,  
receipts, and blanks shall be printed and contain the licensed  
name, ~~department license number~~, and address of the talent  
agency and the words "talent agency." No talent agency may give  
any false information or make any false promises or  
representations concerning an engagement or employment to any  
applicant who applies for an engagement or employment.

(6) ~~(7)~~ No talent agency may send or cause to be sent any  
person as an employee to any house of ill fame, to any house or  
place of amusement for immoral purposes, to any place resorted  
to for the purposes of prostitution, to any place for the  
modeling or photographing of a minor in the nude in the absence  
of written permission from the minor's parents or legal  
guardians, the character of which places the talent agency could  
have ascertained upon reasonable inquiry.

(7) ~~(8)~~ No talent agency, without the written consent of the  
artist, may divide fees with anyone, including, but not limited  
to, an agent or other employee of an employer, a buyer, a  
casting director, a producer, a director, or any venue that uses  
entertainment. For purposes of this subsection, to "divide fees"  
includes the sharing among two or more persons of those fees

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charged to an artist for services performed on behalf of that  
artist, the total amount of which fees exceeds the amount that  
would have been charged to the artist by the talent agency  
alone.

(8) ~~(9)~~ If a talent agency collects from an artist a fee or  
expenses for obtaining employment for the artist, and the artist  
fails to procure such employment, or the artist fails to be paid  
for such employment if procured, such talent agency shall, upon  
demand therefor, repay to the artist the fee and expenses so  
collected. Unless repayment thereof is made within 48 hours  
after demand therefor, the talent agency shall pay to the artist  
an additional sum equal to the amount of the fee.

(9) ~~(10)~~ Each talent agency must maintain a permanent office  
and must maintain regular operating hours at that office.

(10) ~~(11)~~ A talent agency may assign an engagement contract  
to another talent agency licensed in this state only if the  
artist agrees in writing to the assignment. The assignment must  
occur, and written notice of the assignment must be given to the  
artist, within 30 days after the artist agrees in writing to the  
assignment.

Section 22. Section 468.413, Florida Statutes, is amended  
to read:

468.413 Legal requirements; penalties.—

~~(1) Each of the following acts constitutes a felony of the  
third degree, punishable as provided in s. 775.082, s. 775.083,  
or s. 775.084:~~

~~(a) Owning or operating, or soliciting business as, a  
talent agency in this state without first procuring a license  
from the department.~~

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~~(b) Obtaining or attempting to obtain a license by means of fraud, misrepresentation, or concealment.~~

~~(2) Each of the following acts constitutes a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083:~~

~~(a) Relocating a business as a talent agency, or operating under any name other than that designated on the license, unless written notification is given to the department and to the surety or sureties on the original bond, and unless the license is returned to the department for the recording thereon of such changes.~~

~~(b) Assigning or attempting to assign a license issued under this part.~~

~~(c) Failing to show on a license application whether or not the agency or any owner of the agency is financially interested in any other business of like nature and, if so, failing to specify such interest or interests.~~

~~(a)(d)~~ Failing to maintain the records required by s. 468.409 or knowingly making false entries in such records.

~~(b)(e)~~ Requiring as a condition to registering or obtaining employment or placement for any applicant that the applicant subscribe to, purchase, or attend any publication, postcard service, advertisement, resume service, photography service, school, acting school, workshop, or acting workshop.

~~(c)(f)~~ Failing to give each applicant a copy of a contract which lists the services to be provided and the fees to be charged ~~by, which states that the talent agency is regulated by the department, and which lists the address and telephone number of the department.~~

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~~(d)(g)~~ Failing to maintain a record sheet as required by s. 468.412(1).

~~(e)(h)~~ Knowingly sending or causing to be sent any artist to a prospective employer or place of business, the character or operation of which employer or place of business the talent agency knows to be in violation of the laws of the United States or of this state.

~~(3) The court may, in addition to other punishment provided for in subsection (2), suspend or revoke the license of any licensee under this part who has been found guilty of any misdemeanor listed in subsection (2).~~

~~(2)(4)~~ In the event that the department or any state attorney shall have probable cause to believe that a talent agency or other person has violated any provision of subsection (1), an action may be brought by the department or any state attorney to enjoin such talent agency or any person from continuing such violation, or engaging therein or doing any acts in furtherance thereof, and for such other relief as to the court seems appropriate. ~~In addition to this remedy, the department may assess a penalty against any talent agency or any person in an amount not to exceed \$5,000.~~

Section 23. Section 468.414, Florida Statutes, is repealed.

Section 24. Section 468.415, Florida Statutes, is amended to read:

468.415 Sexual misconduct in the operation of a talent agency.—The talent agent-artist relationship is founded on mutual trust. Sexual misconduct in the operation of a talent agency means violation of the talent agent-artist relationship through which the talent agent uses the relationship to induce

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or attempt to induce the artist to engage or attempt to engage in sexual activity. Sexual misconduct is prohibited in the operation of a talent agency. ~~If Any agent, owner, or operator of a licensed talent agency who commits is found to have committed sexual misconduct in the operation of a talent agency, the agency license shall be permanently revoked. Such agent, owner, or operator shall be permanently prohibited from acting disqualified from present and future licensure as an agent, owner, or operator of a Florida talent agency.~~

Section 25. Paragraphs (a) and (e) of subsection (2), subsection (3), paragraph (b) of subsection (4), and subsection (6) of section 469.006, Florida Statutes, are amended to read:

469.006 Licensure of business organizations; qualifying agents.—

(2)(a) If the applicant proposes to engage in consulting or contracting as a partnership, corporation, business trust, or other legal entity, or in any name other than the applicant's legal name, the legal entity must apply for licensure through a ~~qualifying agent or the~~ individual applicant must apply for licensure under the name of the business organization ~~fictitious name.~~

(e) ~~A~~ The license, when issued upon application of a ~~business organization,~~ must be in the name of the qualifying agent business organization, and the name of the business organization qualifying agent must be noted on the license ~~thereon.~~ If there is a change in any information that is required to be stated on the application, the qualifying agent business organization shall, within 45 days after such change occurs, mail the correct information to the department.

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(3) The qualifying agent must ~~shall~~ be licensed under this chapter in order for the business organization to be qualified ~~licensed~~ in the category of the business conducted for which the qualifying agent is licensed. If any qualifying agent ceases to be affiliated with such business organization, the agent shall so inform the department. In addition, if such qualifying agent is the only licensed individual affiliated with the business organization, the business organization shall notify the department of the termination of the qualifying agent and has ~~shall have~~ 60 days after ~~from~~ the date of termination of the qualifying agent's affiliation with the business organization ~~in~~ which to employ another qualifying agent. The business organization may not engage in consulting or contracting until a qualifying agent is employed, unless the department has granted a temporary nonrenewable license to the financially responsible officer, the president, the sole proprietor, a partner, or, in the case of a limited partnership, the general partner, who assumes all responsibilities of a primary qualifying agent for the entity. This temporary license only allows ~~shall only allow~~ the entity to proceed with incomplete contracts.

(4)

(b) Upon a favorable determination by the department, after investigation of the financial responsibility, credit, and business reputation of the qualifying agent and the new business organization, the department shall issue, without any examination, a new license in the qualifying agent's business organization's name, and the name of the business organization qualifying agent shall be noted thereon.

(6) Each qualifying agent shall pay the department an

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amount equal to the original fee for licensure ~~of a new business organization~~, if the qualifying agent for a business organization desires to qualify additional business organizations. The department shall require the agent to present evidence of supervisory ability and financial responsibility of each such organization. Allowing a licensee to qualify more than one business organization must ~~shall~~ be conditioned upon the licensee showing that the licensee has both the capacity and intent to adequately supervise each business organization. The department may ~~shall~~ not limit the number of business organizations that ~~which~~ the licensee may qualify except upon the licensee's failure to provide such information as is required under this subsection or upon a finding that the ~~such~~ information or evidence ~~as is~~ supplied is incomplete or unpersuasive in showing the licensee's capacity and intent to comply with the requirements of this subsection. A qualification for an additional business organization may be revoked or suspended upon a finding by the department that the licensee has failed in the licensee's responsibility to adequately supervise the operations of the business organization. Failure to adequately supervise the operations of a business organization is ~~shall be~~ grounds for denial to qualify additional business organizations.

Section 26. Subsection (1) of section 469.009, Florida Statutes, is amended to read:

469.009 License revocation, suspension, and denial of issuance or renewal.—

(1) The department may revoke, suspend, or deny the issuance or renewal of a license; reprimand, censure, or place

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on probation any contractor, consultant, or financially responsible officer, ~~or business organization~~; require financial restitution to a consumer; impose an administrative fine not to exceed \$5,000 per violation; require continuing education; or assess costs associated with any investigation and prosecution if the contractor or consultant, or business organization or officer or agent thereof, is found guilty of any of the following acts:

(a) Willfully or deliberately disregarding or violating the health and safety standards of the Occupational Safety and Health Act of 1970, the Construction Safety Act, the National Emission Standards for Asbestos, the Environmental Protection Agency Asbestos Abatement Projects Worker Protection Rule, the Florida Statutes or rules promulgated thereunder, or any ordinance enacted by a political subdivision of this state.

(b) Violating any provision of chapter 455.

(c) Failing in any material respect to comply with the provisions of this chapter or any rule promulgated hereunder.

(d) Acting in the capacity of an asbestos contractor or asbestos consultant under any license issued under this chapter except in the name of the licensee as set forth on the issued license.

(e) Proceeding on any job without obtaining all applicable approvals, authorizations, permits, and inspections.

(f) Obtaining a license by fraud or misrepresentation.

(g) Being convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to the practice of asbestos consulting or contracting or the ability to practice



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asbestos consulting or contracting.

(h) Knowingly violating any building code, lifesafety code, or county or municipal ordinance relating to the practice of asbestos consulting or contracting.

(i) Performing any act which assists a person or entity in engaging in the prohibited unlicensed practice of asbestos consulting or contracting, if the licensee knows or has reasonable grounds to know that the person or entity was unlicensed.

(j) Committing mismanagement or misconduct in the practice of contracting that causes financial harm to a customer. Financial mismanagement or misconduct occurs when:

1. Valid liens have been recorded against the property of a contractor's customer for supplies or services ordered by the contractor for the customer's job; the contractor has received funds from the customer to pay for the supplies or services; and the contractor has not had the liens removed from the property, by payment or by bond, within 75 days after the date of such liens;

2. The contractor has abandoned a customer's job and the percentage of completion is less than the percentage of the total contract price paid to the contractor as of the time of abandonment, unless the contractor is entitled to retain such funds under the terms of the contract or refunds the excess funds within 30 days after the date the job is abandoned; or

3. The contractor's job has been completed, and it is shown that the customer has had to pay more for the contracted job than the original contract price, as adjusted for subsequent change orders, unless such increase in cost was the result of

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circumstances beyond the control of the contractor, was the result of circumstances caused by the customer, or was otherwise permitted by the terms of the contract between the contractor and the customer.

(k) Being disciplined by any municipality or county for an act or violation of this chapter.

(l) Failing in any material respect to comply with the provisions of this chapter, or violating a rule or lawful order of the department.

(m) Abandoning an asbestos abatement project in which the asbestos contractor is engaged or under contract as a contractor. A project may be presumed abandoned after 20 days if the contractor terminates the project without just cause and without proper notification to the owner, including the reason for termination; if the contractor fails to reasonably secure the project to safeguard the public while work is stopped; or if the contractor fails to perform work without just cause for 20 days.

(n) Signing a statement with respect to a project or contract falsely indicating that the work is bonded; falsely indicating that payment has been made for all subcontracted work, labor, and materials which results in a financial loss to the owner, purchaser, or contractor; or falsely indicating that workers' compensation and public liability insurance are provided.

(o) Committing fraud or deceit in the practice of asbestos consulting or contracting.

(p) Committing incompetency or misconduct in the practice of asbestos consulting or contracting.

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(q) Committing gross negligence, repeated negligence, or negligence resulting in a significant danger to life or property in the practice of asbestos consulting or contracting.

(r) Intimidating, threatening, coercing, or otherwise discouraging the service of a notice to owner under part I of chapter 713 or a notice to contractor under chapter 255 or part I of chapter 713.

(s) Failing to satisfy, within a reasonable time, the terms of a civil judgment obtained against the licensee, or the business organization qualified by the licensee, relating to the practice of the licensee's profession.

For the purposes of this subsection, construction is considered to be commenced when the contract is executed and the contractor has accepted funds from the customer or lender.

Section 27. Subsection (2) of section 476.034, Florida Statutes, is amended, and subsections (6) and (7) are added to that section, to read:

476.034 Definitions.—As used in this act:

(2) "Barbering" means any of the following practices when done for remuneration and for the public, but not when done for the treatment of disease or physical or mental ailments: shaving, cutting, trimming, coloring, shampooing, arranging, dressing, curling, or waving the hair or beard or applying oils, creams, lotions, or other preparations to the face, scalp, or neck, either by hand or by mechanical appliances, and includes restricted barbering services.

(6) "Restricted barber" means a person who is licensed to engage in the practice of restricted barbering in this state

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under the authority of this chapter and is subject to the same requirements and restrictions as a barber, except as specified in s. 476.114.

(7) "Restricted barbering" means any of the following practices when done for remuneration and for the public, but not when done for the treatment of disease or physical or mental ailments: shaving, cutting, trimming, shampooing, arranging, dressing, or curling the hair or beard, including the application of shampoo, hair conditioners, shaving creams, hair tonic, and hair spray to the face, scalp, or neck, either by hand or by mechanical appliances. The term does not include the application of oils, creams, lotions, or other preparations to the face, scalp, or neck.

Section 28. Present subsection (3) of section 476.114, Florida Statutes, is redesignated as subsection (4) and amended, and a new subsection (3) is added to that section, to read:

476.114 Examination; prerequisites.—

(3) An applicant is eligible for licensure by examination to practice restricted barbering if he or she:

(a) Is at least 16 years of age;

(b) Pays the required application fee; and

(c) 1. Holds an active valid license to practice barbering in another state, has held the license for at least 1 year, and does not qualify for licensure by endorsement as provided for in s. 476.144(5); or

2. Has received a minimum of 1,000 hours of training as established by the board, which must include, but is not limited to, the equivalent of completion of services directly related to the practice of restricted barbering at one of the following:

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697 a. A school of barbering licensed pursuant to chapter 1005;  
 698 b. A barbering program within the public school system; or  
 699 c. A government-operated barbering program in this state.  
 700 ~~(4)(3)~~ An applicant who meets the requirements set forth in  
 701 subparagraphs (2)(c)1. and 2. or subparagraphs (3)(c)1. and 2.  
 702 who fails to pass the examination may take subsequent  
 703 examinations as many times as necessary to pass, except that the  
 704 board may specify by rule reasonable timeframes for rescheduling  
 705 the examination and additional training requirements for  
 706 applicants who, after the third attempt, fail to pass the  
 707 examination. Prior to reexamination, the applicant must file the  
 708 appropriate form and pay the reexamination fee as required by  
 709 rule.

710 Section 29. Subsection (6) of section 477.013, Florida  
 711 Statutes, is amended to read:  
 712 477.013 Definitions.—As used in this chapter:  
 713 (6) "Specialty" means the practice of one or more of the  
 714 following:  
 715 (a) Nail specialty, which includes:  
 716 1. Manicuring, or the cutting, polishing, tinting,  
 717 coloring, cleansing, adding, or extending of the nails, and  
 718 massaging of the hands. This term includes any procedure or  
 719 process for the affixing of artificial nails, except those nails  
 720 which may be applied solely by use of a simple adhesive; and-  
 721 2. ~~(b)~~ Pedicuring, or the shaping, polishing, tinting, or  
 722 cleansing of the nails of the feet, and massaging or beautifying  
 723 of the feet.  
 724 (b) ~~(c)~~ Facial specialty, which includes facials, or the  
 725 massaging or treating of the face or scalp with oils, creams,

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726 lotions, or other preparations, and skin care services.  
 727 (c) Full specialty, which includes manicuring, pedicuring,  
 728 and facial services, including all services as described in  
 729 paragraphs (a) and (b).  
 730 Section 30. Section 477.0132, Florida Statutes, is  
 731 repealed.  
 732 Section 31. Subsections (7), (8), and (9) are added to  
 733 section 477.0135, Florida Statutes, to read:  
 734 477.0135 Exemptions.—  
 735 (7) A license or registration is not required for a person  
 736 whose occupation or practice is confined solely to hair braiding  
 737 as defined in s. 477.013(9).  
 738 (8) A license or registration is not required for a person  
 739 whose occupation or practice is confined solely to hair wrapping  
 740 as defined in s. 477.013(10).  
 741 (9) A license or registration is not required for a person  
 742 whose occupation or practice is confined solely to body wrapping  
 743 as defined in s. 477.013(12).  
 744 Section 32. Paragraph (b) of subsection (7) of section  
 745 477.019, Florida Statutes, is amended to read:  
 746 477.019 Cosmetologists; qualifications; licensure;  
 747 supervised practice; license renewal; endorsement; continuing  
 748 education.—  
 749 (7)  
 750 ~~(b) Any person whose occupation or practice is confined~~  
 751 ~~solely to hair braiding, hair wrapping, or body wrapping is~~  
 752 ~~exempt from the continuing education requirements of this~~  
 753 ~~subsection.~~  
 754 Section 33. Paragraph (f) of subsection (1) of section

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477.026, Florida Statutes, is amended to read:

477.026 Fees; disposition.—

(1) The board shall set fees according to the following schedule:

~~(f) For hair braiders, hair wrappers, and body wrappers, fees for registration shall not exceed \$25.~~

Section 34. Subsection (5) of section 481.203, Florida Statutes, is amended to read:

481.203 Definitions.—As used in this part:

(5) "Business organization" means a partnership, a limited liability company, a corporation, or an individual operating under a fictitious name ~~"Certificate of authorization" means a certificate issued by the department to a corporation or partnership to practice architecture or interior design.~~

Section 35. Section 481.219, Florida Statutes, is amended to read:

481.219 Business organization; qualifying agents ~~Certification of partnerships, limited liability companies, and corporations.—~~

(1) ~~A licensee may~~ The practice of or the offer to practice architecture or interior design ~~by licensees through a business organization that offers corporation, limited liability company, or partnership offering architectural or interior design services to the public, or through by a business organization that offers corporation, limited liability company, or partnership offering architectural or interior design services to the public through such licensees under this part as agents, employees, officers, or partners, is permitted, subject to the provisions of this section.~~

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(2) If a licensee or an applicant proposes to engage in the practice of architecture or interior design as a business organization, the licensee or applicant must apply to qualify the business organization ~~For the purposes of this section, a certificate of authorization shall be required for a corporation, limited liability company, partnership, or person practicing under a fictitious name, offering architectural services to the public jointly or separately. However, when an individual is practicing architecture in her or his own name, she or he shall not be required to be certified under this section. Certification under this subsection to offer architectural services shall include all the rights and privileges of certification under subsection (3) to offer interior design services.~~

(a) An application to qualify a business organization must:

1. If the business is a partnership, state the names of the partnership and its partners.

2. If the business is a corporation, state the names of the corporation and its officers and directors and the name of each of its stockholders who is also an officer or a director.

3. If the business is operating under a fictitious name, state the fictitious name under which it is doing business.

4. If the business is not a partnership, a corporation, or operating under a fictitious name, state the name of such other legal entity and its members.

(b) The board may deny an application to qualify a business organization if the applicant or any person required to be named pursuant to paragraph (a) has been involved in past disciplinary actions or on any grounds for which an individual registration

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813 or certification may be denied.

814 (3) (a) A business organization may not engage in the  
 815 practice of architecture unless its qualifying agent is a  
 816 registered architect under this part. A business organization  
 817 may not engage in the practice of interior design unless its  
 818 qualifying agent is a registered architect or a registered  
 819 interior designer under this part. A qualifying agent who  
 820 terminates her or his affiliation with a business organization  
 821 shall immediately notify the department of such termination. If  
 822 the qualifying agent who terminates her or his affiliation is  
 823 the only qualifying agent for a business organization, the  
 824 business organization must be qualified by another qualifying  
 825 agent within 60 days after the termination. Except as provided  
 826 in paragraph (b), the business organization may not engage in  
 827 the practice of architecture or interior design until it is  
 828 qualified by a qualifying agent.

829 (b) In the event a qualifying architect or interior  
 830 designer ceases employment with the business organization, the  
 831 executive director or the chair of the board may authorize  
 832 another registered architect or interior designer employed by  
 833 the business organization to temporarily serve as its qualifying  
 834 agent for a period of no more than 60 days. The business  
 835 organization is not authorized to operate beyond such period  
 836 under this chapter absent replacement of the qualifying  
 837 architect or interior designer who has ceased employment.

838 (c) A qualifying agent shall notify the department in  
 839 writing before engaging in the practice of architecture or  
 840 interior design in her or his own name or in affiliation with a  
 841 different business organization, and she or he or such business

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842 organization shall supply the same information to the department  
 843 as required of applicants under this part ~~For the purposes of~~  
 844 ~~this section, a certificate of authorization shall be required~~  
 845 ~~for a corporation, limited liability company, partnership, or~~  
 846 ~~person operating under a fictitious name, offering interior~~  
 847 ~~design services to the public jointly or separately. However,~~  
 848 ~~when an individual is practicing interior design in her or his~~  
 849 ~~own name, she or he shall not be required to be certified under~~  
 850 ~~this section.~~

851 (4) All final construction documents and instruments of  
 852 service which include drawings, specifications, plans, reports,  
 853 or other papers or documents that involve ~~involving~~ the practice  
 854 of architecture which are prepared or approved for the use of  
 855 the business organization ~~corporation, limited liability~~  
 856 ~~company, or partnership~~ and filed for public record within the  
 857 state must ~~shall~~ bear the signature and seal of the licensee who  
 858 prepared or approved them and the date on which they were  
 859 sealed.

860 (5) All drawings, specifications, plans, reports, or other  
 861 papers or documents prepared or approved for the use of the  
 862 business organization ~~corporation, limited liability company, or~~  
 863 ~~partnership~~ by an interior designer in her or his professional  
 864 capacity and filed for public record within the state must ~~shall~~  
 865 bear the signature and seal of the licensee who prepared or  
 866 approved them and the date on which they were sealed.

867 ~~(6) The department shall issue a certificate of~~  
 868 ~~authorization to any applicant who the board certifies as~~  
 869 ~~qualified for a certificate of authorization and who has paid~~  
 870 ~~the fee set in s. 481.207.~~

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871 (6)(7) The board shall allow ~~certify~~ an applicant to  
 872 qualify one or more business organizations as qualified for a  
 873 ~~certificate of authorization~~ to offer architectural or interior  
 874 design services, or to use a fictitious name to offer such  
 875 services, if one of the following criteria is met ~~provided that:~~

876 (a) One or more of the principal officers of the  
 877 corporation or limited liability company, or one or more  
 878 partners of the partnership, and all personnel of the  
 879 corporation, limited liability company, or partnership who act  
 880 in its behalf in this state as architects, are registered as  
 881 provided by this part, ~~or~~

882 (b) One or more of the principal officers of the  
 883 corporation or one or more partners of the partnership, and all  
 884 personnel of the corporation, limited liability company, or  
 885 partnership who act in its behalf in this state as interior  
 886 designers, are registered as provided by this part.

887 ~~(8) The department shall adopt rules establishing a~~  
 888 ~~procedure for the biennial renewal of certificates of~~  
 889 ~~authorization.~~

890 ~~(9) The department shall renew a certificate of~~  
 891 ~~authorization upon receipt of the renewal application and~~  
 892 ~~biennial renewal fee.~~

893 (7)(10) Each qualifying agent approved to qualify a  
 894 business organization partnership, limited liability company,  
 895 and corporation certified under this section shall notify the  
 896 department within 30 days after ~~of~~ any change in the information  
 897 contained in the application upon which the qualification  
 898 ~~certification~~ is based. Any registered architect or interior  
 899 designer who qualifies the business organization shall ensure

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900 ~~corporation, limited liability company, or partnership as~~  
 901 ~~provided in subsection (7) shall be responsible for ensuring~~  
 902 ~~responsible supervising control of projects of the business~~  
 903 ~~organization entity and shall notify the department of the upon~~  
 904 ~~termination of her or his employment with a business~~  
 905 ~~organization qualified partnership, limited liability company,~~  
 906 ~~or corporation certified under this section shall notify the~~  
 907 ~~department of the termination within 30 days after such~~  
 908 ~~termination.~~

909 (8)(11) A business organization is not ~~No corporation,~~  
 910 ~~limited liability company, or partnership~~ shall be relieved of  
 911 responsibility for the conduct or acts of its agents, employees,  
 912 or officers by reason of its compliance with this section.  
 913 However, except as provided in s. 558.0035, the architect who  
 914 signs and seals the construction documents and instruments of  
 915 service is ~~shall be~~ liable for the professional services  
 916 performed, and the interior designer who signs and seals the  
 917 interior design drawings, plans, or specifications is ~~shall be~~  
 918 liable for the professional services performed.

919 ~~(12) Disciplinary action against a corporation, limited~~  
 920 ~~liability company, or partnership shall be administered in the~~  
 921 ~~same manner and on the same grounds as disciplinary action~~  
 922 ~~against a registered architect or interior designer,~~  
 923 ~~respectively.~~

924 (9)(13) ~~Nothing in~~ This section may not ~~shall~~ be construed  
 925 to mean that a certificate of registration to practice  
 926 architecture or interior design must ~~shall~~ be held by a business  
 927 organization ~~corporation, limited liability company, or~~  
 928 ~~partnership. Nothing in~~ This section does not prohibit a

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business organization from offering ~~prohibits corporations, limited liability companies, and partnerships from joining together to offer architectural, engineering, interior design, surveying and mapping, and landscape architectural services, or any combination of such services, to the public if the business organization, provided that each corporation, limited liability company, or partnership~~ otherwise meets the requirements of law.

(10)(14) A business organization that is qualified by a registered architect may ~~Corporations, limited liability companies, or partnerships holding a valid certificate of authorization to practice architecture shall be permitted to use in their title the term "interior designer" or "registered interior designer" in its title. designer."~~

Section 36. Subsection (10) of section 481.221, Florida Statutes, is amended to read:

481.221 Seals; display of certificate number.—

(10) Each registered architect or interior designer must, ~~and each corporation, limited liability company, or partnership holding a certificate of authorization, shall include her or his license its~~ certificate number in any newspaper, telephone directory, or other advertising medium used by the registered ~~licensee~~ architect, interior designer, corporation, limited liability company, or partnership. Each business organization must include the license number of the registered architect or interior designer who serves as the qualifying agent for that business organization in any newspaper, telephone directory, or other advertising medium used by the business organization, but is not required to display the license numbers of other registered architects or interior designers employed by the

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business organization ~~A corporation, limited liability company, or partnership is not required to display the certificate number of individual registered architects or interior designers employed by or working within the corporation, limited liability company, or partnership.~~

Section 37. Paragraphs (a) and (c) of subsection (5) of section 481.229, Florida Statutes, are amended to read:

481.229 Exceptions; exemptions from licensure.—

(5) (a) ~~Nothing contained in This part does not prohibit~~ shall prevent a registered architect or a qualified business organization partnership, limited liability company, or corporation holding a valid certificate of authorization to provide architectural services from performing any interior design service or from using the title "interior designer" or "registered interior designer."

(c) Notwithstanding any other provision of this part, a registered architect or qualified business organization certified any corporation, partnership, or person operating under a fictitious name which holds a certificate of authorization to provide architectural services must ~~shall~~ be qualified, without fee, ~~for a certificate of authorization to provide interior design services upon submission of a completed application for qualification therefor. For corporations, partnerships, and persons operating under a fictitious name which hold a certificate of authorization to provide interior design services, satisfaction of the requirements for renewal of the certificate of authorization to provide architectural services under s. 481.219 shall be deemed to satisfy the requirements for renewal of the certificate of authorization to~~

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~~provide interior design services under that section.~~

Section 38. Section 481.303, Florida Statutes, is reordered and amended to read:

481.303 Definitions.—As used in this chapter, the term:

(1) "Board" means the Board of Landscape Architecture.

(2) "Business organization" means any partnership, limited liability company, corporation, or individual operating under a fictitious name.

(4)~~(2)~~ "Department" means the Department of Business and Professional Regulation.

(8)~~(3)~~ "Registered landscape architect" means a person who holds a license to practice landscape architecture in this state under the authority of this act.

(3)~~(4)~~ "Certificate of registration" means a license issued by the department to a natural person to engage in the practice of landscape architecture.

~~(5) "Certificate of authorization" means a license issued by the department to a corporation or partnership to engage in the practice of landscape architecture.~~

(5)~~(6)~~ "Landscape architecture" means professional services, including, but not limited to, the following:

(a) Consultation, investigation, research, planning, design, preparation of drawings, specifications, contract documents and reports, responsible construction supervision, or landscape management in connection with the planning and development of land and incidental water areas, including the use of Florida-friendly landscaping as defined in s. 373.185, where, and to the extent that, the dominant purpose of such services or creative works is the preservation, conservation,

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enhancement, or determination of proper land uses, natural land features, ground cover and plantings, or naturalistic and aesthetic values;

(b) The determination of settings, grounds, and approaches for and the siting of buildings and structures, outdoor areas, or other improvements;

(c) The setting of grades, shaping and contouring of land and water forms, determination of drainage, and provision for storm drainage and irrigation systems where such systems are necessary to the purposes outlined herein; and

(d) The design of such tangible objects and features as are necessary to the purpose outlined herein.

(6)~~(7)~~ "Landscape design" means consultation for and preparation of planting plans drawn for compensation, including specifications and installation details for plant materials, soil amendments, mulches, edging, gravel, and other similar materials. Such plans may include only recommendations for the conceptual placement of tangible objects for landscape design projects. Construction documents, details, and specifications for tangible objects and irrigation systems shall be designed or approved by licensed professionals as required by law.

(7) "Qualifying agent" means an owner, officer, or director of the corporation, or partner of the partnership, who is responsible for the supervision, direction, and management of projects of the business organization with which she or he is affiliated and for ensuring that responsible supervising control is being exercised.

Section 39. Subsection (5) of section 481.321, Florida Statutes, is amended to read:



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1045 481.321 Seals; display of certificate number.-  
 1046 (5) Each registered landscape architect ~~must and each~~  
 1047 ~~corporation or partnership holding a certificate of~~  
 1048 ~~authorization shall include her or his its~~ certificate number in  
 1049 any newspaper, telephone directory, or other advertising medium  
 1050 used by the registered landscape architect, corporation, or  
 1051 partnership. A corporation or partnership ~~must is not required~~  
 1052 ~~to~~ display the certificate number ~~numbers~~ of at least one  
 1053 officer, director, owner, or partner who is a individual  
 1054 registered landscape architect ~~architects~~ employed by or  
 1055 practicing with the corporation or partnership.

1056 Section 40. Subsection (4) of section 481.311, Florida  
 1057 Statutes, is amended to read:  
 1058 481.311 Licensure.-  
 1059 ~~(4) The board shall certify as qualified for a certificate~~  
 1060 ~~of authorization any applicant corporation or partnership who~~  
 1061 ~~satisfies the requirements of s. 481.319.~~

1062 Section 41. Subsection (2) of section 481.317, Florida  
 1063 Statutes, is amended to read:  
 1064 481.317 Temporary certificates.-  
 1065 ~~(2) Upon approval by the board and payment of the fee set~~  
 1066 ~~in s. 481.307, the department shall grant a temporary~~  
 1067 ~~certificate of authorization for work on one specified project~~  
 1068 ~~in this state for a period not to exceed 1 year to an out-of-~~  
 1069 ~~state corporation, partnership, or firm, provided one of the~~  
 1070 ~~principal officers of the corporation, one of the partners of~~  
 1071 ~~the partnership, or one of the principals in the fictitiously~~  
 1072 ~~named firm has obtained a temporary certificate of registration~~  
 1073 ~~in accordance with subsection (1).~~

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

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1074 Section 42. Section 481.319, Florida Statutes, is amended  
 1075 to read:  
 1076 481.319 Corporate and partnership practice of landscape  
 1077 architecture, ~~certificate of authorization.~~-  
 1078 (1) The practice of or offer to practice landscape  
 1079 architecture by registered landscape architects registered under  
 1080 this part through a corporation or partnership offering  
 1081 landscape architectural services to the public, or through a  
 1082 corporation or partnership offering landscape architectural  
 1083 services to the public through individual registered landscape  
 1084 architects as agents, employees, officers, or partners, is  
 1085 permitted, subject to the provisions of this section, if:  
 1086 (a) One or more of the principal officers of the  
 1087 corporation, or partners of the partnership, and all personnel  
 1088 of the corporation or partnership who act in its behalf as  
 1089 landscape architects in this state are registered landscape  
 1090 architects; and  
 1091 (b) One or more of the officers, one or more of the  
 1092 directors, one or more of the owners of the corporation, or one  
 1093 or more of the partners of the partnership is a registered  
 1094 landscape architect and has applied to be the qualifying agent  
 1095 for the business organization; ~~and~~  
 1096 ~~(c) The corporation or partnership has been issued a~~  
 1097 ~~certificate of authorization by the board as provided herein.~~  
 1098 (2) All documents involving the practice of landscape  
 1099 architecture which are prepared for the use of the corporation  
 1100 or partnership must ~~shall~~ bear the signature and seal of a  
 1101 registered landscape architect.  
 1102 (3) A landscape architect applying to practice in the name

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

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1103 ~~of a An applicant~~ corporation must ~~shall~~ file with the  
 1104 department the names and addresses of all officers and board  
 1105 members of the corporation, including the principal officer or  
 1106 officers, duly registered to practice landscape architecture in  
 1107 this state and, also, of all individuals duly registered to  
 1108 practice landscape architecture in this state who shall be in  
 1109 responsible charge of the practice of landscape architecture by  
 1110 the corporation in this state. A landscape architect applying to  
 1111 practice in the name of a An applicant partnership must ~~shall~~  
 1112 file with the department the names and addresses of all partners  
 1113 of the partnership, including the partner or partners duly  
 1114 registered to practice landscape architecture in this state and,  
 1115 also, of an individual or individuals duly registered to  
 1116 practice landscape architecture in this state who shall be in  
 1117 responsible charge of the practice of landscape architecture by  
 1118 said partnership in this state.

1119 (4) Each landscape architect qualifying a partnership or  
 1120 ~~and~~ corporation ~~licensed~~ under this part must ~~shall~~ notify the  
 1121 department within 1 month of any change in the information  
 1122 contained in the application upon which the license is based.  
 1123 Any landscape architect who terminates her or his ~~or her~~  
 1124 employment with a partnership or corporation licensed under this  
 1125 part shall notify the department of the termination within 1  
 1126 month.

1127 ~~(5) Disciplinary action against a corporation or~~  
 1128 ~~partnership shall be administered in the same manner and on the~~  
 1129 ~~same grounds as disciplinary action against a registered~~  
 1130 ~~landscape architect.~~

1131 (5)(6) Except as provided in s. 558.0035, the fact that a

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1132 registered landscape architect practices landscape architecture  
 1133 through a corporation or partnership as provided in this section  
 1134 does not relieve the landscape architect from personal liability  
 1135 for her or his ~~or her~~ professional acts.

1136 Section 43. Subsection (5) of section 481.329, Florida  
 1137 Statutes, is amended to read:

1138 481.329 Exceptions; exemptions from licensure.—

1139 (5) This part does not prohibit any person from engaging in  
 1140 the practice of landscape design, as defined in s. 481.303(6) ~~s.~~  
 1141 ~~481.303(7)~~, or from submitting for approval to a governmental  
 1142 agency planting plans that are independent of, or a component  
 1143 of, construction documents that are prepared by a Florida-  
 1144 registered professional. Persons providing landscape design  
 1145 services shall not use the title, term, or designation  
 1146 "landscape architect," "landscape architectural," "landscape  
 1147 architecture," "L.A.," "landscape engineering," or any  
 1148 description tending to convey the impression that she or he is a  
 1149 landscape architect unless she or he is registered as provided  
 1150 in this part.

1151 Section 44. Subsection (1) of section 548.017, Florida  
 1152 Statutes, is amended to read:

1153 548.017 Participants, managers, and other persons required  
 1154 to have licenses.—

1155 (1) A participant, manager, trainer, second, ~~timekeeper,~~  
 1156 referee, judge, ~~announcer,~~ physician, matchmaker, or promoter  
 1157 must be licensed before directly or indirectly acting in such  
 1158 capacity in connection with any match involving a participant. A  
 1159 physician approved by the commission must be licensed pursuant  
 1160 to chapter 458 or chapter 459, must maintain an unencumbered

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1161 license in good standing, and must demonstrate satisfactory  
1162 medical training or experience in boxing, or a combination of  
1163 both, to the executive director before working as the ringside  
1164 physician.

1165 Section 45. Paragraph (i) of subsection (2) of section  
1166 548.003, Florida Statutes, is amended to read:

1167 548.003 Florida State Boxing Commission.—

1168 (2) The Florida State Boxing Commission, as created by  
1169 subsection (1), shall administer the provisions of this chapter.  
1170 The commission has authority to adopt rules pursuant to ss.  
1171 120.536(1) and 120.54 to implement the provisions of this  
1172 chapter and to implement each of the duties and responsibilities  
1173 conferred upon the commission, including, but not limited to:

1174 ~~(i) Designation and duties of a knockdown timekeeper.~~

1175 Section 46. This act shall take effect October 1, 2017.



**SENATOR KATHLEEN  
PASSIDOMO**  
28th District

## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Ethics and Elections, *Chair*  
Healthy Policy, *Vice Chair*  
Appropriations Subcommittee on Health  
and  
Human Services  
Appropriations Subcommittee on  
Transportation,  
Tourism, and Economic Development  
Commerce and Tourism

**SELECT COMMITTEE:**  
Joint Select Committee on Collective  
Bargaining

**JOINT COMMITTEE:**  
Joint Legislative Auditing Committee

April 5, 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:

CS for Senate Bill 802, Regulated Professions and Occupations, 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,

A handwritten signature in black ink, appearing to read "K. Passidomo", followed by a horizontal line.

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](http://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)

4-28-17  
Meeting Date

802  
Bill Number (if applicable)

641970  
Amendment Barcode (if applicable)

Topic \_\_\_\_\_

Name BOB HARRIS

Job Title \_\_\_\_\_

Address 2618 Centennial Rd.  
Tallahassee FL 32308  
City State Zip

Phone 222-0720

Email bharris@lawfla.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing DeVry University

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

4/28/17

Meeting Date

802

Bill Number (if applicable)

Topic Deregulation of Professions

Amendment Barcode (if applicable)

Name Samantha Padgett

Job Title VP & General Counsel

Address 227 S. Adams St.

Phone 222-4082

Street

Tallahassee

FL

32301

City

State

Zip

Email Samantha@frf.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Beauty Industry Council of the Florida Retail Federation

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/28/17

Meeting Date

SB802

Bill Number (if applicable)

Topic Regulation of Professions

Amendment Barcode (if applicable)

Name Jo Morris

Job Title Legislative Affairs Director

Address 26001 Blairstone Rd.

Phone

Street

Tallahassee

FL

32399

City

State

Zip

Email

Speaking: ☒ For ☐ Against ☐ Information

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

Representing DBPR

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

4-28-2017  
Meeting Date

SB 802  
Bill Number (if applicable)

Topic DEREGULATION OF PROFESSIONS

Amendment Barcode (if applicable)

Name BRAD BRACKINS

Job Title THE JAMES MADISON INSTITUTE

Address 100 NORTH DUVAL STREET

Phone (850) 386-3131

Street

TALLAHASSEE

City

FL

State

32301

Zip

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing THE JAMES MADISON INSTITUTE

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)



THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

Meeting Date \_\_\_\_\_

802  
Bill Number (if applicable) \_\_\_\_\_

Topic \_\_\_\_\_

Amendment Barcode (if applicable) \_\_\_\_\_

Name Andrew Hosek

Job Title Policy Analyst

Address 200 W College Ave

Phone \_\_\_\_\_

Street

Tallahassee

FL

City

State

Zip

Email ahosek@afph.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Americans for Prosperity

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4/12/2017

Meeting Date

Topic \_\_\_\_\_

Bill Number 802  
(if applicable)

Name BRIAN PITTS

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG

FLORIDA

33705

City

State

Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☐ Against ☒ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/20/11)

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/SB 850

INTRODUCER: Banking and Insurance Committee and Senator Rouson

SUBJECT: Public Housing Authority Insurance

DATE: April 27, 2017

REVISED: \_\_\_\_\_

| ANALYST      | STAFF DIRECTOR | REFERENCE | ACTION           |
|--------------|----------------|-----------|------------------|
| 1. Billmeier | Knudson        | BI        | <b>Fav/CS</b>    |
| 2. Present   | Yeatman        | CA        | <b>Favorable</b> |
| 3. Billmeier | Phelps         | RC        | <b>Favorable</b> |

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 850 allows a for-profit or not-for-profit corporation, limited liability company, or other similar business entity in which a public housing authority holds an ownership interest or participates in its governance under s. 421.08(8), F.S., to join a self-insurance fund formed under s. 624.46226, F.S., in which the public housing authority participates. The entity may join the self-insurance fund solely to insure risks related to public housing.

Section 626.46226, F.S., governs public housing authority self-insurance funds. It provides that any two or more public housing authorities may form a self-insurance fund, if the fund:

- Has annual premiums over \$5 million;
- Uses a qualified actuary who develops actuarially sound rates, and certifies to the Office of Insurance Regulation (OIR) annually that the rates are not excessive, inadequate, or unfairly discriminatory;
- Establishes a reserve for losses and loss adjustment expenses that the qualified actuary determines are adequate;
- Maintains an excess insurance and reserve evaluation program, which obtains excess insurance from an admitted insurer or a surplus lines insurer and has no more than \$350,000, per loss, in retained risk;
- Annually submits audited financial statements to OIR, which are audited by an independent certified public accountant within 6 months after the end of the fiscal year;
- Is governed by a body of public housing authority commissioners or persons appointed by the commissioners that are members of the public housing authority self-insurance fund;

- Is administered by licensed, knowledgeable people or business entities with required experience;
- Provides OIR with copies of its member contracts; and
- Annually files a board certification to OIR that the requirements of s. 624.46226, F.S., are being met.

## II. Present Situation:

Florida's role in housing and urban development is outlined in part I of ch. 421, F.S., (Housing Authorities Law), ch. 422, F.S., (Housing Cooperation Law), and ch. 423, F.S., (Tax Exemption of Housing Authorities). Section 421.02, F.S., finds that there is a shortage of safe or sanitary dwelling accommodations available at rents that persons of low income can afford. To provide such accommodations, housing authorities may acquire property to be used for, or in connection with, housing projects.<sup>1</sup> Public money may only be spent to acquire private property for exclusively public uses and purposes, and the purposes must be determined to be governmental functions of public concern.<sup>2</sup>

Current law provides for the creation of special district, city, county, and regional housing authorities. The determination of the need for a city or county housing authority may be made by the governing body of the city or county or upon the filing of a petition signed by 25 residents.<sup>3</sup> A regional housing authority may be created by two or more contiguous counties if a regional entity would be a more economically or administratively efficient unit.<sup>4</sup> The powers of each authority are vested in the commissioners and action may be taken upon a majority vote of the commissioners.<sup>5</sup> Among other things, housing authorities have the power to:

- Acquire, lease, and operate housing projects;
- Provide for the construction, reconstruction, improvement, alteration, or repair of any housing project;
- Lease or rent dwellings, houses, accommodations, lands, buildings, structures, or facilities embraced in any housing project;
- Invest funds held in reserves or sinking funds;
- Organize and create for-profit corporations, not-for-profit corporations, limited liability companies, and other similar business entities in order to acquire, lease, construct, rehabilitate, manage, or operate multifamily or single-family residential projects.<sup>6</sup>

Section 421.21, F.S., empowers a housing authority to borrow money or accept grants or other financial assistance from the federal government for housing projects. This section also allows a housing authority to take over or lease or manage any housing project or undertaking constructed or owned by the federal government. In addition, an authority is authorized to do any and all things necessary or desirable to secure the aid or cooperation of the federal government for any housing project by the housing authority. Because the federal government has exhibited an interest in shifting more resources from ownership of public housing projects to offering tenants

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<sup>1</sup> Section 421.02(3), F.S.

<sup>2</sup> *Id.*

<sup>3</sup> Sections 421.04, 421.05, and 421.27, F.S.

<sup>4</sup> Section 421.28(3)(b), F.S.

<sup>5</sup> Section 421.05(2), F.S.

<sup>6</sup> Section 421.08, F.S.

assistance with their rental costs through the Rental Assistance Demonstration Program, it is anticipated that public housing authorities will organize business entities to facilitate local ownership of public housing projects.<sup>7</sup>

### **Public Housing Authority Self-Insurance Funds**

As an alternative to obtaining insurance from a licensed insurance company, state law allows certain persons to form and obtain insurance coverage from a self-insurance fund. In general, the members of a self-insurance fund assume the risk of loss among themselves, rather than transferring the risk to an insurance company. Various types of self-insurance funds may be established, with varying degrees of state regulation. For certain self-insurance funds, the law requires approval and licensure by the OIR, subject to regulatory requirements that are less restrictive than for insurance companies, but which are intended to provide adequate protections against insolvency and unfair trade practices. For other funds, however, there is little or no regulatory oversight by OIR if certain criteria are met.

Types of self-insurance funds include:

- Commercial self-insurance funds;<sup>8</sup>
- Group self-insurance funds;<sup>9</sup>
- Local government self-insurance funds;<sup>10</sup>
- Self-insured public utilities;<sup>11</sup>
- Public housing authorities self-insurance funds;<sup>12</sup>
- Independent educational institution self-insurance funds;<sup>13</sup>
- Corporation not for profit self-insurance funds;<sup>14</sup>
- Electric cooperative self-insurance fund;<sup>15</sup> and
- Hospital alliances.<sup>16</sup>

Section 624.46226, F.S., governs public housing authority trust funds. It provides that any two or more public housing authorities may form a self-insurance fund, if the fund:

- Has annual premiums over \$5 million;
- Uses a qualified actuary who develops actuarially sound rates, and certifies to OIR annually that the rates are not excessive, inadequate, or unfairly discriminatory;
- Establishes a reserve for losses and loss adjustment expenses that the qualified actuary determines are adequate;

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<sup>7</sup> Information on the federal Rental Assistance Demonstration program can be found at <https://portal.hud.gov/hudportal/HUD?src=/RAD> (last accessed April 10, 2017).

<sup>8</sup> Section 624.462, F.S.

<sup>9</sup> Section 624.4621, F.S.

<sup>10</sup> Section 624.4622, F.S.

<sup>11</sup> Section 624.46225, F.S.

<sup>12</sup> Section 624.46226, F.S.

<sup>13</sup> Section 624.4623, F.S.

<sup>14</sup> Section 624.4625, F.S.

<sup>15</sup> Section 624.4626, F.S.

<sup>16</sup> Section 395.106, F.S.

- Maintains an excess insurance and reserve evaluation program, which obtains excess insurance from an admitted insurer or a surplus lines insurer and has no more than \$350,000 per loss, in retained risk;
- Annually submits audited financial statements to OIR, which are audited by an independent certified public accountant within 6 months after the end of the fiscal year;
- Is governed by a body of public housing authority commissioners or persons appointed by the commissioners that are members of the public housing authority self-insurance fund;
- Is administered by licensed, knowledgeable people or business entities with required experience;
- Provides OIR with copies of its member contracts; and
- Annually files a board certification to OIR that the requirements of s. 624.46226, F.S., are being met.

If the self-insurance fund meets these requirements, then they are not considered insurers for purposes of the insurance guaranty associations or subject to the provisions of the group self-insurance fund law. Such self-insurance funds are also relieved of any workers' compensation reporting requirement that is unique to group self-insurance funds. Public housing authority self-insurance funds that fail to meet the stated requirements must operate under the more extensive regulations of the Commercial Self-Insurance Fund Act.<sup>17</sup>

Other benefits of operating as a public housing authority self-insurance fund include:

- Reduced premium taxes;
- Exemption from the Florida Insurance Guaranty Association Assessment, the Florida Hurricane Catastrophe Fund assessment, and various insurance risk apportionment plans; and
- Authority to purchase reinsurance.

The Florida Public Housing Authority Self Insurance Fund is the only self-insurance fund operating under s. 624.46226, F.S.<sup>18</sup>

Under current law, entities organized by a public housing authority pursuant to s. 421.08(8), F.S., cannot purchase insurance through a public housing authority self-insurance fund because participation in such funds is limited to public housing authorities.

### **III. Effect of Proposed Changes:**

The bill allows a for-profit or not-for-profit corporation, limited liability company, or other similar business entity in which a public housing authority holds an ownership interest or participates in its governance under s. 421.08(8), F.S., to join a self-insurance fund formed under s. 624.46226, F.S., in which the public housing authority participates. The entity may join the self-insurance fund solely to insure risks related to public housing.

The bill takes effect July 1, 2017.

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<sup>17</sup> The Commercial Self-Insurance Fund Act is governed by ss. 624.460-624.488, F.S.

<sup>18</sup> Information from The Florida Public Housing Authority Self-Insurance Fund Website, <https://www.fphasif.com/> (last accessed April 10, 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 section 624.46226 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 March 27, 2017:**

Clarifies that the entity formed pursuant to s. 421.08(8), F.S., may only participate in the self-insurance fund to insure risks related to public housing.

B. Amendments:

None.

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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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By the Committee on Banking and Insurance; and Senator Rouson

597-02937-17

2017850c1

A bill to be entitled

An act relating to public housing authority insurance; amending s. 624.46226, F.S.; authorizing certain business entities to join, solely for a specified purpose, self-insurance funds participated in by public housing authorities who hold ownership interests in or who participate in governing such entities; authorizing reinsurance companies to issue coverage directly to certain self-insuring entities organized by a public housing authority under certain circumstances; specifying that such entities are considered insurers under certain circumstances; requiring that reinsurance contracts issued to such entities receive the same tax treatment as contracts issued to insurance companies; revising construction; providing an effective date.

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

Section 1. Subsections (1) and (7) of section 624.46226, Florida Statutes, are amended to read:

624.46226 Public housing authorities self-insurance funds; exemption for taxation and assessments.—

(1) Notwithstanding any other provision of law, any two or more public housing authorities in the state as defined in chapter 421 may form a self-insurance fund for the purpose of pooling and spreading liabilities of its members as to any one or combination of casualty risk or real or personal property risk of every kind and every interest in such property against

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

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loss or damage from any hazard or cause and against any loss consequential to such loss or damage, provided the self-insurance fund that is created:

(a) Has annual normal premiums in excess of \$5 million.

(b) Uses a qualified actuary to determine rates using accepted actuarial principles and annually submits to the office a certification by the actuary that the rates are actuarially sound and are not inadequate, as defined in s. 627.062.

(c) Uses a qualified actuary to establish reserves for loss and loss adjustment expenses and annually submits to the office a certification by the actuary that the loss and loss adjustment expense reserves are adequate. If the actuary determines that reserves are not adequate, the fund shall file with the office a remedial plan for increasing the reserves or otherwise addressing the financial condition of the fund, subject to a determination by the office that the fund will operate on an actuarially sound basis and the fund does not pose a significant risk of insolvency.

(d) Maintains a continuing program of excess insurance coverage and reserve evaluation to protect the financial stability of the fund in an amount and manner determined by a qualified and independent actuary. At a minimum, this program must:

1. Purchase excess insurance from authorized insurance carriers or eligible surplus lines insurers.

2. Retain a per-loss occurrence that does not exceed \$350,000.

(e) Submits to the office annually an audited fiscal year-end financial statement by an independent certified public

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accountant within 6 months after the end of the fiscal year.

(f) Has a governing body which is comprised entirely of commissioners of public housing authorities that are members of the public housing authority self-insurance fund or persons appointed by the commissioners of public housing authorities that are members of the public housing authority self-insurance fund.

(g) Uses knowledgeable persons or business entities to administer or service the fund in the areas of claims administration, claims adjusting, underwriting, risk management, loss control, policy administration, financial audit, and legal areas. Such persons must meet all applicable requirements of law for state licensure and must have at least 5 years' experience with commercial self-insurance funds formed under s. 624.462, self-insurance funds formed under s. 624.4622, or domestic insurers.

(h) Submits to the office copies of contracts used for its members that clearly establish the liability of each member for the obligations of the fund.

(i) Annually submits to the office a certification by the governing body of the fund that, to the best of its knowledge, the requirements of this section are met.

A for-profit or not-for-profit corporation, limited liability company, or other similar business entity in which a public housing authority holds an ownership interest or participates in its governance under s. 421.08(8) may join a self-insurance fund formed under this section in which such public housing authority participates. Such for-profit or not-for-profit corporation,

597-02937-17

2017850c1

limited liability company, or other similar business entity may join the self-insurance fund solely to insure risks related to public housing.

(7) Reinsurance companies complying with s. 624.610 may issue coverage directly to a public housing authority or an entity organized by a public housing authority under s. 421.08(8) if such public housing authority or entity self-insures ~~self-insuring~~ its liabilities under this section. A public housing authority purchasing reinsurance or an entity that is organized by a public housing authority under s. 421.08(8) and that is purchasing reinsurance shall be considered an insurer for the sole purpose of entering into such reinsurance contracts. Contracts of reinsurance issued to public housing authorities self-insuring under this section or to entities that are organized by public housing authorities under s. 421.08(8) and that are self-insuring under this section shall receive the same tax treatment as reinsurance contracts issued to insurance companies. However, the purchase of reinsurance coverage by a public housing authority self-insuring under this section or by an entity that is organized by a public housing authority under s. 421.08(8) and that is self-insuring under this section shall not be construed as authorization to otherwise act as an insurer.

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

## THE FLORIDA SENATE

**APPEARANCE RECORD**

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

4/28/17

Meeting Date

850

Bill Number (if applicable)

Topic Public Housing Authorities

Amendment Barcode (if applicable)

Name Mike Rogers

Job Title \_\_\_\_\_

Address 4961 Southern Oaks DrPhone 850-566-2560

Street

TallahasseeFL32308Email Mike@southernadvocacygroup.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ InformationWaive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)Representing Florida Public Housing Authority Self Insurance GroupAppearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee Rules

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BILL: CS/SB 856

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Broxson

SUBJECT: Education

DATE: April 27, 2017

REVISED: \_\_\_\_\_

| ANALYST       | STAFF DIRECTOR | REFERENCE | ACTION             |
|---------------|----------------|-----------|--------------------|
| 1. Benvenisty | Graf           | ED        | <b>Favorable</b>   |
| 2. Ferrin     | Ferrin         | GO        | <b>Fav/CS</b>      |
| 3. Benvenisty | Phelps         | RC        | <b>Unfavorable</b> |

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 856 clarifies that a district school board must issue contracts on an annual basis to instructional personnel hired on or after July 1, 2011, by specifying that, except under certain circumstances, the district school board may not:

- Award an annual contract based on a contingency or condition that is not expressed in s. 1012.335, F.S.; or
- Alter or limit its authority to award or not award an annual contract as provided in s. 1012.335, F.S.

The bill takes effect upon becoming law.

**II. Present Situation:**

Instructional personnel provide direct instructional services or direct instructional support to K-12 students.<sup>1</sup> Instructional personnel include:<sup>2</sup>

- Classroom teachers;<sup>3</sup>
- Staff who provide student personal services (e.g., guidance counselors, social workers, career specialists, and school psychologists);
- Librarians and media specialists;

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<sup>1</sup> Section 1012.01(2), F.S.

<sup>2</sup> *Id.* at (2)(a)-(e).

<sup>3</sup> Classroom teachers include substitute teachers. Section 1012.01(2)(a), F.S.

- Other instructional staff (e.g., learning resource specialists);<sup>4</sup> and
- Education paraprofessionals.<sup>5</sup>

Three types of contracts are used to employ instructional personnel in Florida: continuing contracts,<sup>6</sup> professional service contracts<sup>7</sup>, and annual contracts.<sup>8</sup>

An annual contract is an employment contract for a period of no longer than one school year that a district school board may choose to award or not award without cause.<sup>9</sup> As of July 1, 2011, instructional personnel under an annual contract and personnel hired thereafter may only be employed on an annual contract basis.<sup>10</sup> The first annual contract for newly hired instructional personnel is a one-year probationary contract, which may be terminated without cause or from which the employee may resign without breach of contract.<sup>11</sup> “Newly hired instructional personnel” include employees new to the profession or employees with experience who are new to the school district.<sup>12</sup>

Upon successful completion of the one-year probationary contract, district school boards may award subsequent annual contracts if the employee:<sup>13</sup>

- Holds an active professional certificate or temporary certificate issued pursuant to Florida law and rules of the State Board of Education.
- Has been recommended by the superintendent based upon his or her performance evaluation, and approved by the district school board.
- Has not received two consecutive annual performance evaluation ratings of unsatisfactory, two annual performance evaluation ratings of unsatisfactory within a 3-year period, or three consecutive annual performance evaluation ratings of needs improvement or a combination of needs improvement and unsatisfactory pursuant to Florida law.

### III. Effect of Proposed Changes:

The bill clarifies that a district school board must issue contracts on an annual basis to instructional personnel hired on or after July 1, 2011, by specifying that, except under certain circumstances, the district school board may not:

- Award an annual contract based on a contingency or condition that is not expressed in s. 1012.335, F.S.; or
- Alter or limit its authority to award or not award an annual contract as provided in s. 1012.335, F.S.

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<sup>4</sup> *Id.* at (2)(d).

<sup>5</sup> Educational paraprofessionals are individuals who are under the direct supervision of an instructional staff member, aiding in the instructional process. *Id.* at (2)(e). The term includes classroom paraprofessionals in regular instruction, exceptional education paraprofessionals, career education paraprofessionals, adult education paraprofessionals, library paraprofessionals, physical education and playground paraprofessionals, and other school-level paraprofessionals. *Id.*

<sup>6</sup> Section 1012.33(3)(a)1.-3., F.S. (2010).

<sup>7</sup> Section 231.36(1) and (3)(a)1.-4., F.S. (1981).

<sup>8</sup> Section 1012.335(1)(a), F.S.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at (2)(a)-(b), F.S.

<sup>11</sup> *Id.* at (1)(c).

<sup>12</sup> Section 1012.335(1)-(2), F.S. For the purpose of awarding annual contracts, the term “instructional personnel” does not include substitute teachers. Section 1012.335(1)(b), F.S.

<sup>13</sup> *Id.* at (2)(c).

Additionally, the bill specifies that the provisions enumerated above only apply to collective bargaining agreements entered into or renewed by a district school board on or after this legislation is enacted. Accordingly, instructional personnel hired after the effective date of this bill may not be awarded an annual contract based on a contingency or condition that is not currently authorized in law.

The bill takes effect upon becoming law.

**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:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 1012.335 of the Florida Statutes.

**IX. Additional Information:**

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

**CS by Governmental Oversight and Accountability on April 24, 2017:**

The amendment creates an exception for a county as defined in s. 125.011(1), F.S.<sup>14</sup>

- B. Amendments:

None.

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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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<sup>14</sup> Miami-Dade County is the only county that meets the criteria set forth in s. 125.011(1), F.S.

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

585-04366-17

2017856c1

1 A bill to be entitled  
2 An act relating to education; amending s. 1012.335,  
3 F.S.; prohibiting a district school board from  
4 awarding an annual contract for instructional  
5 personnel under certain circumstances; prohibiting a  
6 district school board from altering or limiting its  
7 authority to award or not award an annual contract  
8 under certain circumstances; providing applicability;  
9 providing a directive to the Division of Law Revision  
10 and Information; providing an effective date.  
11  
12 Be It Enacted by the Legislature of the State of Florida:  
13  
14 Section 1. Paragraph (d) is added to subsection (2) of  
15 section 1012.335, Florida Statutes, to read:  
16 1012.335 Contracts with instructional personnel hired on or  
17 after July 1, 2011.—  
18 (2) EMPLOYMENT.—  
19 (d) Except in a county as defined in s. 125.011(1), a  
20 district school board may not:  
21 1. Award an annual contract on the basis of any contingency  
22 or condition not expressly authorized in this section; or  
23 2. Alter or limit its authority to award or not award an  
24 annual contract as provided in this section.  
25  
26 This paragraph applies only to a collective bargaining agreement  
27 entered into or renewed by a district school board on or after  
28 the effective date of this act.  
29 Section 2. The Division of Law Revision and Information is

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585-04366-17

2017856c1

30 directed to replace the phrase "the effective date of this act"  
31 as it occurs in section 1 of this act with the date this act  
32 takes effect.  
33 Section 3. This act shall take effect upon becoming a law.

Page 2 of 2

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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)

4-28-17

Meeting Date

856

Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name BOB HARRIS

Job Title \_\_\_\_\_

Address 2618 Centerville RD.

Phone 222-0720

Street

Tallahassee FL 32308

City

State

Zip

Email bharris@lawfla.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Panhandle Area Educational Consortium

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

4/28/17

Meeting Date

856

Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Spencer Pylant

Job Title Communications & Gov't Relations Liaison

Address 7227 Land O' Lakes Blvd.

Street

Phone 813-794-2259

Land O' Lakes FL 34638

City

State

Zip

Email spylant@pasco.k12.fl.us

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Pasco County Schools

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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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)

4/28/17

Meeting Date

856

Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Corinne Nixon

Job Title Lobbyist

Address 119 S. Main

Phone \_\_\_\_\_

Street

Tallahassee FL

City

State

Zip

Email \_\_\_\_\_

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Santa Rosa County Schools

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

April 28

Meeting Date

SB 856

Bill Number (if applicable)

Topic Annual Contract / Labor

Amendment Barcode (if applicable)

Name Jeff Wright

Job Title Director - Public Policy

Address 213 S. Adam Street

Phone 850-224-2078

Street

Tallahassee FL

32301

Email

City

State

Zip

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Education Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

9/28/2017

*Meeting Date*

Topic \_\_\_\_\_

Bill Number 856  
*(if applicable)*

Name BRIAN PITTS

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

*Street*

SAINT PETERSBURG

FLORIDA

33705

*City*

*State*

*Zip*

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☐ Against ☒ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/20/11)

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/CS/SB 1370

INTRODUCER: Rules Committee; Judiciary Committee; and Senator Perry

SUBJECT: Warnings for Lottery Games

DATE: May 1, 2017

REVISED: \_\_\_\_\_

|    | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION           |
|----|---------|----------------|-----------|------------------|
| 1. | Kraemer | McSwain        | RI        | <b>Favorable</b> |
| 2. | Parks   | Cibula         | JU        | <b>Fav/CS</b>    |
| 3. | Kraemer | Phelps         | RC        | <b>Fav/CS</b>    |

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 1370 requires, beginning January 1, 2018, that one of six specified warnings be placed in every advertisement or promotion of lottery games. Each of the six warnings must appear in an equal number of advertisements and promotions.

The bill includes the required text of the warnings:

1. "WARNING: GAMBLING CAN BE ADDICTIVE."
2. "WARNING: LOTTERY GAMES MAY BE ADDICTIVE."
3. "WARNING: LOTTERY GAMES ARE A FORM OF GAMBLING."
4. "WARNING: YOUR ODDS OF WINNING THE TOP PRIZE ARE EXTREMELY LOW."
5. "WARNING: GAMBLING CAN CAUSE FINANCIAL PROBLEMS."
6. "WARNING: PLAYING THE LOTTERY CONSTITUTES GAMBLING."

A warning must occupy not less than 10 percent of the surface area of each advertisement or promotion of lottery games on television, the Internet, other electronic media, newspapers, magazines, and billboards. The warning must be announced at the end of radio advertisements.

The bill also requires that one of the warnings be printed on every lottery ticket printed on or after January 1, 2018. Each of the six warnings must appear on an equal number of lottery tickets.

The bill states that every contract between the Department of the Lottery (department) and a lottery ticket vendor must include a provision requiring the vendor to place or print one of the warnings on every lottery ticket. The warning must occupy not less than 10 percent of the total face of every lottery ticket, and be in black type on a white background.

The bill will have a fiscal impact on state government. See Section V. Fiscal Impact Statement.

The bill provides for an effective date of January 1, 2018.

## II. Present Situation:

Section 15 of Article X of the State Constitution (1968) allows lotteries to be operated by the state. The relevant provisions of statute which specify how the Florida Lottery must be operated are set forth in s. 24.102(2), F.S., which provides:

- The net proceeds of lottery games shall be used to support improvements in public education;
- Lottery operations shall be undertaken as an entrepreneurial business enterprise; and
- The department shall be accountable through audits, financial disclosure, open meetings, and public records laws.

The department operates the Florida Lottery to maximize revenues “consonant with the dignity of the state and the welfare of its citizens”<sup>1</sup> for the benefit of public education.<sup>2</sup> The department contracts with retailers (e.g., supermarkets, convenience stores, gas stations, and newsstands) to provide adequate and convenient availability of lottery tickets.<sup>3</sup> Retailers receive commissions of 5 percent of the ticket price, 1 percent of the prize value for redeeming winning tickets, and bonus and performance incentive payments.<sup>4</sup> Retailers are eligible to receive bonuses for selling select winning tickets and performance incentive payments.<sup>5</sup>

The department selects retailers based on financial responsibility, integrity, reputation, accessibility, convenience, security of the location, and estimated sales volume, with special consideration for small businesses.<sup>6</sup> Retailers must be at least 18 years old, and the sale of lottery tickets must occur as part of an ongoing retail business. Contracting with a retailer with a felony criminal history is prohibited,<sup>7</sup> and the authority to act as a retailer may not be transferred.<sup>8</sup>

Retailers may not extend credit or lend money to a person to purchase a lottery ticket. The use of a credit or charge card or other instrument issued by a bank, savings association, credit union,

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<sup>1</sup> See s. 24.104, F.S.

<sup>2</sup> See s. 24.121(2), F.S.

<sup>3</sup> See s. 24.105(17), F.S.

<sup>4</sup> Office of Program Policy Analysis and Gov’t Accountability, Florida Legislature, Report No. 14-06, *See Lottery Transfers Have Recovered; Options Remain to Enhance Transfers 2* (January 2014), (hereinafter *OPPAGA Report 14-06*), <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1406rpt.pdf>, (last visited Apr. 28, 2017).

<sup>5</sup> See Office of Program Policy Analysis and Gov’t Accountability, Florida Legislature, Report No. 15-03, *Lottery Transfers Continue to Increase; Options Remain to Enhance Transfers and Increase Efficiency 1 n.3* (Jan. 2015), (hereinafter *OPPAGA Report 15-03*), <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1503rpt.pdf> (last visited Apr. 28, 2017).

<sup>6</sup> See s. 24.112(2), F.S., which also includes a statement of legislative intent that retailer selections be based on business considerations and public convenience, without regard to political affiliation.

<sup>7</sup> See s. 24.112(3)(c), F.S.

<sup>8</sup> See s. 24.112(4), F.S.

charge card company, or by a retailer (for installment sales of goods) is allowed, if the lottery ticket purchase is part of a purchase transaction for other goods and services that cost \$20 or more.<sup>9</sup>

The department may establish by rule a system to verify and pay winning lottery tickets:<sup>10</sup>

- Any lottery retailer, as well as any department office, may redeem a winning ticket valued at less than \$600.<sup>11</sup> Payments less than \$50 are generally paid by a retailer in cash, depending on store policy or local ordinance. Higher amounts may be paid by cash, check, or money order at no cost to the winner.
- Only a department office may redeem a winning ticket valued at \$600 or more.<sup>12</sup> Winning tickets are paid at the claimant's option in a combination of cash, check, or lottery tickets (with a limitation of \$200 payable in cash).

Prizes must be claimed within certain time limits, depending on the type of game played. Instant lottery tickets (e.g., scratch-off tickets), must be redeemed within 60 days after the end of that lottery game.<sup>13</sup> Other lottery tickets (e.g., tickets for drawings) must be redeemed within 180 days after the drawing or the end of the lottery game in which the prize was won.

The department may adopt rules governing the types of lottery games to be conducted,<sup>14</sup> including lottery terminals or devices that “may be operated solely by the player without the assistance of the retailer.”<sup>15</sup>

The department introduced full service vending machines in retail stores across the state in November 2013.<sup>16</sup> In its most recent Financial Audit, the department stated that 500 vending machines used in the 2015-2016 fiscal year reflected an increase in sales of more than \$36 million, more than 14 percent over the prior fiscal year.<sup>17</sup>

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<sup>9</sup> See s. 24.118(1), F.S.

<sup>10</sup> See s. 24.115, F.S., and Fla. Admin. Code R. 53ER15-31 (2015).

<sup>11</sup> The winner has the option of presenting a winning ticket in person to any lottery retailer, any of the nine lottery district offices, or to lottery headquarters in Tallahassee.

<sup>12</sup> Mega Millions® and Powerball® prizes up to \$1 million may be claimed at any lottery district office. All other prizes greater than \$250,000 must be claimed at lottery headquarters.

<sup>13</sup> See s. 24.115(1)(f), F.S.

<sup>14</sup> See s. 24.105(9)(a), F.S.

<sup>15</sup> Prior to 1996, there was no provision for player-activated lottery terminals or devices. Section 4 of ch. 96-341, Laws of Fla., authorized such machines, subject to restrictions that they be: (1) designed solely for dispensing of instant lottery tickets; (2) activated by coin or currency; (3) in the direct line of sight of on-duty retail employees; (4) capable of being electronically deactivated for 5 minutes or more; and (5) incapable of redeeming winning tickets, though they may dispense change. Chapter 2012-130, Laws of Fla., moved the restrictions on player-activated machines from s. 24.105(9)(a)4., F.S., to s. 24.112(15), F.S. As amended, the law (1) authorizes lottery vending machines to dispense “online lottery tickets, instant lottery tickets, or both,” and (2) prohibits use of mechanical reels or video depictions of slot machine or casino game themes or titles (but does not prohibit use of casino game themes or titles on lottery tickets, signage, or advertising displays on the vending machines).

<sup>16</sup> *OPPAGA Report 14-06*, *supra* note 5, at 2.

<sup>17</sup> See State of Florida Auditor General, Report No. 2017-103, *Financial Audit of the Department of the Lottery, for the Fiscal Year Ended June 30, 2016, and 2015* 30 (Jan. 2015), [http://www.myflorida.com/audgen/pages/pdf\\_files/2015-092.pdf](http://www.myflorida.com/audgen/pages/pdf_files/2015-092.pdf) (2017 Financial Audit section) (last visited Apr. 28, 2017).



## Scratch-off Games

The department's legislatively-approved performance standards are reported in its long-range program plan for the 2017-2018 fiscal year.<sup>18</sup> In that plan, the department noted that it set a new all-time sales record in the 2015-2016 fiscal year with sales reaching \$6.06 billion, exceeding those in the prior year by more than \$479 million and resulting in a transfer of more than \$1.69 billion to the Educational Enhancement Trust Fund.<sup>19</sup> Further, the department indicated that the success of the Florida Lottery was a result of the agency's continued efforts to expand and revise its roster of games. During the 2015-2016 fiscal year, scratch-off ticket sales exceeded \$3 billion for the fourth consecutive year, and broke all-time scratch-off sales records for the fifth consecutive year.<sup>20</sup>

Scratch-off games have a finite lifecycle based on the number that are printed and how they sell; at the end of the lifecycle of a game, the department replaces it with more profitable games. Typically, 12 to 15 scratch-off games are closed each calendar quarter. The following criteria are used to determine when to end games:

- There are no remaining top prizes;
- There is no available inventory to order; and
- Current sales levels, inventory levels, contract requirements, seasonality, unforeseen circumstances, changing market conditions or print defects.<sup>21</sup>

The department currently promotes responsible lottery play and directs persons struggling with a gambling problem to contact the 1-888-ADMIT-IT telephone line for assistance.<sup>22</sup>

### III. Effect of Proposed Changes:

The bill amends s. 24.107, F.S., dealing with the advertisement and promotion of lottery games, to require, beginning January 1, 2018, that one of six specified warnings be placed in every advertisement or promotion of lottery games. Each of the six warnings must appear in an equal number of advertisements and promotions.

The bill includes the required text of the warnings:

1. "WARNING: GAMBLING CAN BE ADDICTIVE."
2. "WARNING: LOTTERY GAMES MAY BE ADDICTIVE."
3. "WARNING: LOTTERY GAMES ARE A FORM OF GAMBLING."
4. "WARNING: YOUR ODDS OF WINNING THE TOP PRIZE ARE EXTREMELY LOW."
5. "WARNING: GAMBLING CAN CAUSE FINANCIAL PROBLEMS."
6. "WARNING: PLAYING THE LOTTERY CONSTITUTES GAMBLING."

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<sup>18</sup> See Florida Lottery, Long Range Program Plan (Sept. 13, 2016), <http://floridafiscalportal.state.fl.us/Document.aspx?ID=14600&DocType=PDF> (last visited Apr. 28, 2017).

<sup>19</sup> *Id.* at pages 3-4.

<sup>20</sup> *Id.* at page 4.

<sup>21</sup> *OPPAGA Report 15-03*, *supra* note 5, at 10.

<sup>22</sup> See 2017 Agency Legislative Bill Analysis (AGENCY: Department of Florida Lottery) for SB 1370, dated Mar. 7, 2017 on file with Senate Committee on Regulated Industries) at page 2.

A warning must occupy not less than 10 percent of the surface area of each advertisement or promotion of lottery games on television, the Internet, other electronic media, newspapers, magazines, and billboards. The warning must be announced at the end of radio advertisements.

The bill also requires that one of the warnings be printed on every lottery ticket printed on or after January 1, 2018. Each of the six warnings must appear on an equal number of lottery tickets.

The bill amends s. 24.111, F.S., concerning vendors of lottery tickets, to require, beginning January 1, 2018, that every contract between the Department of the Lottery and a lottery ticket vendor must include a provision requiring the vendor to place or print one of the warnings on every lottery ticket. The warning must occupy not less than 10 percent of the total face of every lottery ticket, and be in black type on a white background.”

The bill provides for an effective date of January 1, 2018.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of the Lottery (department) indicated that the original version of the bill would have no fiscal impact on state government.<sup>23</sup> However, the department will have to expend funds to implement the requirements of CS/CS/SB 1370, and lottery ticket sales potentially could be impacted. At a minimum, existing lottery advertising and promotion

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<sup>23</sup> *Id.* at page 3.

appropriations will have to be used to implement the requirements, and as a consequence, placed media advertising could be impacted.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 24.107 and 24.111.

**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 28, 2017:**

The committee substitute requires that:

- One of six specified warnings be placed in every advertisement or promotion of lottery games, beginning January 1, 2018, with each of the six warnings appearing in an equal number of advertisements and promotions;
- A warning must occupy not less than 10 percent of the surface area of each advertisement or promotion of lottery games on television, the Internet, other electronic media, newspapers, magazines, and billboards;
- For radio advertisements, the warning must be announced at the end of the radio advertisement;
- One of the warnings must be printed on every lottery ticket printed on or after January 1, 2018, with each of the six warnings appearing on an equal number of lottery tickets;
- Beginning January 1, 2018, every contract between the Department of the Lottery and a lottery ticket vendor must require the vendor to place or print one of the warnings on every lottery ticket, which must occupy not less than 10 percent of the total face of every lottery ticket, and be in black type on a white background; and
- Narrows the title to “Warnings for Lottery Games” from “Lottery Games”.

**CS by Judiciary on April 19, 2017:**

The committee substitute removes the language for retailers which would have required them to print warning labels on lottery tickets and replaces it with the language requiring retailers to display warning signs.

- B. Amendments:

None.

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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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370162

LEGISLATIVE ACTION

|            |   |       |
|------------|---|-------|
| Senate     | . | House |
| Comm: RCS  | . |       |
| 04/28/2017 | . |       |
|            | . |       |
|            | . |       |
|            | . |       |

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The Committee on Rules (Perry) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Subsection (3) is added to section 24.107,  
Florida Statutes, to read:

24.107 Advertising and promotion of lottery games.—  
(3) Beginning January 1, 2018, every advertisement or  
promotion of lottery games under this chapter shall include a  
warning, which must:

(a) If on television, the Internet, or other electronic



370162

medium, be typed in black font on a white background and occupy no less than 10 percent of the surface area of the advertisement or promotion.

(b) If in print, including a newspaper, magazine, or billboard, be typed in black font on a white background and occupy no less than 10 percent of the surface area of the advertisement or promotion.

(c) If on radio, be audibly announced at the conclusion of the advertisement or promotion.

(d) Contain one of the following messages, with each message appearing in an equal number of advertisements and promotions:

1. "WARNING: GAMBLING CAN BE ADDICTIVE."

2. "WARNING: LOTTERY GAMES MAY BE ADDICTIVE."

3. "WARNING: LOTTERY GAMES ARE A FORM OF GAMBLING."

4. "WARNING: YOUR ODDS OF WINNING THE TOP PRIZE ARE EXTREMELY LOW."

5. "WARNING: GAMBLING CAN CAUSE FINANCIAL PROBLEMS."

6. "WARNING: PLAYING THE LOTTERY CONSTITUTES GAMBLING."

Section 2. Subsection (8) is added to section 24.111, Florida Statutes, to read:

24.111 Vendors; disclosure and contract requirements.—

(8) Beginning January 1, 2018, every contract subject to this section shall contain a provision that requires the vendor to place or print a warning on every lottery ticket sold under this chapter. The required warning must:

(a) Appear on the face of each lottery ticket.

(b) Be typed in black font on a white background.

(c) Occupy no less than 10 percent of the total face of the



370162

lottery ticket.

(d) Contain one of the following messages, with each message appearing on an equal number of lottery tickets:

1. "WARNING: GAMBLING CAN BE ADDICTIVE."

2. "WARNING: LOTTERY GAMES MAY BE ADDICTIVE."

3. "WARNING: LOTTERY GAMES ARE A FORM OF GAMBLING."

4. "WARNING: YOUR ODDS OF WINNING THE TOP PRIZE ARE EXTREMELY LOW."

5. "WARNING: GAMBLING CAN CAUSE FINANCIAL PROBLEMS."

6. "WARNING: PLAYING THE LOTTERY CONSTITUTES GAMBLING."

(e) Appear on every lottery ticket printed under this chapter on or after January 1, 2018.

Section 3. Subsections (10) through (15) of section 24.112, Florida Statutes, are renumbered as subsections (11) through (16), respectively, and a new subsection (10) is added to that section, to read:

24.112 Retailers of lottery tickets; authorization of vending machines to dispense lottery tickets.—

(10) Beginning January 1, 2018, every contract in effect pursuant to this section shall contain a provision that requires the retailer to prominently display a sign, provided by the department, at or near the lottery ticket point of sale which contains the following message: "WARNING: GAMBLING CAN BE ADDICTIVE."

Section 4. This act shall take effect January 1, 2018.

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

And the title is amended as follows:

Delete everything before the enacting clause



370162

and insert:

A bill to be entitled  
An act relating to warnings for lottery games;  
amending s. 24.107, F.S.; requiring every  
advertisement or promotion of lottery games to include  
a specified warning; providing requirements for the  
warning; amending s. 24.111, F.S.; requiring contracts  
entered into between the Department of the Lottery and  
a vendor of lottery tickets to include a provision  
that requires the vendor to place or print a specified  
warning on all lottery tickets; providing requirements  
for the warning; amending s. 24.112, F.S.; requiring  
contracts entered into between the department and a  
retailer of lottery tickets to include a provision  
that requires the retailer to prominently display a  
sign, provided by the department, with a specified  
warning at the point of sale; providing an effective  
date.





836842

LEGISLATIVE ACTION

|            |   |       |
|------------|---|-------|
| Senate     | . | House |
| Comm: RCS  | . |       |
| 04/28/2017 | . |       |
|            | . |       |
|            | . |       |
|            | . |       |

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The Committee on Rules (Perry) recommended the following:

**Senate Amendment to Amendment (370162) (with title amendment)**

Delete lines 53 - 64.

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

And the title is amended as follows:

Delete lines 81 - 86

and insert:

for the warning; providing an effective

By the Committee on Judiciary; and Senator Perry

590-04112-17

20171370c1

1 A bill to be entitled  
2 An act relating to warnings for lottery games;  
3 amending s. 24.111, F.S.; requiring contracts entered  
4 into between the Department of the Lottery and a  
5 vendor of lottery tickets to include a provision that  
6 requires the vendor to place or print a specified  
7 warning on all lottery tickets; amending s. 24.112,  
8 F.S.; requiring contracts entered into between the  
9 department and a retailer of lottery tickets to  
10 include a provision that requires the retailer to  
11 prominently display a sign with a specified warning at  
12 the point of sale; providing an effective date.  
13  
14 Be It Enacted by the Legislature of the State of Florida:  
15  
16 Section 1. Subsection (8) is added to section 24.111,  
17 Florida Statutes, to read:  
18 24.111 Vendors; disclosure and contract requirements.—  
19 (8) Every contract subject to this section shall contain a  
20 provision that requires the vendor to place or print a warning  
21 on all lottery tickets that prominently reads: "WARNING:  
22 GAMBLING CAN BE ADDICTIVE."  
23 Section 2. Subsections (10) through (15) of section 24.112,  
24 Florida Statutes, are renumbered as subsections (11) through  
25 (16), respectively, and a new subsection (10) is added to that  
26 section, to read:  
27 24.112 Retailers of lottery tickets; authorization of  
28 vending machines to dispense lottery tickets.—  
29 (10) Every contract subject to this section shall contain a

Page 1 of 2

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

590-04112-17

20171370c1

30 provision that requires the retailer to prominently display a  
31 sign, provided by the department, at the lottery ticket point of  
32 sale that states: "WARNING: GAMBLING CAN BE ADDICTIVE."  
33 Section 3. This act shall take effect July 1, 2017.

Page 2 of 2

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/28/17

Meeting Date

1370

Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Amber Kelly

Job Title Director of Policy & Communications

Address 4853 S. Orange Avenue

Phone (407) 418-0250

Street

Orlando

City

FL

State

32806

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)

4-29-17

Meeting Date

SB 1370

Bill Number (if applicable)

Topic SB 1370

Amendment Barcode (if applicable)

Name MIKE MAULEY

Job Title DIR. LEGISLATIVE AFFAIRS

Address 250 MARBOTT DRIVE

Street

TALLAHASSEE

City

FL

State

32301

Zip

Phone 850-487-7777

Email

Speaking: ☐ For ☐ Against ☒ Information

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

Representing DEPT. OF FLORIDA LOTTERY

Appearing at request of Chair: ☒ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

4/28/2017

Meeting Date

1370

Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name BRIAN PITTS

Job Title Trustee

Address 1119 Newton Ave S.  
Street

Phone 727/897-9291

St Petersburg  
City

FL  
State

33705  
Zip

Email justice2jesus@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Justice-2-Jesus

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

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.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/SB 1494

INTRODUCER: Ethics and Elections Committee and Senator Rader

SUBJECT: Write-in Candidate Qualifying

DATE: April 27, 2017

REVISED: \_\_\_\_\_

| ANALYST    | STAFF DIRECTOR | REFERENCE | ACTION           |
|------------|----------------|-----------|------------------|
| 1. Fox     | Ulrich         | EE        | <b>Fav/CS</b>    |
| 2. Cochran | Yeatman        | CA        | <b>Favorable</b> |
| 3. Fox     | Phelps         | RC        | <b>Favorable</b> |

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE – Technical Changes

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**I. Summary:**

CS/SB 1494 codifies the 2016 Florida Supreme Court decision in *Brinkmann v. Francois*, by repealing the statute that requires a write-in candidate to reside in the district that he or she seeks to represent *at the time of qualifying*.

**II. Present Situation:**

In November 1998, Florida voters passed Proposition 11,<sup>1</sup> a comprehensive elections amendment to the Florida Constitution proposed by the Constitutional Revision Commission (CRC). Part of Proposition 11 amended Article VI of the Constitution to provide for a “universal” or “open” primary — a contest in which all eligible voters could cast a ballot regardless of party affiliation — wherein the winner of the primary election would face no general election opposition.<sup>2</sup>

In practice, this situation arises when the only candidates qualifying for an office have the same major party affiliation.

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<sup>1</sup> The amendment passed with 64.1% favorable vote, almost 2-to-1. Florida Division of Elections web site, <https://enight.elections.myflorida.com/Index.asp?ElectionDate=11/3/1998&DATAMODE=> (“Election Results” tab, General Election 1998, Constitutional Amendments), last accessed Apr. 11, 2017.

<sup>2</sup> Art. VI, s. 5(b), FLA. CONST.

The general election ballot contains a blank line for qualified write-in candidates.<sup>3</sup> Nonetheless, the 1998 CRC debates and discussions on Proposition 11 never addressed the issue of what impact the presence of a write-in candidate should have in a field otherwise composed entirely of candidates from one of the major parties.

In 2000, the Florida Division of Elections published an opinion stating that the presence of a write-in candidate in an otherwise all-Republican or all-Democratic field “closed” the primary to all voters other than those registered with that particular party.<sup>4</sup> (Multiple district and appellate courts have since confirmed the Division’s legal position.)<sup>5</sup>

In 2007, faced with write-ins having closed numerous legislative primaries since 2000, the Legislature enacted s. 99.0615, F.S. — which required write-in candidates to reside in the district they sought to represent *at the time of qualifying*.<sup>6</sup>

In February 2016, the Florida Supreme Court struck down the statute as unconstitutional. In *Brinkmann v. Francois*,<sup>7</sup> a Broward County voter challenged the qualifying status of a write-in candidate, Tyron Francois, for Broward County Commissioner, District 2. Francois did not live in the District at the time of qualifying as required by s. 99.0615, F.S., but he did say that he intended to move there if he won the general election. All of the other candidates that qualified to run for the seat were Democrats. The *Brinkmann* court found that the statute was facially unconstitutional because the timing of its residency requirement (at the time of qualifying) for write-in candidates conflicted with the timing of the residency requirement for county commission candidates in the Constitution (at the time of election).<sup>8</sup>

As a result, beginning with the 2016 election cycle, any registered voter can now qualify to run as a write-in candidate in any contest in the state and close a primary where the only other qualified candidates are from the same party, ***regardless of his or her physical residence***.

### III. Effect of Proposed Changes:

The bill codifies the 2016 Florida Supreme Court decision in *Brinkmann v. Francois*. It repeals the statute requiring write-in candidates to reside in the district they seek to represent *at the time of qualifying*.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

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<sup>3</sup> Section 101.151(2)(b), F.S.

<sup>4</sup> DOE Opinion 2000-06 (May 11, 2000).

<sup>5</sup> *Lacasa v. Townsley*, 883 F.Supp2d 1231 (S.D. Fla 2012); see also, *Telli v. Snipes*, 98 So.3d 1284 (4th Fla DCA 2012) (write-in candidates constitute general election opposition under the constitutional open primary provision).

<sup>6</sup> Ch. 2007-30, s. 56, LAWS OF FLA.

<sup>7</sup> 184 So. 3d 504 (Fla. 2016).

<sup>8</sup> Fla Const., Art. VIII, §1(e); see also, *Francois v. Brinkmann*, 147 So. 3d 613, 615 (Fla 4<sup>th</sup> DCA 2014), *affd.*, *Francois v. Brinkmann*, 184 S.3d 504 (Fla. 2016), citing, *State v. Grassi*, 532 So.2d 1055, 1056 (Fla. 1988) (constitutional provision regarding the residency requirement for county commissioners requires residency at the time of election).

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 repeals section 99.0615 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 Ethics and Elections on March 28, 2017:**

Narrows the title from “elections” to “write-in candidate qualifying.”

B. Amendments:

None.



By the Committee on Ethics and Elections; and Senator Rader

582-03004-17

20171494c1

A bill to be entitled

An act relating to write-in candidate qualifying;  
repealing s. 99.0615, F.S., relating to write-in  
candidate residency requirements; repealing a  
requirement that all write-in candidates must reside  
within the district represented by the office sought  
at the time of qualification; providing an effective  
date.

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

Section 1. Section 99.0615, Florida Statutes, is repealed.

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

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/SB 1684

INTRODUCER: Banking and Insurance Committee and Senator Farmer

SUBJECT: Insurance Rates

DATE: April 27, 2017

REVISED: \_\_\_\_\_

|    | ANALYST          | STAFF DIRECTOR | REFERENCE | ACTION             |
|----|------------------|----------------|-----------|--------------------|
| 1. | <u>Billmeier</u> | <u>Knudson</u> | <u>BI</u> | <u>Fav/CS</u>      |
| 2. | <u>Billmeier</u> | <u>Phelps</u>  | <u>RC</u> | <u>Pre-meeting</u> |

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1684 provides that attorney fees awarded pursuant to s. 440.34, F.S., and s. 627.428, F.S., may not be included in an insurer's rate base and may not be used to justify a rate or rate change. This bill will bar the inclusion of such attorney fees in rate making in property, casualty, surety, motor vehicle, workers' compensation, employer liability, title, wet marine, credit life or credit disability, and health insurance.

Section 627.428, F.S., requires an insurer to pay its insured's attorney fees if the insured prevails in an action against an insurer. That section applies to many insurance lines. Section 440.34, F.S., applies to workers' compensation insurance.

The bill takes effect July 1, 2017.

**II. Present Situation:**

**Insurance Rates**

Section 627.062, F.S., specifies the rate filing process for property and casualty insurers and provides rating standards for these insurers. The rating law applies to property, casualty and surety insurance and prohibits rates that are excessive, inadequate, or unfairly discriminatory. At the same time, an insurer is allowed a reasonable rate of return. The Office of Insurance Regulation (OIR) regulates insurer rate and form filing.

A rate is excessive if:

- It is likely to produce a profit from Florida business that is unreasonably high in relation to the risk involved or if expenses are unreasonably high in relation to the services rendered.
- The rate structure established by a stock insurance company provides for replenishment of surpluses from premiums, when the replacement is attributable to investment losses.<sup>1</sup>

A rate is inadequate if:

- It is clearly insufficient, together with the investment income attributable to them to sustain projected losses and expenses in the class of business to which it applies.
- If discounts or credits are allowed that exceed a reasonable reflection of expense savings and reasonably expected loss experience from the risk or group or risks.<sup>2</sup>

A rate is unfairly discriminatory if:

- The rating plan, including discounts, credits, or surcharges fails to clearly and equitably reflect consideration of the policyholder's participation in a risk management program pursuant to s. 627.0625, F.S.
- As to a risk or group of risks, the application of premium discounts, credits, or surcharges among the risks does not bear a reasonable relationship to the expected loss and expense experience among the various risks.<sup>3</sup>

Section 627.0651, F.S., is the rating law for motor vehicle insurance. It is similar to the law for property. Rates must not be excessive, inadequate, or unfairly discriminatory. At the same time, an insurer is allowed a reasonable rate of return. Workers' compensation insurance rate filings must meet the requirements of ss. 627.062, F.S., and 627.072, F.S.<sup>4</sup> Section 627.410, F.S., governs health insurance filings and rates. The OIR reviews health insurance filings to determine the reasonableness of benefits in relation to premiums charged.

### **Attorney Fees in Insurance Litigation**

Section 627.428, F.S., provides, in part:

Upon the rendition of a judgment or decree by any of the courts of this state against an insurer and in favor of any named or omnibus insured or the named beneficiary under a policy or contract executed by the insurer, the trial court or, in the event of an appeal in which the insured or beneficiary prevails, the appellate court shall adjudge or decree against the insurer and in favor of the insured or beneficiary a reasonable sum as fees or compensation for the insured's or beneficiary's attorney prosecuting the suit in which the recovery is had.

This statute allows the insured or the insured's assignee<sup>5</sup> to recover attorney's fees if the insured or assignee prevails in an action against an insurer. Florida courts have interpreted the statute

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<sup>1</sup> ss. 627.062(2)(e)1. and 2., F.S.

<sup>2</sup> ss. 627.062(2)(e)3. and 5., F.S.

<sup>3</sup> ss. 627.062(2)(e)4. and 6., F.S.

<sup>4</sup> s. 627.151, F.S.

<sup>5</sup> *All Ways Reliable Bldg. Maintenance, Inc. v. Moore*, 261 So.2d 131 (Fla. 1972).

broadly to allow recovery of fees when the insurer ultimately settles the case before trial.<sup>6</sup> Fees are awarded pursuant to the statute even if the insurer does not act in bad faith.<sup>7</sup> The Florida Supreme Court recently explained the purpose of the statute:

The need for fee and cost reimbursement in the realm of insurance litigation is deeply rooted in public policy. Namely, the Legislature recognized that it was essential to "level the playing field" between the economically-advantaged and sophisticated insurance companies and the individual citizen. Most assuredly, the average policyholder has neither the finances nor the expertise to single-handedly take on an insurance carrier. Without the funds necessary to compete with an insurance carrier, often a concerned policyholder's only means to take protective action is to hire that expertise in the form of legal counsel... For this reason, the Legislature recognized that an insured is not made whole when an insurer simply grants the previously denied benefits without fees. The reality is that once the benefits have been denied and the plaintiff retains counsel to dispute that denial, additional costs that require relief have been incurred. Section 627.428, F.S., takes these additional costs into consideration and levels the scales of justice for policyholders by providing that the insurer pay the attorney's fees resulting from incorrectly denied benefits.<sup>8</sup>

Section 440.34, F.S., provides attorney fees to claimant's attorney if they prevail in workers' compensation cases. The statute's attorney fee cap was recently declared unconstitutional by the Florida Supreme Court.<sup>9</sup> The court held that attorney fees pursuant s. 440.34, F.S., must be "reasonable."<sup>10</sup>

### **Attorney Fees in Insurance Rates**

Generally, attorney fees, including those paid pursuant to s. 627.428, F.S., are expenses that insurers can use to justify a rate.<sup>11</sup> However, motor vehicle insurers cannot use attorney fees to justify a rate or rate change if those fees are related to bad faith or punitive damages.<sup>12</sup> Medical malpractice insurers are likewise prohibited from using attorney fees related to bad faith to justify a rate or rate change.<sup>13</sup>

Section 627.062(10), F.S., provides that an insurer cannot include interest paid to a policyholder when an insurer does not act on a claim within statutory time limits.

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<sup>6</sup> *Johnson v. Omega Ins. Co.*, 200 So.3d 1207, 1215 (Fla. 2016)( noting that "it is well settled that the payment of a previously denied claim following the initiation of an action for recovery, but prior to the issuance of a final judgment, constitutes the functional equivalent of a confession of judgment").

<sup>7</sup> *Johnson v. Omega Ins. Co.*, 200 So.3d 1207, 1216 (Fla. 2016)(noting "the insurer's intentions do not factor into a policyholder's recovery of fees; it is the fact that the denial of benefits was ultimately incorrect that triggers the statute"); *Ins. Co. of N. Am. v. Lexow*, 602 So.2d 928, 531 (Fla. 1992)("INA's good faith in bringing this suit is irrelevant. If the dispute is within the scope of s. 627.428, F.S., and the insurer loses, the insurer is always obligated for attorney's fees").

<sup>8</sup> *Johnson v. Omega Ins. Co.*, 200 So.3d 1207, 1215-1216 (Fla. 2016)(internal citations omitted).

<sup>9</sup> *Castellanos v. Next Door Co.*, 192 So.3d 431 (Fla. 2016).

<sup>10</sup> *Id.*

<sup>11</sup> See, e.g., s. 627.062(2)(b), F.S. (requiring the OIR to consider expenses when reviewing a rate filing).

<sup>12</sup> s. 627.0651(12), F.S.

<sup>13</sup> s. 627.062(7)(a), F.S.

**III. Effect of Proposed Changes:**

The bill amends s. 627.062, F.S., to provide that attorney fees paid pursuant to s. 440.34, F.S., or s. 627.428, F.S., may not be included in the insurer's rate base and may not be used to justify a rate or rate change. These provisions will bar the use of attorney fees paid pursuant to s. 440.34, F.S., or s. 627.428, F.S., in rate making in property, casualty, surety, motor vehicle, workers' compensation, employer liability, title, wet marine, credit life or credit disability, and health insurance.

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:**

The OIR reports that if insurers are not allowed to use attorney fees to set rates, the OIR might be forced to approve rates that are insufficient to cover the costs of the policy.<sup>14</sup> Another concern is that insurers will simply pay all claims and never litigate over potential fraudulent claims or even claims where there is no coverage. This could lead to rate increases.<sup>15</sup> These concerns were raised by the OIR about a prior version of this bill which excluded more attorney fees from rate base than this version of the bill. The OIR has not completed its analysis of the committee substitute.

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<sup>14</sup> Office of Insurance Regulation, *Analysis of SB 1684* (March 28, 2017) at p. 2 (on file with the Committee on Banking and Insurance).

<sup>15</sup> *Id.* at p. 5.

C. Government Sector Impact:

The OIR believes that if property insurers were to stop writing policies in parts of the state where litigation is the highest, many property owners would likely buy property insurance from Citizens.<sup>16</sup>

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 627.062 and 627.428.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

**CS by Banking and Insurance on April 3, 2017:**

The bill provides that attorney fees awarded pursuant to s. 440.34, F.S., and s. 627.428, F.S., may not be used to justify a rate or rate change. The original bill provided that attorney fees in which the insurer prevailed in the action and the attorney fees an insurer paid defending an action could not be used to justify a rate or rate change.

B. Amendments:

None.

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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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<sup>16</sup> *Id.* at p. 5.



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LEGISLATIVE ACTION

Senate

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House

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The Committee on Rules (Farmer) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Subsection (11) is added to section 627.062,  
Florida Statutes, to read:

627.062 Rate standards.—

(11) Attorney fees and costs paid by a property insurer  
pursuant to s. 627.428 may not be included in the property  
insurer's rate base and may not be used to justify a rate  
increase or rate change.



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Section 2. Section 627.422, Florida Statutes, is amended to read:

627.422 Assignment of policies or post-loss benefits.—A policy may be assignable, or not assignable, as provided by its terms.

(1) LIFE OR HEALTH INSURANCE POLICIES.—Subject to its terms relating to assignability, any life or health insurance policy under the terms of which the beneficiary may be changed upon the sole request of the policyowner may be assigned either by pledge or transfer of title, by an assignment executed by the policyowner alone and delivered to the insurer, whether or not the pledgee or assignee is the insurer. Any such assignment shall entitle the insurer to deal with the assignee as the owner or pledgee of the policy in accordance with the terms of the assignment, until the insurer has received at its home office written notice of termination of the assignment or pledge or written notice by or on behalf of some other person claiming some interest in the policy in conflict with the assignment.

(2) POST-LOSS BENEFITS UNDER CERTAIN PROPERTY INSURANCE POLICIES.—A personal lines residential property insurance policy, a commercial residential property insurance policy, or a commercial property insurance policy may not prohibit or limit the post-loss assignment of benefits. This subsection does not affect the assignment of benefits in other insurance policies.

(a) An agreement to assign post-loss benefits under this subsection is not valid unless the agreement:

1. Is in writing between the policyholder and assignee and is delivered to the insurer as provided in paragraph (c);

2. Is limited to claims for work performed or to be





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performed by the assignee for damages claimed to be covered;

3. Allows the policyholder to unilaterally cancel the assignment of post-loss benefits without penalty or obligation within 7 days after the execution of the assignment by an insured; provided, however, that the policyholder or insurer may be responsible for payment for work already performed during such period;

4. Contains an accurate and up-to-date statement of the scope of work to be performed;

5. Includes proof that the assignee possesses a valid certification from an entity that requires water damage remediation to be performed according to a standard approved by the American National Standards Institute; and

6. Contains the following notice in at least 14-point, capitalized type:

YOU ARE AUTHORIZING THE ASSIGNEE OF YOUR POLICY TO COMMUNICATE WITH YOUR INSURANCE COMPANY ON YOUR BEHALF. THIS ASSIGNMENT GIVES YOUR ASSIGNEE THE PRIMARY AUTHORITY TO NEGOTIATE WITH YOUR INSURANCE COMPANY ON YOUR BEHALF. PLEASE READ AND UNDERSTAND THIS DOCUMENT BEFORE SIGNING IT. YOU HAVE THE RIGHT TO CANCEL THIS AGREEMENT WITHOUT PENALTY OR OBLIGATION WITHIN 7 DAYS AFTER THE DATE THIS AGREEMENT IS EXECUTED. SHOULD YOU CANCEL THIS AGREEMENT, YOU OR YOUR INSURER MAY BE RESPONSIBLE FOR ANY WORK THAT HAS ALREADY BEEN PERFORMED. THIS AGREEMENT DOES NOT CHANGE YOUR OBLIGATION TO PERFORM THE DUTIES UNDER YOUR PROPERTY INSURANCE POLICY.

(b) An assignee of post-loss benefits under this subsection:



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1. Must provide the policyholder with accurate and up-to-date revised statements of the scope of work to be performed as supplemental or additional repairs are required, and must provide to the policyholder and insurer a final invoice and bill for service rendered within 7 business days after the date on which the work was completed;

2. Must guarantee to the policyholder that the work performed conforms to current and accepted industry standards;

3. May not charge the policyholder more than the applicable deductible contained in the policy unless the policyholder opts for additional work or betterment of materials at the policyholder's own expense;

4. May not pay referral fees totaling more than \$750 in connection with the assignment; and

5. May not charge the policyholder directly, except for additional work not covered under the policy which includes:

a. Work performed that is rightfully denied as not covered; and

b. Betterments or additional work not part of the loss.

(c) An insurer shall provide on its website and in the policy its contact information for receiving the agreement that meets the requirements of paragraph (a). The contact information must include at least a dedicated facsimile number. After executing the assignment agreement, the assignee must deliver the agreement to the insurer within the later of:

1. If a state of emergency was declared under s. 252.36 for a hurricane or other natural disaster and the property covered under the policy was damaged as a result of the hurricane or natural disaster, 7 days after the state of emergency is



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terminated; or

2. Seven business days after execution of the agreement.

(d) Notwithstanding s. 627.70131, upon receiving the agreement in paragraph (a), the insurer must make any initial inspections of the covered property within the later of:

1. If a state of emergency was declared under s. 252.36 for a hurricane or other natural disaster and the property covered under the policy was damaged as a result of the hurricane or natural disaster, 7 days after the state of emergency is terminated; or

2. Seven business days after receiving the agreement.

(e) No later than 7 days before an insured or assignee initiates litigation against an insurer relating to a denied or limited claim, the insured or assignee must provide the insurer with notice of intent to initiate such litigation. The notice of intent must include a copy of the final invoice required under subparagraph (b)1 for the work that has been performed or an estimate of the work to be performed. This paragraph does not increase the time periods prescribed in s. 627.70131.

(f) Notwithstanding any other law, in a dispute relating to the assignment of benefits for a personal lines residential property insurance policy, commercial residential property insurance policy, or commercial property insurance policy in which an assignee but not the named insured is a party, for any proposal for settlement made to a plaintiff, such proposal shall be served no earlier than 10 days after the date of commencement of the action.

(g) This section does not apply to:

1. An assignment, transfer, or conveyance granted to a



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subsequent purchaser of the property with an insurable interest in the property following a loss;

2. A power of attorney under chapter 709 which grants to a management company, family member, guardian, or similarly situated person of an insured the authority to act on behalf of an insured as it relates to a property insurance claim; or

3. Liability coverage under a property insurance policy.

(3) ANNUAL REPORT.—The office shall require each insurer to report by March 31, 2019, and each year thereafter, data on each claim paid in the prior calendar year pursuant to an assignment agreement. Such data must include, but are not limited to:

(a) The number of days between the first notice of loss and the initial inspection.

(b) Loss severity.

(c) Allocated loss adjustment expense.

(d) For litigated claims:

1. Any amount paid before litigation, the amount in dispute, the amount of any proposal for settlement, and the settlement or judgment amount;

2. The amount of fees paid to the claimant's attorney; and

3. The amount and structure, whether fixed, hourly, or contingent, of fees paid to the insurer's attorney.

All information the insurer reports under this paragraph must first be reported to the opposing counsel on the litigated claim for verification or certification. The opposing counsel on the litigated claim shall report to the office its agreement or disagreement with the accuracy of the figures reported.

(e) For nonlitigated claims, the difference between the



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insurer's initial offer and the amount paid on the claim.

(f) The time from the first notice of loss until the claim was closed.

(g) For claims involving water damage, whether the adjuster possessed certification from an entity that requires water damage remediation to be performed according to a standard approved by the American National Standards Institute.

Section 3. The amendments made by this act to s. 627.422, Florida Statutes, apply to assignment agreements entered into on or after January 1, 2018.

Section 4. Paragraph (a) of subsection (3) of section 627.7011, Florida Statutes, is amended to read:

627.7011 Homeowners' policies; offer of replacement cost coverage and law and ordinance coverage.—

(3) In the event of a loss for which a dwelling or personal property is insured on the basis of replacement costs:

(a) For a dwelling:—

1. The insurer must initially pay at least the actual cash value of the insured loss, less any applicable deductible. The insurer shall pay any remaining amounts necessary to perform such repairs as work is performed and expenses are incurred. If a total loss of a dwelling occurs, the insurer shall pay the replacement cost coverage without reservation or holdback of any depreciation in value, pursuant to s. 627.702.

2. The insurer may not require that a particular vendor make repairs to such dwelling.

3. The insurer may not, unless expressly requested by the insured, recommend or suggest a particular vendor for repairs to be made to such dwelling.



979514

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

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

And the title is amended as follows:

Delete everything before the enacting clause  
and insert:

A bill to be entitled

An act relating to property insurance; amending s.  
627.062, F.S.; prohibiting certain attorney fees and  
costs paid by a property insurer from being included  
in such insurer's rate base and from being used to  
justify a rate increase or rate change; amending s.  
627.422, F.S.; prohibiting certain property insurance  
policies from prohibiting or limiting the post-loss  
assignment of benefits; providing that an assignment  
agreement is not valid unless it meets specified  
requirements; providing requirements and limitations  
for assignees of post-loss benefits; requiring  
insurers to provide specified contact information on  
their websites and in policies; requiring assignees to  
deliver an executed assignment agreement to insurers  
within a specified timeframe; requiring insurers, upon  
receiving such agreements, to make any initial  
inspections of covered property within specified  
timeframes; requiring insureds or assignees to provide  
a certain prelitigation notice and invoice to insurers  
within a specified timeframe; providing construction;  
requiring certain settlement proposals to a plaintiff  
to be served no earlier than a specified time;



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215 providing applicability; requiring the Office of  
216 Insurance Regulation to require each insurer to report  
217 at specified timeframes certain data relating to  
218 claims paid pursuant to assignment agreements;  
219 requiring insurers to report certain information to  
220 opposing counsel, and requiring the opposing counsel  
221 to verify or certify the information; providing  
222 applicability of the amendments made by the act;  
223 amending s. 627.7011, F.S.; prohibiting specified acts  
224 of insurers relating to homeowners' insurance policies  
225 under certain circumstances; providing an effective  
226 date.



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LEGISLATIVE ACTION

Senate

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House

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The Committee on Rules (Brandes) recommended the following:

**Senate Amendment to Amendment (979514) (with title amendment)**

Between lines 166 and 167  
insert:

Section 4. Subsection (1) of section 627.428, Florida Statutes, is amended to read:

627.428 Attorney's fee.—

(1) Upon the rendition of a judgment or decree by any of the courts of this state against an insurer and in favor of any named or omnibus insured or the named beneficiary under a policy





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or contract executed by the insurer, the trial court or, in the event of an appeal in which the insured or beneficiary prevails, the appellate court shall adjudge or decree against the insurer and in favor of the named or omnibus insured or named beneficiary a reasonable sum as fees or compensation for the named or omnibus insured's or named beneficiary's attorney prosecuting the suit in which the recovery is had. An assignee of an insurance claim may not, in any event, recover fees under this section.

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

And the title is amended as follows:

Between lines 222 and 223  
insert:

amending s. 627.428, F.S.; revising the insureds or beneficiaries who may recover attorney fees in certain judgments against insurers; prohibiting assignees of insurance claims from recovering such attorney fees in any event;



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LEGISLATIVE ACTION

Senate

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House

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The Committee on Rules (Brandes) recommended the following:

**Senate Amendment (with directory and title amendments)**

Between lines 19 and 20

insert:

(1) Upon the rendition of a judgment or decree by any of the courts of this state against an insurer and in favor of any named or omnibus insured or the named beneficiary under a policy or contract executed by the insurer, the trial court or, in the event of an appeal in which the insured or beneficiary prevails, the appellate court shall adjudge or decree against the insurer and in favor of the named or omnibus insured or named



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beneficiary a reasonable sum as fees or compensation for the  
named or omnibus insured's or named beneficiary's attorney  
prosecuting the suit in which the recovery is had. An assignee  
of an insurance claim may not, in any event, recover fees under  
this section.

===== 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 17 - 18

and insert:

Section 2. Subsection (1) of section 627.428, Florida  
Statutes, is amended, and subsection (4) 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 lines 2 - 6

and insert:

An act relating to insurance-related attorney fees;  
amending s. 627.062, F.S.; providing that attorney  
fees paid pursuant to specified provisions may not be  
included in an insurer's base rate and may not be used  
to justify a rate or rate change; amending s. 627.428,  
F.S.; revising the insureds or beneficiaries who may  
recover attorney fees in certain judgments against  
insurers; prohibiting assignees of insurance claims  
from recovering such attorney fees in any event;  
providing that attorney fees paid pursuant to  
specified provisions may not be included in an



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41 insurer's base rate and may not be used to justify a  
42 rate or rate change; providing an



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LEGISLATIVE ACTION

Senate

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House

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The Committee on Rules (Farmer) recommended the following:

**Senate Substitute for Amendment (846406) (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Subsection (11) is added to section 627.062,  
Florida Statutes, to read:

627.062 Rate standards.—

(11) Attorney fees and costs paid by a property insurer  
pursuant to s. 627.428 may not be included in the property  
insurer's rate base and may not be used to justify a rate



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increase or rate change.

Section 2. Section 627.422, Florida Statutes, is amended to read:

627.422 Assignment of policies or post-loss benefits.—A policy may be assignable, or not assignable, as provided by its terms.

(1) LIFE OR HEALTH INSURANCE POLICIES.—Subject to its terms relating to assignability, any life or health insurance policy under the terms of which the beneficiary may be changed upon the sole request of the policyowner may be assigned either by pledge or transfer of title, by an assignment executed by the policyowner alone and delivered to the insurer, whether or not the pledgee or assignee is the insurer. Any such assignment shall entitle the insurer to deal with the assignee as the owner or pledgee of the policy in accordance with the terms of the assignment, until the insurer has received at its home office written notice of termination of the assignment or pledge or written notice by or on behalf of some other person claiming some interest in the policy in conflict with the assignment.

(2) POST-LOSS BENEFITS UNDER CERTAIN PROPERTY INSURANCE POLICIES.—A personal lines residential property insurance policy, a commercial residential property insurance policy, or a commercial property insurance policy may not prohibit or limit the post-loss assignment of benefits. This subsection does not affect the assignment of benefits in other insurance policies.

(a) An agreement to assign post-loss benefits under this subsection is not valid unless the agreement:

1. Is in writing between the policyholder and assignee and is delivered to the insurer as provided in paragraph (c);



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2. Is limited to claims for work performed or to be performed by the assignee for damages claimed to be covered;

3. Allows the policyholder to unilaterally cancel the assignment of post-loss benefits without penalty or obligation within 7 days after the execution of the assignment by an insured; provided, however, that the policyholder or insurer may be responsible for payment for work already performed during such period;

4. Contains an accurate and up-to-date statement of the scope of work to be performed;

5. Includes proof that the assignee possesses a valid certification from an entity that requires water damage remediation to be performed according to a standard approved by the American National Standards Institute; and

6. Contains the following notice in at least 14-point, capitalized type:

YOU ARE AUTHORIZING THE ASSIGNEE OF YOUR POLICY TO COMMUNICATE WITH YOUR INSURANCE COMPANY ON YOUR BEHALF. THIS ASSIGNMENT GIVES YOUR ASSIGNEE THE PRIMARY AUTHORITY TO NEGOTIATE WITH YOUR INSURANCE COMPANY ON YOUR BEHALF. PLEASE READ AND UNDERSTAND THIS DOCUMENT BEFORE SIGNING IT. YOU HAVE THE RIGHT TO CANCEL THIS AGREEMENT WITHOUT PENALTY OR OBLIGATION WITHIN 7 DAYS AFTER THE DATE THIS AGREEMENT IS EXECUTED. SHOULD YOU CANCEL THIS AGREEMENT, YOU OR YOUR INSURER MAY BE RESPONSIBLE FOR ANY WORK THAT HAS ALREADY BEEN PERFORMED. THIS AGREEMENT DOES NOT CHANGE YOUR OBLIGATION TO PERFORM THE DUTIES UNDER YOUR PROPERTY INSURANCE POLICY.

(b) An assignee of post-loss benefits under this



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subsection:

1. Must provide the policyholder with accurate and up-to-date revised statements of the scope of work to be performed as supplemental or additional repairs are required, and must provide to the policyholder and insurer a final invoice and bill for service rendered within 7 business days after the date on which the work was completed;

2. Must guarantee to the policyholder that the work performed conforms to current and accepted industry standards;

3. May not charge the policyholder more than the applicable deductible contained in the policy unless the policyholder opts for additional work or betterment of materials at the policyholder's own expense;

4. May not pay referral fees totaling more than \$750 in connection with the assignment; and

5. May not charge the policyholder directly, except for additional work not covered under the policy which includes:

a. Work performed that is rightfully denied as not covered; and

b. Betterments or additional work not part of the loss.

(c) An insurer shall provide on its website and in the policy its contact information for receiving the agreement that meets the requirements of paragraph (a). The contact information must include at least a dedicated facsimile number. After executing the assignment agreement, the assignee must deliver the agreement to the insurer within the later of:

1. If a state of emergency was declared under s. 252.36 for a hurricane or other natural disaster and the property covered under the policy was damaged as a result of the hurricane or





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natural disaster, 7 days after the state of emergency is terminated; or

2. Seven business days after execution of the agreement.

(d) Notwithstanding s. 627.70131, upon receiving the agreement in paragraph (a), the insurer must make any initial inspections of the covered property within the later of:

1. If a state of emergency was declared under s. 252.36 for a hurricane or other natural disaster and the property covered under the policy was damaged as a result of the hurricane or natural disaster, 7 days after the state of emergency is terminated; or

2. Seven business days after receiving the agreement.

(e) No later than 7 days before an insured or assignee initiates litigation against an insurer relating to a denied or limited claim, the insured or assignee must provide the insurer with notice of intent to initiate such litigation. The notice of intent must include a copy of the final invoice required under subparagraph (b)1 for the work that has been performed or an estimate of the work to be performed. This paragraph does not increase the time periods prescribed in s. 627.70131.

(f) Notwithstanding any other law, in a dispute relating to the assignment of benefits for a personal lines residential property insurance policy, commercial residential property insurance policy, or commercial property insurance policy in which an assignee but not the named insured is a party, for any proposal for settlement made to a plaintiff, such proposal shall be served no earlier than 10 days after the date of commencement of the action.

(g) This section does not apply to:



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1. An assignment, transfer, or conveyance granted to a subsequent purchaser of the property with an insurable interest in the property following a loss;

2. A power of attorney under chapter 709 which grants to a management company, family member, guardian, or similarly situated person of an insured the authority to act on behalf of an insured as it relates to a property insurance claim; or

3. Liability coverage under a property insurance policy.

(3) ANNUAL REPORT.—The office shall require each insurer to report by March 31, 2019, and each year thereafter, data on each claim paid in the prior calendar year pursuant to an assignment agreement. Such data must include, but are not limited to:

(a) The number of days between the first notice of loss and the initial inspection.

(b) Loss severity.

(c) Allocated loss adjustment expense.

(d) For litigated claims:

1. Any amount paid before litigation, the amount in dispute, the amount of any proposal for settlement, and the settlement or judgment amount;

2. The amount of fees paid to the claimant's attorney; and

3. The amount and structure, whether fixed, hourly, or contingent, of fees paid to the insurer's attorney.

All information the insurer reports under this paragraph must first be reported to the opposing counsel on the litigated claim for verification or certification. The opposing counsel on the litigated claim shall report to the office its agreement or disagreement with the accuracy of the figures reported.



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157       (e) For nonlitigated claims, the difference between the  
158 insurer's initial offer and the amount paid on the claim.

159       (f) The time from the first notice of loss until the claim  
160 was closed.

161       (g) For claims involving water damage, whether the adjuster  
162 possessed certification from an entity that requires water  
163 damage remediation to be performed according to a standard  
164 approved by the American National Standards Institute.

165       Section 3. The amendments made by this act to s. 627.422,  
166 Florida Statutes, apply to assignment agreements entered into on  
167 or after January 1, 2018.

168       Section 4. Paragraph (a) of subsection (3) of section  
169 627.7011, Florida Statutes, is amended to read:

170       627.7011 Homeowners' policies; offer of replacement cost  
171 coverage and law and ordinance coverage.—

172       (3) In the event of a loss for which a dwelling or personal  
173 property is insured on the basis of replacement costs:

174       (a) For a dwelling:—

175       1. The insurer must initially pay at least the actual cash  
176 value of the insured loss, less any applicable deductible. The  
177 insurer shall pay any remaining amounts necessary to perform  
178 such repairs as work is performed and expenses are incurred. If  
179 a total loss of a dwelling occurs, the insurer shall pay the  
180 replacement cost coverage without reservation or holdback of any  
181 depreciation in value, pursuant to s. 627.702.

182       2. The insurer may not require that a particular vendor  
183 make repairs to such dwelling.

184       3. The insurer may not, unless expressly requested by the  
185 insured, recommend or suggest a particular vendor for repairs to



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be made to such dwelling.

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

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

And the title is amended as follows:

Delete everything before the enacting clause  
and insert:

A bill to be entitled  
An act relating to insurance; amending s. 627.062,  
F.S.; prohibiting certain attorney fees and costs paid  
by a property insurer from being included in such  
insurer's rate base and from being used to justify a  
rate increase or rate change; amending s. 627.422,  
F.S.; prohibiting certain property insurance policies  
from prohibiting or limiting the post-loss assignment  
of benefits; providing that an assignment agreement is  
not valid unless it meets specified requirements;  
providing requirements and limitations for assignees  
of post-loss benefits; requiring insurers to provide  
specified contact information on their websites and in  
policies; requiring assignees to deliver an executed  
assignment agreement to insurers within a specified  
timeframe; requiring insurers, upon receiving such  
agreements, to make any initial inspections of covered  
property within specified timeframes; requiring  
insureds or assignees to provide a certain  
prelitigation notice and invoice to insurers within a  
specified timeframe; providing construction; requiring  
certain settlement proposals to a plaintiff to be



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215 served no earlier than a specified time; providing  
216 applicability; requiring the Office of Insurance  
217 Regulation to require each insurer to report at  
218 specified timeframes certain data relating to claims  
219 paid pursuant to assignment agreements; requiring  
220 insurers to report certain information to opposing  
221 counsel, and requiring the opposing counsel to verify  
222 or certify the information; providing applicability of  
223 the amendments made by the act; amending s. 627.7011,  
224 F.S.; prohibiting specified acts of insurers relating  
225 to homeowners' insurance policies under certain  
226 circumstances; providing an effective date.

By the Committee on Banking and Insurance; and Senator Farmer

597-03393-17

20171684c1

A bill to be entitled

An act relating to insurance rates; amending ss.  
627.062 and 627.428, F.S.; providing that attorney  
fees paid pursuant to specified provisions may not be  
included in an insurer's base rate and may not be used  
to justify a rate or rate change; providing an  
effective date.

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

Section 1. Subsection (11) is added to section 627.062,  
Florida Statutes, to read:

627.062 Rate standards.—

(11) Attorney fees paid pursuant to s. 440.34 or s. 627.428  
may not be included in the insurer's rate base and may not be  
used to justify a rate or rate change.

Section 2. Subsection (4) is added to section 627.428,  
Florida Statutes, to read:

627.428 Attorney's fee.—

(4) Attorney fees paid pursuant to this section may not be  
included in the insurer's rate base and may not be used to  
justify a rate or rate change.

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

# CourtSmart Tag Report

Room: EL 110  
Caption: Senate Rules Committee

Case No.:  
Judge:

Type:

Started: 4/28/2017 10:36:11 AM  
Ends: 4/28/2017 12:30:26 PM Length: 01:54:16

10:36:10 AM Meeting called to order by Chair Benacquisto  
10:36:22 AM Roll call by Administrative Assistant Futch  
10:36:42 AM Quorum present  
10:36:47 AM Comments by Chair Benacquisto  
10:37:18 AM HJR 7105 introduced by Chair Benacquisto  
10:37:27 AM Explanation of HJR 7105 by Senator Lee  
10:39:45 AM Amendment Barcode No. 507120 introduced by Chair Benacquisto  
10:39:54 AM Explanation of Amendment Barcode No. 507120 by Senator Lee  
10:40:36 AM Sally Everett, Director of Government Relations for the City of St. Petersburg waives in opposition  
10:40:44 AM Nicole Fogarty on behalf of the St. Lucie County Board of County Commissioners waives in opposition  
10:40:52 AM Devon West on behalf of the Martin County Board of County Commissioners waives in opposition  
10:41:00 AM Without objection, Amendment Barcode No. 507120 is adopted  
10:41:05 AM Question by Vice Chair Thurston  
10:41:28 AM Response by Senator Lee  
10:41:45 AM Follow up question by Vice Chair Thurston  
10:42:09 AM Additional response by Senator Lee  
10:42:45 AM Discussion between Vice Chair Thurston and Senator Lee  
10:45:27 AM Question by Senator Montford  
10:45:55 AM Response by Senator Lee  
10:46:50 AM Follow up question by Senator Montford  
10:47:34 AM Additional response by Senator Lee  
10:48:18 AM Discussion between Senator Montford and Senator Lee  
10:50:49 AM Nicole Fogarty, Legislative Affairs Director for the City of Fort Pierce and the St. Lucie County Board of County Commissioners waives in opposition  
10:50:59 AM Devon West, Legislative Affairs Director for the Martin County Board of County Commissioners waives in opposition  
10:51:04 AM Andy Johnson, Assistant to the County Administrator for Leon County waives in opposition  
10:51:09 AM Mark Jeffries on behalf of Orange County waives in opposition  
10:51:16 AM Grover Robinson, Escambia County Commissioner, on behalf of local county governments speaks in opposition  
10:53:18 AM Ralph Thomas, Chairman, on behalf of the Wakulla County Board of County Commissioners speaks in opposition  
10:53:29 AM Lisa Hurley on behalf of Flagler County waives in opposition  
10:54:45 AM Andreina Figueron on behalf of the City of Hialeah waives in opposition  
10:55:36 AM Eddy Labrador, Director of Intergovernmental Affairs for Broward County, speaks in opposition; noticed by Chair for opposition on the amendment  
10:55:49 AM Question by Senator Bradley  
10:55:58 AM Response by Mr. Labrador  
10:56:07 AM Karen Woodall, Executive Director for the Florida Center for Fiscal and Economic Policy, waives in opposition  
10:56:22 AM Rich Templin on behalf of the Florida AFC-CIC speaks in opposition  
10:58:04 AM Laura Donaldson on behalf of the North Collier Fire Control Rescue speaks in opposition  
10:59:40 AM Todd Bonlarron, Assistant County Administrator for Palm Beach County speaks in opposition  
11:01:01 AM Question by Vice Chair Thurston  
11:01:11 AM Response by Mr. Bonlarron  
11:02:08 AM Comment by Senator Bradley  
11:02:22 AM Sally Everett, Director of Government Relations for the City of St. Petersburg, waives in opposition  
11:02:35 AM Jim Millican, District Chief, on behalf of the Florida Fire Chiefs Association speaks in opposition  
11:04:14 AM Nick Maddox, Commissioner, on behalf of the Leon County Board of County Commission waives in opposition  
11:04:16 AM Matt Dunangan, Deputy Director of the Florida Sheriffs Association waives in opposition  
11:04:21 AM John Wayne Smith on behalf of Marion County speaks in opposition

11:06:37 AM Chair Benacquisto asks Eddy Labrador to return for a question by Senator Book  
 11:06:45 AM Question by Senator Book to Mr. Labrador  
 11:07:05 AM Response by Mr. Labrador  
 11:07:39 AM Question by Vice Chair Thurston  
 11:08:02 AM Response by Mr. Labrador  
 11:08:27 AM Laura Youmans, Associate Director of Public Policy for the Florida Association of Counties speaks in opposition  
 11:09:40 AM Amber Hughes, Sr. Legislative Advocate for the Florida League of Cities speaks in opposition  
 11:11:03 AM Chris Lyon on behalf of the Florida Association of Special Districts speaks in opposition  
 11:12:07 AM Question by Senator Bradley  
 11:12:22 AM Response by Mr. Lyon  
 11:12:29 AM Chris Doolin on behalf of the Small County Coalition speaks in opposition  
 11:14:32 AM Brian Pitts on behalf of Justice-2-Jesus speaks for information  
 11:16:40 AM Comments by Vice Chair Thurston  
 11:18:53 AM Comments by Senator Braynon  
 11:20:28 AM Senator Lee closes on HJR 7105  
 11:23:36 AM Roll call on HJR 7105 by Administrative Assistant Futch  
 11:24:07 AM HJR 7105 is reported favorably  
 11:24:11 AM HB 7107 introduced by Chair Benacquisto  
 11:24:18 AM Explanation of HB 7107 by Senator Lee  
 11:25:19 AM Question by Vice Chair Thurston  
 11:25:51 AM Response by Senator Lee  
 11:26:01 AM Amendment Barcode No. 690150 introduced by Chair Benacquisto  
 11:26:15 AM Explanation of Amendment Barcode No. 690150 by Senator Lee  
 11:26:39 AM Comments by Senator Bradley  
 11:27:59 AM Comments by Vice Chair Thurston  
 11:28:27 AM Without objection, Amendment Barcode No. 690150 is adopted  
 11:28:33 AM Chris Doolin, on behalf of the Small County Coalition waives in support  
 11:28:37 AM Ralph Thomas, Commissioner, on behalf of the Wakulla County Board of County Commissioners waives in support  
 11:28:43 AM Matt Dunagan, Deputy Director of the Florida Sheriffs Association, waives in opposition  
 11:28:48 AM Chris Lyon on behalf of the Florida Association of Special Districts speaks in opposition  
 11:29:14 AM Eddy Labrador, Director of Intergovernmental Affairs for Broward County, waives in opposition  
 11:29:18 AM Laura Youmans, Associate Director of Public Policy for the Florida Association of Counties, speaks in opposition  
 11:29:49 AM Comment by Chair Benacquisto  
 11:30:04 AM Amber Hughes, Sr. Legislative Advocate, on behalf of the Florida League of Cities waives in opposition  
 11:30:09 AM Brian Pitts on behalf of Justice-2-Jesus speaks for information  
 11:31:35 AM Senator Lee closes on HB 7107  
 11:31:54 AM Roll call on HB 7107 by Administrative Assistant Futch  
 11:32:18 AM HB 7107 is reported favorably  
 11:32:25 AM SB 248 introduced by Chair Benacquisto  
 11:32:31 AM Explanation of SB 248 by Senator Broxson  
 11:32:52 AM Jamie Mongiovi on behalf of the Florida Office of Financial Regulation waives in support  
 11:32:59 AM Brian Pitts on behalf of Justice-2-Jesus speaks in support  
 11:33:57 AM Senator Broxson waives close  
 11:34:00 AM Roll call on SB 248 by Administrative Assistant Futch  
 11:34:20 AM SB 248 is reported favorably  
 11:34:27 AM CS/SB 856 introduced by Chair Benacquisto  
 11:34:32 AM Explanation of CS/SB 856 by Senator Broxson  
 11:34:49 AM Question by Vice Chair Thurston  
 11:35:02 AM Response by Senator Broxson  
 11:35:13 AM Follow up question by Vice Chair Thurston  
 11:35:29 AM Additional response by Senator Broxson  
 11:35:41 AM Discussion between Vice Chair Thurston and Senator Broxson  
 11:36:25 AM Bob Harris on behalf of the Panhandle Area Educational Consortium speaks in support  
 11:36:57 AM Spencer Pylant, Communications & Government Relations Liaison for Pasco County Schools, speaks in support  
 11:37:24 AM Corinne Mixon on behalf of Santa Rosa County Schools waives in support  
 11:37:25 AM Jeff Wright, Director of Public Policy for the Florida Education Association speaks in opposition  
 11:39:20 AM Brian Pitts on behalf of Justice-2-Jesus speaks for information  
 11:40:22 AM Comments by Senator Latvala



11:40:54 AM Comments by Senator Bradley  
 11:42:00 AM Comments by Vice Chair Thurston  
 11:43:25 AM Comments by Senator Brandes  
 11:43:42 AM Comments by Senator Lee  
 11:44:59 AM Comments by Senator Montford  
 11:46:52 AM Senator Broxson closes on CS/SB 856  
 11:48:00 AM Roll call on CS/SB 856 by Administrative Assistant Futch  
 11:48:33 AM CS/SB 856 is reported unfavorably  
 11:48:46 AM CS/SB 294 introduced by Chair Benacquisto  
 11:48:53 AM Explanation of CS/SB 294 by Senator Bracy  
 11:49:22 AM Melanie Bostick, Vice President of the Florida Institute of CPAs, waives in support  
 11:49:27 AM Richard Pinsky on behalf of Cyber Citizens waives in support  
 11:49:32 AM Senator Bracy waives close  
 11:49:35 AM Roll call on CS/SB 294 by Administrative Assistant Futch  
 11:49:58 AM CS/SB 294 is reported favorably  
 11:50:00 AM CS/SB 204 intro by Chair Benacquisto  
 11:50:06 AM Explanation of CS/SB 204 by Senator Passidomo  
 11:50:42 AM Question by Senator Lee  
 11:50:57 AM Response by Senator Passidomo  
 11:51:36 AM Follow up question by Senator Lee  
 11:51:58 AM Additional response by Senator Passidomo  
 11:52:42 AM Discussion between Senator Lee and Senator Passidomo  
 11:53:12 AM Brian Pitts on behalf of Justice-2-Jesus waives in support  
 11:53:20 AM Carol Bowen, Deputy Chief Lobbyist for the Associated Builders-Contractors of Florida, waives in support  
 11:53:27 AM Senator Passidomo waives close  
 11:53:33 AM Roll call on CS/SB 204 by Administrative Assistant Futch  
 11:53:58 AM CS/SB 204 is reported favorably  
 11:54:04 AM CS/CS/SB 744 introduced by Chair Benacquisto  
 11:54:10 AM Explanation of CS/CS 744 by Senator Passidomo  
 11:54:42 AM William Stander on behalf of the American Fire Sprinkler Association waives in opposition  
 11:54:57 AM Justin Thames, Director of Governmental Affairs for the Florida Institute of CPAs, waives in support  
 11:55:03 AM Richard Pinsky on behalf of Cyber Citizens waives in support  
 11:55:05 AM Jim Millican, District Chief, on behalf of the Florida Fire Marshal's Association & Florida Fire Chiefs speaks in opposition  
 11:55:47 AM Comments by Vice Chair Thurston  
 11:55:54 AM Senator Passidomo closes  
 11:56:16 AM Roll call on CS/CS/SB 744 by Administrative Assistant Futch  
 11:56:39 AM CS/CS/SB 744 is reported favorably  
 11:56:45 AM CS/SB 850 introduced by Chair Benacquisto  
 11:56:52 AM Explanation of CS/SB 850 by Senator Rouson  
 11:57:38 AM Mike Rogers on behalf of the Florida Public Housing Authority Self Insurance Group waives in support  
 11:57:46 AM Senator Rouson waives close  
 11:57:48 AM Roll call on CS/SB 850 by Administrative Assistant Futch  
 11:58:15 AM CS/SB 850 is reported favorably  
 11:58:19 AM CS/CS/SB 680 introduced by Chair Benacquisto  
 11:58:22 AM Explanation of CS/CS/SB 680 by Senator Baxley  
 11:58:39 AM Senator Baxley waives close  
 11:58:40 AM Roll call on CS/CS/SB 680 by Administrative Assistant Futch  
 11:59:03 AM CS/CS/SB 680 is reported favorably  
 11:59:08 AM CS/SB 1494 introduced by Chair Benacquisto  
 11:59:12 AM Explanation of CS/SB 1494 by Senator Rader  
 11:59:48 AM Senator Rader waives close  
 11:59:50 AM Roll call on CS/SB 1494 by Administrative Assistant Futch  
 12:00:14 PM CS/SB 1494 is reported favorably  
 12:00:19 PM CS/CS/SB 736 introduced by Chair Benacquisto  
 12:00:28 PM Explanation of CS/CS/SB 736 by Senator Mayfield  
 12:00:51 PM Slater Bayliss on behalf of the Florida International Administrators Association is in support  
 12:01:02 PM Jamie Mongiovi on behalf of the Florida Office of Financial Regulation is in support  
 12:01:06 PM Brian Pitts on behalf of Justice-2-Jesus speaks for information  
 12:02:43 PM Senator Mayfield waives close  
 12:02:48 PM Roll call on CS/CS/SB 736 by Administrative Assistant Futch  
 12:03:10 PM CS/CS/SB 736 is reported favorably

12:03:15 PM CS/CS/CS/SB 738 introduced by Chair Benacquisto  
 12:03:20 PM Explanation of CS/CS/CS/SB 738 by Senator Mayfield  
 12:03:51 PM Jamie Mongiovi on behalf of the Florida Office of Financial Regulation waives in support  
 12:03:59 PM Brian Pitts on behalf of Justice-2-Jesus waives in support  
 12:04:03 PM Senator Mayfield waives close  
 12:04:05 PM Roll call on CS/CS/CS/SB 738 by Administrative Assistant Futch  
 12:04:26 PM CS/CS/CS/SB 738 is reported favorably  
 12:04:30 PM CS/SB 1370 introduced by Chair Benacquisto  
 12:04:35 PM Explanation of CS/SB 1370 by Senator Perry  
 12:04:51 PM Amendment Barcode No. 370162 introduced by Chair Benacquisto  
 12:04:58 PM Explanation of Amendment Barcode No. 370162 by Senator Perry  
 12:05:06 PM Late filed Amendment to Amendment Barcode No. 836842 introduced by Chair Benacquisto; taken up without objection  
 12:05:15 PM Explanation of Amendment to Amendment Barcode No. 836842 by Senator Perry  
 12:05:35 PM Without objection, Amendment to Amendment Barcode No. 836842 is adopted  
 12:05:44 PM Question by Senator Latvala  
 12:05:57 PM Response by Senator Perry  
 12:05:59 PM Additional question by Latvala  
 12:06:05 PM Additional response by Perry  
 12:06:11 PM Question by Vice Chair Thurston  
 12:06:24 PM Response by Senator Perry  
 12:06:30 PM Additional question by Vice Chair Thurston  
 12:06:38 PM Additional response by Senator Perry  
 12:06:50 PM Discussion between Vice Chair Thurston and Senator Perry  
 12:07:11 PM Comments by Senator Latvala  
 12:07:54 PM Without objection, Amendment Barcode No. 370162 is adopted  
 12:07:59 PM Amber Kelly waives in support  
 12:08:15 PM Comment by Senator Latvala  
 12:08:41 PM Mike Manley, Director of Legislative Affairs for the Department of Florida Lottery appears in response to question by Senator Latvala  
 12:09:41 PM Question by Senator Braynon  
 12:09:46 PM Response by Mr. Manley  
 12:10:29 PM Question by Vice Chair Thurston  
 12:10:37 PM Response by Mr. Manley  
 12:10:54 PM Brian Pitts on behalf of Justice-2-Jesus waives in support  
 12:11:01 PM Comments by Senator Braynon  
 12:12:03 PM Comments by Vice Chair Thurston  
 12:12:15 PM Senator Perry closes  
 12:13:30 PM Roll call on CS/CS/SB 1370 by Administrative Assistant Futch  
 12:13:59 PM CS/CS/SB 1370 is reported favorably  
 12:14:06 PM CS/SB 802 introduced by Chair Benacquisto  
 12:14:10 PM Explanation of CS/SB 802 by Senator Passidomo  
 12:14:37 PM Amendment Barcode No. 417800 introduced by Chair Benacquisto  
 12:14:40 PM Explanation of Amendment Barcode No. 417800 by Senator Passidomo  
 12:14:54 PM (Senator Bradley takes the chair)  
 12:15:18 PM Question by Senator Latvala  
 12:15:39 PM Response by Senator Passidomo  
 12:16:01 PM Additional question by Senator Latvala  
 12:16:03 PM Response by Senator Passidomo  
 12:16:34 PM Voice vote on Amendment Barcode No. 417800  
 12:16:42 PM Amendment Barcode No. 417800 is adopted  
 12:16:46 PM Amendment Barcode No. 912078 introduced by Chair Bradley  
 12:16:48 PM Explanation of Amendment Barcode No. 912078 by Senator Passidomo  
 12:17:08 PM Voice vote on Amendment Barcode No. 912078  
 12:17:11 PM Amendment Barcode No. 912078 is adopted  
 12:17:14 PM Amendment Barcode No. 641970 introduced by Chair Bradley  
 12:17:19 PM Explanation of Amendment Barcode No. 641970 by Passidomo  
 12:17:32 PM Bob Harris of DeVry University waives in support  
 12:17:54 PM Voice vote on Amendment Barcode No. 641970  
 12:17:57 PM Amendment Barcode No. 641970 is adopted  
 12:18:10 PM Samantha Padgett, Vice President and General Counsel for the Beauty Industry Council of the Florida Retail Federation, waives in support

12:18:23 PM Jo Morris, Legislative Affairs Director for DBPR, waives in support  
 12:18:28 PM Brad Brackins on behalf of the James Madison Institute waives in support  
 12:18:35 PM Andrew Hosek, Policy Analyst for the Americans for Prosperity, waives in support  
 12:18:42 PM Brian Pitts on behalf of Justice-2-Jesus speaks for information  
 12:19:58 PM Senator Passidomo waives close  
 12:20:02 PM Roll call on CS/CS/SB 802 by Administrative Assistant Futch  
 12:20:29 PM CS/CS/SB 802 is reported favorably  
 12:20:37 PM CS/SB 202 introduced by Chair Bradley  
 12:20:44 PM Explanation of CS/SB 202 by Senator Brandes  
 12:21:08 PM Amendment Barcode No. 882106 introduced by Chair Bradley  
 12:21:15 PM Explanation of Amendment Barcode No. 882106 by Senator Lee  
 12:22:03 PM Question by Senator Braynon  
 12:22:12 PM Response by Senator Lee  
 12:23:21 PM Brian Pitts on behalf of Justice-2-Jesus speaks on the amendment  
 12:24:07 PM Comments by Senator Braynon  
 12:25:17 PM Senator Lee closes on Amendment Barcode No. 882106  
 12:26:06 PM Senator Lee withdraws Amendment Barcode No. 882106  
 12:26:18 PM Fred Baggett on behalf of the Florida Association of Court Clerks waives in support  
 12:26:29 PM Jon Costello on behalf of Courthouse News Services waives in support  
 12:26:32 PM Brian Pitts on behalf of Justice-2-Jesus speaks for information  
 12:28:19 PM Senator Brandes waive close  
 12:28:23 PM Roll call on CS/CS/SB 202 by Administrative Assistant Futch  
 12:28:46 PM CS/CS/SB 202 is reported favorably  
 12:28:55 PM Senator Braynon moves to have the record show his voting in favor of CS/CS/SB 202, CS/CS/SB 802, CS/CS/SB 744, CS/SB 850, CS/CS/SB 680, CS/SB 1494, and CS/CS/CS/SB 738  
 12:29:31 PM Motion shown as adopted  
 12:29:35 PM Vice Chair Thurston moves to have the record show his voting in favor of CS/SB 1494  
 12:29:44 PM Motion shown as adopted  
 12:29:48 PM Senator Flores moves to have the record show her voting in favor of HB 7107, SB 248, CS/SB 294, CS/SB 204, CS/CS/SB 744, CS/SB 850, CS/CS/SB 680, CS/SB 1494, CS/CS/SB 736, and CS/CS/CS/SB 738  
 12:30:03 PM Motion shown as adopted  
 12:30:17 PM Senator Latvala moves to adjourn  
 12:30:24 PM Without objection, meeting is adjourned